DRAFT FOR REVIEW AND DISCUSSION ONLY

REPORT OF THE MAINE ORAL FLUID TESTING GROUP

Pursuant to Resolves 2025, Chapter 87

Primary Author of Report:

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Date of Report:

_____ ___, 2025

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Jennifer Limgoes,
Associate Director of Toxicology
Forensic Investigation Center
New York State Police

William Lindsey
Deputy Director
National Computer Forensics Institute
(Former Traffic Safey Resource Prosecutor for Alabama)

Paul Thompson
Drug Evaluation and Classification Program State Coordinator
Alabama Law Enforcement Agency
ALEA Training Center

Ellen Fraser
Toxicology Supervisor (and Working Group Member)
HETL

SYNOPSIS

The Maine Oral Fluid Testing Group ("the Working Group") was comprised of traffic safety experts from across the state, and each member brought a different, invaluable perspective to the group. The Working Group heard from experts in oral fluid testing from the states of Alabama and New York. These experts included a lab director, a traffic safety resource prosecutor, and state coordinator for the International Association of Police Chiefs' (IACP) drug recognition expert program. Further, each member reviewed and discussed relevant publications, and the group had at least two presentations from our own laboratory expert: Ellen Fraser, Toxicology Supervisor of that Health and Environmental Testing Laboratory of the Department of Health and Human Services ("HETL").

Through open minds, mutual respect, and thorough discussion, the Working Group, by a vote of ___ to ___, makes the recommendations that:

1. Oral fluid testing be used in the State for evidentiary purposes,
2. The statutory changes outlined in the Original Bill[1] be made to allow for use of evidential oral fluid testing and that each relevant department, such as the Department of Health and Human Services, be authorized to adopt its own related regulations in accordance with each department's normal processes,
3. Properly administered oral fluid tests be used as a basis for administrative license suspensions and refusal suspensions in the same manner as blood tests,
4. The following equipment necessary to implement an evidential oral fluid testing program be procured: one liquid chromatography tandem mass spectrometer and oral fluid collection kits. Additionally, HETL will require two new chemists (including salaries and benefits); total estimated HETL costs to implement an evidential oral fluid testing program will be an *additional* $1,008,000.00- $1,011,000 in the first year with an ongoing, unadjusted annual fee of $338,000-342,000, and
5. The Maine Criminal Justice Academy be charged with developing necessary officer training in coordination with HETL, the Maine Bureau of Highway Safety, and the Traffic Safety Resource Prosecutors.

In addition to the aforementioned laboratory costs, there are likely to be additional associated costs related to indigent defense (hiring of experts to evaluate and/or challenge the to-be-adopted oral fluid testing program).

It will take approximately two years from initial funding until any evidential oral fluid testing program is validated and in use.

[1] *See infra* at _____. Attached hereto as Appendix A.

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I. GLOSSARY AND KEY TERMS

Alabama Method: the chemical testing process used in the State of Alabama. Specifically, it is used to describe the routine collection and testing of blood *and* oral fluid in the same impaired driving investigation.

Collection Kit: the equipment used for obtaining a biological sample. As used herein, it refers to the equipment used to collect either oral fluid or blood.

Detection Limits: the minimum concentration of a drug or drug metabolite in a given biological sample that can be detected through the relevant chemical analysis.

Evidential and/or Confirmatory Oral Fluid Testing: the chemical analysis of oral fluid that is first screened for drugs and then confirmed (as to any positive screening results) by secondary analysis using a liquid chromatography tandem mass spectrometer.

New York Method: the chemical testing process used in the State of New York. Specifically, it is used to describe the collection and testing of blood *or* oral fluid in an impaired driving investigation.

Oral Fluid Testing: the chemical analysis – either screening (roadside or otherwise) or confirmatory – of saliva to detect the presence of drugs and drug metabolites.

Roadside Oral Fluid Testing: the use, by officers during traffic investigations, of commercial devices to *screen* for the presence of drugs and drug metabolites.

II. BACKGROUND

A. LEGISLATIVE HISTORY

The original LD 1135 ("the Original Bill") was dated March 18, 2025, and was sponsored by Senator Cyrway and cosponsored by Representative Nutting, Senator Baldacci, Senator Timberlake, Representative Ardell, Representative Bunker, Representative Hasenfus, Representative LaJoie, Representative McIntrye, and Representative Perkins. The Original Bill would have allowed for use of oral fluid testing in investigations of operating under the influence[2] and hunting under the influence.

On March 18, 2025, the Original Bill was referred to the Joint Standing Committee on Criminal Justice and Public Safety ("the Committee").

[2] Note that the Original Bill included language relevant to investigations of operating each of the following vehicles while under the influence: motor vehicles, all-terrain vehicles, watercraft, snowmobiles, and aircraft.

A public hearing was held on April 7, 2025, at which the Committee heard testimony from a number in individuals, including the following: Senator Cyrway (bill sponsor), Chuck DeWeese (Responsibility.Org and National Alliance to Stop Impaired Driving ("NASID")), Lauren Stewart (Maine Bureau of Highway Safety ("MeBHS")), Eric Thistle (Maine Association of Criminal Defense Lawyers ("MACDL")), Dr. Va Puthiery (Maine Center for Disease Control and Prevention ("MeCDC")). NASID was in favor of the Original Bill. MeBHS and MeCDC were neither for nor against the Original Bill. MACDL was opposed to the Original Bill.

A work session was held on April 16, 2025, and an amendment ("the Amendment") to the Original Bill was proposed. The Amendment called to replace the entire Original Bill with a resolve to create a working group that would investigate and evaluate oral fluid testing and eventually make recommendations to the Committee regarding the future of oral fluid testing in Maine. The Amendment was accepted by the Committee, and the Original Bill effectively turned into a resolve ("the Resolve"). On June 12, 2025, the Committee reported out that the Resolve (the Bill as amended) "ought to pass."

The Resolve was finally passed on June 13, 2025, and it was signed by Governor Mills on June 18, 2025. It then became effective as "2025 Resolves, Chapter 87" on September 24, 2025. The Resolve tasked MeBHS with convening a working group of enumerated members and issuing a report, by January 1, 2026, to the Committee.

B. Procedural History of the Working Group

MeBHS began convening the Working Group in early July, admittedly before the Resolve became effective. Each of the organizations enumerated in the Resolve agreed to participate in the Working Group, and all have had a substantial and meaningful impact on its work. In addition to the enumerated organizations and individuals, representatives of the Maine Warden Service and additional employees of MeBHS joined in the Working Group as members, having been appointed by Director Lauren Stewart of MeBHS. It must be noted that no one representing pilots or aircraft regulation was part of the working group. A full membership list is provided below under subsection C, "Working Group Membership."

The Working Group held its first meeting on August 11, 2025, and it had subsequent meetings on the following dates: August 25, 2025; September 8, 2025; September 22, 2025; October 6, 2025; October 20, 2025; _____; and _____. A brief synopsis of each meeting is described in Section III, "Meetings and Process," and the minutes from each of these meetings can be found in the attached Appendix B.

C. Working Group Membership

The Working Group, in accordance with its adopted bylaws[3] and what seemed to be the spirit of the Resolve, divided itself into voting and nonvoting members. The voting members of the Working Group were as follows (note that each number represents a single vote, regardless of whether there is more than one person listed) (individuals are listed as the organizations are listed in the Resolve):

[3] Attached hereto in Appendix C.

1. Lauren Stewart, Director of MeBHS;

2. Joshua Saucier, Assistant Traffic Safety Resource Prosecutor, or
   Scot Mattox, Traffic Safety Resource Prosecutor;

3. Lynne Gardner, Director of Legal Affairs, Adjudications and Hearings, Bureau of Motor Vehicles, or
   Anne Schools, Assistant Director of Legal Affairs, Adjudications and Hearings, Bureau of Motor Vehicles;

4. Don Finnegan, Training Coordinator/DECP Coordinator, Maine Criminal Justice Academy (MCJA), or
   James Lyman, Training Coordinator, Maine Criminal Justice Academy;

5. Ellen Fraser, Toxicology Supervisor, HETL;

6. Eddie Benjamin, Chief, Holden Police Department for the Maine Chiefs of Police Association;

7. Patrick Polky, Sheriff, Knox County Sheriff's Office for the Maine Sheriffs' Association;

8. Patricia Mador, Assistant District Attorney, District 3 for Maine Prosecutors' Association; and

9. Justin Andrus, Attorney/Owner, Law Office of Justin Andrus, for Maine Association of Criminal Defense Lawyers.

Also dedicating and donating time and expertise to the Working Group were the following non-voting members (listed in alphabetical order by last name):

1. Haley Fleming, Specialist, Maine State Police;

2. Nicholas Johnson, Game Warden, Maine Warden Service;

3. Jeremy Morin, Highway Safety Coordinator, MeBHS;

4. John Roma, Highway Safety Coordinator, MeBHS; and

5. Jim Willis, Law Enforcement Liaison, Dirigo Safety, LLC as a contractor for MeBHS.

III. MEETINGS AND PROCCESS

At the August 11, 2025, meeting of the Working Group, members reviewed, discussed, and approved proposed bylaws. Working Group members then reviewed and adopted a remote meeting

policy.[4] Member Ellen Fraser then discussed the current HETL testing program, and the potential equipment necessary for oral fluid testing. Member Joshua Saucier provided a brief overview of Maine's impaired driving statutory program, and there was a brief discussion of the need for statutory change if either roadside or evidential oral fluid testing was recommended by the Working Group. At Member Lauren Stewart's suggestion, members discussed their current feelings regarding oral fluid testing, and members also discussed suggested content and procedures for future meetings.

At the August 25, 2025, meeting, Jennifer Limgoes, Associate Director of Toxicology at the New York State Police Forensic Investigation Center presented on oral fluid testing in New York. A copy of the PowerPoint associated with this presentation is available on the Working Group's website.[5] Some takeaways from the presentation included (1) New York uses either blood or oral fluid for evidential testing in impaired driving cases (not both), (2) New York State Police uses oral fluid or blood for evidential/confirmatory testing but does not use roadside oral fluid screening devices (various local police departments are using these devices and there is strong support from the New York State Highway Safety Office), (3) New York State Police Laboratory recommends blood in all felony impaired driving investigations, as well as any fatal or serious bodily injury crash (oral fluid may be collected in addition to blood if blood collection is delayed), (4) blood is still the best evidential source for impaired driving investigations, but oral fluid is a reliable alternative to detect recent drug intake, (5) New York adopted an evidential oral fluid testing program because law enforcement experiences several hurdles in obtaining timely blood draws, including subject refusals and difficulty accessing legislatively authorized medical personnel, and (6) New York's evidential oral fluid testing program has not yet had a court determination as to reliability, but the science supports that oral fluid testing is reliable, and (7) through the New York State Police standard budget, impaired driving toxicology services including oral fluid testing is free for all law enforcement agencies.

At the September 8, 2025, meeting, the Working Group caught up on prior work (approving minutes) and discussed potential future presentations. Member Nick Johnson suggested that the Working Group have someone from the field – such as a drug recognition expert ("DRE") or patrol officer – present and discuss the potential uses of oral fluid testing roadside or for evidence. Member Patricia Mador suggested that we hear from a jurisdiction that required a statutory change to implement oral fluid testing. Member John Roma mentioned that Amanda Moore from CFSRE would be a good resource for a presentation. Additionally, there were discussions of studies and other resources available. It was decided that such materials would be added to the Working Group's website[6] and that the Working Group would be notified of the materials. *Importantly*, Member Ellen Fraser presented to the Working Group about what an evidential oral fluid testing program would look like for Maine. This presentation included what drugs would be expected to be detected, what the detection limits would be, and what the detection time limits would be. A copy of the associated PowerPoint is available on the Working Group's website.[7] There were notable differences in blood and oral fluid testing. For example, oral fluid testing would be able to detect 6-Monoacetylmorphine (6-MAM), which is an uncommon drug metabolite generally found

[4] The remote meeting policy and bylaws are attached hereto as Appendix C.
[5] https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group.
[6] https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group.
[7] https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group.

after someone ingests illicit heroin (not found after fentanyl injection or oral ingestion of pharmaceutical heroin (diamorphine)), whereas our blood testing cannot. Oral fluid testing would not, however, be able to detect any drugs in the "benzodiazepine" category of drugs, which are a problem in impaired driving in Maine and include drugs like Xanax, Valium, and Clonazepam. More details are discussed in Section IV, subsection A.

At the September 22, 2025, meeting, William (Bill) Lindsey, Deputy Director of the National Computer Forensics Institute and former TSRP for Alabama presented on Alabama's oral fluid testing program, which includes both roadside and confirmatory/evidential testing. With Bill, from Alabama, was Paul Thompson, the DRE coordinator and an active DRE for the State of Alabama. Paul helped answer several questions after the presentation. The PowerPoint associated with the presentation is available of the Working Groups website.[8] Some takeaways from the presentation include that (1) Alabama uses both roadside and confirmatory/evidential testing for every impaired driving investigation, (2) Alabama did its own studies to determine the reliability of oral fluid testing and found it to be reliable, (3) Alabama uses both blood testing and oral fluid testing for evidential/confirmatory purposes in every impaired driving investigation, (4) the roadside oral fluid testing is not generally admitted into court – this includes that it is not used in court to prove probable cause, (5) the roadside oral fluid testing results may be used, occasionally, in warrants for blood draws, (6) Alabama carefully scrutinizes impaired driving cases when there is not a blood draw (i.e., if there is only evidential oral fluid testing the case has increased prosecutorial scrutiny in deciding whether to charge), and (7) Alabama's funding for chemical testing, including chemical testing kits, comes from a fee paid, through the court system, by those convicted of impaired driving.

At the October 6, 2025, meeting, Ellen Fraser, Toxicology Supervisor at HETL presented on her analysis of oral fluid testing costs using two general models: the New York Method and the Alabama Method. Under either method, HETL would need both new equipment and more staffing. In particular, HETL would require a liquid chromatography tandem mass spectrometer and oral fluid collection kits. Additionally, HETL would require two more chemists to keep up with workflow while validating a new testing method (and then thereafter to maintain and utilize the new testing method). The Working Group was generally in favor of the New York Method over the Alabama Method. Under the New York Method, it is estimated that adopting oral fluid testing would cost the State of Maine between $1,008,000 and $1,012,000 in the first year. It is then expected that the program would cost between $338,000 and $342,000 annually thereafter. The annual fee estimation does not include likely increased costs due to staff raises, healthcare premium increases, collection kit price increases, or anything else. In this way, that annual estimate is "unadjusted."

At the October 20, 2025, meeting, the Working Group discussed the future of oral fluid testing in Maine and what its thoughts were. After discussions, the working group was tentatively in unanimous agreement that evidential oral fluid testing would benefit Maine and that any statute change should be limited to "oral fluid" or similar type language (as opposed to the broader potential terms of "bodily fluid" or "biological sample"). Note that the working group previously, unanimously indicated that it did not favor roadside oral fluid screening tests. Multiple working group members indicated that they would need to obtain authority from their greater organization

[8] https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group.

before finalizing their position – that their current thoughts and/or indications of votes were simply them as an individual and that these thoughts were intended only to help further discussions. These members included the representatives from MACDL and the Secretary of State's Office. The Working Group further discussed oral fluid testing, including statutory provisions, and the need to have draft language.

A meeting originally scheduled for November 3, 2025, was postponed due to member illness and concerns over obtaining a quorum.

At the _____ ___, 2025 meeting,

IV. RECOMMENDATIONS, ANALYSIS, AND VOTING

The Resolve tasked the Working Group with making recommendations in the following areas:

> 1. The State's need for and intended use of oral fluid testing, including whether oral fluid testing will be used to assist in establishing probable cause or whether it will be used for evidentiary purposes, or both;
>
> 2. Legal and regulatory changes required to allow the use of oral fluid testing in the State;
>
> 3. How the use of oral fluid testing may impact administrative license suspensions, including whether refusal to submit to oral fluid testing should result in an administrative license suspension and whether the results of oral fluid testing can be used as a basis for an administrative license suspension;
>
> 4. The necessary equipment required to implement the use of oral fluid testing, including potential laboratory equipment, and the associated costs and funding sources; and
>
> 5. Addition training requirements that may be needed to implement the use of oral fluid testing.

A majority of the Working Group offers the below recommendations, in order of those assigned questions. The recommendations are made based upon a vote of ____ to ____, with ____ objecting. The objections and thoughts of _____ are noted in Section V: "Minority Viewpoint – _____."

A. The State's need for and intended use of oral fluid testing, including whether oral fluid testing will be used to assist in establishing probable cause or whether it will be used for evidentiary purposes, or both

The Working Group finds that confirmatory oral fluid testing would be beneficial to the State of Maine. It is noted that the presenters and research indicate blood testing is still the "gold standard" for what is in a person's system. However, confirmatory oral fluid testing is well-accepted within

the scientific community and has developed to the point of being reliable. The Working Group does not recommend that a roadside oral fluid testing program be funded *at this time*.

In its favor, confirmatory oral fluid testing offers reliable evidence of what is within a person's body with similar detection times as blood. Detection limits for some drugs and drug metabolites, such as cocaine and benzoylecgonine, are lower in oral fluid than they are in blood. Indeed, 6-MAM would be able to be detected in oral fluid, and it cannot be detected by HETL in blood. Oral fluid testing is also minimally invasive in that it involves a subject essentially forcing saliva into a collection tube, and oral fluid sample collection could be done by almost any officer with minimal training. The ability to collect oral fluid samples could assist officers when phlebotomists were unavailable or when it would take hours to obtain a blood draw.

In general, and on the neutral or negative sides, detection limits are either similar between oral fluid and blood or higher in oral fluid. For example, methadone can be detected in blood at a concentration of 5 ng/mL but can only be detected in oral fluid at a concentration of 10 ng/mL; methamphetamine can be detected in blood at 10 ng/ML and can be detected in oral fluid at 20 ng/mL. Additionally, drugs and metabolites that HETL would be able to test for in oral fluid are significantly reduced in number from those that they can detect in blood. In blood, HETL can test for 76 drugs and metabolites (expected to soon be 120); in oral fluid, HETL would expect to be able to test for 30 drugs or metabolites. Notable exceptions that HETL would not expect to detect in oral fluids (that they can detect in blood) include the following: all benzodiazepines, morphine, and hydroxy-delta-9-THC (a psychoactive metabolite of Delta-9-THC). Last, adding an evidential oral fluid testing program would be expensive. It is estimated that the first year of the evidential oral fluid testing program would cost the State of Maine an *additional* $1,008,000.00- $1,011,000 in the first year with an ongoing, unadjusted annual cost of $338,000-342,000.

Confirmatory oral fluid testing is not a replacement for blood testing. Indeed, even in states that have oral fluid testing, blood is still considered the "gold standard." Oral fluid testing is, however, a valid alternative to blood testing when blood testing is logistically impossible. Thus, the Working Group recommends its adoption, assuming that a confirmatory oral fluid testing program could be appropriately funded.

B. Legal and Regulatory Changes Required to Allow the Use of Oral Fluid Testing in the State

The Working Group has reviewed the Original Bill and recommends that its language be used to adopt oral fluid testing in the State of Maine.

If the legislature in fact authorizes oral fluid testing in the State of Maine, the Working group recommends that the legislature consider the fiscal impact of adopting an oral fluid testing program and that such a program be appropriately funded. It is estimated that, once funded, a confirmatory oral fluid testing program would take two years to be validated and in operation. It is estimated that such a program would cost the State of Maine an *additional* $1,008,000.00-$1,011,000 in the first year with an ongoing, unadjusted annual cost of $338,000-342,000. Such funding may require additional legislative action, and, as such, it is noted here.

C. How the use of oral fluid testing may impact administrative license suspensions, including whether refusal to submit to oral fluid testing should result in an administrative license suspension and whether the results of oral fluid testing can be used as a basis for an administrative license suspension

The Working Group recommends that properly administered oral fluid tests be used as a basis for administrative license suspensions and refusal suspensions in the same manner as blood tests.

D. The necessary equipment required to implement the use of oral fluid testing, including potential laboratory equipment, and the associated costs and funding sources

One liquid chromatography tandem mass spectrometer and oral fluid collection kits would be required for an oral fluid testing program. While not equipment, HETL would require two new chemists (including salaries and benefits). It is estimated that the first year of the evidential oral fluid testing program would cost the State of Maine an *additional* $1,008,000.00- $1,011,000 in the first year with an ongoing, unadjusted annual cost of $338,000-342,000.

The Working Group found that some states fund their oral fluid testing programs through a general budget to the testing agency, through fees assessed upon an impaired driving conviction, through taxes on cannabis, through the highway fund, or through federal grant funds allocated to states to enforce impaired driving laws. It is unlikely that Maine's allocation of federal highway grant funding could support an oral fluid testing program, and the Working Group recommends that the legislature consider other sources.

E. Additional training requirements that may be needed to implement the use of oral fluid testing

The Working Group suggests that additional training for law enforcement would be minimal and could be incorporated into existing trainings. MCJA, HETL, and the TSRPs are confident that they could train Maine law enforcement to collect oral fluid testing samples.

V. MINORITY VIEWPOINT -

[insert minority viewpoints – either in total or for specific sections]

VI. CONCLUSION

A majority of the Working Group recommends that legislation allowing for Oral Fluid Testing in Maine be adopted. The Working Group further recommends that the legislature fund an evidential oral fluid testing program using the "New York Method." Oral fluid testing would not replace blood testing, and blood testing remains the "gold standard" for forensic toxicology. Oral fluid testing is, however, a reliable alternative to blood testing when the collection of blood is not possible. It is *not* recommended that the legislature fund a roadside oral fluid testing program *at this time*.

_____ disagrees with the majority of the Working Group and does not believe that oral fluid testing should be approved or adopted. _____ (synopsis of minority reasons)

Appendix A

[insert Appendix A – Original Bill]

Appendix B

[Insert Appendix B – Meeting Minutes]

Appendix C

[Insert Appendix C – Bylaws]