CHAPTER 12

PRELIMINARY DRUG SCREENING DEVICES

NOVEMBER 2019

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CHAPTER 12

PRELIMINARY DRUG SCREENING DEVICES

1. GENERAL.

a. Preliminary drug screening (PDS) devices are an investigative tool available to properly trained departmental personnel for the purposes of assisting in the identification of drivers impaired by drugs, or drivers impaired by a combination of alcohol and drugs.

b. These PDS devices **DO NOT** supplant or replace the need for a complete impaired driving investigation. It is important to note, these devices only test for common drug types. As such, an officer may still observe impairment or form the opinion a person is impaired even if the PDS provides a negative result.

c. These tests **DO NOT** take the place of Advanced Roadside Impaired Driving Enforcement training or Drug Recognition Experts.

d. Preliminary drug screening devices do not detect impairment. These devices merely detect the presence of common drugs in a person's oral fluid. **The mere presence of a drug alone, as indicated by a PDS, is not sufficient cause to make an arrest for driving under the influence (DUI).**

NOTE: Drug concentrations in a person's oral fluid generally do not correlate with drug concentrations in the blood.

e. The decision to arrest for DUI must be based on the totality of the circumstances, which may include, but are not limited to: a person's driving behaviors or the reason for the contact, signs and symptoms of impairment, performance of field sobriety tests, evidence of drug and/or alcohol use, results from a preliminary alcohol screening (PAS) device, and/or results from a PDS.

f. A person could test positive for a drug, or a combination of drugs, during a PDS test and not be under the influence. As such, when making DUI arrests involving suspected drug-impaired or alcohol and drug-impaired drivers, it is ***imperative*** officers conduct complete investigations, and thoroughly document all observations and evidence that led them to the conclusion the person was impaired.

2. TRAINING.

a. Prior to use, officers shall receive training in the proper use of PDS devices from the Impaired Driving Section (IDS) or persons designated by IDS.

b. The IDS will conduct PDS training as devices are deployed to the field. Upon the conclusion of training, IDS will issue employees training certificates which shall be entered into the Electronic Training Records System (ETRS) by the employee's command. These certificates shall be kept at the local command as part of the employee's training file.

3. DEPLOYMENT. Commanders should encourage the use of PDS devices, as appropriate. Additionally, commanders should ensure PDS devices are deployed in a manner that maximizes coverage and usage in accordance with operational needs. Only trained personnel may use PDS devices. However, officers trained in the use of PDS devices should be encouraged to assist other officers investigating suspected drug-impaired drivers by conducting testing, as practicable, and as outlined in this chapter.

a. Devices Used by the Department.

(1) The Department currently uses the Abbot SoToxa (formerly known as Allere/Abbot DDS2) and the Dräger Drug Test 5000 devices. Each device consists of an analyzer and a collection kit.

(2) Although PDS technology continues to evolve, the PDS devices used by the Department have been involved in multiple scientific studies, and have been used extensively by law enforcement agencies throughout the United States.

b. Vehicle-Based Versus Location-Based Program.

(1) Vehicle-based programs equip officers with PDS devices in their patrol vehicle, giving them the ability to respond to incident locations and conduct prearrest testing. Both the Abbot SoToxa and the Dräger Drug Test 5000 can be used in the field; however, due to its smaller size, the Abbot SoToxa may be better suited for vehicle-based programs.

(2) Location-based programs allow officers to utilize only the collection kit (in the field) to take a sample of oral fluid for later testing at the Area office or other location. Due to manufacturer limitations, only the Dräger Drug Test 5000 can be utilized for location-based testing.

c. Operator's Manual.

(1) During PDS training, officers will become familiar with this chapter and the PDS device(s), including the PDS device(s) operator's manual. Once trained, officers should have the appropriate PDS device quick reference guide (similar to an alcohol-based breath test precautionary checklist) readily accessible when conducting testing using a PDS device.

(2) The Department does not conduct secondary oral fluid confirmation testing. The Department considers a postarrest blood test (or urine test in some specified cases), as required by California law, to be the confirmatory laboratory test. Refer to Chapter 5, Chemical Tests – Implied Consent Law, of this manual for additional information.

d. Drugs. Drugs are defined in California Vehicle Code Section 312 as, "…any substance or combination of substances, other than alcohol, which could so affect the nervous system, brain, or muscles of a person as to impair, to an appreciable degree [their] ability to drive a vehicle in the manner that an ordinary prudent and cautious [person], in full possession of [their] faculties, using reasonable care, would drive a similar vehicle under like conditions."

NOTE: Both PDS devices used by the Department test for common drugs. They **DO NOT** test for alcohol. As such, officers should continue to use PAS devices in conjunction with PDS devices. For additional information related to PAS devices, refer to Chapter 7, Preliminary Alcohol Screening (PAS) Device, of this manual.

e. Theory of Operations.

(1) Officers should become familiar with the theory of operations for PDS devices.

(2) When drugs are consumed, they enter the blood stream and the brain (potentially causing impairment). Additionally, they enter the liver, where the parent drug is metabolized (or broken down) into different metabolites. Due to differences in drug concentrations between a person's blood and their oral fluid, drugs will enter a person's oral fluid through a process known as diffusion where they can be collected. Drugs can also be deposited into the oral fluid through direct contact in the oral cavity (through smoking or oral consumption).

(3) Both PDS devices used by the Department use a collection kit to obtain a sample of a person's oral fluid. The PDS passes the oral fluid from the collection kit onto a test strip where the device's optic reader measures the presence or absence of specific anitgen(s) through an immunoassay process.

(4) After reading the test strip, the PDS displays a positive or negative reading for common (but not all) drugs. Refer to the operator's manual and collection kit for additional information.

f. Accuracy Testing.

(1) Each PDS device comes with an inert testing cartridge(s) used for accuracy and quality control purposes. In addition to the internal self-checks conducted by the PDS, officers using a PDS shall conduct an accuracy test before and after shift to ensure the device is properly functioning.

(2) Accuracy testing shall be conducted in accordance with the directions provided in the PDS operator's manual.

(3) Usage and accuracy testing shall be logged on the CHP 202O, Oral Fluid Analyzer Usage and Accuracy Testing Log, which can be found on the CHP Intranet site under Forms.

(4) In addition to the accuracy testing requirements above, the Area PDS device coordinator should conduct an accuracy test once per week. If conducted, this accuracy test shall be noted on the CHP 202O.

g. Maintenance and Repairs.

(1) Each PDS device will provide a visual indicator when maintenance is due. Generally, PDS devices must be serviced by the manufacturer on an annual basis, or when the analyzer detects a problem that must be repaired by the manufacturer.

(2) Areas shall take any PDS requiring maintenance or repair out of service, and contact IDS.

h. Storage and Collection Kit Disposal.

(1) Departmental PDS analyzers and collection kits should generally be stored at room temperatures. Refer to the operator's manuals for specific temperature ranges and storage recommendations. The PDS device(s) and collection kits should generally not be exposed to extreme heat (e.g., inside patrol vehicles during summer months) or extreme cold.

(2) Departmental PDS devices have an internal temperature gauge which will prohibit testing if the analyzer is outside of specified operating temperatures (refer to the operator's manual for additional information).

(3) The PDS analyzer will conduct an internal check on the collection kit prior to testing. If the analyzer detects a problem with the collection kit, the analyzer will discontinue testing.

(4) Prior to use, officers should inspect the collection kit packaging to ensure the packaging is not torn. If the packaging is damaged, discard and obtain a new collection kit.

NOTE: Each Abbot SoToxa PDS collection kit contains a colored silica package. Upon opening, the officer should inspect the silica to ensure silica is yellow. If the silica is black or dark green, the collection kit was exposed to moisture. If the collection kit was exposed to moisture, the officer shall discard the collection kit and obtain a new kit to continue testing.

(5) Collection kits have expiration dates. Areas should review the expiration dates printed on their collection kits to ensure sufficient stock. Areas are encouraged to review local usage utilizing the CHP 202O and request only the amount necessary to fulfill Area needs.

(6) Collection kits are not considered hazardous or toxic. As such, these kits may be properly disposed of without any special handling (unless local law/procedures dictate otherwise). Officers shall not discard collection kits on the roadside.

NOTE: There is no evidential value in maintaining collection kits as evidence after testing as they cannot be retested.

4. RESPONSIBILITIES. Areas, Divisions, and IDS all have specific responsibilities to ensure the successful deployment and use of PDS devices.

a. Impaired Driving Section.

(1) The IDS will deploy PDS devices to the field, and track equipment locations.

NOTE: The PDS devices **SHALL NOT** be transferred between Areas. However, Areas may return their PDS device to IDS for redeployment to another command.

(2) The IDS will facilitate training and issue training certificates.

(3) The IDS will review local standard operating procedures (SOP), at the request of Assistant Commissioner, Field (ACF), when the local district/city attorney requests deviations in procedures or recommendations listed in the PDS operator's manual.

b. Division.

(1) Divisions should review Area SOP as appropriate.

(2) Divisions shall notify ACF of any significant legal challenges involving PDS devices. The IDS will assist the Area/Division at the request of ACF.

c. Area.

(1) Once an Area receives a PDS device, the commander should meet with their local district/city attorney and discuss the deployment of PDS devices. If requested, IDS personnel can assist Areas prepare for these meetings and provide background information as needed.

(2) Areas shall incorporate local procedural requests from the district/city attorney into their SOP.

(3) Local Area SOP should include:

(a) Deployment considerations, to include vehicle- versus location-based programs.

(b) Recommendations from the local district/city attorney.

(c) Local procedures for evidence documentation and submission for prosecution.

(d) Storage locations (for both the analyzer and the collection kits).

(e) Disposal of collection kits.

NOTE: Major deviations from this policy or the PDS operator's manual requested by local prosecutors shall be routed to ACF's office, through channels, for review and approval prior to PDS device deployment. The IDS will review requested changes at the direction of ACF.

(4) Areas shall track usage and accuracy testing using the CHP 202O.

(5) Areas shall submit copies of their CHP 202O forms on a quarterly basis to PAS-PDS@chp.ca.gov. This will assist IDS in tracking oral fluid device usage statewide.

(6) Areas may request additional PDS device supplies from IDS.

(7) Areas will enter all PDS device training into the employees' ETRS and training files.

(8) Areas should designate a PDS device coordinator. The PDS device coordinator is responsible for:

(a) Coordinating PDS device maintenance and repairs with IDS.

(b) Providing copies of the CHP 202O to IDS on a quarterly basis.

(c) Responding to subpoenas as the custodian of record for Area PDS devices.

(d) Conducting a weekly accuracy test utilizing the inert testing cartridge provided by the manufacturer. Refer to the Accuracy Testing section of this chapter for additional information.

(9) Areas shall notify ACF, through channels, of any significant legal challenges involving PDS devices. The IDS will assist the Area at the request of ACF.

5. LEGAL CONSIDERATIONS.

a. Fourth Amendment. The Fourth Amendment of the United States Constitution guards against unlawful government search and seizure. To ensure a sample collection complies with current law, PDS testing will generally **either** be conducted prior to arrest when the subject provides free and voluntary consent (refer to paragraph 6.d. of this chapter for additional information); **or** postarrest after the officer has provided a Miranda Warning (which can be found on the CHP 202, Driving Under the Influence Arrest-Investigation Report) and the subject has waived their right against self-incrimination. For additional information related to search and seizure, refer to General Order 100.91, Search and Seizure Policy.

b. Court Admissibility and Testimony. Nothing in current law prevents the use of oral fluid screening devices during the course of an impaired driving investigation. Officers should be prepared to testify to the following items:

(1) Training (to demonstrate they are a qualified and competent operator).

(2) Accuracy testing (to ensure the device was functioning properly) and usage as documented in the CHP 202O.

(3) Theory of operations.

(4) General capabilities of the PDS (e.g., the types of drugs for which the device tests).

c. Legal Challenges. Areas should immediately notify IDS, through channels, of any significant legal challenges to PDS technology. Depending on the nature and level of the challenge, IDS may request assistance from the PDS device manufacturer.

6. USE OF PRELIMINARY DRUG SCREENING DEVICES FOR ENFORCEMENT PURPOSES.

a. Capabilities. Both the Abbot SoToxa and the Dräger Drug Test 5000 test for commonly abused drugs.

(1) Generally, the Abbot SoToxa tests for Amphetamines, Benzodiazepines, Cannabis, Cocaine, Methamphetamine, and Opiates.

(2) Generally, the Dräger Drug Test 5000 tests for Amphetamine, Benzodiazepines, Cocaine, Methamphetamine, Methadone, Opiates, and Cannabis.

b. Driving Under the Influence Investigative Sequence.

(1) Generally, the investigative considerations for impaired driving investigations consist of (but are not limited to): a person's driving behaviors or the reason for the contact, observations of signs and symptoms of impairment, performance of field sobriety tests, evidence of drug and/or alcohol use, results from a PAS device (if applicable), and/or results from a PDS (if applicable).

(2) If a PDS test is administered, it shall be the last test given and shall be conducted after the PAS test (if a PAS device is used).

NOTE: The investigative sequence can be modified based on a person's abilities, injuries, and/or location as allowed by policy and current law. However, regardless of the circumstances, the PDS shall be the last test administered.

(3) For vehicle-based programs, an oral fluid sample should be collected on-scene prior to arrest, after free and voluntary consent is granted (refer to paragraph 6.d. of this chapter). After a sample is obtained, the collection kit should be analyzed in the field for the purposes of giving the officer additional information when deciding if enough probable cause exists to make an arrest.

NOTE: As a reminder, a positive PDS test result alone is not sufficient cause to make an arrest. The decision to arrest must be based on the totality of the circumstances.

(4) For location-based programs, an oral fluid sample should be collected on-scene prior to arrest, after free and voluntary consent is granted (refer to paragraph 6.d. of this chapter). The officer shall then secure the safety cap over the sample collector to ensure the integrity of the test. It is important to note, the officer will not have the test results when weighing the decision to arrest and will have to rely on the information gathered during their investigation to determine whether the subject is impaired. If an arrest is made, the officer should generally transport the subject back to the Area where they should use the analyzer to test the collection kit, if circumstances allow. For location-based programs, testing must occur within four hours from the time of collection. If known, the results of the test should be considered when weighing the decision to charge the subject, or release the subject using a CHP 103, Certificate of Release from Custody.

NOTE: Only the Dräger Drug Test 5000 can be utilized for location-based programs.

(5) Nothing in this sequence shall preclude postarrest oral fluid collection and testing if the subject is first provided a Miranda Warning and waives their right to self-incrimination.

c. Nondriving Under the Influence Investigative Sequence. Similar to the DUI investigative sequence, officers may utilize the PDS device prearrest, if the subject provides free and voluntary consent, or post-arrest, if the subject is provided a Miranda Warning and waives their right to self-incrimination.

d. Consent-Based Testing Admonishment.

(1) Prearrest oral fluid testing for drivers suspected of being under the influence (e.g., a violation of California Vehicle Code Sections 23152 or 23153) must be conducted only when free and voluntary consent is granted by the subject

(2) As such, the following admonition should be communicated to the subject prior to testing: *"Because I believe you are under the influence of a drug or a*

combination of alcohol and drugs, I am requesting you take a preliminary drug screening test. This test will examine a sample of your oral fluid and check for commonly abused drugs. You do not have to take this test; however, if you are arrested, you will still be required to submit to a chemical test to determine the actual drug and/or alcohol levels in your blood. Will you take this test?"

(3) Prearrest oral fluid testing for nondrivers suspected of being under the influence (e.g., a violation of Health and Safety Code Section 11550) must be conducted only when free and voluntary consent is granted by the subject.

(4) As such, the following admonition should be communicated to the subject prior to testing: *"Because I believe you are under the influence of a drug or a combination of alcohol and drugs, I am requesting you take a preliminary drug screening test. You do not have to take this test. This test will examine a sample of your oral fluid and check for commonly abused drugs. Will you take this test?"*

NOTE: Postarrest oral fluid testing of nondrivers may only take place after a subject has been provided a Miranda Warning and waived their right to self-incrimination.

e. Refusals. Nothing in statute requires a person to consent to oral fluid testing. As such, a person is free to refuse testing.

f. Oral Fluid Collection. Oral fluid should be collected pursuant to manufacturer recommendations utilizing the manufacturer-provided collection kit.

(1) Similar to alcohol-based breath testing, officers should wait 15 minutes prior to obtaining an oral fluid sample. This gives the subject's oral cavity the chance to refresh (though salivation) and helps ensure the subject does not place anything in their mouth which could alter the test results. During this 15 minute observation period, officers shall ensure the subject does not eat, drink, smoke, regurgitate, vomit, or place anything in their mouth. This observation period can coincide with the impaired driving investigation, and generally starts as soon as the officer contacts the subject.

(2) Officers are strongly encouraged to have a subject collect their own oral fluid samples. Generally, this is accomplished by having the officer open the collection kit package and asking the subject to take the collector. The officer can then instruct the subject on how to collect the sample. Once finished, the officer can take the collector from the subject and process appropriately. This greatly reduces any chance of being exposed to the subject's oral fluid.

NOTE: If a subject refuses to collect their own sample, the officer should consider this a refusal unless conditions exist which may warrant an officer

collecting the sample from the subject (e.g., the subject was injured in a collision and cannot collect their own sample).

(3) Oral fluid collection involves having the subject move the collector kit around their mouth. Generally, the subject should be instructed to run the collector around their cheeks, gums, and over and under their tongue. The collector will turn blue when enough oral fluid has been collected to test.

NOTE: Departmental PDS devices shall only be used to test oral fluid. Due to differences in viscosity between oral fluid and other liquids, using a PDS device to test for the presence of drugs in fluids other than oral fluids will likely lead to errors or invalid tests.

(4) Officers should follow the electronic prompts on the PDS device and refer to the appropriate manufacturer quick reference card to complete testing. Refer to Annexes A and B for additional information.

(5) After the analyzer completes testing, the officer shall print the results using the manufacturer-included printer, and attach a copy of the test results to the report in accordance with local Area SOP.

g. Error Codes and Invalid Tests.

(1) Officers receiving error codes or invalid tests should refer to the operator's manual for additional information. Common errors include expired collection kits, insufficient oral fluid to conduct testing, or the analyzer is tilted (not level) beyond allowable tolerances.

(2) If the officer is unable to correct the error, or the error code indicates service or repair is needed, the officer shall take the device out of service and the Area shall contact IDS in accordance with local SOP.

(3) The officer may use another functioning PDS device, if available.

h. Evidence and Report Documentation.

(1) The Area shall defer to the local prosecutor to determine the preferred method of submitting PDS device test results. However, generally, the officer should print the receipt indicating the results and attach a copy to their report.

(2) In addition to any requirements of the local prosecuting attorney, the officer's report shall include specific information related to the fact that an oral fluid screening device was used in the investigation, including the PDS device make and model, testing times, where the device was used in the investigative

sequence, admonishments provided to the subject prior to testing, and all results.

7. SURVEYS. The IDS may send surveys through departmental e-mail to trained PDS users to gauge the impact and usefulness of oral fluid testing. Officers receiving these surveys shall respond as soon as practicable as directed in the survey.

8. LOST, STOLEN, DAMAGED, OR DESTROYED PDS DEVICES. Lost, stolen, damaged, or destroyed PDS devices shall be reported pursuant to the procedures contained in Highway Patrol Manual 11.2, Materials Management Manual, Chapter 8, Equipment. Additionally, the reporting command shall notify IDS via e-mail at PAS-PDS@chp.ca.gov.

9. SUPPLIES AND FORMS.

a. Commands may order additional supplies including collection kits and printing paper from IDS.

b. Commands shall utilize the CHP 202O to track all PDS usage and accuracy testing. Commands shall submit copies of the CHP 202O quarterly to IDS.

c. The CHP 202O shall be maintained at the Area for three years.

10. QUESTIONS AND REQUESTS. General PDS testing questions and requests for supplies may be referred to IDS at PAS-PDS@chp.ca.gov or at (916) 843-4360.

ANNEX A

ABBOT SOTOXA QUICK REFERENCE CARD

Alere™

DDS®2 Mobile Test System Procedure Card

Running a Test

1

Press the **power button** to switch the analyzer on. Wait for the initializing process to complete.

2

Remove a new **Alere™ DDS®2 Test Cartridge** from its foil wrapper.

3

Check that the **silica gel pack** is present, intact and is yellow.

If the silica gel is missing, open or is green, discard the test and start again with a new cartridge.

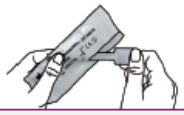
4

When prompted by the analyzer screen, insert the test cartridge.

The analyzer will verify that the cartridge is valid.

⚠ Make sure to keep the analyzer **horizontal** and **still** at all times.

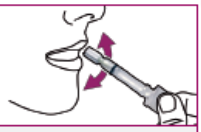
5



Ask the **donor** to unwrap a new **Alere™ DDS®2 Oral Fluid Collection Device** from the packaging.

Ensure that they hold the collection device by the plastic stem, and then place it in the mouth.

6



The sample donor must actively swab the collection device around the **gums**, **tongue** and **inside the cheek**.

7

Continue swabbing until the sample volume indicator turns **completely blue**.

8

Insert the **collection device** into the **test cartridge** (in the analyzer).

Gently push all the way into the cartridge to the **stop position**.

9

The analyzer will now test the sample.

The test time will be displayed on the screen.

Make sure to keep the analyzer **horizontal** and **still** at all times.

10

OPI	NEGATIVE
COC	POSITIVE
AMP	NEGATIVE
MAMP	NEGATIVE
THC	NEGATIVE

The results will be displayed on the analyzer screen.

If it has been enabled, a donor questionnaire will begin after pressing 'OK'.

11

If required, the results can be printed.

Please ensure that the printer is connected to the analyzer and has been **switched on** before printing.

To skip this step press 'NO'.

12

The test cartridge and collection device can now be removed from the analyzer.

Do not remove the test cartridge by pulling the collection device and do not attempt to remove the collection device from the test cartridge.

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ANNEX B

DRÄGER DRUG TEST 5000 QUICK REFERENCE CARD

Dräger

enUS

Dräger DrugTest® 5000 - Quick Reference Guide

NOTICE

In order to operate the Dräger DrugTest 5000 test system, be sure you fully understand and strictly follow the instructions for the analyzer and the test kits utilized.

Collecting Oral Fluid Sample

Prior to sample collection, please observe a 10 minute waiting (deprivation) period. Ensure the test subject does not consume anything 10 minutes prior to taking the sample (e.g. food, beverages, tobacco, chewing gum).

1. **Move** the saliva collector of the DrugTest 5000 Test Cassette throughout **the complete oral cavity** for approx. **one minute**, including brisk movement from side to side (cheek pouch, under the tongue, on top of tongue, palatal area).
2. Adequate sample has been collected when **the sample collector begins to turn blue**. In the absence of a blue color, the sample may be used after collecting for **4 minutes maximum**.

NOTICE

It does not invalidate the test if the sample adequacy indicator does not turn blue. Proceed to analyze the sample if the indicator does not turn blue after 4 minutes of sample collection. Do not allow the subject to drink water or dip the collector in water to force the indicator to turn blue.

Analyzing Oral Fluid Sample

1. **Turn on** analyzer by pressing the OK button for three seconds. Wait until the display reads: "**Ready for measurement**".
2. **Open door**.
3. Insert **DrugTest cassette**.
4. Insert **DrugTest cartridge**.
5. **Close door**: Analysis will begin automatically.
6. Enter data at the data entry prompts, then press the Save button.
7. After completion of the analysis, the results are indicated on the display.
8. Remove DrugTest cassette and close door to prepare for next measurement.

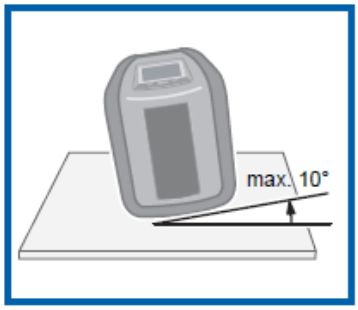
ANNEX B

DRÄGER DRUG TEST 5000 QUICK REFERENCE CARD *(continued)*

Dräger

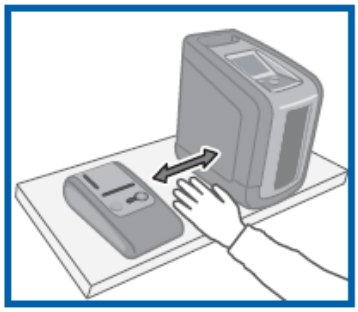
Positioning Dräger DrugTest 5000 analyzer

1. Place the analyzer horizontally. The design of the analyzer will allow analysis within a **tilt angle of 10°** about all axes of the device.
2. If the display of the analyzer reads "**Invalid**" for one or more analytes: check position of analyzer. Repeat measurement if necessary. Individual results with valid indicators ("positive" or "negative") can continue to be utilized, even if one or more individual results should be "invalid" from the same test run.



Printing with the Dräger Mobile Printer

1. Place Mobile Printer to the left of the analyzer.
   - Mobile Printer and analyzer should stand on the same surface.
   - Front panels of the Mobile Printer and the analyzer should be in alignment with each other.
   - Distance between Mobile Printer and analyzer should equal approx. one hand's width.
- The Mobile Printer automatically turns itself off after 4 minutes to save energy.
  Therefore, do not switch Mobile Printer on until just before printing or instead operate with the associated power supply, even when using non-rechargeable batteries.



Analyzer Power

- When practical, operate the analyzer with the power supply. Connecting the analyzer to a power supply for extended periods of time is not detrimental to the built-in battery, but will maintain its performance capability. Ensure the analyzer is recharged fully (~4 hours) at least once per month.