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RULING SOUGHT FROM TOP STATE COURT QUICK RESOLUTION OF DUI-TEST FLAP WANTED

Brent Whiting, The Arizona Republic

The state's highest court was urged Wednesday to intervene in a statewide flap involving drunken driving and allegations of evidence tampering by the Arizona Department of Public Safety.

Defense lawyers filed a special action with the Arizona Supreme Court saying that guidance is needed to break a logjam involving thousands of cases throughout the state that touch on the matter.

"The sheer volume of pending motions and cases involving thousands of defendants guarantees the recurrence of the issue," the lawyers wrote in their petition.

There was no indication when the court may rule whether to assume legal jurisdiction. If the court declines the accelerated review, then appeals are expected to proceed through normal but slower channels in lower Arizona courts.

Rob Robinson, a Glendale lawyer, and **Craig Penrod**, a Tempe attorney, are challenging part of a ruling last week by Judge John Burkholder of Glendale City Court that tossed out breath-test evidence gathered against 88 people accused of driving under the influence.

The two lawyers told the Supreme Court that under state law, Burkholder should have ordered outright dismissal of the cases.

In a 41-page ruling, Burkholder held that the DPS crime lab has engaged in "bad faith" dealings in its handling of evidence relating to breath-tests results registered by the Intoxilyzer 5000, a machine used by police statewide in DUI cases.

They allege that "tens of thousands of DUI cases" that have been resolved since 1995 may be jeopardized because of the practice.

Robinson and **Penrod** told the Supreme Court that lower courts throughout the state "are at a virtual standstill since they cannot try DUI breath-test cases, often their most frequently litigation matters, absent a resolution of these issues."

Joe Albo, the DPS director, has denied any legal or scientific improprieties by the crime lab to warrant the ruling issued by Burkholder.