

# DUI: Charges from January 1997 to June 25, 1998, may be cleared from driving records

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DMV spokesman Bill Gengler. Defense attorneys said using the Datamasters before the state signed off on the procedures for handling them is more than a technicality.

"The difference between 1/100th of a percent determines guilt or innocence," said Laguna Beach attorney Barry Simons, who succeeded in clearing DUIs from 50 clients' driving records by raising the licensing issue.

"It's incumbent that the lab do everything possible to ensure that innocent people are not falsely convicted," he said.

Defense attorney Virginia L. Landry said: "What they did was absolutely significant. People lost the opportunity to drive, based on a machine that was not scientifically proven. It's something that stays on your record for seven years, and it costs thousands of dollars."

Costa Mesa Police Chief Dave Snowden said the DMV's decision to erase the records because of the Datamaster licensing problem was "ridiculous."

"They're not stating that the testing procedures were invalid, only that the license wasn't valid," Snowden said. "These people were still drunk, they were still on our highways, and the public has a right to be protected from these people."

Drivers who were charged with DUI in Orange County between January 1997 and June 25, 1998, can have the DUI erased from their DMV records if the charge was based solely on a reading from a Datamaster breath machine, said Gengler of

## WHICH DUI CASES ARE AFFECTED AND WHAT TO DO

The state Department of Motor Vehicles will remove a DUI-related offense from its records for drivers whose licenses were revoked or suspended between Jan. 11, 1997, and June 25, 1998, based solely on a blood-alcohol reading taken by an Orange County police agency using the BAC Datamaster breath-testing machine.

People who gave blood or urine tests for DUI evidence during that period are not eligible for the same consideration. The action does not affect criminal convictions, which will remain on court records, and people are responsible for informing their insurance carrier after the record is expunged. All Orange County police agencies, except Huntington Beach, which operates its own lab, used the machines.

DMV spokesman Bill Gengler said requests will be reviewed on a case-by-case basis. Drivers who believe they qualify should make a written request to the DMV to have their driving record cleared. The letter should include the driver's name, address, date of birth, date and place of arrest, and driver's license number. Letters should be sent to: DMV, Driver Safety Branch, 2415 First Ave., Sacramento, Calif. 94232-3450.

In most cases, DMV will have a record of whether the Datamaster was used. However, individual DMV files are destroyed after 18 months, so in some cases, people may have to contact the arresting agency to obtain proof that the Datamaster was used.

- The Orange County Register

the DMV.

Police and sheriff's deputies administered more than 5,300 tests before an amendment to the lab's license allowed it to perform critical accuracy checks for police agencies, according to sheriff's statistics. 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.

People charged with DUI face administrative penalties through the DMV, plus criminal charges. DUI convictions or guilty pleas will remain in criminal court records even if the DMV clears a driver's record, attorneys said.

A suspected drunken driver could challenge the Datamaster reliability in criminal court before a jury, which would then decide how much weight to give the

results in determining guilt or innocence.

Gengler said Thursday, after being contacted by The Orange County Register, that because the DMV expunged the record of 50 of the 54 cases that were appealed on the basis of the lab's license, fairness requires that it extend that action to other similarly affected drivers.

"Anyone with a DUI on their record has problems with insurance and employment, and if they get arrested (for DUI) again, the second suspension is much more severe," Gengler said.

Motorists, however, will not be reimbursed by the DMV for money they spent on mandatory driver-education courses and higher insurance premiums, he said.

Sheriff's statistics show that law enforcement steadily in-

creased its use of the Datamaster in DUI arrests before the department was licensed to check for the equipment's accuracy.

In 1997, the Datamaster accounted for 49 percent of the 5,873 DUI breath tests run in Orange County, according to Sheriff's Department data. From January through June of 1998, the Datamaster was the exclusive breath-testing device, accounting for all of the 2,424 DUI breath tests.

Clay Larson, chief of the state health department's abused-substances analysis section, said that in 10 years there have been only one or two other instances where a forensics lab in California used breath-testing machines without the proper license.

Before the state issues a license to use the equipment to charge suspects with drunken driving, labs must prove that

they can train people to use the machines, and that their handling of the machines and other testing equipment doesn't create false readings.

Reidel Post, executive director of Mothers Against Drunk Driving-Orange County, said the licensing issue is difficult because it pits individual rights against public protection.

"I understand if there are rules to ensure accuracy and uniformity in the testing procedures so that the evidence is clear and usable for trials and legal proceedings," she said. "But if there weren't changes that needed to be made (at the lab), then it puts the community at greater risk in expunging the records for these folks and putting them into the community without the benefit of the punitive measures they would otherwise have to adhere to."

With a DUI recidivism rate of 32 percent in Orange County, the community relies on the punishments to keep that rate from climbing, Post said.

"From what many DUI offenders have told me, ... the inconvenience and the emotional and financial pain they've been through have caused them to rec-

ognize the errors of the

she said. Darrell O. Clardy of a former supervising officer for the Sheriff's Department now runs a forensic firm specializing in drug testing, said the lab could have avoided them by using the other testing instruments. "To use the instrument in an arrest situation, you show it's accurate," she said. Clardy, who assists DUI defense attorneys, went ahead and used the Datamaster even though other (breath-testing) instruments were available. That's "disturbing."

The department also supervised trainees who performed breath tests on DUI suspects. On two occasions, a suspect's test resulted in dismissal of charges against two suspects, according to letters between the department and state licensing officials.

"For whatever reason, the Orange County criminal justice system has a tendency to ignore the possibility to the Department of Health," Simons, said. "There are agencies that believe what's best."

