

PRESS RELEASE



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May 12, 2015

On May 4th we received a letter from The Executive Office of Public Safety and Security (EOPSS) regarding their final conclusions on the breathalyzer issue. EOPSS has found that human error by breathalyzer operators, specifically the failure to read test tickets to assure that the calibration of the machine was between the accepted tolerance for Massachusetts (see attached letter).

The number of cases in the Cape and Islands District affected is six and all have been dealt with.

"I am lifting forthwith, the embargo placed into effect during the pendency of this review regarding the offering of breathalyzer evidence to the court. This embargo was instituted to assure the integrity of evidence presented to the court," said District Attorney O'Keefe.

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DANIEL BENNETT
Secretary



District Attorney Michael O'Keefe
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May 4, 2015

Dear District Attorney O'Keefe:

As you know, in response to concerns raised about the use of breath test instruments in the Commonwealth, the Executive Office of Public Safety and Security ("EOPSS") has conducted an internal review of breath test records compiled by the State Police Office of Alcohol Testing ("OAT"). Attached please find an index of each of the documents reviewed by EOPSS during the course of our review. These documents have been provided to each of you in electronic form.

The EOPSS review revealed no basis to doubt the underlying science of breath testing, or the reliability or integrity of the Draeger 9510 breath test instrument. Rather, what the review revealed were two types of operator error. The first type of error involved periodic testing by Officers In Charge ("OICs"), who are appointed by their respective departments or barracks to maintain the instruments, and who are responsible for ensuring, on a regular basis, that the instrument reads a known standard within the specific range required by the Code of Massachusetts Regulations ("CMRs"). The second type of error involved Breath Test Operators ("BTOs") administering breath tests to individual motorists; the CMRs require that, for a breath test to be valid, the instrument must again read a known standard within a given range.

Both of these types of operator errors appear to have flowed from the same basic vulnerability in our protocol: while both Officers in Charge and Breath Test Operators have been specifically trained in accordance with the CMRs to proceed only where the instrument gives a reading of the known sample at a level between .074 and .086, the instruments in service in the Commonwealth were programmed to automatically disqualify a sample only when it fell below .070 or above .090. As a consequence, in a small percentage of cases, where the reading fell within the range acceptable to the instrument but outside the narrower strictures of the CMRs,

both OICs and BTOs read the tests results as compliant when they should have been recognized as noncompliant.

We have communicated with the manufacturer of the instruments, and the manufacturer has agreed to create a software patch that will bring the instrument's internal checks into compliance with the CMRs. While this will be a helpful prophylactic step that will minimize the opportunity for user error going forward, this improvement should not be seen as a criticism of the past accuracy of the instruments or a sign of any defect in the reliability of the instruments. The purpose of the software update is not to change the testing technology, but merely to assist operators in using the instrument properly. Where the instruments have been properly calibrated, the readings produced by those instruments are accurate, reliable, and properly admissible in court pursuant to statute even without the software update.

If I can be of any further assistance, please do not hesitate to contact me.



Daniel Bennett
Secretary of Public Safety

Attachment

Cc:

District Attorney David F. Capeless
District Attorney Thomas M. Quinn
District Attorney Jonathan W. Blodgett
District Attorney Anthony D. Gulluni
District Attorney Marian T. Ryan
District Attorney Michael Morrissey
District Attorney David Sullivan
District Attorney Timothy J. Cruz
District Attorney Daniel F. Conley
District Attorney Joseph D. Early, Jr.