

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: H.228 Name of Bill: An act relating to adding saliva testing to the DUI statutes

Agency/Dept: Public Safety Author of Bill Lt. John Flannigan / Dr. Trisha Conti  
Review: \_\_\_\_\_

Date of Bill Review: 02/20/2015 Related Bills and Key Players: Rep. Potter & 12 other co-sponsor / S.95

Status of Bill: (check one)

Upon Introduction       As passed by 1<sup>st</sup> body       As passed by both bodies

Recommended Position:

Support       Oppose       Remain Neutral       Support with modifications identified in # 8 below

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**Analysis of Bill**

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1. Summary of bill and issue it addresses. This bill proposes to add saliva testing to the tests that may be conducted on operators of motor vehicles reasonably suspected to be under the influence.
2. Is there a need for this bill? There is currently no approved drug screening device for detecting the presence of drugs roadside, similar to a portable preliminary breath test. This also includes saliva as an evidentiary test option in addition to breath and blood testing.
3. What are likely to be the fiscal and programmatic implications of this bill for this Department? Currently the screening devices retail for approximately \$5,000 each. However, as more these devices are used, the price should become more cost effective. The cost of using saliva for evidentiary confirmation testing vs blood may be less expensive. Programmatically, training would be needed for those using the devices and maintaining them. This technology would also likely be challenged in an evidentiary (Daubert) hearing in the courts.
4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it? Cost for instruments could be a fiscal constraint; however there may be an opportunity to purchase them with grant funding through NHTSA. Training could also be an obstacle for other departments.
5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? The same would apply to other local and county law enforcement agencies for instruments and training.
6. Other Stakeholders:
  - 6.1 Who else is likely to support the proposal and why?

Highway safety advocates and other entities that want to identify drug usage and impairment on the state's highways.

#### 6.2 Who else is likely to oppose the proposal and why?

The defense bar and public defender's office and those that support legalization of certain drugs.

7. Rationale for recommendation: Vermont currently has no means to detect an operator's possible drug use and presence in the field at roadside. Vermont currently only allows collection of a blood sample as an evidentiary test in those operators suspected to be impaired by a drug.

Saliva (oral fluids) has been in use for well over a decade and has gained significant scientific approval. Several peer reviewed studies have been published demonstrating that saliva samples accurately reflect the presence of drugs found in plasma (blood) samples.

Collection of oral fluids in suspected DUI cases are currently permissible in fourteen states (AL, AR, CO, GA, IN, KS, LA, MO, NY, NC, OH, OK, SD and UT) as an evidentiary test. Additionally, oral fluids have been used extensively in some European countries and Australia for many years.

The use of oral fluids is less invasive than a blood test and can be taken more rapidly without the delay of transporting an operator to a medical facility and waiting for a blood draw. These tests can be performed by a trained law enforcement officer, much like breath tests are performed today.

Roadside oral fluid devices currently test for most abused drugs, but do not test for everything. The range of detectable drugs is generally limited to Opiates, Cocaine, Amphetamine, Methamphetamine, Benzodiazepines, Delta 9 THC and Methadone. Several studies and pilot programs have shown high accuracy rates with few false positives and false negatives.

The Vermont State Police are currently conducting an oral fluids pilot program. This has yielded limited samples to date, but has shown a high degree of accuracy between the oral fluid screens and confirmatory samples. The oral fluid testing has been performed after the evidentiary test on a voluntary basis.

It is important to note that saliva may not be a viable option for all cases. There may be times in which a person exhibits xerostomia (dry mouth), caused by certain drugs that have been ingested and cannot provide enough of a saliva sample (1 ml needed). In those cases, blood may be the only test option.

Oral Fluid testing should also act as a significant deterrent to the motoring public who may choose to drive while impaired by drug(s).

8. Specific modifications that would be needed to recommend support of this bill: None at this time.

9. Gubernatorial appointments to board or commission? No

Secretary/Commissioner has reviewed this document

A handwritten signature in black ink that reads "Francis X. Aumand III". The signature is written in a cursive style with a horizontal line under the name.

Date: 2/26/15