

**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

## ACKNOWLEDGEMENTS

The Working Group thanks those individuals and organizations who donated their time to address and inform the group. Without the presentations and written information selflessly shared by countless individuals and organizations, the Working Group's task would have been near-insurmountable. A special thank you goes out to the following people who presented to the Working Group:

Jennifer Limgoes,  
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New York State Police

William Lindsey  
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(Former Traffic Safety Resource Prosecutor for Alabama)

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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 [REDACTED] to [REDACTED], makes the recommendations that:

1. Oral fluid testing be used in the State for evidentiary purposes,
2. The statutory changes outlined in the Appendix A 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 breath, blood, and urine 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.

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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 an oral fluid sample.

**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<sup>1</sup> 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”).

A public hearing was held on April 7, 2025, at which the Committee heard testimony from a number of individuals, including the following: Senator Cyrway (bill sponsor), Chuck DeWeese

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<sup>1</sup> 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.

(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; November 24, 2025; and December 17, 2025. 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<sup>2</sup> 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):

1. Lauren Stewart, Director of MeBHS;

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<sup>2</sup> Attached hereto in Appendix C.

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);
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 PROCESS

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.<sup>3</sup> 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

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<sup>3</sup> The remote meeting policy and bylaws are attached hereto as Appendix C.

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](#).<sup>4</sup> 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](#)<sup>5</sup> 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](#).<sup>6</sup> 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 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

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<sup>4</sup> <https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group>.

<sup>5</sup> <https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group>.

<sup>6</sup> <https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group>.

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 on the Working Groups [website](#).<sup>7</sup> 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 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

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<sup>7</sup> <https://www.maine.gov/dps/bhs/law-enforcement/oral-fluid-testing-working-group>.

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 November 24, 2025, meeting, the Working Group reviewed draft recommended statutory language and a draft report. The draft statutory language was the Original Bill. Working Group members Lynne Gardiner and Patricia Mador made several recommendations for additions to the Original Bill, including additional amendments to Title 29-A, Sections 2431 and 2524. Each recommendation was appropriately discussed, considered, and accepted as appropriate in due course. Working Group members made additional recommendations for edits to the draft report. These recommendations were discussed, considered, and accepted in due course. The Working Group reviewed and accepted minutes from the prior meeting and took public comment, including from Chuck DeWeese of NASID. Chuck DeWeese suggested that the group also recommend a roadside oral fluid testing program. There was a brief discussion surrounding this recommendation.

At the December 17, 2025 meeting, the Working Group took its final votes, as reported herein, on recommendations to the Committee, this report, and outstanding meeting minutes. It then adjourned finally.

#### **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 [REDACTED] to [REDACTED], with [REDACTED] objecting. The objections and thoughts of [REDACTED] 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 or urine 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 or impractical. 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 has used it as a basis for proposed legislation. The proposed legislation, attached hereto as Appendix A, contains the Original Bill and recommended additions. Notable additions are in Section 11 of Appendix A, which amends Title 29-A, Section 2431, subsection 2 and Section 17-A of Appendix A, which amends Title 29-A, Section 2424, subsection 2. The Section 11 addition amends paragraph F to include oral fluid samples. The Section 17-A addition amends Title, 29-A, Section 2524, subsection 2 to include urine and oral fluid testing to provisions governing which laboratories may test blood samples for drugs.

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 breath, blood, and urine 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 - [REDACTED]

[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 or urine 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 or practical. It is *not* recommended that the legislature fund a roadside oral fluid testing program *at this time*.

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

## Appendix A

### **An Act to Permit the Use of Oral Fluid Testing in Determining the Intoxication of Drivers, Aircraft Operators and Hunters**

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 6 MRSA §204**, as amended by PL 2009, c. 447, §3, is further amended to read:

#### **§204. Implied consent to chemical tests**

A person who operates or attempts to operate an aircraft within this State has a duty to submit to chemical testing to determine that person's alcohol level and drug concentration by analysis of blood, breath or, urine or oral fluid if there is probable cause to believe that the person has operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs. The duty to submit to a chemical test includes the duty to complete either a blood, breath or, urine or oral fluid test. Tests and procedures applicable in determining whether a person is under the influence are governed by section 205.

**Sec. 2. 6 MRSA §205, sub-§5**, as amended by PL 2019, c. 627, Pt. B, §1, is further amended to read:

**5. Administration of tests.** Persons conducting analyses of blood, breath or, urine or oral fluid for the purpose of determining the alcohol level or drug concentration must be certified for this purpose by the Department of Health and Human Services under certification standards set by that department.

Only a duly licensed physician, licensed physician assistant, registered nurse or a person certified by the Department of Health and Human Services under certification standards set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood to determine the alcohol level or drug concentration of a person who is complying with the duty to submit to a chemical test. This limitation does not apply to the taking of breath specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate that states that the person is in fact a duly licensed or certified person as required by this subsection and that the person followed the proper procedure for drawing a specimen of blood to determine the alcohol level or drug concentration. That certificate, when duly signed and sworn to by the person, is admissible as evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen for chemical testing, unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

A law enforcement officer may take a sample specimen of the breath or, urine or oral fluid of any person whom the officer has probable cause to believe operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs and who is complying with the duty to submit to and complete a chemical test. The sample specimen must be submitted to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting chemical tests of the sample specimen to determine the alcohol level or drug concentration of that sample.

Only equipment approved by the Department of Health and Human Services may be used by a law enforcement officer to take a sample specimen of the defendant's breath or, urine or oral fluid for submission to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting tests of the

sample specimen to determine the alcohol level or drug concentration of that sample. Approved equipment must have a stamp of approval affixed by the Department of Health and Human Services. Evidence that the equipment was in a sealed carton bearing the stamp of approval must be accepted in court as prima facie evidence that the equipment was approved by the Department of Health and Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath ~~or~~, urine or oral fluid.

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person whom the officer has probable cause to believe operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs, by use of a self-contained, breath-alcohol testing apparatus to determine the person's alcohol level, as long as the testing apparatus is reasonably available. The procedures for the operation and testing of self-contained, breath-alcohol testing apparatuses must be as provided by rule adopted by the Department of Health and Human Services. The result of any such test must be accepted as prima facie evidence of the alcohol level of a person in any court.

Approved self-contained, breath-alcohol testing apparatuses must have a stamp of approval affixed by the Department of Health and Human Services after periodic testing. That stamp of approval is valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of approval must be accepted in court as prima facie evidence that the equipment was approved by the Department of Health and Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath.

Failure to comply with any provision of this subsection or with any rule adopted under this subsection does not, by itself, result in the exclusion of evidence of alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable.

Testimony or other evidence that any materials used in operating or checking the operation of the equipment were bearing a statement of the manufacturer or of the Department of Health and Human Services must be accepted in court as prima facie evidence that the materials were of a composition and quality as stated.

A person certified by the Maine Criminal Justice Academy, under certification standards set by the academy, as qualified to operate approved self-contained, breath-alcohol testing apparatuses may operate those apparatuses to collect and analyze a sample specimen of a defendant's breath.

**Sec. 3. 6 MRSA §205, sub-§7**, as amended by PL 2009, c. 447, §4, is further amended to read:

**7. Evidence.** The drug concentration in the defendant's blood or the defendant's alcohol level at the time alleged, as shown by the chemical analysis of the defendant's blood, breath ~~or~~, urine or oral fluid or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 5 is admissible in evidence.

When a person, certified under subsection 5, conducts a chemical analysis of blood or breath to determine alcohol level, the person may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the person taking a specimen of blood ~~or~~, urine or oral fluid was a person authorized by subsection 5; that the equipment, chemicals and other materials used in the taking of the blood ~~or~~, urine or oral fluid specimen or a breath sample were of a quality appropriate for the purpose of producing reliable test results; that any equipment, chemicals or materials required by subsection 5 to be approved

by the Department of Health and Human Services were in fact approved; that the sample tested by the person certified under subsection 5 was in fact the same sample taken from the defendant; and that the drug concentration in the defendant's blood or the defendant's alcohol level was, at the time the blood or breath sample was taken, as stated in the certificate, unless with 10 days' written notice to the prosecution, the defendant requests that a qualified witness testify as to any of the matters as to which the certificate constitutes prima facie evidence. The notice must specify those matters concerning which the defendant requests testimony.

A person certified under subsection 5 as qualified to operate a self-contained, breath-alcohol testing apparatus to determine the alcohol level may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the defendant's alcohol level was, at the time the breath sample was taken, as stated in the certificate, unless, with 10 days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

Transfer of sample specimens to and from a laboratory for purposes of analysis is by certified or registered mail and, when so made, is deemed to comply with all requirements regarding the continuity of custody of physical evidence.

The failure of a person to comply with the duty to submit to and complete a chemical test under section 204 is admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs. If the law enforcement officer having probable cause to believe that the person operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs fails to give either of the warnings required under subsection 2, the failure of the person to comply with the duty to submit to a chemical test is not admissible, except when a test was required pursuant to subsection 11. If a failure to submit to and complete a chemical test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

If a test result is not available for a reason other than failing to comply with the duty to submit to and complete a chemical test, the unavailability and the reason are admissible in evidence.

**Sec. 4. 6 MRSA §205, sub-§11**, as amended by PL 2009, c. 447, §4, is further amended to read:

**11. Fatalities.** Notwithstanding any other provision of this section, an operator of an aircraft who is involved in an aircraft accident that results in the death of a person must submit to and complete a chemical test to determine that person's alcohol level or drug concentration by analysis of blood, breath ~~or~~, urine or oral fluid. A law enforcement officer may determine which type of test will be administered. The result of a test taken pursuant to this subsection is not admissible at trial unless the court is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicating liquor or drugs or had an excessive alcohol level.

**Sec. 5. 12 MRSA §10702, sub-§1**, as amended by PL 2009, c. 447, §9, is further amended to read:

**1. Duty to submit.** A person who hunts wild animals or wild birds or operates or attempts to operate a watercraft, snowmobile or ATV within this State has a duty to submit to a test to determine that person's alcohol level or drug concentration by analysis of blood, breath ~~or~~, urine or oral fluid if there is probable cause to believe that the person is hunting wild animals or wild birds or operating or attempting to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs. The duty to submit to an alcohol level or drug concentration test includes the duty to complete either a blood, breath ~~or~~, urine or oral

fluid test or any combination of those tests. Tests and procedures for determining whether a person is under the influence of intoxicating liquor or drugs are governed by section 10703.

**Sec. 6. 12 MRSA §10703, sub-§5**, as amended by PL 2019, c. 627, Pt. B, §2, is further amended to read:

**5. Administration of tests.** Persons conducting analyses of blood, breath or urine or oral fluid for the purpose of determining an alcohol level or drug concentration must be certified for each purpose by the Department of Health and Human Services under certification standards set by that department.

A. Only a physician, licensed physician assistant, registered nurse or person whose occupational license or training allows that person to draw blood samples may draw a specimen of blood for the purpose of determining the blood-alcohol level or the presence of a drug or drug metabolite. This limitation does not apply to the taking of breath or urine specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate that states that the person is in fact a duly licensed or certified person as required by this subsection and that the person followed the proper procedure for drawing a specimen of blood to determine an alcohol level or drug concentration. That certificate, when duly signed and sworn to by the person, is admissible as evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen of blood for chemical testing, unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

B. A law enforcement officer may take a sample specimen of the breath or urine or oral fluid of any person whom the officer has probable cause to believe hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs and who is complying with the duty to submit to and complete a chemical test. The sample specimen must be submitted to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting chemical tests of the sample specimen to determine an alcohol level or drug concentration of that sample.

C. Only equipment approved by the Department of Health and Human Services may be used by a law enforcement officer to take a sample specimen of the defendant's breath or urine or oral fluid for submission to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting tests of the sample specimen to determine an alcohol level or drug concentration of that sample. Approved equipment must have a stamp of approval affixed by the Department of Health and Human Services. Evidence that the equipment was in a sealed carton bearing the stamp of approval must be accepted in court as prima facie evidence that the equipment was approved by the Department of Health and Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath or urine or oral fluid.

D. As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person whom the officer has probable cause to believe hunted wild birds or wild animals or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, by use of a self-contained, breath-alcohol testing apparatus to determine an alcohol level, as long as the testing apparatus is reasonably available. The procedures for the operation and testing of self-contained, breath-alcohol testing apparatuses must be as provided by rule

adopted by the Department of Health and Human Services. The result of any such test must be accepted as prima facie evidence of an alcohol level in any court.

E. Approved self-contained, breath-alcohol testing apparatuses must have a stamp of approval affixed by the Department of Health and Human Services after periodic testing. That stamp of approval is valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of approval must be accepted in court as prima facie evidence that the equipment was approved by the Department of Health and Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath.

F. Failure to comply with any provision of this subsection or with any rule adopted under this subsection does not, by itself, result in the exclusion of evidence of an alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable.

G. Testimony or other evidence that any materials used in operating or checking the operation of the equipment were bearing a statement of the manufacturer or of the Department of Health and Human Services must be accepted in court as prima facie evidence that the materials were of a composition and quality as stated.

H. A person certified by the Maine Criminal Justice Academy, under certification standards set by the academy, as qualified to operate approved self-contained, breath-alcohol testing apparatuses may operate those apparatuses to collect and analyze a sample specimen of a defendant's breath.

**Sec. 7. 12 MRSA §10703, sub-§7**, as amended by PL 2023, c. 228, §4, is further amended to read:

**7. Evidence.** The defendant's alcohol level at the time alleged and the concentration of drugs at the time alleged, as shown by the chemical analysis of the defendant's blood, breath or<sub>2</sub> urine or oral fluid or by any test authorized by subsection 5 is admissible in evidence.

A. When a person certified under subsection 5 conducts a chemical analysis of blood, breath or<sub>2</sub> urine or oral fluid to determine an alcohol level or drug concentration, the person conducting the analysis may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the person taking a specimen of blood or<sub>2</sub> urine or oral fluid was a person authorized by subsection 5; that the equipment, chemicals and other materials used in the taking of the blood or<sub>2</sub> urine or oral fluid specimen or a breath sample were of a quality appropriate for the purpose of producing reliable test results; that any equipment, chemicals or materials required by subsection 5 to be approved by the Department of Health and Human Services were in fact approved; that the sample tested by the person certified under subsection 5 was in fact the same sample taken from the defendant; and that the drug concentration in the defendant's blood or the defendant's alcohol level was, at the time the blood, breath or<sub>2</sub> urine or oral fluid sample was taken, as stated in the certificate, unless with 10 days' written notice to the prosecution, the defendant requests that a qualified witness testify as to any of the matters as to which the certificate constitutes prima facie evidence. The notice must specify those matters concerning which the defendant requests testimony.

B. A person certified under subsection 5 as qualified to operate a self-contained, breath-alcohol testing apparatus to determine an alcohol level may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the defendant's alcohol level was, at the time the breath sample was taken, as stated in

the certificate, unless, with 10 days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

C. Transfer of sample specimens to and from a laboratory for purposes of analysis must be by certified or registered mail and, when so made, is deemed to comply with all requirements regarding the continuity of custody of physical evidence.

D. The failure of a person to comply with the duty to submit to and complete a chemical test under section 10702, subsection 1 is admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs. If the law enforcement officer having probable cause to believe that the person hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs fails to give either of the warnings required under subsection 2, the failure of the person to comply with the duty to submit to a chemical test is not admissible. If a failure to submit to and complete a chemical test is not admitted into evidence, the court may inform the jury of the fact that a test result is not available.

E. If a test result is not available for a reason other than a person's failure to comply with the duty to submit to and complete a chemical test, the unavailability and the reason are admissible in evidence.

**Sec. 8. 16 MRSA §357, 2nd ¶**, as amended by PL 2011, c. 335, §1, is further amended to read:

Notwithstanding this section, the result of a laboratory or any other test kept by a hospital or other medical facility that reflects an alcohol level, a detectable urine-drug level, a detectable blood-drug level, a detectable oral fluid-drug level or a drug concentration of ~~either blood or urine~~ or oral fluid may not be excluded as evidence in a criminal or civil proceeding by reason of any claim of confidentiality or privilege and may be admitted as long as the result is relevant and reliable evidence if the proceeding is one in which the operator of a motor vehicle, snowmobile, all-terrain vehicle or watercraft is alleged to have operated under the influence of intoxicating liquor or drugs and the court is satisfied that probable cause exists to believe that the operator committed the offense charged.

**Sec. 9. 29-A MRSA §2401, sub-§3**, as amended by PL 2013, c. 459, §1, is further amended to read:

**3. Chemical test or test.** "Chemical test" or "test" means a test or tests used to determine alcohol level or the presence of a drug or drug metabolite by analysis of blood, breath ~~or urine~~ or oral fluid.

**Sec. 10. 29-A MRSA §2431, sub-§1**, as amended by PL 2011, c. 335, §3, is further amended to read:

**1. Test results.** Test results showing a confirmed positive drug or metabolite presence in blood ~~or urine~~ or oral fluid or alcohol level at the time alleged are admissible in evidence. Failure to comply with the provisions of sections 2521 and 2523 may not, by itself, result in the exclusion of evidence of alcohol level or confirmed positive drug or metabolite presence, unless the evidence is determined to be not sufficiently reliable.

**Sec. 11. 29-A MRSA §2431, sub-§2**, as amended by PL 2021, c. 204, §1, is further amended to read:

**2. Analysis of blood, breath ~~and~~ urine and oral fluid.** The following provisions apply to the analysis of blood, breath ~~and~~ urine and oral fluid, and the use of that analysis as evidence.

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- A. A laboratory certified or licensed in accordance with section 2524 conducting a chemical analysis of blood, breath ~~or~~, urine or oral fluid to determine an alcohol level or the presence of a drug or drug metabolite may issue a certificate stating the results of the analysis.
- B. A person qualified to operate a self-contained, breath-alcohol testing apparatus may issue a certificate stating the results of an analysis of a test that the person administered.
- C. A certificate issued in accordance with paragraph A or B, when duly signed and sworn, is prima facie evidence that:
- (2) Materials used in the taking of the specimen were of a quality appropriate for the purpose of producing reliable test results;
  - (3) Materials required to be approved by the Department of Health and Human Services were in fact approved;
  - (4) The sample tested was in fact the same sample taken from the defendant; and
  - (5) The alcohol level or the presence of a drug or drug metabolite in the blood ~~or~~, urine or oral fluid of the defendant at the time the sample was taken was as stated in the certificate.
- D. With 10 days written notice to the prosecution, the defendant may request that a qualified witness testify to the matters of which the certificate constitutes prima facie evidence. The notice must specify those matters concerning which the defendant requests testimony. The certificate is not prima facie evidence of those matters.
- E. A person drawing a specimen of blood may issue a certificate that states that the person is in fact qualified under section 2524 and that the proper procedure for drawing a specimen of blood was followed. That certificate, when signed and sworn to by the person, is prima facie evidence of its contents unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify.
- F. Evidence that ~~the a~~ urine sample or oral fluid sample was in a sealed carton bearing the Department of Health and Human Services' stamp of approval is prima facie evidence that the equipment was approved by the Department of Health and Human Services.
- G. The results of a self-contained breath-alcohol apparatus test is prima facie evidence of an alcohol level.
- H. Evidence that the self-contained breath-alcohol testing equipment bearing the Department of Health and Human Services' stamp of approval is prima facie evidence that the equipment was approved by the Department of Health and Human Services.
- I. Evidence that materials used in operating or checking the operation of the self-contained breath-alcohol testing equipment bore a statement of the manufacturer or of the Department of Health and Human Services is prima facie evidence that the materials were of the composition and quality stated.
- J. Transfer of sample specimens to and from a laboratory for purposes of analysis by certified or registered mail complies with all requirements regarding the continuity of custody of physical evidence.
- K. The prosecution is not required to produce expert testimony regarding the functioning of self-contained breath-alcohol testing apparatus before test results are admissible, if sufficient evidence is offered to satisfy paragraphs H and I.

**Sec. 12. 29-A MRSA §2432, sub-§4**, as amended by PL 2013, c. 459, §4, is further amended to read:

**4. Confirmed presence of drug or drug metabolite.** If a person has a trace amount of any drug or the metabolites of any drug within the person's blood or urine or oral fluid in accordance with the drug reporting rules, standards, procedures and protocols adopted by the Department of Health and Human Services, it is admissible evidence, but not prima facie, indicating whether that person is under the influence of intoxicants to be considered with other competent evidence, including evidence of alcohol level.

**Sec. 13. 29-A MRSA §2453-A, sub-§3**, as enacted by PL 2011, c. 335, §5, is amended to read:

**3. Drug test.** The person who analyzed the drug or its metabolite in the blood or urine or oral fluid of the person who is the subject of the drug recognition expert's report under subsection 2 shall send a copy of a confirmed positive test result certificate to the Secretary of State.

**Sec. 14. 29-A MRSA §2453-A, sub-§7, ¶A**, as enacted by PL 2011, c. 335, §5, is amended to read:

A. The person operated a motor vehicle with a confirmed positive blood or urine or oral fluid test for a drug or its metabolite;

**Sec. 15. 29-A MRSA §2472, sub-§5, ¶B**, as amended by PL 2011, c. 335, §8, is further amended to read:

B. The person operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath or with a confirmed positive blood or urine or oral fluid test for a drug or its metabolite and was under the influence of the confirmed drug; and

**Sec. 16. 29-A MRSA §2521, sub-§1**, as amended by PL 2013, c. 459, §7, is further amended to read:

**1. Mandatory submission to test.** If there is probable cause to believe a person has operated a motor vehicle while under the influence of intoxicants, that person shall submit to and complete a test to determine an alcohol level and the presence of a drug or drug metabolite by analysis of blood, breath or urine or oral fluid.

**Sec. 17-A. 29-A MRSA §2524, sub-§2**, as amended by PL 2023, c. 498, §1, is further amended to read:

**2. Laboratories qualified to analyze blood, urine or oral fluid. ~~for blood tests.~~** A laboratory conducting an analysis of blood-alcohol level or an analysis of the presence of a drug or drug metabolite in blood, urine, or oral fluid must either be certified by the Department of Health and Human Services or be licensed to do so under the laws of this State or any other state and also certified by the United States Department of Health and Human Services under the federal Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, Section 263a (2018) or be accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body.

**Sec. 17. 29-A MRSA §2524, sub-§4**, as amended by PL 2019, c. 368, §4, is further amended to read:

**4. Chemical tests on blood ~~and~~, urine and oral fluid specimens.** A sample specimen of blood or urine or oral fluid may be submitted to the Department of Health and Human Services or to a laboratory qualified pursuant to subsection 2 for the purpose of conducting chemical tests to determine alcohol level or the presence of a drug or drug metabolite.

**Sec. 18. 29-A MRSA §2524, sub-§5**, as amended by PL 2019, c. 368, §5, is further amended to read:

**5. Equipment for taking specimens.** For purposes of this section, collection kits having a stamp of approval affixed by the Department of Health and Human Services may be used to take a sample specimen of blood or urine or oral fluid. A sample specimen of blood or urine or oral fluid may also be taken in any collection tube of the type normally used in a laboratory qualified pursuant to subsection 2. The fact that a laboratory qualified pursuant to subsection 2 supplied the collection tube is prima facie evidence that the collection tube is the type of tube normally used in such a laboratory. Alternatively, a self-contained, breath-alcohol testing apparatus if reasonably available may be used to determine the alcohol level.

Approved breath-alcohol testing apparatus must have a stamp of approval affixed by the Department of Health and Human Services after periodic testing. That stamp is valid for no more than one year.

**Sec. 19. 29-A MRSA §2525, sub-§1**, as amended by PL 2011, c. 335, §14, is further amended to read:

**1. Submission to test required.** If a drug recognition expert has probable cause to believe that a person is under the influence of a specific category of drug, a combination of specific categories of drugs or a combination of alcohol and one or more specific categories of drugs, that person must submit to a blood or urine or oral fluid test selected by the drug recognition expert to confirm that person's category of drug use and determine the presence of the drug.

#### SUMMARY

This bill permits the use of oral fluid testing in determining the intoxication of drivers, aircraft operators and hunters.

**Appendix B**

**[Insert Appendix B – Meeting Minutes]**

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**Appendix C**

**[Insert Appendix C – Bylaws and Remote Meeting Policy]**

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