

## Legal Update

April 2010

### Changes to 501 CMR 2.00: Safe Roads

**Effective Date:** April 30, 2010

Massachusetts currently uses the Draeger 7110 breath testing system with a wet bath calibration standard. Over the course of the next few years the Commonwealth of Massachusetts, in conjunction with the State Police Office of Alcohol Testing, will update the breath testing system across the state. The new instruments, the Draeger 9510, will utilize a dry gas calibration standard. The two systems will run simultaneously for a number of years until the update is complete. In preparation for the upgrade, new CMRs have been promulgated that regulate both the Draeger 7110 and the Draeger 9510 instruments. A summary of the major changes are below:

**Renumbering:** The CMRs have been renumbered in a consistent numerical order.

**2:05(4): Requirements for Approved Breath Test Devices –** The following language has been added: *“[t]his requirement does not preclude the use of complementary technologies designed to ensure the accuracy of the results or used to detect interfering substances.”*

**2.08: Breath Test Operator (BTO): Training and Certification -** The Director of the Office of Alcohol Testing can now revoke the certification of a breath test operator if the operator fails to comply with G.L. c. 90 § 24, 501 CMR 2.00 or the breath alcohol testing or training procedures established by the Office of Alcohol Testing.

**2.09: Breath Test Instructor: Training and Designation -** The Director of the Office of Alcohol Testing is now responsible for breath test Instructors rather than the Municipal Police Training Committee. The Director may remove a breath test instructor designation.

**2:10: Officer in Charge: Training and Designation -** The Director of the Office of Alcohol Testing has established a uniform statewide training

program for officers in charge of the breath test instrument. This program is recommended but not mandatory.

**2:13(3): Administration of a Breath Test: Requirements** – The breath test operator must observe the defendant for 15 minutes **immediately** prior to the administration of the test. Language was also added to explain why the breath test operator is observing the defendant during this time.

**2:17: Blood Test Refusal** – The process a law enforcement officer needs to follow when entering a defendant’s blood test refusal is now codified in the CMRs.

**2:19: Blood Test Analyst: Certification Revocation** - The Director of the Office of Alcohol Testing can revoke a blood test analyst’s certification. This CMR also adds responsibilities to a blood test analyst.

**2:53: Authorized Personnel** - This section has been deleted as redundant language.