

SB309: Drugged Driving - Oral Fluid Tests - Pilot Program
Position: FAVORABLE

My name is Dr. Curt E. Harper and I serve as Chief Toxicologist for the Alabama Department of Forensic Sciences (ADFS). As Toxicology Discipline Chief, I oversee technical operations, method development and validation, and the quality assurance/quality control program, and develop and maintain standard operating procedures. I obtained a Ph.D. in Pharmacology and Toxicology and a Master's of Science in Forensic Science from the University of Alabama at Birmingham. I hold board certification as a Fellow of the American Board of Forensic Toxicology (F- ABFT) and serve as Chair of the SOFT/AAFS Drugs and Driving and Vice Chair of the Oral Fluid Committees. In addition, I am a Board Member for the International Association for Chemical Testing (IACT). I serve as an adjunct professor at the University of Alabama at Birmingham (UAB) in the Department of Justice Sciences and faculty for the Borkenstein Alcohol Course at Indiana University. My interests include DUI/D testing and interpretation and oral fluid drug testing. As an Alabama Peace Officer, I have been certified as a Drug Recognition Expert since 2015 and act as a member of the Alabama Impaired Driving Prevention Council.

The Toxicology Discipline of the Alabama Department of Forensic Sciences provides assistance to local, county, state and federal law enforcement agencies in Alabama in death and criminal investigations. This assistance includes laboratory analyses of biological specimens for the presence of drugs and poisons. The findings of these analyses may then be used to establish cause and manner of death or to establish or explain impairment or performance of an individual pursuant to criminal activity. The Alabama Department of Forensic Sciences Toxicology Discipline operates in the Birmingham/Hoover Regional Laboratory. We average around 6,000 submissions per year worked by 15-16 Toxicologists. Approximately 40% are DUI cases and from this point forward would include an oral fluid sample.

Despite its limited use in drugged driving investigation, oral fluid testing has been around for over a decade and is used today in workplace drug testing, pain management monitoring, and other applications. A major advantage of oral fluid (saliva) drug testing is the amenability to rapid point of collection (on-site) testing (e.g. roadside testing for drugged driving investigations). Oral fluid collection is rapid, non-invasive, and simple. Oral fluid contains the active/impairing drug which likely represents recent drug use. Oral fluid shares this advantage with blood. We are the first state to offer a comprehensive Oral Fluid Drug Testing program at the State Crime Laboratory level. The program is two parts: screening at the roadside and evidentiary confirmation testing at ADFS.

In 2016-2017, we validated and approved (3) "roadside" oral fluid drug screening devices that law enforcement can use during a DUI stop or crash to identify drug use. They screen for marijuana, cocaine, methamphetamine, amphetamine, opioids, and benzodiazepines. The devices are analogous to PBTs for alcohol and should be used to establish probable cause only. They display "positive" or "negative" and should be administered after standardized field sobriety tests to confirm suspicion of drug use. This information can also be used to assist with obtaining a search warrant to collect a confirmation specimen such as blood (or oral fluid). The three approved devices are Abbott SoToxa, Draeger DT5000, and Randox Evidence MultiStat.

Secondly, we validated oral fluid drug evidentiary confirmation testing at ADFS. After an arrest, an evidentiary confirmation oral fluid specimen should be collected in an appropriate collection device/tube provided by ADFS. In fact, we advocate collecting the oral fluid sample at the roadside or as

close to the time of driving as possible. This enhances the ability to detect drugs that rapidly metabolize or dissipate from the body (e.g. THC, cocaine). The average time between arrest and blood draw is 2 hours in AL. Therefore, the ability to collect a sample within 15-30 minutes of arrest or crash is a significant advantage. The Toxicology Section will test the oral fluid sample and issue a report of our findings. We test for over 20 drugs of abuse and therapeutic drugs commonly found in driving cases. Officers are instructed to collect both blood and oral fluid since together they paint a more detailed picture of recent drug use and the cause of impairment. However, oral fluid drug concentration cannot be used to predict blood drug concentrations or vice versa.

As with any DUI investigation, all facets of the investigation should be considered (i.e. vehicle in motion, personal contact, and SFST performance). The totality of circumstances in conjunction with the toxicological analysis should be reviewed. The first oral fluid case was submitted to the laboratory in August 2018. Since the inception of the program, we have received approximately 150 oral fluid cases. To date, we have not testified in an oral fluid case. However, it is just a matter of time.

There are valuable resources available to states considering implementing an oral fluid drug testing program. The SOFT/AAFS Oral Fluid committee has published a FAQ document and pilot project guidelines on the Society of Forensic Toxicology website. It is very important to involve a toxicologist in the study design and key stakeholders such as local attorneys, judges, and the State TRSP and DRE coordinator in program development.

Thank you for the opportunity to provide testimony on SB 309/HB 0808. If you have any questions or need more information, please feel free to contact me at Curt.Harper@ads.alabama.gov or 205-982-9292, x247.

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References:

<https://www.ads.alabama.gov/services/tox/toxicology-oral-testing-program>
<http://www.soft-tox.org/oral-fluid-faq>
<http://www.soft-tox.org/oral-fluid-pilot-project-guidelines>