

Saliva DUI testing

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Mr. James R. McDonough
Director, Florida Office of Drug Control
Office of the Governor
The Capitol
Tallahassee, Florida 32399-0001

Dear Mr. McDonough:

Your inquiry concerns a research effort on DUI testing to be conducted at select locations in Florida.

According to your letter, the study would attempt to determine whether law enforcement's use of a rapid saliva drug test would lead to better enforcement of traffic laws. As you note in your letter, however, section 316.1932(1)(a), Florida Statutes, which authorizes the use of approved chemical or physical tests for alcohol, chemical substances, or controlled substances, refers to breath, blood or urine tests. Saliva testing is not mentioned.

I am not aware of any provision prohibiting the *voluntary* collection of saliva specimens by law enforcement, *i.e.*, the participation by law enforcement *and* the individual whose saliva is being tested is voluntary. The statutes, however, do not authorize the granting of "waivers" for conducting such testing. Moreover, to permit such results to be used during the prosecution of DUI cases would require a statutory amendment.

I hope that the above informal advisory comments may be of assistance.

Sincerely,

Charlie Crist
Attorney General

CC/tjw