

N.J. DUI cases are left in question

Justices say defendants must prove a machine is unreliable.

By Elisa Ung

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TRENTON - More than 10,000 drunken-driving sentences could remain in limbo - possibly for months - because of a state Supreme Court order issued yesterday in the debate over the reliability of a new breath-testing device, lawyers said.

Attorneys had expected the high court to bring closure to the case by saying what evidence from the Alcotest machine could be used in prosecutions and sentencings. Instead, justices bounced the issue back to defendants, who argue the machine is unreliable and should not be used in prosecutions.

The justices said the defense should have the right to study a computer program that the Alcotest runs on; its manufacturer has so far refused to share its code.

The defense must decide within a week whether it will hire an independent software firm to study the code. That testing could take nearly five more months, according to deadlines the court set yesterday.

An infuriated defense attorney, Evan M. Levow, said his clients would most likely take a pass, though they had not made a final decision. Levow, a Cherry Hill lawyer, said the court order improperly forced the burden of proof onto defendants, who may have no way of paying for such testing.

"Why should the defendants pay to prove the state's case, when the state hasn't done so after two and a half years?" Levow asked. But, he said, "if we decline or are unable to do this, then my guess is, they [the Supreme Court] will find the machine reliable. . . . It's outrageous."

Jeffrey Gold, an attorney for the state Bar Association, which has taken a middle ground in the debate, said he was disappointed that cases could remain in limbo for months longer if the defense decides to test the program. "We all expected this to be over," he said.

Gold argued that the Supreme Court had given the defendants a "hollow right" by not requiring the state or the Alcotest manufacturer to pay for the testing.

Representatives of the manufacturer, Draeger Safety Diagnostics Inc., did not return a message seeking comment late yesterday.

Peter Aseltine, a spokesman for the state Attorney General's Office, said the office was still reviewing the order and would not comment, except to reiterate its position that the machine was scientifically reliable.

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