



# **NEWS RELEASE**

## **MICHIGAN STATE POLICE**

### **Update on State's Evidential Breath Alcohol Testing Program**

**FOR IMMEDIATE RELEASE:**

**January 16, 2020**

**LANSING.** This morning Michigan State Police (MSP) Director Col. Joe Gasper provided testimony before the state's Judiciary and Public Safety Committee on the findings to-date of the department's investigation into issues with the state's Datamaster DMT evidential breath alcohol testing instruments.

As of 7 a.m., discrepancies have been identified involving eight instruments at the following locations:

| <b>Instrument Location</b>            | <b>Period of Time in Question</b> | <b>Number of Breath Tests</b> | <b>Possible Criminal Act</b> |
|---------------------------------------|-----------------------------------|-------------------------------|------------------------------|
| Alpena County Sheriff's Department    | 11/14/19 – 1/9/20                 | 8                             | Yes                          |
| Beverly Hills Police Department       | 1/22/19 – 6/21/19                 | 9                             | Yes                          |
| Detroit Detention Center              | 10/10/19 – 10/13/19               | 6                             | No                           |
| Montcalm County Sheriff's Department  | 8/23/19 – 8/26/19                 | 1                             | No                           |
| Niles Law Enforcement Center          | 1/15/19 – 2/18/19                 | 7                             | No                           |
| Pittsfield Township Police Department | 12/20/18 – 8/7/19                 | 5                             | Yes                          |
| Tecumseh Police Department            | 2/15/19 – 6/28/19                 | 12                            | Yes                          |
| Van Buren County Sheriff's Department | 11/21/19 – 12/9/19                | 4                             | No                           |

As irregularities are identified, notification is made to the affected prosecutor regarding impacted breath tests. Prosecutors will review each case on a case-by-case basis to determine what actions to take.

On Jan. 13, 2020, the MSP took all 203 Datamaster DMT evidential breath alcohol testing instruments in the state out of service until they could be inspected and verified by MSP personnel. As of 7 a.m. this morning, 37 of 203 instruments have been returned to service following verification by MSP personnel that the instruments are properly calibrated.

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MSP personnel are re-certifying the most frequently used instruments and those in areas with limited access to obtaining blood samples first, with hopes of returning all instruments to service by the end of February.

A criminal investigation by MSP into potential fraud committed by contract employees of Datamaster vendor, Intoximeters, is ongoing.

The below timeline of events was also shared with the committee today.

### Timeline of Events:

**September 1, 2018** – Effective date of three-year maintenance contract with Intoximeters Inc.

- Contract is \$1.26 million; requires vendor's three technicians to conduct 120-day certifications of all instruments, perform service calls and routine maintenance, and provide court testimony on the service and maintenance of the instruments.
- The technicians whose work is in question were hired in September and November of 2018.

**January 2019** – With the intent to bring the state's evidentiary breath alcohol testing program into alignment with forensic laboratory standards and work toward national accreditation, the MSP created a new position, Breath Alcohol Technical Leader, within the Forensic Science Division. The accreditation process was expected to take at least 18 months.

**April 2019** – MSP put additional workflow requirements in place with the vendor to ensure compliance with state law and administrative rules and move toward accreditation. It was after these additional controls were put in place that the MSP began to notice noncompliance by the vendor's technicians.

**August 9, 2019** – After identifying repeated failures by the technicians to meet contractual requirements and the inability to perform the mandated tasks of maintaining and certifying the Datamaster instruments, the MSP asked DTMB Central Procurement to issue a letter to Intoximeters outlining grounds for breach of contract and requesting a corrective action plan.

- Examples of improper actions include:
  - Not performing timely 120-day certifications in 60 instances.
  - Incorrect recording of important elements during instrument checks; these include dry gas lot numbers and expiration dates, which can create issues in court when the lot numbers recorded by the technicians are wrong, or do not exist.
  - Sharing instrument passwords with jail staff.

**August 21, 2019** – MSP received a corrective action plan from Intoximeters that outlined their action plan to correct the contractual failures.

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**August 23, 2019** – An Intoximeters technician committed a serious error that resulted in the dismissal of an OWI case in Montcalm County.

- On August 23, 2019, the technician went to the Montcalm County Jail and signed the Datamaster Maintenance Log. The technician did not notify the MSP nor Intoximeters of this visit and did not submit any paperwork regarding the reason for his visit. Later that day, an MSP sergeant arrested an individual for OWI and utilized that instrument for evidential testing. MSP was first made aware of this technician's August 23<sup>rd</sup> visit by the Montcalm County Prosecutor's Office on November 15, 2019. The technician and Intoximeters were both unable to explain this visit, casting doubt on the reliability of any tests conducted on August 23, 2019 through August 26, 2019 when an accuracy check was performed by the technician. This lack of documentation resulted in the dismissal of this OWI case.

**October 10, 2019** – Another serious error occurred that resulted in the dismissal of evidence in six cases in Wayne County.

- On this date, a technician arrived at the Detroit Detention Center to perform a 120-day certification. The instrument failed testing, but the technician did not notice the failure. Consequently, he left the instrument in service until October 13, 2019. During this 3-day period, the instrument was used for six OWI evidential breath tests. Because the instrument was not properly serviced and was left in service, these six cases did not have reliable breath evidence. The MSP sent a notice to the Wayne County Prosecutor's Office, which decided to dismiss the evidence in these cases.
- Following discovery of this error, MSP requested removal of the technician responsible, with removal and replacement to occur no later than January 15, 2020. This never occurred due to the MSP actions taken on January 7 to issue the stop work order.

**December 2019** – MSP began the process of establishing a unit within the Forensic Science Division to oversee the state's breath alcohol testing program. The unit will be comprised of three equipment technician positions to maintain and certify the state's breath alcohol testing equipment.

**January 2, 2020** - During a routine audit of documents submitted by the vendor for the prior two-week period, an irregularity is noticed on an instrument at the Alpena County Sheriff's Department. The MSP immediately requested the original documents from the technician.

**January 6, 2020** – MSP confirmed the irregularity was the result of the technician fabricating the paperwork for a required test that was not performed on the instrument.

- A criminal investigation is opened by the MSP into possible forgery of a public document. This investigation is ongoing.

**January 7, 2020** – With potential criminal acts committed by an Intoximeters technician, the MSP issues a stop work order with the vendor and secures all equipment and paperwork from the three technicians.

**January 10, 2020** – MSP finalizes an emergency plan to immediately bring all maintenance responsibilities for the state's 203 instruments in-house, and notification is made to police and prosecutors of the stop work order and MSP's new responsibilities.

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**January 13, 2020** – MSP personnel continued through the weekend to review records from the technicians yielding additional discrepancies involving a second technician and three more impacted instruments (Beverly Hills PD, Pittsfield Township PD, and Tecumseh PD), in which it is suspected that instrument calibration tests were again fabricated.

- With this new information, MSP removes all 203 Datamaster DMT evidential breath alcohol testing instruments from service until they can be inspected and verified by MSP personnel to ensure they are properly calibrated.
- MSP recommends to police agencies that they utilize blood draws rather than breath tests to establish evidence of drunk driving during the interim period.

**###**

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