

501 CMR 2.00: SAFE ROADS

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2.01: Purpose

The purpose of 501 CMR 2.00 is to establish rules and regulations regarding satisfactory methods, techniques and criteria for breath and blood tests of those persons who have been arrested for operating a motor vehicle while under the influence of intoxicating liquor or a related offense. It also establishes a statewide training and certification program for all operators of breath test devices and a certification program of breath test devices in accordance with M.G.L. c. 90, § 24K. 501 CMR 2.00 does not apply to portable breath test devices used to conduct pre-arrest screening. Additionally, certification of blood test analysts is addressed.

2.02: Definitions

Adequate Breath Sample: a sample of breath that when delivered is sufficient for analysis by an approved breath test device.

Arrestee: a person who has been arrested for operating a motor vehicle while under the influence of intoxicating liquor or a related offense.

Assistant Director: The Deputy Director of the Forensic Chemistry Section with the Massachusetts Department of State Police Crime Laboratory, who shall be appointed by the Colonel.

Blood Alcohol Content (BAC): the number of grams of alcohol per 100 milliliters of blood; or the number of grams of alcohol per 210 liters of breath. Breath alcohol content is also known as blood alcohol concentration, blood alcohol level and BAC.

Blood Test Analyst (BTA): a Forensic Scientist of the Massachusetts Department of State Police Crime Laboratory who performs blood alcohol analysis.

Breath Test Device: an instrument and its components, used as a confirmatory test, that complies with M.G.L. c. 90, § 24K, that is capable of quantifying the amount of alcohol in a breath sample or Control standard.

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Breath Test Instructor (BTI): a breath test operator who has completed the uniform statewide instructor training program.

Breath Test Operator (BTO): a designated individual who has completed the uniform statewide training and certification program. Only a certified breath test operator can administer a breath test.

Colonel: the Colonel of the Massachusetts Department of State Police.

Committee: the Municipal Police Training Committee.

Control Standard: a sample of known alcohol concentration used to demonstrate the breath test device is operating properly.

Cylinder: the component that contains a known alcohol concentration in gaseous state.

Director: the Director of the Massachusetts Department of State Police Crime Laboratory, who shall be appointed by the Colonel.

Officer in Charge (OIC): a breath test operator responsible for maintaining the breath test device and breath test documentation. The Officer in Charge is the keeper of the breath test records for instruments assigned to his or her individual department or barracks.

The State Police Academy (SPA): the statewide training facility for the Massachusetts Department of State Police.

2.03: Office of Alcohol Testing (OAT)

There is hereby established within the Massachusetts Department of State Police Crime Laboratory an Office of Alcohol Testing.

2.04: Responsibilities of the Office of Alcohol Testing

The Office of Alcohol Testing shall be responsible for, but not limited to:

- (a) establishing and maintaining a list of approved breath test devices in accordance with Massachusetts General Laws and the National Highway Traffic Safety Administration's list of conforming products;
- (b) certifying approved breath test devices annually;
- (c) approving and distributing all control standards used with such breath test devices;
- (d) establishing the standards for training and/or certification of BTO(s), BTI(s), OIC(s), and BTA(s);
- (e) training BTI(s), OIC(s) and BTA(s);
- (f) creating and maintaining the Breath Test Operator's Manual.

2.05: Requirements for Approved Breath Test Devices

The Director shall approve the list of approved breath test devices. A device may be added to the list by the Director if it is on the National Highway Traffic Safety Administration's list of conforming products. The Office of Alcohol Testing shall maintain the list of approved breath test devices. The device shall have at least the following capabilities, but need not be limited to:

- (a) analyzing samples of alveolar or deep lung air;
- (b) analyzing a control standard;
- (c) performing subject breath tests in the following sequence:
 - 1. one adequate breath sample analysis;
 - 2. one control standard analysis; and
 - 3. a second adequate breath sample analysis.

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(d) using infrared breath testing technology to report the arrestee's blood alcohol content. This requirement does not preclude the use of complementary technologies designed to ensure the accuracy of the results or used to detect interfering substances.

2.06: Breath Test Device Certification

The Office of Alcohol Testing shall certify all breath test devices used in the Commonwealth. Such certifications shall be valid for one year. A valid certification shall contain the model number, the serial number and the effective date of certification. The breath test device certifications shall be noted on the report created at the completion of a valid breath test. This report shall serve as the certified record of the device and shall be admissible in a court of law.

2.07: Breath Test Operator (BTO): Training and Certification

- (1) The Director shall approve a uniform statewide training and certification program for BTO(s).
- (2) The approved BTO training program shall be implemented by the Committee, the State Police Academy, and OAT, using only instructors designated (BTI) by OAT.
- (3) Upon successful completion of the approved training program, the BTO shall be certified for three years. The OAT shall maintain a record of such training and certification.
- (4) A valid certification shall contain the name of the certified operator and the effective date of certification. The BTO's certification shall be noted on the report created at the completion of a valid breath test. This report shall serve as the certified record of the BTO and shall be admissible in a court of law.

2.08: Breath Test Operator (BTO): Certification Revocation

The Director may suspend or revoke the certification of a BTO who fails to comply with the requirements of M.G.L. c. 90, § 24K, 501 CMR 2.00 or the breath alcohol testing or training procedures established by the Office of Alcohol Testing.

2.09: Breath Test Instructor (BTI): Training and Designation

- (1) The Director shall approve a uniform statewide training program for BTI(s). The program shall be implemented by the Office of Alcohol Testing.
- (2) BTI(s) must be certified BTO(s).
- (3) Upon successful completion of the program, the Director may designate the candidate as a BTI. The OAT shall maintain a list of all BTI(s) and shall maintain a record of such training.
- (4) BTI(s) shall be responsible for training and certifying BTO(s) utilizing the training program set forth by OAT.
- (5) The Director may remove BTI designation at his or her discretion.

2.10: Officer in Charge (OIC): Training and Designation

- (1) For each certified breath test device in the Commonwealth, there shall be at least one designated OIC. The OIC(s) shall be responsible for ensuring the breath test device is in proper working order and shall act as the keeper(s) of the records for such device.

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- (2) The name(s) of the designated OIC(s) shall be submitted in writing by the chief of police or designee of the department or agency to the Office of Alcohol Testing. Any changes in this designation shall also be submitted in writing to the Office of Alcohol Testing.
- (3) OIC(s) must be certified BTO(s).
- (4) The Director shall approve a uniform statewide training program for the OIC. The program shall be implemented by the Office of Alcohol Testing.

2.11: Control Standards

- (1) Only control standards approved by the Office of Alcohol Testing shall be used with breath test devices. The Office of Alcohol Testing shall provide an adequate supply of such control standards and distribute the same to police departments and law enforcement agencies throughout the Commonwealth. Each such control standard shall be labeled with its expiration date, alcohol concentration and lot number.
- (2) The gas control standard used as part of a valid Implied Consent Breath Test sequence shall be manufactured at an alcohol concentration not to exceed $0.080\% \pm 0.006$. The test shall be considered valid if the analysis of the gas control standard results in an alcohol concentration of $0.074\% - 0.086\%$. The results shall be truncated to three decimal places.

2.12: Periodic Tests

- (1) The periodic test sequence shall consist of five consecutive control standard analysis tests. The results of the alcohol concentration of each of these tests must be in the range specified in 501 CMR 2.11(2). The periodic test results shall be truncated to three decimal places. This report shall serve as the record of a valid periodic test that the device is working properly, and shall be admissible in a court of law.
- (2) At a minimum, the OIC(s) shall initiate the periodic test sequence whenever the control standard is replaced and after the breath test device is certified by OAT.

2.13: Administration of a Breath Test: Requirements

- (1) A breath test of an arrestee must be administered in accordance with M.G.L. c. 90, § 24K and 501 CMR 2.00. Neither the statute nor the regulations create an obligation upon law enforcement to administer a breath test to a person who has been arrested for operating a motor vehicle while under the influence of intoxicating liquor or a related offense.
- (2) An arrestee who has been offered a breath test and who consents to submit to a breath test, shall be administered a breath test using a certified breath test device within a reasonable period of time.
- (3) The BTO shall observe the arrestee for no less than 15 minutes immediately prior to the administration of the breath test. If the BTO has reason to believe the arrestee has introduced any item into his or her mouth, the 15 minute observation period shall be restarted. Also, if during the test sequence, the breath test device reports the presence of mouth alcohol, the test sequence shall end. The 15 minute observation period shall be restarted and a new test sequence shall be started. This observation period is designed to allow the dissipation of mouth alcohol.
- (4) The breath test shall be valid and the results admissible in a court of law if it complies with 501 CMR 2.14.

2.14: Administration of a Breath Test: Procedures

- (1) The arrestee's consent to a breath test shall be documented by the arresting officer or the BTO.
- (2) The breath test shall be administered by a certified BTO on a certified breath test device as defined in 501 CMR 2.02.
- (3) The breath test shall consist of a multipart sequence consisting of:
 - (a) one adequate breath sample analysis;
 - (b) one control standard analysis; and
 - (c) a second adequate breath sample analysis.
- (4) If the sequence described in 501 CMR 2.14(3) does not result in breath samples that are within ± 0.020 blood alcohol content units, a new breath test sequence shall begin.

2.15: Breath Test Results

- (1) The results of the analysis of each breath sample and control standard shall be truncated to three decimal places.
- (2) For the purpose of determining the arrestee's BAC pursuant to M.G.L. c. 90, §24:
 - (a) if the two breath sample results are the same, that result shall be truncated to two decimal places and reported as the arrestee's BAC; otherwise
 - (b) the lower of the two breath sample results shall be truncated to two decimal places and reported as the arrestee's BAC.
- (3) The arrestee shall be informed of his or her BAC upon completion of a valid test, if requested.

2.16: Breath Test Refusal

If after being advised of his or her rights and the consequences of refusing to take a breath test, the arrestee refuses to submit to a breath test, none shall be given. The Registry of Motor Vehicles (RMV) shall be notified of such refusal in a format approved by the Registrar. If at any time following an arrestee's initial consent to the breath test and prior to the successful completion of the test, the arrestee refuses to participate or declines to cooperate, the test shall be terminated and it shall be noted as a refusal. If the arrestee fails to supply the required breath samples upon request, the test shall be terminated and it shall be noted as a refusal.

2.17: Blood Test Refusal

If after being advised of his or her rights and the consequences of refusing to take a blood test, the arrestee refuses to submit to a blood test, none shall be given in the absence of a court order or search warrant. The Registry of Motor Vehicles (RMV) shall be notified of such refusal in a format approved by the Registrar.

2.18: Blood Test Analyst (BTA): Training and Certification

- (1) The Director shall approve a training and certification program for BTA(s). The OAT shall implement a training and certification program for BTA(s).
- (2) Upon successful completion of the program, the BTA shall be certified for three years.
- (3) The Office of Alcohol Testing shall maintain a record of such training and certification. A valid certificate shall contain the name of the certified analyst and the effective dates of certification.

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2.19: Blood Test Analyst (BTA): Certification Revocation

The Director may suspend or revoke the certification of a BTA who fails to comply with the requirements of the written laboratory protocol for blood alcohol analysis.

2.20: Certificate of Blood Alcohol Analysis

A Forensic Scientist of the Department of the Massachusetts State Police who has been certified as a blood test analyst shall provide certificates of blood alcohol analysis.

REGULATORY AUTHORITY

501 CMR 2.00: M.G.L. c. 90, § 24K.

(PAGES 11 THROUGH 16 ARE RESERVED FOR FUTURE USE.)