

WA high court: DUI breath tests valid, machine results not at fault

A state Supreme Court ruling reversed an earlier Kitsap County decision that found alcohol breath tests inadmissible as evidence.

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EVERETT — A state Supreme Court ruling last week ended two years of confusion over the validity of alcohol breath tests in court cases — a case that sparked worry in Snohomish County over its impact on DUI prosecutions.

In a 2022 Kitsap County District Court case, a judge ruled a machine used to administer alcohol breath tests violated state law by the method it used to calculate its results.

In their 7-2 decision April 4, state Supreme Court justices ruled the machine did not violate state code, because it was not required by law to perform the calculations itself.

Despite the local concerns, it did not appear the Kitsap County case had a significant impact on the number of DUI cases prosecuted in Snohomish County.

In 2022, local prosecutors filed misdemeanor charges in over 1,800 cases in Snohomish County district and municipal courts for DUI and physical control of a vehicle while under the influence, according to state data. Last year, prosecutors filed charges in over 2,400 such cases. Both years, just under one-fifth of defendants were found guilty as charged, while about a third were dismissed.

Felony charges wouldn't be affected by the change as much as others, as felony cases hinge on blood tests instead of breath tests, deputy prosecutor Tobin Darrow noted in 2022.

The main contention in the original Kitsap County case was the difference between “truncation” versus “rounding” in breath test results.

The Kitsap County judge ruled to suppress alcohol breath tests as evidence, because they were produced with Dräger Alcotest 9510 machines. Under state code, the average of four breath tests had to be rounded to four decimal places. But the Washington State Patrol's Dräger machine calculates the average of the four breath tests and truncates the results, meaning it cuts off numbers, in violation of the rules. The legal limit is 0.08.

Understanding the process involves a decent amount of math. Rounding to four decimal places requires adjusting the fourth decimal up or down depending on the value of the fifth decimal place. In contrast, truncating cuts off the mean at four decimal places, “without regard to the value of any number” in the fifth decimal place, according to court documents.

In the Kitsap County case, prosecutors argued the problem could actually benefit defendants, as rounding the mean could increase the final results of the breath test.

According to last week’s state [Supreme Court ruling](#), no state law required the Dräger instrument “itself” to perform its calculations “at the time of the test” by rounding. The protocols for calculating a valid breath test do not specify at what point in time the calculation of the mean has to occur, court documents said.

According to state law, a breath test is only valid if it is performed “according to the methods approved by the state toxicologist.” While those methods require the results of a breath test to be rounded instead of truncated, prosecutors can establish the “required pieces” for breath tests to be administered by doing the math in a different way, the justices wrote.

In a dissenting opinion, Justice G. Helen Whitener wrote that the device violates state law, making its results inadmissible, simply because the machine doesn’t calculate its mean using methods “approved by the state toxicologist,” as in, truncating instead of rounding.

“The majority’s interpretation ignores the plain reading of this provision,” Whitener wrote. “If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.”

The justice argued that calculating the mean at a different time than the initial breath analysis would render a foundational requirement of state law — that the calculations are done “proximate” to the breath analysis — “completely meaningless.”

The initial Kitsap County ruling only affected district court cases there.

At the time, authorities expected cases statewide could be impacted, including hundreds of Snohomish County district and municipal court rulings.

Snohomish County Prosecutor Jason Cummings, who was out of the office this week, could not be reached for comment about how the court rulings affected local cases.

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Jonathan Tall covers breaking news in Snohomish County for the Herald. [Read more of Jonathan's stories here.](#)