

Lab error could affect hundreds of Orange County DUI cases

An Orange County Crime Lab error leads to inaccurate blood alcohol test results that could affect hundreds of DUI cases, officials say.



Police in Huntington Beach conduct a DUI investigation in 2011. An Orange County Crime Lab error has led to some inaccurate blood alcohol test results that could affect hundreds of DUI cases. (Francine Orr / Los Angeles Times / February 11, 2011)

By Richard Winton

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The Orange County Crime Lab produced inaccurate blood alcohol test results in 2,200 driving-under-the-influence cases filed by prosecutors this year — mistakes that could affect outcomes in dozens of cases.

Prosecutors in recent days sent letters to people charged with driving under the influence, including 900 whose cases resulted in convictions. The letters advised them that their cases were among those with miscalculations.

Crime lab officials said the "human error" occurred over nearly five months and led to mistakes in the forensic examination of blood alcohol content. But they insist the miscalculations were so few that they affect only about 200 cases. As few as 20 people could see their blood alcohol test levels drop below 0.08%, California's legal definition of DUI impairment.

But veteran DUI attorneys across Orange County said flaws with the lab's basic testing probably will affect many more cases because sentence enhancements and negotiations are often based on how far over the legal limit a motorist was determined to be.

"If it took them nearly five months to figure out this mistake, what else is there?" said Virginia Landry, an Orange County defense attorney known as the "DUI Queen." "Everyone wants the roads to be safe. But this is a forensic nightmare with a lack of integrity in the process."

She said her office is reviewing dozens of cases.

"I want all the data," she said.

Orange County Crime Lab Director Bruce Houlihan said the facility, which serves the entire county, discovered flaws in its analysis Oct. 10 while conducting an audit.

"It was a human error that led to an instrument to be wrongly calibrated," he said.

The lab tests each blood sample twice using two machines and then averages the results, Houlihan said. The error affected one of the machines beginning May 29. The machine uses five calibrator data points for levels of alcohol in the blood; one was entered incorrectly, Houlihan said.

As a result, the machine was off by 0.003 percentage points, he said.

"Because the error was so small, we didn't catch it," he said. The lab has safeguards designed to catch any error bigger than 0.004 percentage points, he added.

About 200 cases will have the blood alcohol average change by 0.01 points. Twenty people will have their blood-alcohol content dropped from 0.08% to 0.07% — below the DUI legal limit — Houlihan said.

Farrah Emami, a district attorney's spokeswoman, confirmed that the changes may affect some cases, but she said drops in blood alcohol content below the legal limit don't guarantee that charges will be dropped.

"When you arrest a person and they have a 0.07 two hours after arrest, they had a 0.08 at the time of arrest. We have obtained convictions in those cases," she said.

A Fullerton father whose son was arrested on suspicion of driving under the influence said he was outraged by the errors.

"What upsets me is when authorities conduct tests, they are under penalty of perjury. Everything has to be accurate," said Miguel L., who asked that his full name not be used. "If they're not checking their machines daily, what else is happening inside that lab?"

He said his son, 22, was surprised to receive the letter from the Orange County district attorney's office. When officers stopped him for a blood alcohol test, he registered 0.09%, his father said.

"I do think it's an injustice," he said. "Imagine if you were a person who made your living driving. If you were a truck driver or someone like that, something like this could ruin your career."

Attorney Paul Wallin, whose firm represents about 100 of the 2,200 cases, said such a serious error is rare and that judges and defense attorneys would get to the bottom of it in court.

"I expect there to be hearings in some cases, and they are going to have put someone up to testify from the crime lab," he said.

Wallin said he fears those without attorneys may let wrongful convictions stand and "won't go back and challenge it."

Houlihan said the lab was prepared for whatever legal challenges appear: "I am always concerned about anything being wrong. But I'm confident in our analysis and we can explain what happened," he said.

richard.winton@latimes.com

Times staff writer Anh Do contributed to this report.

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