

**WHATCOM COUNTY PROSECUTING ATTORNEY
DAVID S. McEACHRAN**

CHIEF CRIMINAL DEPUTY
Mac D. Setter

ASST. CHIEF CRIMINAL DEPUTY
Warren J. Page

CRIMINAL DEPUTIES
Craig D. Chambers
Elizabeth L. Gallery
David A. Graham
Eric J. Richey
James T. Hulbert
Dona Bracke
Ann L. Stodola
Jeffrey D. Sawyer
Anna Gigliotti
Shannon Connor
Christopher D. Quinn
David E. Freeman
Kari Hathorn
Kyle Moore
Kristen Reid

**Whatcom County Courthouse
311 Grand Avenue, Second Floor
Bellingham, Washington 98225-4079
(360) 676-6784 FAX (360) 738-2532
COUNTY (360) 398-1310**

CHIEF CIVIL DEPUTY
Randall J. Watts

CIVIL DEPUTIES
Karen L. Frakes
Daniel L. Gibson
Royce Buckingham

**CIVIL SUPPORT
ENFORCEMENT DEPUTIES**
Angela A. Cuevas
Dionne M. Clasen

APPELLATE DEPUTIES
Kimberly Thulin
Hilary A. Thomas

ADMINISTRATOR
Kathy Walker

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Dear Colleagues:

I am writing regarding the myriad of motions that have been filed surrounding the Washington State Toxicologist and State Toxicology Lab. Having reviewed much of the record and all of the decisions rendered by the Courts around the state, I would note that both of the following cases are persuasive. King County District Court decision, *State v. Ahmach, Sanafim, ET AL.* issued January 30, 2008, which held for the defense, suppressing the BAC result; and Snohomish County Superior Court decision, *State v. Russeff*, issued January 22, 2008, which held for the State, denying the defense's motion to suppress the BAC result. The conflicting results notwithstanding, the analysis in both cases is well taken and is consistent with the Supreme Court decision *City of Fircrest v. Jensen*, 158 Wn.2d 384 (2006) and Justice Madsen's opinion in *City of Seattle v. Ludvigsen*, SL OP 79974-1 (December 20, 2007).

Accordingly, it is the decision of the Whatcom County Prosecutor's Office that in cases where the charge filed is RCW 46.61.502, Driving Under the Influence of Intoxicating Liquor, RCW 46.61.504, Physical Control While Under the Influence of Intoxicating Liquor, or 46.61.503, Minor Operating, the State will not seek to admit at trial any BAC result run with a simulator solution from a batch approved by the State Toxicology Lab prior to Batch 07026. In all but a few instances, this decision will only affect tests run prior to August 24, 2007. It is the belief of this office that solutions from Batch 07026 onward do not suffer from the procedural or substantive errors, which have been the basis of the above referenced motions and court decisions.

Those pending cases falling within the subject time period, will be evaluated on a case-by-case basis. Where evidence is sufficient, DUI and Physical Control charges will be litigated under the appreciably affected prong of the statute.

Sincerely,

Warren J. Page
Assistant Chief Criminal Deputy