



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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April 4, 2025

Senator Anne Beebe-Center, Chair
Representative Travis Hasenfus, Chair
Committee on Criminal Justice and Public Safety
100 State House Station, Room 436
Augusta, ME 04330

RE: LD 1135 – An Act to Permit the Use of Oral Fluid Testing in Determining the Intoxication of Drivers, Aircraft Operators and Hunters.

Dear Senator Beebe-Center, Representative Hasenfus, and Members of the Committee on Criminal Justice and Public Safety,

MACDL opposes LD 1135.

This bill introduces significant legal, scientific, and civil liberties concerns that outweigh the potential benefit. The use of oral fluid testing to determine intoxication from drugs and alcohol is fraught with questions about scientific reliability and evidentiary validity. Unlike breathalyzers or blood tests, oral fluid testing is not yet a gold standard in toxicology. Passing legislation that allows such unreliable data to serve as evidence could result in wrongful arrests, prosecutions, and convictions.

Rather than relying on a testing method still debated in the scientific and legal communities, Maine should continue to use well-established and legally defensible tools, such as field sobriety tests in combination with blood or breath tests. Unlike breath or blood tests, which have undergone decades of validation and are widely accepted in courts, oral fluid testing is still emerging and lacks uniform standards for administration, interpretation, and admissibility.

By way of example, cannabis detection through oral fluid testing is particularly problematic. THC, the active compound in cannabis, can linger in oral fluids for hours or even days after consumption, long after any impairing effects have worn off. This makes it difficult, if not impossible, to distinguish between recent use that may indicate impairment, and past use that poses no safety concern. The same can be said for many other prescription medications.

This bill risks undermining public trust in impairment testing and in the overall efforts to promote public safety. Individuals could be punished based on the mere presence of alcohol or drugs, not actual impairment, which is a dangerous precedent to set in the context of criminal or administrative penalties.

Maine deserves policies that are grounded in sound science, respect constitutional rights, and truly promote safety without overreach. For these reasons, MACDL asks that you vote “ought not to pass” on LD 1135.

Sincerely,

/s/ Eric S. Thistle
Eric S. Thistle, Esq.
MACDL Member