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Department of Public Safety
Bureau of Highway Safety
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Michael J. Sauschuck
Commissioner

Lauren V. Stewart
Director

Testimony of Director Lauren V. Stewart

TESTIMONY 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

Senator Beebe-Center, Representative Hasenfus, and distinguished Members of the Joint Standing Committee on Criminal Justice and Public Safety, I am Lauren Stewart, Director of the Department of Public Safety, Bureau of Highway Safety, and I am here today to testify on behalf of the Department Neither for Nor Against LD 1135.

As written, this bill seeks to permit and include oral fluid testing as one of the chemical tests used for implied consent under Title 6 M.R.S.A, Title 12 M.R.S.A, title 16 M.R.S.A, and Title 29-A M.R.S.A. The department is speaking only to implied consent under Title 29-A. We are unclear if the purpose is intended to use these for roadside screening (as other states have done) or as another confirmation test at the police station (like an Intoxilyzer for alcohol) for presence of drugs. This bill appears to add oral fluid as only another chemical test following probable cause.

While we generally support bills designed to make our roadways safer, and we greatly respect Senator Cyrway's dedication to fighting impaired driving, we believe that this bill will be somewhat costly and may not be necessary given that we already have a program to test blood for drugs in Maine. We have invested considerable time, funding, and personnel resources into supporting the HETL lab, including salaries and training of chemists, training of law enforcement phlebotomists, training and reimbursement for Drug Recognition Experts, training officers in ARIDE, and purchasing equipment and supplies.

If the intention is to use this tool roadside, we maintain that properly trained officers can observe and find signs and symptoms of impairment using eyes, odor, fumbling, slurred speech, driving concerns, admission, etc., which will likely be better evidence in court than oral fluid evidence. It will also present a significant challenge for proper storage due to temperature requirements of the units and swabs. For proper use, the temperature of the environment must be between 41-95 degrees Fahrenheit to run tests. If the test is being moved between two environments of different temperatures the device must equilibrate for 30 minutes. Test cartridges cannot be stored at temperatures less than 23 F.

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After sample collection, oral fluid samples will need to be immediately stored in freezers to maintain stability and avoid bacterial growth and sample degradation. This may be a consideration for individual law enforcement agencies who have limited evidence storage resources.

If the intention is to use oral fluid as confirmation at a police station, after probable cause has been developed, there may be some value in their use as a relatively quick and accurate confirmation of recent drug use, and which category of drug is present, although not as accurate as a blood sample.

It is also unclear whether oral fluid testing could be considered inadmissible like portable breath testing instruments (PBTs) results. It should be noted that Maine does not currently use portable breathalyzers (PBTs) because they have been deemed inadmissible in Maine courts.

Finally, this bill stops short of discussing costs associated with adding another test to the allowable chemical tests. Purchasing of the oral fluid testing analyzers (estimated at \$4,500.00 - \$7,500.00/unit) is only the start-up cost. There are other costs associated, such as:

- a. Supplies (swabs est. at \$1300/box of 25)
- b. Instrument maintenance
- c. Training officers and prosecutors
- d. Laboratory testing fees

If it is anticipated that DPS will cover these costs under the existing implied consent program 29-A §2525 (3), DPS will need to identify the final costs of oral fluid swabs and analyzers costs of testing, costs of training, intended use of units and number of units before understanding what the fiscal impact may be. We may also need additional highway funded staff to administer the added oral fluid program if added to the implied consent program. Since HETL would need to create a new testing program for oral fluid, I anticipate that they will be submitting a fiscal note as well.

Thank you for your time today and I would be happy to try to answer any questions you may have.

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