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Sheriff to fight DMV's DUI ruling

AGENCIES: The department says the blood-alcohol tests were done legally, and drivers' records shouldn't be expunged.

By **SUSAN KELLEHER**

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The Orange County Sheriff's Department is seeking to overturn a decision that could help 4,700 motorists erase drunken-driving charges from their DMV records, but there might be no legal avenue for doing so, a sheriff's spokesman said Wednesday.

Lt. Hector Rivera said the Sheriff's Department will contact state officials, including at the Department of Motor Vehicles, to try to persuade them that breath-testing machines used by Orange County law-enforcement

agencies in 1997 and 1998 were legally operated.

The DMV said last week that it will consider removing DUI-related offenses from drivers' records if the charges were based solely on blood-alcohol readings from BAC Datamaster machines from Jan. 1, 1997, to June 25, 1998.

The action will apply only to charges filed with the DMV to revoke or suspend licenses. Criminal DUI convictions or guilty pleas handled by the district attorney will remain on the record.

The decision will not affect drivers whose blood-alcohol levels were measured by other machines during that 18-month period, or if a variety of evidence, including blood or urine samples, was collected, the DMV said.

All Orange County law-enforcement agencies except Huntington Beach police, use Datamaster machines under a license

held by the sheriff's crime lab. State records show the lab was not licensed to check the machines' accuracy until June 25, 1998.

The Sheriff's Department, however, says it was legally able to check the machines when it filed paperwork with the state in January 1997.

"As far as we're concerned, there isn't any question as to the use of the machine or its accuracy," Rivera said.

But a DMV spokesman said there was "no wiggle room" on the issue because the sheriff's crime lab used Datamaster results to charge people with DUIs before the state signed off on the procedures used to check the Datamasters' accuracy.

"The DMV is heart-sick over this situation," said DMV spokesman Evan Nossoff. "But if the machine wasn't certified, it wasn't a legal test."

The license is more than a technicality, Nossoff said. Breath tests — unlike blood and urine tests — leave no sample for double-checking, so there must be safeguards to ensure that people aren't released or charged on false results.

Rivera said his department did not have an opportunity to address the licensing issue last year before the DMV cleared DUIs from the driving records of 50 motorists. Last week, the DMV said it would review the cases of other drivers who met the same criteria.

"The agreement made was between the Attorney General's Office and a private attorney, not a court decision," Rivera said. "The hearing involved only one case, yet the decision made by DMV officials was to apply it to well over 4,700 people."