



Final tally on flawed DUI: 206 errors, 9 tossed or reduced

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Prosecutors had to dismiss or reduce nine drunken driving charges as a result of 206 errors a former Colorado Springs Metro Crime Lab forensic chemist made on cases dating back to 2007, authorities disclosed today.

Of the nine affected cases, seven resulted in DUI charges being dismissed while two resulted in lesser penalties, said 4th Judicial District Attorney Dan May. Five of the defendants spent time in jail. Two of those cases dated from 2007 and seven from 2009.

May said the errors did not shake his confidence in the crime lab, which serves both the city and the county.

"They're the ones who discovered this and disclosed it immediately," he said. "We feel they've taken the appropriate measures that they should have."

Still of the nine cases, May added. "If you are one of the ones affected, that's one too many."

Deputy Police Chief Rod Walker would not disclose whether the chemist was fired or resigned, citing personnel rules. Nor would he say if that was a result of the mistakes that were uncovered. Walker said the chemist had been a "long-time" employee.

In December, the police department disclosed that in at least 82 cases, the lab findings were reported to be at levels higher than they actually were. By January, the number of flawed cases had grown to 167. They also found an additional 39 erroneous results from 2007. In all, the lab retested 7,892 blood alcohol cases dating back to 2006.

A partial set of documents obtained through an open records request by local DUI lawyer and former prosecutor Tim Bussey indicted that mistakes with the concentration of n-Propanol, a solvent used in the testing process, might have been responsible for the errors.

Crime Lab Supervisor Ian Fitch confirmed that the errors with the solvent were the root cause of the problem.

He said the mistakes came to light when two chemists in the lab were given routine proficiency exams in October. The tests involve blood samples with known alcohol levels supplied by the College of American Pathologists. One chemist passed the exam and the other didn't, which led Fitch to go back and begin retesting samples.

Police previously had reported that the mistakes were the result of human error and not the result of equipment or system failure.

Bussey said the errors still raise troubling questions about the lab.

"Every person in the county needs to be concerned about that lab," he said. "To simply blame it on one analyst is to ignore the fact that any lab is a system of checks and balances from the lab to the certifying agency, which in this case is the department of health."

The discovery of the flawed results resulted in the lab's blood alcohol testing unit being shut down for about two weeks while retesting began, Fitch said. But it did not result in the loss of the lab's certification with the health department nor its accreditation to an international agency.

"It was a fairly complex error," Fitch said of the type of mistake the chemist made. Fitch said he is not aware of any lab elsewhere in the U.S. making a similar error.

Fitch said he could not explain why 39 of the mistaken cases occurred in 2007, none in 2008 and 167 in 2009.

Prosecutors said they contacted the lawyers and defendants in the 206 flawed cases and provided them with all the documentary evidence for free. The district attorney's office also handled 210 calls from a hotline set up in December after the mistakes were publicly reported.

For summaries of the nine dismissed or reduced cases go to the [Sidebar blog](#) at Gazette.com.