



**THE TRIAL COURT OF MASSACHUSETTS  
EXECUTIVE OFFICE OF THE TRIAL COURT**

John Adams Courthouse  
One Pemberton Square, 1M  
Boston, MA 02108

**Paula M. Carey**  
Chief Justice of the Trial Court

**Jonathan S. Williams**  
Court Administrator

**INFORMATION CONCERNING THE BREATHALYZER TEST USED  
IN YOUR COURT CASE**

Court records indicate that an Alcotest 9510 breathalyzer machine was used in an Operating Under the Influence of Liquor case in which you were convicted or admitted to sufficient facts.

A statewide hearing was conducted to determine the scientific reliability of breath test results. As a result of that hearing, all breath tests administered in Massachusetts between June of 2011 and April 18, 2019 have been excluded from use in criminal prosecutions. This may provide an opportunity for you to challenge the disposition in your case.

This packet from the Court includes information about your legal rights and options, which has been provided by the Committee for Legal Counsel Services, the statewide public defender agency. If you have any questions, you are encouraged to call the public defender intake line at **617-910-5856** or to go to [www.mass.gov/breathalyzer](http://www.mass.gov/breathalyzer). Please review the enclosed letter from CPCS for further information.

**MESSAGE FROM THE COMMITTEE FOR PUBLIC COUNSEL  
SERVICES**

You received this packet because you have a criminal conviction based on the Draeger Alcotest 9510 breathalyzer machine.

**You have the right to challenge your OUI conviction if your breath test was done on a Draeger 9510 breathalyzer machine that was calibrated and certified between June of 2011 and April 17, 2019. In deciding whether it makes sense to challenge the conviction, it will be important to consider if there was other evidence of driving under the influence of alcohol that the government could use against you even if there were no breath test results (accident, driving violations, open containers, failing field sobriety test, etc.)**

Please go to <https://www.publiccounsel.net/breathalyzer/> to submit an intake form or leave a message at the breathalyzer intake line at (617) 910-5856 to help you find out if you are eligible for the appointment of counsel and, if so, assist you in obtaining a lawyer.

**Your Rights**

**You have the right to a lawyer.** You have the right to have an attorney advise and represent you in your case involving a breath test on the Draeger 9510 breathalyzer machine case - for free if you cannot afford to hire one. You have the right to get advice from a lawyer about whether to challenge these convictions. If you choose to go to court, you have the right to have a lawyer represent you. If the Court finds you cannot afford a lawyer, a lawyer will be appointed to advise and represent you for free.

When you ask for an attorney you are not committing to going to court to challenge your conviction based on a breath test on the Draeger 9510 ~~breathalyzer machine. You will be able to meet with your attorney and discuss~~ your options before you decide whether to go to court.

**If you were convicted at trial,** you have the right to ask for a new trial. The judge will review your case. Your rights might have been violated and your conviction could be vacated based upon OAT's method of calibrating the breathalyzer machines.

**If you challenge your convictions and you win, you have the right to a new trial. Please be aware that there may be undesirable consequences if you succeed in undoing your conviction so you need to consult with a lawyer to determine if it makes sense for you to do so. The following information may**

**help you and your lawyer decide whether you want to challenge your convictions:**

- If you challenge your conviction, and that challenge is successful, a judge will undo or “vacate” your conviction.
- You will have the ability to have a new trial or to negotiate a new plea in your case.
- Cases in which the result from the breathalyzer test was the *only evidence* of driving under the influence will probably be the most successful in getting a dismissal or a finding of not guilty.
- If you challenge your conviction and go to trial again, please be aware that the government may be able to use *other kinds of evidence* of intoxication against you, in an effort to get a new conviction - such as driving infractions, motor vehicle accidents or crashes, ~~failing field sobriety tests,~~ the odor of alcohol, statements you may have made, etc.
- You should also know that if you succeed in undoing your conviction, the prosecution could try to bring back charges that were originally dismissed.
- If you are found guilty a second time, the court could impose a greater punishment or sentence than you received the first time.

**How To Get a Lawyer:**

**If you know the name of the lawyer who represented you in this case, you should call that person.**

**If you cannot afford to hire a lawyer,** you have a right to have the court appoint a lawyer for you. **You may wish to contact the attorney who previously represented you on this case.** You can also use the following methods to contact CPCS, the public defender agency in Massachusetts, to begin the process:

- **We urge you to go to our website to fill out our form - [www.publiccounsel.net/breathalyzer](http://www.publiccounsel.net/breathalyzer) (*preferred*)**
- You can also leave a message on our confidential intake line at (617) 910-5856. Please note that you will not speak directly to a person initially. You will be asked to leave a message with detailed information, including your name and telephone number, the name of the defendant (if you are calling on behalf of someone else), the docket number and court where the case was resolved (this information is located on the letter from the Court), whether appointed counsel represented the defendant in this OUI case and whether the defendant is currently represented by appointed counsel in other matters. Your call will be returned so that an intake can be completed.

Approximately twenty-seven thousand (27,000) notices have been sent out. Due to limited resources and depending on the number of requests for appointed counsel, your inquiry may not be addressed for days or even weeks. We appreciate your patience and we will work diligently to reply to all inquiries.

**There are a limited number of appointed lawyers available to handle these cases so there could be substantial delays in addressing a request for appointed counsel.**

**If your income is too high to qualify for an appointed lawyer, you may hire a lawyer. We recommend that you contact the attorney who previously represented you on this case.** If you do not already have a lawyer, you may be able to find one by contacting the Massachusetts Bar Association, The Boston Bar Association, or other bar association lawyer referral services.

***What do you have to gain by challenging your Draeger 9510 breath test conviction?***

The answer depends on your circumstances. An OUI conviction often has serious consequences separate from and lasting longer than the sentence imposed in court. These have been called “invisible punishments” and they can make it hard or even impossible for you to live your life in the best way possible.

- Examples of areas where OUI convictions have imposed additional, “invisible” punishments are: immigration, housing, occupational and professional licenses, employment generally, public benefits, financial aid for higher education and driver’s license suspension.

You may have already experienced some of these problems in your life. If so, vacating your OUI conviction may make a difference. Even if you have not experienced these problems in the past, vacating your OUI conviction might open up possibilities for your future that would not otherwise be available to you.

There is another reason why you should consider speaking to an attorney about the possibility of vacating your OUI conviction: *fairness*. Your conviction may have been based on unreliable breath test results. You might have served time, paid fines/fees or probation, or had problems with your employment. You cannot get back the liberty you lost but you can try to rid yourself of the tainted conviction.

**For more information or to complete the intake form, please go to [www.publiccounsel.net/breathalyzer](http://www.publiccounsel.net/breathalyzer).**

Aviso

Español: Este es un documento oficial del tribunal. Si no puede leerlo en inglés, por favor visite [mass.gov/breathalyzer](http://mass.gov/breathalyzer) para conseguir la versión traducida, o hágalo traducir.

Aviso

Português: Este é um documento jurídico oficial. Se você não conseguir lê-lo em inglês, acesse [mass.gov/breathalyzer](http://mass.gov/breathalyzer) para ler a tradução em português. Ou procure traduzir de outra forma.

Avi

Kreyol Ayisyen: Sa a se yon dokiman tribinal ofisyèl. Si ou pa kapab li li nan lang angle, tanpri vizite [mass.gov/breathalyzer](http://mass.gov/breathalyzer) pou yon vèsyon tradui, oswa fè li tradui.

Thông báo

Tiếng Việt: Đây là giấy tờ chính thức của tòa. Nếu bạn không thể đọc bằng tiếng Anh, vui lòng vào trang mạng [mass.gov/breathalyzer](http://mass.gov/breathalyzer) để đọc bản dịch, hoặc nhờ người dịch sang tiếng Việt.

កំណត់សំគាល់

នេះជាឯកសារផ្លូវការរបស់តុលាការ។ បើសិនជាលោក-អ្នកមិនអាចអានវាជាភាសាអង់គ្លេសបានទេ សូមចូលទៅគេហទំព័រ [mass.gov/breathalyzer](http://mass.gov/breathalyzer) សម្រាប់ឯកសារដែលត្រូវបានគេបកប្រែ ឬឱ្យអ្នកណាម្នាក់ជួយបកប្រែជូន។

Внимание

Русский: Это официальный документ суда. Если вы не можете прочитать документ на английском языке, то пройдите, пожалуйста, по ссылке [mass.gov/breathalyzer](http://mass.gov/breathalyzer) где находится переведенный вариант, или переведите его.

تنويه

"هذه وثيقة رسمية صادرة بموجب المحكمة - إذا كنت لا تتحدث اللغة الإنكليزية، يرجى زيارة الموقع التالي للاطلاع على نسخة مترجمة. أو اطلب ان يتم ترجمتها لك [mass.gov/breathalyzer](http://mass.gov/breathalyzer)"

