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**Section:** Front

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**Page:** A1

## BLOOD A TRUE MEASURE OF DUI POLICE FIND TEST RESULTS MORE ACCURATE THAN BREATHALYZER

*Judi Villa, The Arizona Republic*

John Hornig isn't convinced he was impaired when a Mesa police officer pulled him over on New Year's Eve for making a wide turn and driving slower than the posted speed limit.

But police believe they have a nearly foolproof way to find out: a blood test.

Three East Valley police agencies, including Mesa, have switched to blood tests from breath tests in their crackdown on drunken drivers. Officers say the results are more reliable than breath tests and harder to challenge in court.

"If it's running through your veins, it's going to your brain," Mesa police Sgt. Bill Peters said. "To me, it's a more accurate reflection of what's in your system."

Blood and breath tests both determine a person's blood-alcohol concentration, and either can be a crucial component of cases against suspected drunken drivers. This holiday season, 3,236 suspected drunken drivers were arrested statewide.

Although most agencies still rely on breath tests, those that have their own labs and can process the results in about a week have turned to blood tests. That is partly because breath tests have taken a beating in court.

Proponents say breath tests are just as accurate and reliable as blood tests. But because the Breathalyzer is a machine, defendants can challenge whether it was properly maintained and calibrated and whether an officer operated it correctly.

In 2000, nearly 1,400 drunken-driving cases in Phoenix and Glendale were tossed out after judges upheld challenges to the machines.

"With breath, you're utilizing a mechanical instrument, and there's always questions," Chandler police Sgt. Kurt Houser said. "With blood, you don't have that. ... It's a medical procedure as opposed to a mechanical instrument that can be manipulated."

Blood is drawn from a suspect's arm by a trained phlebotomist or by a doctor or nurse at a hospital. Peters said the only thing better than a blood test is to test the fluid behind a person's eye. But that isn't practical.

Mesa, the first agency to turn to blood tests more than a decade ago, has at least a 95 percent conviction rate in drunken-driving cases, Peters said. In Scottsdale, where blood tests have been done for about five years, Sgt. Dave Larson said the results are more fair to suspects because there is no machine involved. Chandler police switched to blood tests two months ago.

"Defense attorneys hate blood draws," Larson said. "You just can't defend it."

**Craig Penrod**, a Tempe attorney who specializes in defending drunken-driving cases, said blood tests are harder but not impossible to dispute. And, regardless of the test results, police have to have a valid reason to stop someone, or any test can be thrown out.

"Oftentimes in their zeal to arrest a lot of DUI people, they'll pull over people they shouldn't be stopping," **Penrod** said. "And then you have a case."

Chris Emmons, a Chandler police officer, said attorneys would like juries to believe officers are taking a nitpicking approach to driving.

The camera mounted in his patrol car tells a different story. It records all of Emmons' stops and the field sobriety tests he gives to suspected drunks. Phoenix police have cameras in their DUI vans.

Emmons said that in the 2 1/2 years he has used the camera, only one drunken-driving case has gone to trial. He arrests 16 to 20 impaired drivers a month. Usually, once defense attorneys view the tape, they ask about a plea, Emmons said.

"While I'm comfortable and confident I can present a case, this is like money in the bank to me," Emmons said. "A jury of this person's peers can watch and make their own judgments about whether this person is impaired."

"You don't have to listen to me on the stand telling you about the field sobriety tests. You can watch it."

Those convicted of driving drunk face jail time, fines and license suspensions.

Hornig, 41, of Mesa, is counting on the blood test to clear him.

He said he drank a six-pack of beer in 4 1/2 hours and was headed home from a liquor store when he was pulled over.

An initial breath test showed his blood-alcohol concentration at .081 percent, just over the legal limit. Inside a police command van, Hornig held out his left arm as Anthony Ballew, a phlebotomist, drew two vials of blood, one for police and one for Hornig's defense.

"It'll probably come back under," Hornig said. "I don't feel that intoxicated."