

Sheriff's officials to attend hearings to back its DUI test

CRIME: The department seeks to avoid future dismissal of drunken driving charges from driver's license records.

By **SUSAN KELLEHER**
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The Orange County Sheriff's Department said Wednesday that it will send officials to testify at DMV hearings in the future if drunken driving suspects try to win their licenses back by attacking the quality of work at the sheriff's crime lab.

The action will have no impact on a Jan. 7 decision by the Department of Motor Vehicles to review previous cases where DUI suspects lost their licenses based solely on the results of breath-testing machines used in Orange County for 18 months in 1997 and 1998, DMV spokesman Bill Gengler said.

"The same standards will apply," he said.

The DMV automatically suspends the licenses of people charged with driving under the influence of alcohol. Drivers may request a hearing or file an appeal with the DMV to challenge the suspension.

More than 50 drivers had their DMV charges dismissed last year after attorneys offered evidence that the sheriff's crime lab — which checks and services Datamaster machines for every police agency in Orange County except Huntington Beach — was not licensed to check the accuracy of the breath-testing machines until June 25, 1998.

Drivers arrested for DUI in Orange County between Jan. 1, 1997, and June 25, 1998, can ask the DMV for a similar dismissal if their charges were based solely on evidence obtained from a Datamaster machine during that period, Gengler said.

People who gave blood or urine tests for DUI evidence during that period are not eligible for

the same consideration. The action also will not erase criminal DUI convictions or guilty pleas.

People arrested in Huntington Beach, which operates its own lab, also are not affected.

Gengler said Wednesday that the department will not review cases where drivers did not request a DMV hearing or file an appeal to challenge the suspension. Because the disputed Datamaster cases are up to 2 years old, Gengler said it was unlikely any still are active. However, if some still are pending, sheriff's officials will be notified so they can argue that the lab was legally licensed.

In the future, Gengler said, DMV will alert the Sheriff's Department if other lab tests are challenged by motorists seeking to have their driving records cleared. Sheriff's officials said they were not given such notification when the licensing issue was initially raised.

Police and sheriff's deputies administered more than 5,300 Datamaster tests during the 18-month period. Of those tests, more than 4,700 suspects produced breath samples that showed blood-alcohol levels at or exceeding the legal limit of 0.08 percent.

Assistant Sheriff Doug Storm said Wednesday that DMV and state Department of Health Services officials now agree with the Sheriff's Department's contention that the lab was legally allowed to check the Datamasters once it submitted paperwork to the state outlining the procedures it would use.

But Clay Larson, chief of the state Health Department section that licenses alcohol and drug testing labs, said Wednesday that a lab is fully approved to check the accuracy of Datamaster machines only if its license says so. State records show that the Orange County lab's license didn't include the Datamaster machine until June 25, 1998.

DMV spokesman Gengler referred comments about Storm's statement to the state Health Department.