

**PROSECUTING GUIDELINES FOR EVIDENTIARY
BREATH TESTING MACHINES**

Technical Committee for Standards and Procedures for law
Enforcement equipment

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PROSECUTING GUIDELINES FOR EVIDENTIARY BREATH TESTING MACHINES (EBTM)

1. GENERAL GUIDELINES FOR PROSECUTION IN DRUNK DRIVING CASES

1.1 The fact that neither a blood nor a breath sample can be obtained *does not preclude* a prosecution on a charge of driving under the influence, if other evidence is available.

If, for example, a competent and knowledgeable officer on drunken driving cases is available as witness, his or her evidence may well suffice.

1.2 Section 37 of Act 51 of 1977 is *not* unconstitutional and accordingly an accused may not refuse that blood be drawn.

1.3 A traffic officer, appointed as a peace officer in terms of section 334 of the Criminal Procedure Act, 1977 (GKR. 159 Government Gazette 6295 2 February 1979, as amended) has for purposes of the CPA the same powers as a police officer. He may therefore request a doctor or registered nurse to draw blood.

1.4 If the holder of a Professional driving permit (Prdp) is charged for driving with excess alcohol in his blood or breath, whilst driving in circumstances where a Prdp is not required, he must be prosecuted for contravention of the section as a normal driver and not a professional driver. (After implementation of Section 65 of Act 93 of 1996).

2. GUIDELINES FOR PROSECUTION WITH EVIDENTIARY BREATH TESTING MACHINES

2.1 The equipment may only be operated by a registered traffic officer who must have passed an operator's course for the particular model of the machine and must be issued with an operator's certificate of competence.

2.2 The operator must keep in his/her possession the operator's certificate for the machine in question or a certified copy.

2.3 Only the machines listed in Regulation 332(4) of the Regulations in terms of the National Road Traffic Act may be used. The machines must be calibrated at least once every six months by an accredited laboratory and a calibration certificate issued. A certified copy of the calibration certificate should be available on site.

2.4 After maintenance and repair of the equipment, it must be recalibrated. ,

2.6 All calibrations, maintenance and repairs shall be recorded in an appropriate equipment service record, which is kept for each machine.

EVIDENTIAL BREATH TESTER: EQUIPMENT SERVICE RECORD				
AUTHORITY				
MACHINE SERIAL NUMBER		CALIBRATION LABORATORY		
DATE	NATURE OF MALFUNCTION/ ROUTINE TEST	CALIBRATION TEST	DETAILS OF REPAIRS	MANUFACTURER/SUPPLIER SIGNATURE
<i>Example</i>				
1/1/99	Detects interferant all the time	2/2/99	Heating tube replaced	XYZ (Pty) Ltd
5/7/99	Routine calibration test	5/7/99	N/A	XYZ (Pty) Ltd

EVIDENTIAL BREATH TESTER: OCCURRENCE REGISTER					
AUTHORITY					
MACHINE SERIAL NUMBER					
DATE	SUBJECT	TIME STOPPED	TIME TESTED	EBTM READING	CAS NUMBER
<i>Example</i>					
1/1/99	Mr X	10:05	10:15	0.62	Sunnyside X/xx/99
1/1/99	Mr Y	10:17	11:03	0.37	Released