



## Meeting Minutes Nevada Interim Committee on Testing for Intoxication (COTI)

Attendance	DATE	September 26, 2023
	TIME	10:00 a.m.
	METHOD	Microsoft Teams Meeting Meeting ID: 219 038 831 425 Dial in: +1 (775) 325-0620
	RECORDER	Annalise Lockhart
<b>Appointed Voting Members</b>		
Shannon Bryant, Chair	NV TSRP and Deputy District Attorney, Washoe County District Attorney's Office	X
Dr. William Anderson	Forensic Toxicologist, NMS Labs	X
Eric Bauman	Chief Deputy District Attorney, Clark County District Attorney's Office	X
Stephen Johnson	Supervising Criminalist, WCSO Forensic Science Division	X
Terri Suffecool	Las Vegas Metro Forensic Laboratory	X
<b>Others Invited</b>		
David Astel	WCSO Forensic Science Division	X
Marlissa Collins	Las Vegas Metro Forensic Analyst	X
David Johnson		
Shari Baughman	WCSO Forensic Science Division	X
Anastacia Melendy		
Rebecca Nelson	WCSO Forensic Science Division	X
Michael Stypa	Forensic Laboratory Supervisor, Las Vegas Metro Forensic Laboratory	X
Brad Taylor	WCSO Forensic Science Division, FAA Supervisor Chemistry Section	X
<b>Legal and Support</b>		
Nathan L. Hastings	Senior Deputy Attorney General, State of Nevada	X
Laurie Ginn	Deputy Attorney General, State of Nevada	X
Meg Matta	Office of Traffic Safety, Impaired Driving Program Manager	X

### 1. CALL TO ORDER (Non-Action Item)

Shannon Bryant, Chair, opened the meeting at 10:01 a.m.

### 2. ROLL CALL, CONFIRM QUORUM, AND INTRODUCTIONS (Non-Action Item)

Roll was taken, introductions were made, and a quorum was established.

### 3. PUBLIC COMMENT (Non-Action Item)

There was no public comment.

### 4. PROPOSED REGULATION CHANGES

The Committee discussed several possible regulatory changes to NAC 484C.020 and 484C.030. The group decided Forensic Analysts of Alcohol (FAAs) must be employed with an accredited forensic calibration laboratory in the State of Nevada. The length of FAA certifications should be extended from 2 years to 4 years. The number of required seminars should remain at 2 and the number of continuing education hours should be increased from 8 to 16 hours within the 4-year certification period.

- Steven Johnson moved to make the following changes to NAC 484C.020 and 484C.030:
  - Accept the potential draft language in 484C.020 and 484C.030 as noted on the attachment.
  - Add language to 484C.020 to require the FAA work in an accredited forensic laboratory within the State of Nevada with a proper scope of accreditation for breath alcohol calibration.
  - Add language to 484C.020(2)(c) to increase the certification length from 2 to 4 years.
  - In 484C.030 add a requirement that the FAA continue to work for an accredited forensic laboratory in the State of NV with a proper scope of accreditation.
  - In 484C.030(1) increase the recertification hours needed from 8 to 16 hours.
  - In 484C.030(c) adjust the language so it reflects the language in 484C.020
  - In 484C.030 the recertification timeframe be extended from 2 years to 4 years.
- Dr. Anderson seconded the motion, and it was unanimously approved. The motion passes. Shannon Bryant stated the changes will be made offline for proposal to the legislative workshop.

The Committee discussed NAC 484C.060, 484C.100 and 484C.110.

- David Astle summarized the proposed changes for 484C.100 and 484C.110:
  - The Committee decided to not completely eliminate 484C.060(3) but rather re-word it to the effect that instruction in preliminary breath testing devices must include some reference to manufacturers instructions for the operation of the device.
  - Strike references to the Peace Officer's Standards and Training Commission to remove POST from involvement in approval of courses in 484C.100 and 484C.110
- Motion by Steven Johnson to move forward with the rule making process with the changes listed on the attachment and with the summary of changes David Astel described above.
- Terri Suffecool seconded the motion, and it was unanimously approved. The motion passes.

The Committee discussed NAC 484C.130(2) and agreed this subsection should be removed as it's not the duty of the operator. Discussion is tabled for further discussion as to where it needs to go.

- Shannon Bryant moved to table the discussion of the proposed changes to 484.130 for a later meeting in which the Committee can find a suitable place where subsection 2 language can be inserted as to the duties that are required of the instrument itself, not the duties of the operator.
- Steve Johnson seconded the motion, and it was unanimously approved. The motion passes.

The Committee discussed 484C.140 and agreed the logbook is unnecessary.

- Shannon Bryant summarized the proposed change to remove the regulations listed in 484C.140 in its entirety as the Committee moves forward with the rule making process.
- Steven Johnson seconded the motion, and it was unanimously approved. The motion passes.

## **5. ORAL FLUID TESTING PILOT PROGRAM (Discussion / Possible Action Item)**

Shannon Bryant provided background information on this program. The Dept. of Public Safety received a grant to purchase oral roadside fluid testing devices. This handheld device tests six different drug categories and gives results in about 3 minutes. A swizzle stick is stuck in the suspect's mouth and then stuck into the device for results. Suspects would have to consent to this test. It's less invasive than a

blood test. There is a dramatic increase in impairment of alcohol with a combination of other drugs in our DUI fatality cases. 57% of roadway fatalities in Nevada involve impairment. This pilot program would be useful in obtaining stats and trends in substance abuse on the roadway. The symptoms of alcohol impairment can mask the symptoms of other drug use. The results of this device will not provide concentration levels of any substance, just the presence of the substance. This will simply help officers to make further testing decisions. This device does *not* test for Fentanyl. The Committee discussed the pros and cons of this pilot program and were in agreement to support the pilot program.

- Steven Johnson made a motion as summarized by Shannon Bryant for the Dept. of Public Safety to undertake this pilot program for roadside oral fluid testing to help collect data and make determinative testing decisions for the presence of drugs that are appropriate for drivers in Nevada.
- Terri Suffecool seconded the motion, and it was unanimously approved. The motion passes.

#### **6. PUBLIC COMMENT (Non-Action Item)**

There was no public comment.

#### **7. ADJOURNMENT (Discussion / For Possible Action)**

The next meeting date will be arranged offline. Dr. Anderson moved to adjourn the meeting, and Steve Johnson seconded the motion. The meeting was adjourned at 12:16 p.m.

**NAC 484C.020 Forensic analyst of alcohol: Certification.** ([NRS 484C.620](#), [484C.630](#))

1. A person must apply to the Director or his or her designee on a form furnished by the Department of Public Safety for certification as a forensic analyst of alcohol.
2. The Director or his or her designee shall certify as a forensic analyst of alcohol each applicant who:
  - (a) Possesses a baccalaureate degree in a natural, physical or forensic science;
  - (b) Has completed a minimum of:
    - (1) Twenty-four semester hours in the study of chemistry at an accredited college or university; or
    - (2) Eighteen semester hours in the study of chemistry at an accredited college or university and 1 year of full-time experience which has been approved by the Committee and is related to the forensic analysis of alcohol;
  - (c) Has successfully completed a ~~course which has been approved by the Committee and consisted~~ program of instruction of at least 24 hours of instruction on the physiology and effects of alcohol on humans, on the design, calibration and operation of the kind of breath-testing devices that the applicant will be calibrating or teaching others to operate; and
  - (d) Demonstrates ~~his or her~~ their competence in calibrating breath-testing devices and in evaluating others on their competence in operating those devices.
3. Certification as a forensic analyst of alcohol is valid for 2 years after the date of certification.

**NAC 484C.030 Forensic analyst of alcohol: Renewal of certificate.** ([NRS 484C.620](#), [484C.630](#)) The Director or his or her designee shall renew the certificate of any person certified by him or her as a forensic analyst of alcohol who applies in writing to the Director for a renewal before the certificate expires and:

1. Successfully completes ~~a course approved by the Committee, consisting of~~ at least 8 hours of instruction continuing education on the subjects taught in the basic course described in paragraph (c) of subsection 2 of [NAC 484C.020](#) and demonstrates the person's competence in calibrating breath-testing devices and in evaluating others on their competence in operating such devices; or
2. Submits to the Director or designee the following documents:
  - (a) A current resume of the person's education and other qualifications.
  - (b) Verification of attendance at no less than two seminars or training programs related to the influence of alcohol on drivers. The verification must include the dates of attendance, the names of the instructors and speakers, and a general description of the curriculum.

~~(c) Proof of acceptance as an expert in the field of breath alcohol testing in no less than four courts of law. The proof must include the names of the courts, date of acceptance and the names of the cases for which the person was accepted as an expert.~~

(dc) Verification of continued activity in the field of breath alcohol testing since the person's previous certification.

(d) Recertification as a forensic analyst of alcohol is valid for 2 years after the date of recertification.

#### PRELIMINARY BREATH-TESTING DEVICES

##### **NAC 484C.060 Required training of operator. ([NRS 484C.630](#))**

1. Before operating a preliminary breath-testing device, the operator of a preliminary breath-testing device must satisfactorily complete a course on the operation of the instrument.

2. The instructor of the course must be a forensic analyst of alcohol, a manufacturer's representative or a person approved by a forensic analyst of alcohol.

~~3.—The course must meet the manufacturer's requirements for instruction in the proper operation of the preliminary breath testing device and be approved by the Committee.~~

#### EVIDENTIAL BREATH-TESTING DEVICES

##### **NAC 484C.100 Certification as operator. ([NRS 484C.630](#))**

1. A person or his or her employer must apply to the Department of Public Safety on a form furnished by the Department for certification of the person as an operator of an evidential breath-testing device.

2. The Director or his or her designee shall certify as an operator of an evidential breath-testing device each applicant who has successfully completed a course of instruction on the subject of the operation of devices for testing a person's breath to determine the concentration of alcohol in the person's breath which has been approved by ~~the Peace Officers' Standards and Training Commission and~~ the Committee. Such a course must be taught by a certified forensic analyst of alcohol and must include instruction on and a determination of the applicant's proficiency in the operation of the devices for which certification is granted.

3. The Director or his or her designee shall certify as an operator of an additional evidential breath-testing device each applicant who:

(a) Holds a current certification as an operator of an evidential breath-testing device; and

(b) Has successfully completed a course consisting of instruction on the subject of the operation of the device for testing a person's breath to determine the concentration of alcohol in the person's breath which has been approved by ~~the Peace Officers' Standards and Training Commission and~~ the Committee. The course must be taught

by a certified forensic analyst of alcohol and must include instruction on and a determination of the applicant's proficiency in the operation of the device for which certification is granted.

4. The certificate issued by the Director or his or her designee must specify by manufacturer and model the evidential breath-testing devices which the applicant has been certified to operate.

5. Certification as an operator of an evidential breath-testing device:

(a) Authorizes the holder of the certificate to operate any evidential breath-testing device which he or she has been certified to operate and any other such device in a series of the model of that specific evidential breath-testing device if the Committee has certified the other device in the series pursuant to [NRS 484C.610](#) and the Committee has not made a finding that the person needs additional training to operate the other device in the series; and

(b) Is valid for 3 years after the date of the certification.

**NAC 484C.110 Renewal of certificate as operator.** ([NRS 484C.630](#)) The Director or his or her designee shall renew the certificate of any person certified by the Director or designee as an operator of an evidential breath-testing device who:

1. Individually or through the person's employer applies in writing to the Director for such renewal before the person's certificate expires or within 6 months after the person's certificate expires; and

2. Successfully completes a course consisting of instruction on the operation of devices for testing a person's breath to determine the concentration of alcohol in his or her breath which has been approved by ~~the Peace Officers' Standards and Training Commission and~~ the Committee.

**NAC 484C.130 Duties of operator.** ([NRS 484C.620](#), [484C.640](#)) A certified operator of an evidential breath-testing device:

1. In the ordinary course of his or her business and at the time the operator is performing a test of a person's breath, shall use, and follow ~~the instructions in and enter the appropriate information on the Checklist for Operators of Breath-Testing Devices which is~~ approved by the Committee for use with the type of device that he or she is operating. ~~The operator shall provide a documentary affirmation that he or she followed the instructions.~~

~~2. Immediately before performing the evidentiary test of the person's breath, shall verify the calibration of the device by testing it using an aqueous solution or gas which is certified to contain a specific concentration of alcohol within the range that corresponds to a concentration of alcohol in the breath from .05 to .20 gram per 210 liters of breath, inclusive.~~

~~— NAC 484C.140 — Records of law enforcement agency using device; entries into record. (NRS 484C.620)~~

~~— 1. Each law enforcement agency which uses an evidential breath testing device shall keep in the ordinary course of its business a chronological record for each device.~~

~~— 2. The operator or forensic analyst of alcohol shall enter into the record, at or near the time of his or her activity, for the:~~

~~— (a) Test of a person's breath on the device:~~

~~— (1) The name of the person tested;~~

~~— (2) The date and time of the test;~~

~~— (3) The name of the operator of the device;~~

~~— (4) The result of the test to verify the calibration of the device; and~~

~~— (5) The result of the test of the person's breath.~~

~~— (b) Calibration of the device:~~

~~— (1) The date and time of the calibration;~~

~~— (2) The name of the forensic analyst of alcohol who performs the calibration;~~

~~and~~

~~— (3) The response and accuracy of the device for each test which is performed.~~

~~— (c) Maintenance or repair of the device:~~

~~— (1) The date and time of the maintenance or repair;~~

~~— (2) The name of the person performing the maintenance or repair; and~~

~~— (3) The nature and extent of the maintenance or repair.~~