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Committee on Testing for Intoxication

DRAFT Minutes of March 28, 2016 Meeting

Telephone Conference Between

Washoe County Sheriff's Office
Forensic Laboratory Library, Basement Floor
911 Parr Blvd.
Reno, NV

Las Vegas Metropolitan Police Department
Forensic Laboratory
5605 W. Badura Ave., Suite 120B
Las Vegas, NV

A roll call of voting members was taken with the following members present.

Steven Johnson, Alternate for Kerri Heward
Dr. William Anderson
Brian Rutledge
Tracy Birch
Victoria Hauan

A quorum was in attendance and the meeting was called to order at 10:32 am.

The following individuals were also in attendance:

| | |
|-----------------|------------------|
| Brad Taylor | Darby Lanz |
| Kulvir Sarai | Terri Suffecool |
| Rebecca Nelson | Marlissa Collins |
| Nathan Hastings | Kim Murga |
| Kevin Honea | |

Agenda item #1 was public comment.

No comments were made.

Agenda item #2 was the review and approval of the minutes of the previous meeting held March 28, 2016.

Two changes were proposed and the minutes were approved with changes by a unanimous vote of all members.

Agenda item #3 was discussion for approval of the Ignition Interlock breath test device (A) and preliminary breath testing device – “PBT” (B) as certified for use in Nevada.

The presentation of the Evaluation results was given by Steve Johnson, WCSO Forensic Lab.

- A. Draeger Interlock 7000: was evaluated as a Breath Ignition interlock device. Three instruments were received and evaluated over a 90 day period. The reviewed accuracy, ability to maintain accuracy and ability to function at high, low and normal temperature extremes in allowing the vehicle to start as well as respond to the rolling retest. If the device had a reading of over .02, it would ask for a new test almost immediately. These devices are detachable and the manufacture recommends not leaving them in the vehicles. After the third failed test, the device has a lockout which calls for a service check. The Draeger devices had excellent results during testing.

The Committee voted unanimously to approve the Draeger Interlock 7000 for use in the state.

- B. CMI I-500 was evaluated as a preliminary breath testing device – “PBT.” WCSO Forensic Lab received two devices and evaluated it over 90 days. These Instruments were on par with other currently approved PBTs in the state. They were more susceptible to temperature extremes than the interlock devices, but were tested at higher and lower temperatures than recommended by the manufacturer’s manual of 23 degrees Fahrenheit -104 degrees operating temperatures. Testing was done at -4 degrees up to 155 degrees. Officers are trained by the FAA not to leave PBTs in the vehicles to operate as designed. The study proved that the PBT normal operating temperature range recommended is valid, and that temperatures outside of the range may not be consistent or high. The recommendation is that officers are trained to understand that the device should be operated within the manufacture’s stated temperature range.

After discussion of the reports, the Committee voted unanimously to accept the CMI I-500 PBT for addition to the list of approved PBT devices.

Agenda item #4 was a discussion regarding the requirement in NAC 484C.030(2)(c) for “Proof of acceptance as an expert in the field of breath alcohol testing in no less than four courts of law...” when an FAA may not have opportunity within two years to testify in four different courts due to factors beyond his/her control.

Nathan Hastings, Deputy Attorney General in preparation for this meeting, reviewed the regulation section listed and enabling statute, NRS 484.C 620 and 630, but had not accessed or reviewed minutes associated with public workshops or hearings on the enactment of the regulation that would have been in 1983, 1986, and 1998, but as it reads, it would require four different courts.

Tracy Birch was there in 1984, and said the intent was FAA's were testifying as an expert witness in four different courts of law, but while it was never a problem in the 80's, it could be a complication now. Questions in testimony vary even with the same court, as it may involve different attorneys or judges.

Kulvir Sarai said she had no problem meeting the requirement, with the volume of cases she has, but most of her testimony is in justice court. For some FAA's in the program they may not be able to testify in four different courts within two years, depending on where they

calibrate and the number of tests in that location. There is no guarantee of where the FAA is asked to testify.

Mr. Hastings stated that if the Committee has an appetite to make that change to four times rather than four courts, they can do so by changing the regulation and could begin the regulation change administratively with a draft of an idea or proposed language in preparation of a future agenda. When the process formally begins, follow Administrative Rulemaking, but no action in this meeting needs to be taken to start ball rolling.

Agenda item #5 was discussion regarding the background, purpose, and relevance of the Logbook page requirement.

Ms. Sarai led the discussion regarding the logbook. The Logbook form is redundant and availability of information is also stored elsewhere.

In reviewing the code sections, Mr. Hastings asked if the purpose of it is to allow an FAA to accomplish the requirements of NAC 484.C150.2. Ms. Sarai clarified that it is not, the lab maintains its own calibration records. Ms. Birch explained that the purpose of the log was to show a chronological record on one sheet to assist the FAA's at a location when doing a calibration, maintenance, or repair. The FAA could at a glance see how many tests had been administered, were there any errors, past calibrations and maintenance of the device.

Regarding 484C.140 that lists data law enforcement (LE) must keep, including the chronological record of each device, Steve Johnson added that LE is using the logbook page to keep that chronological record, but if the device keeps its own record of tests given with information listed in that section, does that satisfy the requirement?

Mr. Hastings explained that the logbook page as referred to in NAC 4854C.140.1, under that piece if the device keeps the chronological record you would be fine, but NAC 4854C.150 requires the FAA to enter into the record. None require using a specific form.

Ms. Lanz said that yes subject tests and calibration records are stored on the device, but Las Vegas has an electronic maintenance record not stored on the equipment, so they would need to include both as the chronological record. Mr. Johnson added that the current logbook page captures all the required data. The logbook page stays with the device, which could change agencies if the device is relocated.

Agenda item #6 was the discussion of conducting the recertification as an evidentiary breath test operator for Intoxilyzer 8000 as an online recertification program.

Mr. Johnson led the Discussion. The Committee has been interested in pursuing this and it has been discussed at previous meetings. A vendor has an existing program with a cost as well as a maintenance cost. The Committee would need to determine where the class will reside such as on the OTS website so all LE agencies can access it, and how would it be funded, since it would be used by all agencies in Nevada.

Mr. Johnson stated that this is a two hour recertification class and in terms of staffing, to have all officers available at the same time to take the class can be problematic for many LE agencies, especially the smaller ones. The feedback he has received is in favor of the online option.

May need to look at minutes in 2013 or April 2014, but the Committee previously voted or discussed changing course language, regulations and certifications. In April and October

2012 a decision was made by the Committee to replace hourly requirement with content to be approved by the Committee. NAC 484C.100 & 110. In August of 2015, P.O.S.T. did not want to be part of that training any longer.

Discussion indicated that are additional language changes the Committee desires that will require an additional workshop and hearing. The Committee will need to administratively follow up to determine the final outcome of past workshop and hearing language.

Agenda item #7 Possible Action May Include: Clarification or initiating change to records requirements for calibration, maintenance and repair of instruments.

Discussion addressed the possibility to allow agencies to use their own forms or electronic logs that meet the requirements of the regulation NAC 484C.080(1) includes the following language:

“Each person who calibrates, maintains or repairs a preliminary breath-testing device shall enter... information on a form approved by the Committee.”

Ms. Lanz led the discussion on the item. Some are keeping electronic versions in an excel spreadsheet. Ms. Birch said a form was approved a long time ago. This is a form for PBTs.

Mr. Hastings stated that “form approved by the Committee” does not mean the form has been created by the committee. Agencies could submit their form to the Committee for approval as long as the report contains the contents identified in the regulation. NRS 484C.620 states Committee shall adopt regulations and “C” says prescribe the form and contents of records respecting the calibration to be kept by the LE agency in a form approved by the Committee. Regulation cannot change language that is required in the statute.

Best practice would be to administratively work to notify the LE agencies that they need to submit their form for Committee approval. It could even be a printout of their data from their electronic system. Labs could draft a letter from the committee to send out. Send the form to Ms. Hauan and she can work with Nathan administratively first to see how close it is to the code section. Gathering other agency forms to review can also be done administratively. After Committee approval of a form, a letter from the Committee could be sent out notifying that their form had been reviewed and approved. If the Committee wishes to make substantive changes to the old form, another meeting would be required.

To approve forms in the future the Agenda item could read “Approve / Disapprove / Approve with contingent changes” as one step.

Established information in the NAC 484C.080(1) includes:

- Whether the calibration is done monthly or annually;
- The date and time of the calibration;
- The name of the person performing the calibration; and
- The response and accuracy of the device for each test which is performed
- The nature and extent of maintenance or repair performed on the device.

Agenda item #8 Future meetings

Decision to schedule a future meeting date as necessary based on completion of existing instrument evaluations by the labs.

Agenda item #9 was public comment

No comments were made.

Agenda item #10 was Adjournment

Motion was made for adjournment. The motion passed unanimously

