



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

GRETCHEN WHITMER
GOVERNOR

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DIRECTOR

Timeline:

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 to 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.

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 23rd 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 was to be comprised of three equipment technician positions responsible for the maintenance and certification of the state's breath alcohol testing equipment.

December 9, 2019 – Intoximeters notifies the MSP that an instrument located at the Van Buren County Jail did not pass all required checks during the onsite 120-day inspection that was completed on Nov. 21, 2019. The instrument should have been repaired during the inspection; however, the repair was not completed until Dec. 9, 2019, calling into question four breath alcohol tests conducted during that time. MSP makes notification to the county prosecutor of impacted cases.

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 requests 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 what is now potentially criminal action by an Intoximeters technician, the MSP issues a stop work order with the vendor and secures all equipment and paperwork from the three technicians.

- At the same time, the MSP begins an exhaustive review of vendor records to look for any other evidence of fabricated documents or other issues of non-compliance. In doing so, it is identified that an instrument located at the Niles Law Enforcement Center did not pass all required checks during the onsite 120-day inspection that was completed on January 15, 2019. The instrument should have been repaired by the technician at that time; however, the repair was not completed until Feb. 18, 2019, calling into question seven breath alcohol tests conducted during that time. Notification is immediately made to the impacted prosecutors.

January 10, 2020 – MSP finalizes an emergency plan to immediately bring all maintenance responsibilities performed by the vendor 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.

January 13, 2020 –Additional discrepancies are identified 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 more than one instance of potential criminal acts being committed by the vendor's technicians, 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.

Impact:

The MSP is still in the process of reviewing vendor records. To date, discrepancies have been identified involving eight instruments at the following locations:

Instrument Location	Period of Time in Question	Number of Breath Tests	Possible Criminal Act
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

MSP anticipates completing its review of all vendor records by January 27, 2020, if not sooner. If additional irregularities are identified, notification will be made immediately to the affected prosecutor regarding impacted breath tests. Prosecutors will then be able to conduct a case-by-case review to determine what actions to take.

As of this morning, 81 of 203 Datamaster DMT evidential breath alcohol testing instruments have been returned to service following verification by MSP personnel that the instruments are properly calibrated. 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.