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April 7, 2025

Senator Beebe-Center, Chair
Representative Hasenfus, Chair
Members, Joint Standing Committee on Criminal Justice and Public Safety
100 State House Station
Augusta, ME 04333-0100

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

Senator Beebe-Center, Representative Hasenfus and members of the Joint Standing Committee on Criminal Justice and Public Safety, thank you for the opportunity to provide information neither for nor against LD 1135, *An Act to Permit the Use of Oral Fluid Testing in Determining the Intoxication of Drivers, Aircraft Operators and Hunters*.

This bill permits the use of oral fluid (saliva) testing in determining the intoxication of drivers, aircraft operators, and hunters. The Forensic Chemistry Section (FCS) of Maine's Health and Environmental Testing Laboratory (HETL) within the Department of Health and Human Services performs in-house toxicology testing on blood and urine samples for criminal investigations, such as suspected operating under the influence (OUI) and driving under the influence of drugs (DUID).

If passed, this bill will allow for the expansion of sample matrices to include oral fluid. While the HETL FCS is neither for nor against this proposed change, it is important that the following information is taken into consideration.

Testing blood samples is universally considered the gold standard of toxicological investigation of OUI and DUID cases. The creation of an oral fluid testing program at the HETL will require additional initial and annual resources and once implemented, will only test for 20-30 drugs/metabolites qualitatively (Detected/Not Detected). There are drugs that the HETL cannot test for, as some drugs/metabolites are not stable in oral fluid. The current blood drug testing program tests for 80+ drugs/metabolites qualitatively (Detected/Not Detected) and quantitatively (Concentration/Level). Additionally, oral fluid has a significantly larger variability of composition that differs between individuals. Products taken by mouth such as chewing tobacco may impact the laboratory's ability to test individual samples.

The storage and stability of oral fluid must be taken into consideration. From evaluation of oral fluid collection kits available for purchase, the sample must be collected, transported to the laboratory, and tested within 10-21 days if stored at room temperature. Delaying testing increases the potential of degradation of the sample. Testing samples past the manufacturers recommended storage date may lead to results of analysis being questioned as the results

obtained would be different than the results obtained from a test performed within the recommended time window. In 2024, the average time between samples collected and delivered to the laboratory was 17 days. Additionally, between November 2024-February 2025, with the laboratory operating with minimal to no backlog in testing, the average time between samples being received by the laboratory and testing completion was 86.6 days. Combined that is an average of 103.6 days between collection and completion of testing.

Maine CDC is neither for nor against for this proposed bill. Maine already has a robust blood testing program for the toxicological investigation of OUI and DUI. While oral fluid is more convenient to collect than the more invasive blood collection, blood is universally considered the “gold standard” in these specific types of investigations. The creation of an oral fluid testing program at the HETL once implemented will test for only 20-30 drugs/metabolites in comparison to the existing blood drug testing program that tests for 80+ drugs/metabolites. Maine CDC’s initial estimate of the costs associated with this bill is upward of \$500,000. Where 29-A MRS § 2525 specifies specimens of blood or breath tests are to be paid through the Highway Fund, Maine CDC recommends that, if the Committee votes to enact LD 1135, the costs and procurement of the HETL-approved oral fluid collections kits be addressed.

Please feel free to contact me if you have any questions during your deliberation of this bill.

Sincerely,



Puthiery Va, DO
Director
Maine Center for Disease Control and Prevention
Maine Department of Health and Human Services