



SECTION: Risk Management
TOPIC: Drug and Alcohol Testing
DATE: October, 2020

ADMINISTRATIVE PRACTICES MANUAL

SUBJECT: ALCOHOL AND DRUG TESTING

1. POLICY STATEMENT

The work place should be free from the hazards posed by the use of alcohol and controlled substances in order to protect the safety of employees and the public. Alcohol and drugs can impair thinking and reasoning and may lead to behaviors that bring the user into severe conflict with their work environment. Misuse of alcohol and drugs/controlled substances among Dane County employees can have a devastating impact on safety, health and on the efficiency of the workforce.

Therefore, while Dane County has no intention of unreasonably intruding into the off-duty lives of County employees, it is necessary to establish policies and procedures addressing the use and/or misuse of alcohol and/or drugs/controlled substances that may affect the workplace. At the same time, Dane County recognizes that the abuse of alcohol and controlled substances is a treatable illness. Employees who need treatment and/or rehabilitation may exercise rights recognized by other Dane County policies pertaining to, for example, the ADA and/or FMLA. In addition, Dane County offers an employee assistance program (EAP) to employees with a variety of issues, including alcohol or controlled substance abuse.

This policy is intended to comply with the Omnibus Transportation Employees Testing Act of 1991 (as amended) and applicable U. S. Department of Transportation (DOT) rules and regulations, including, but not limited to, 49 CFR § 382.

2. WHO IS COVERED BY THIS POLICY

All Dane County employees are covered by this policy and are referred to as “County employees.” The requirements summarized in this policy represent minimums; additional requirements may be set within each County Department.

Not all requirements of this policy apply to all County employees. For example, Dane County Sheriff staff and employees who are required to maintain a CDL for the performance of their job duties have stricter requirements than most other County employees.

3. GENERAL PROHIBITIONS & REQUIREMENTS

- 3.1. County employees are prohibited from using alcohol while on duty, and County employees are prohibited from reporting for duty (and from remaining on duty) when their blood alcohol concentration is greater than 0.00.



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- 3.2. County employees are prohibited from reporting for duty and from remaining on duty when under the influence of any drugs/controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform his/her duties. It is the responsibility of the employee to accurately inform his/her physician of the type of job duties that the employee performs in order that the physician may determine if the prescribed substance could interfere with the safe and effective performance of the employee's duties or operation of County equipment. Possession of drugs & controlled substances while on duty is prohibited as defined by statute and administrative rules.
- 3.3. County employees who are tested for alcohol and/or controlled substances under Paragraph 6 (below) are prohibited from returning to duty until they have successfully passed a return to duty test.
- 3.4. County employees are prohibited from obstructing or interfering with the administration of any alcohol or drug/controlled substances test.
- 3.5. County employees are prohibited from engaging in the unlawful manufacture, sale or attempted sale, distribution, dispensing, possession or use of alcohol, drugs/controlled substance, and/or drug paraphernalia in the workplace.
- 3.6. County Employees are required to notify their supervisor if they are taking any legally prescribed or non-prescription drugs/controlled substances that may adversely impact their ability to perform their job duties in a safe and efficient manner.

4. PROHIBITIONS & REQUIREMENTS FOR CDL HOLDERS

In addition to the above prohibitions and requirements, CDL Holders must comply with the following:

- 4.1. CDL Holders are prohibited from using alcohol within four (4) hours of reporting for duty. CDL Holders are cautioned that refraining from alcohol for four (4) hours before reporting for duty could still result in a supervisor sending the CDL Holder out for a Test in Response to Reasonable Suspicion, or Post Accident, and discipline upon a positive test result.
- 4.2. CDL Holders are prohibited from performing safety-sensitive functions for 24 hours following an alcohol test result indicating an alcohol concentration of greater than 0.00.



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- 4.3. CDL Holders are prohibited from possessing or using medication containing alcohol while on duty. CDL Holders that test positive for alcohol will be removed from their position, and be subject to provisions of this Policy, even though the reason for the positive alcohol test is the fact that the employee's prescription medication contains alcohol.
- 4.4. CDL Holders are prohibited from reporting for duty, remaining on duty, and/or performing safety-sensitive functions following a positive test for drugs/ controlled substances.
- 4.5. CDL Holders are prohibited from refusing to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up tests.
- 4.6. CDL Holders must immediately report to their supervisor any arrest and/or conviction for operating a vehicle under the influence of alcohol, drugs/controlled substances, or any combination thereof.
- 4.7. CDL Holders must immediately report to their supervisor any conviction for a violation of a criminal drug statute.
- 4.8. CDL Holders must immediately report to their supervisor if they are taking any legally prescribed or non-prescription drug/controlled substance which contains any amount of alcohol or which carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication.
- 4.9. The Federal Motor Carrier Safety Administration (FMCSA), of the United States Department of Transportation (DOT) established requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse. The Clearinghouse is a database under the Agency's administration that will contain information about violations of FMCSA's drug and alcohol testing program for CDL holders. Records of drug and alcohol program violations will remain in the Clearinghouse for five (5) years, or until the driver has completed the return-to-duty process, whichever is later.
 - All applicants who are offered employment must register with the FMCSA Clearinghouse as part of the background investigation process. Dane County queries the Clearinghouse for prospective employees' drug and alcohol violations before permitting those individuals to operate a Dane County commercial motor vehicle on public roads. Should data exist in the Clearinghouse, the applicant must consent to allowing Dane County completing a full query into any drug and alcohol violation information. Failure to comply with the Clearinghouse requirements will disqualify the applicant for consideration of employment.



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- Dane County annually queries the Clearinghouse for each CDL driver we employ. Current County employees holding a CDL for purposes of their employment with the County must complete a Limited Consent Form, and allow Dane County to perform this annual Clearinghouse query. If a query reports that data exists in the Clearinghouse, then the employee must register with the Clearinghouse and provide consent for a full query. Dane County may remove the employee from performing safety-sensitive functions until Clearinghouse requirements are met and the employee is found not in violation of drug and alcohol regulations.

5. PROHIBITIONS AND REQUIREMENTS FOR STAFF of the DANE COUNTY SHERIFF'S OFFICE (DCSO)

Please refer to DCSO policies.

6. CIRCUMSTANCES FOR EMPLOYEE TESTING

6.1. Pre-employment testing. Dane County conditions offers of employment for certain positions (including, but not limited to, positions that require a CDL as a condition of employment) upon submission to alcohol and controlled substance testing.

- Conditional offers may affect current County employees who seek to transfer from a position not requiring a testing to a position which does require testing.
- Employees who return to work after a leave of absence or layoff period of at least six (6) months during which they are not subject to random testing will also be required to undergo alcohol and controlled substance testing before beginning work. Leaves of absence and layoffs are as defined in the applicable sections of the Employee Benefit Handbook.

6.2. Testing in Response to Reasonable Suspicion An employee may be required to undergo alcohol and/or controlled substance testing if Dane County has reasonable suspicion that he/she has violated the rules concerning alcohol or controlled substance use.

- Anonymous tips cannot form the sole basis of reasonable suspicion that an employee has used alcohol or controlled substances.
- Dane County may test non-CDL Holders after a vehicle accident under this "reasonable suspicion" paragraph if the accident resulted in a fatality, or if the accident caused anyone to be transported to the hospital, or if the non-CDL Holder



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received a moving traffic violation arising from the accident, or if the accident caused major property damage.

- It is best practice, but not required, that two (2) supervisors are involved in ordering a reasonable suspicion test. The supervisor/supervisors reasonable suspicion must be based on specific, contemporaneous, articulate observations concerning appearance, behavior, speech or body odors. The supervisor/supervisors will make and sign a written record of his/her/their observations leading to an alcohol or controlled substance reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the alcohol or controlled substance test are released, whichever is earlier.
- The test(s) will be administered within two (2) hours following the determination of reasonable suspicion.

6.3. Random Testing for CDL Holders All employees with CDL's will be required to undergo random alcohol and controlled substance testing. Each year, Dane County conducts unannounced alcohol tests on a random selection CDL Holders, and unannounced controlled substance testing on a random selection of its CDL Holders in compliance with FMCSA guidelines.

- Each driver who is notified of his/her selection for random alcohol and/or controlled substances testing must proceed to the test site immediately; provided, however that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, Dane County shall instead ensure that the driver ceases performance of the safety-sensitive function and proceeds to the testing site as soon as possible.
- This random testing is conducted throughout the calendar year and each CDL Holder will have an equal chance of being tested under the random selection process used.

6.4. Post-accident Testing for CDL Holders Dane County will test CDL Holders as soon as practical after a vehicle accident and if any of the following apply:

- If the accident resulted in a fatality, then all Dane County employees in the vehicle who were performing safety sensitive functions must be tested for alcohol within eight (8) hours and for drugs within thirty-two (32) hours;



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- Anyone who receives a citation under State or local law for a moving traffic violation arising from the accident must be tested for alcohol within eight (8) hours and for drugs within thirty-two (32) hours;
- If the accident caused anyone to be transported to the hospital, then the driver must be tested for alcohol within eight (8) hours and for drugs within thirty-two (32) hours;
- The County will provide CDL Holders with the necessary post-accident information, procedures and instructions.

6.5. Evaluation by an SAP & Return to Work Testing. Any employee who engages in conduct prohibited under this policy, shall be evaluated by a Substance Abuse Professional (defined below) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use.

- The employee has the responsibility of choosing an SAP. Not all SAPs are certified under the U.S. Department of Transportation's regulations. If the employee is a CDL holder, the employee must verify that the SAP is DOT certified.
- Any employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substance use shall be subject to at least six (6) unannounced follow-up tests in the first twelve (12) months following the employee's return to duty. However, the Substance Abuse Professional may direct additional testing during the twelve (12) month period, or for an additional period not to exceed sixty (60) months from the date the employee returns to duty.
- An employee who returns to duty after violation of the alcohol misuse provisions will be required to undergo an alcohol test, with a resulting BAC of 0.00% necessary before the employee returns to duty requiring the performance of a safety-sensitive function. An employee who returns to duty after violation of the controlled substance use provisions will be required to undergo a controlled substance test, with a negative result necessary before the employee returns to duty requiring the performance of a safety-sensitive function.

7. TESTING PROCEDURES

7.1. General Rules: Dane County contracts with external vendors to provide alcohol and drug/controlled substances testing for employees. Vendors complete their tests either at their facility or, at the discretion of management, at a Dane County facility. The vendor has



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the responsibility to provide all necessary equipment, personnel and materials at the location where the testing is conducted. No unauthorized person shall be permitted access to the testing location. The vendor has the responsibility to ensure that the testing site provides employees with visual and aural privacy sufficient to prevent unauthorized persons from seeing or hearing either the test being conducted or test results.

7.2. Any County employee directed to undergo testing shall proceed to the designated test site as instructed, and shall be accompanied by a supervisor or designee. If the test is either post-accident or based upon reasonable suspicion, the employee may not drive herself/himself to the test site. Upon entering the test site, Dane County employee shall be required to provide the vendor with positive identification. Positive identification may take the form of a photo ID card or identification by a supervisor or County official. Upon request of the covered employee, the vendor shall provide positive identification to the covered employee.

- County employees shall follow all procedures and instructions given by the vendor including completing, signing, initialing, and/or dating any required forms.
- If a covered employee fails to follow all procedures and instructions given by the vendor, it shall be considered a refusal to test. A “refusal to test” is considered a positive test.
- The vendor shall supervise only one covered employee at a time and shall not leave the alcohol testing location while testing is in progress.

7.3. If the initial test of a covered employee indicates a breath alcohol concentration of 0.000, no further alcohol testing shall be conducted and the covered employee shall return to work.

7.4. If the initial test of a covered employee indicates a breath alcohol concentration of greater than 0.00, a confirmation test shall be conducted between 15 and 30 minutes following completion of the initial test. The covered employee shall not eat, drink, smoke, put any object or substance in his or her mouth, and, to the extent possible, not belch during the waiting period. If a vendor other than the one who conducted the initial test is conducting the confirmation test, the covered employee shall be required to provide positive identification, and the covered employee may request positive identification of the new vendor as described above. In addition, the new vendor shall initiate a new Breath Alcohol Testing form. The covered employee shall then complete the form and sign the certification as required. In addition, as with the initial test, failure to follow all procedures and instructions given by the vendor shall be considered a refusal to test.



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- If the confirmation test indicates a breath alcohol concentration of 0.000, the covered employee shall return to work.
- If the confirmation test indicates a breath alcohol concentration of greater than 0.000, then the vendor shall immediately notify the Designated Employer Representative (DER) (defined below); the employee will be prohibited from returning to work until Dane County's progressive discipline policy is followed; and, if the confirmation test indicates a breath alcohol concentration of greater than the legal limit, the employee should not drive.

7.5. If the test detects the presence of an illegal substance, an amphetamine, a narcotic or habit forming drugs (as defined by statute and/or administrative rule), then the vendor shall immediately notify the Designated Employer Representative (DER) (defined below); the employee will be prohibited from returning to work until Dane County's progressive discipline policy is followed; and the employee should not drive.

- Exception: Progressive discipline may not apply if the substance or drug detected is prescribed by a licensed medical practitioner who (a) is familiar with the employee's medical history and assigned duties and (b) has advised the employee that the prescribed substance or drug will not adversely affect the driver's ability to safely perform all the essential functions of the employee's job, including, if applicable, operating a commercial motor vehicle.
- The intent of this exception is to ensure that the employee has no medical condition which interferes with the safe performance of essential job functions. Therefore, if Dane County finds the employee's medical documentation unsatisfactory, then Dane County will follow procedures in the Employee Handbook regarding obtaining a second opinion.

8. FAILURE TO COMPLETE THE TESTING

8.1. If an initial or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the vendor shall, if practicable, begin a new initial or confirmation test, as applicable, using a new form with a new sequential test number.

8.2. If a covered employee is unable or alleges that she/he is unable to complete a test because of a medical condition, the vendor shall again instruct the covered employee to attempt to complete the test. If the covered employee refuses to make the attempt, it shall be considered a refusal to test. If the covered employee attempts and fails, then the vendor shall note it in the "Remarks" section of the form, immediately inform the DER, and the employee shall be removed from duty for a minimum of 24 hours. The DER shall direct the



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covered employee to obtain, as soon as practicable after the attempted test, an evaluation from a licensed physician who is acceptable to Dane County concerning the covered employee's medical ability to be tested.

- 8.3. If the licensed physician determines that in his/ her reasonable medical judgment, that a medical condition has or with a high degree of probability could have, precluded the covered employee from being tested, the covered employee's failure test shall not be considered a refusal to test. The physician shall provide to Dane County a written statement of the basis for his/ her conclusion.
- 8.4. If the licensed physician in his/ her reasonable medical judgment is unable to determine that a medical condition has or with a high degree of probability, could have precluded the covered employee testing, the covered employee's failure to test shall be considered a refusal to test. The physician shall provide to Dane County a written statement of the basis for his/ her conclusion.
- 8.5. The vendor shall immediately notify the DER of any refusal to test. A refusal to test shall be deemed a positive test.

9. COSTS

- 9.1. Dane County will pay for pre-employment testing, post accident testing, random testing, testing after reasonable suspicion, and one (1) return-to-work test.
- 9.2. If the employee's return to work is conditioned upon the completion of more than one (1) test, then the costs of the additional tests will be the employee's responsibility. Employees may have coverage with their health insurer.
- 9.3. If the employee's return to work is conditioned upon an evaluation of a Substance Abuse Professional ("SAP") and/or the completion of a plan of care, then the costs of the SAP and of the completion of the plan of care will be the employee's responsibility. Employees may have coverage with their health insurer.

10. CONSEQUENCES AND DISCIPLINE

- 10.1. Dane County will follow its policy regarding progressive discipline whenever a covered employee engages in any conduct in violation of the provisions of this policy or when a covered employee uses drug/controlled substance or misuses alcohol in violation of applicable laws, regulations and/or County work rules.



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- At a minimum, if a confirmation test indicates a breath alcohol concentration of between 0.020 and 0.040 and the employee has a CDL, then the employee may not return to safety sensitive operations for the next 8 hours; and if the confirmation test indicates a breath alcohol concentration of 0.040 or greater and the employee has a CDL, then the employee will not be permitted to return to work until undergoing evaluation by a Substance Abuse Professional (SAP) and successfully passing a return to duty test.
 - If the positive test was for alcohol, the employee must have a BAC of 0.000 in order to pass the return to duty test.
 - If the positive test was for drugs/controlled substances, the return to duty test must be negative in order to pass the return to duty test.
- 10.2. Failure to comply with any required evaluation by a Substance Abuse Professional (SAP) or failure to comply and remain in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs may result in discipline up to and including discharge.
- 10.3. In addition, any employee who uses drugs, controlled substances and/or alcohol in violation of applicable laws or regulations may face additional criminal penalties.

11. CONFIDENTIALITY

Dane County takes the confidentiality of all records pertaining to alcohol and/or drugs/controlled substances very seriously, and the following steps will be taken to ensure that records are secure:

- 11.1. Dane County complies with all applicable statutes and administrative rules regarding confidentiality, including but not limited to requirements promulgated by the U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA) mandating certain records be maintained in a secure location with controlled access.
- 11.2. Except as required or permitted by law or expressly authorized or required by 49 CFR § 382.405, Dane County shall not release information that is contained in records required to be maintained under the FHWA Rules and Regulations.
- 11.3. Upon written request, a covered employee is entitled to copies of any records pertaining to the covered employee's own use of drugs/controlled substances or alcohol, including any records pertaining to his/her drug, alcohol or drugs/controlled substances tests. Upon the covered employee's written request and authorization, Dane County shall release information regarding that covered employee's records to a person or entity



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identified in the authorization. For example, Dane County will honor an employee's express written request to disclose test results that are in Dane County's possession to the employee's subsequent employer.

- 11.4. All results of alcohol and/or drugs/controlled substances testing conducted pursuant to this policy shall be made available, upon request, to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over Dane County or any of its employees.
- 11.5. Information related to post-accident test results administered following an accident may be released to law enforcement, the National Transportation Safety Board, and other State and Federal agencies as required.
- 11.6. Dane County may disclose information pertaining to a covered employee that is required to be maintained under the FHWA rules and regulations to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered employee, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results), and including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee and arising from the results of an alcohol and/or drugs/controlled substances test administered in accordance with the FHWA. Additionally, Dane County may disclose information in criminal or civil actions in accordance with 49 CFR §40.323.

12. DEFINITIONS

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration (Or Content) - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Alcohol Test - A test conducted by a Breath Alcohol Technician, or any other person approved by the Department of Transportation rules, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath, or any other test used to detect the presence of alcohol that is approved by the Federal Highway Administration (FHWA).

Alcohol Use - The consumption of any beverage, mixture, or preparation, including medication, containing alcohol.



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Commercial Motor Vehicle - A motor vehicle or a combination of motor vehicles used in a commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Has a gross combination weight of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of hazardous materials that require placarding under federal law

Hazardous Materials Transportation Act - requires the motor vehicle to be placarded under the Hazardous Materials Regulations (149 CFR 172, sub F).

CDL Holder - Any employee required to have and maintain a Commercial Driver's License (CDL) and who is subject to operating a Commercial Motor Vehicle at the direction of, or with the consent of Dane County including, but not limited to, full-time, part-time, regularly employed drivers, casual, intermittent or occasional drivers, any person applying to Dane County to drive a commercial motor vehicle, and any person who has received a reimbursement in part or whole from Dane County for securing a CDL.

Designated Employer Representative (DER) - The primary contact person designated by Dane County to receive all information and/or reports from the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional and the laboratories. The DER is also the designated contact person for inquiries regarding this policy.

Drug/Controlled Substance - Cocaine, marijuana, opiates, amphetamines, and any substance determined by the United States. or the State of Wisconsin to be a drug/controlled substance.

Drugs/Controlled Substance Test - A method for determining the presence of drugs/controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 CFR 40.

Evidential Breath Testing Device (EBT) - A device approved by the National Highway Traffic Safety Administration (NHTSA), placed on the NHTSA's Conforming Products List, and is used for the evidential testing of breath.

Medical Review Officer (MRO) - A licensed physician responsible for receiving and reviewing laboratory results generated by Dane County's drug testing program and evaluating medical explanations for certain drug test results.



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Safety-Sensitive Function - A CDL Holder shall be considered to be performing safety-sensitive functions whenever:

- he/she begins work until the time she/he is relieved from work including time spent at a facility waiting to be dispatched, or
- inspecting or servicing the vehicle, or
- driving or at the controls of the vehicle, or
- resting in the vehicle, or
- loading or unloading the vehicle including the performance of any related paperwork, or
- performing those duties required of a driver involved in a vehicle accident, or
- repairing or attending to a disabled vehicle, or
- during all time while providing a breath sample or urine specimen including travel time to and from the collection site in order to comply with testing directed by Dane County.

Substance Abuse Professional (SAP) - An SAP is a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission and certified in accordance with the federal regulations) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders. Although any SAP meeting this definition is acceptable, at the time this policy is published, here is the contract information for two local SAPs:

On Track Counseling Elizabeth Doby – S.A.P (608) 622-5453	S.A.I.L. (Sober and Inspired Living) Kay Spicer S.A.P. (608)393-1221
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Supervisor - A management or supervisory employee of Dane County.

Vendor – the organization with whom Dane County contracts to instruct and assist individuals in the alcohol testing process and operates the evidential breath testing device.