TO: All Chief Law Enforcement Officers

FROM: J. Stephen Ferketic, Director, Division of Criminal Justice

DATE: June 27, 2024

SUBJECT: **Interim Guidance on DWI Prosecutions with Alcotest 9510 Instruments Pending Firmware Updates**

The following instructions are for police agencies using the breath-testing instrument, Alcotest 9510, to determine an individual's blood alcohol content ("BAC") for driving while intoxicated investigations and prosecutions.

Calculation of Acceptance Criteria

The Alcotest 9510 firmware will *truncate* the mean of the four individual BAC readings as well as the upper and lower limits of the tolerance window after the fourth decimal place for each value.

Until the firmware update is completed and installed on the Alcotest 9510 instruments, **Breath Test Operators shall use the Alcotest Calculator to confirm that all four BAC readings are within the accepted tolerance window. If they are not, a new breath testing sequence must be initiated to obtain two new breath samples.**

Use of the Lowest Value for Prosecution

New Jersey uses one BAC value for purposes of prosecution. The Alcotest 9510 firmware will display the *lowest* of the four readings as the final "Reported Breath Test Result."

Until the firmware update is completed and installed on the Alcotest 9510 instruments, **the displayed *average* "Reported Breath Test Result" should be disregarded, and only the _lowest_ of the four[1] readings should be used as the final "Reported Breath Test Result."**

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[1] In the small number of instances where a third breath sample is obtained, the Breath Test Operator shall use the Alcotest Calculator to determine which of the individual's breath samples meet the acceptance criteria. For example, if Breath Samples 1 and 3 are in tolerance, the lowest of those four EC and IR values will be used as the final "Reported Breath Test Result." If Breath Sample 3 is in tolerance with both Breath Samples 1 and 2, the lowest of all six EC and IR values will be used as the final "Reported Breath Test Result."