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Alcohol breath tests challenged in Lake Orion

Mike Martindale/ The Detroit News

Lake Orion— Lack of maintenance on a police department breath analyzer has allowed at least three Oakland County drunken drivers to dodge stiffer penalties, and authorities fear other cases could be affected.

At issue is the DataMaster alcohol breath analyzer at the Lake Orion Police Department, regularly used by Lake Orion and Oxford Police and some Oakland County Sheriff's deputies to test drivers suspected of [drinking](#) after they are given preliminary breath tests.

The DataMaster tests performed at the police station are critical because they can be used in court, unlike preliminary ones that are collected after traffic stops. But state law requires the machines be tested weekly and maintenance logs kept of those checks. County Prosecutor Jessica Cooper said her office was preparing for some cases recently and discovered the logs had not been maintained regularly since January.

Authorities routinely check the testing of such machines when prosecuting "superdrunk" cases, or those in which suspects have a blood-alcohol level of .17 or higher. Such cases carry enhanced penalties under a state law that went into effect in October.

"We found it (the problem) ourselves," Cooper said. "We contacted defense attorneys and police departments involved and we believe the problem has been fixed.

"It's only impacted a few cases that we know of."

In those three cases, "we later had to drop these down to lesser penalty offenses because there was a problem using the findings of the machine," Cooper said.

Three cases were reduced to lesser charges at request of the Prosecutor's Office since May. None had prior drunken driving convictions on record with the state. They are:

David [Bond](#), 56, of Lake Orion, who initially was charged with having a .20 blood-alcohol count after driving off the road March 18, had his charge amended to reckless driving July 1. He is to be sentenced on Aug. 23.

Kenneth Ferguson, 57, of Lake Orion, had a .27 blood-alcohol count in a May 1 stop and accepted a plea to operating while visibly impaired. He is to be sentenced Sept 12.

Ashley Cameron, 23, of Rochester, who had a .19 blood-alcohol count on May 30 when spotted driving partly on the shoulder of Lapeer Road, accepted a plea on Wednesday of operating while impaired.

Her attorney, Jeffrey Quas, said records show the DataMaster was not properly tested before her arrest. "It's pretty clear somebody has dropped the ball over there," he said.

Lake Orion Police Chief Jerry Narsh said tests were missed on several weeks between February and July but the matter has been corrected and the machine is running properly.

"We have a great reputation and conviction [rate](#) during my 30 years here," Narsh said. "The officer assigned to it was too busy to get the tests done and so they have been reassigned to another officer. There may be disciplinary actions out of this." Cooper said in over two years as prosecutor she has not come across any similar problems and suspects it is likely confined to the one department.

Local attorneys who specialize in drunken driving cases said they regularly check simulator log testing and did not know of any widespread problems.

"I have come across a couple cases where a machine might not have been tested for one or two weeks before my client was stopped and tested," attorney Robert Larin said. He said he has been able to "get charges knocked down — or even to a nonalcohol offense." "But 90 percent (of machines) are being tested properly and regularly," he said. "But probably only about one in three attorneys raise questions about them."

About 28,000 breath tests are conducted each year across Michigan, according to Michigan State Police Sgt. Paul Curtis of the alcohol enforcement division.

He said while State Police are mandated to administer and inspect them, police agencies are supposed to test them and follow all rules and procedures.

"The credibility of these tests (is) important," said Curtis, who said he plans to inquire into the situation to determine its magnitude and whether any problems have been corrected.

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