

SENATE BILL REPORT

SB 5791

As Reported by Senate Committee On:
Transportation, January 18, 2024

Title: An act relating to the evaluation of the effectiveness of oral fluid roadside information in the enforcement of driving under the influence laws.

Brief Description: Concerning the evaluation of the effectiveness of oral fluid roadside information in the enforcement of driving under the influence laws.

Sponsors: Senators Padden, Lias, Kuderer, Lovick, McCune and Nobles.

Brief History:

Committee Activity: Transportation: 1/09/24, 1/18/24 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Requires the Washington State Patrol to establish a pilot program to evaluate the outcomes and effectiveness of oral fluid roadside information used as part of driving under the influence law enforcement.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5791 be substituted therefor, and the substitute bill do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Fortunato, Hansen, Hawkins, MacEwen, Padden, Wilson, C. and Wilson, J..

Minority Report: Do not pass.

Signed by Senators Kauffman, Nobles and Valdez.

Minority Report: That it be referred without recommendation.

Signed by Senator Lovelett.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Brandon Popovac (786-7465)

Background: Impaired Driving and Implied Consent. A person is guilty of driving under the influence (DUI) or physical control of a motor vehicle under the influence of intoxicating liquor or any drug offense if the person drives or is in physical control of a vehicle with a blood or breath alcohol concentration of 0.08 percent or higher, or is under the influence of or affected by liquor or any drug.

By driving a vehicle in Washington, drivers give implied consent to a breathalyzer test or field sobriety test as part of law enforcement pre-arrest screening for impaired driving. A driver may refuse either test resulting in possible arrest or driver license suspension.

Oral Fluid Roadside Testing. Oral fluid roadside screening devices test the saliva of an individual for the presence of specific drugs. A positive result indicates drug presence above a certain cut-off level and not a quantifiable drug level, and relatively recent drug use. A positive result obtained through such a screening device is preliminary and requires further testing to establish impairment. As a result, such devices can aid law enforcement to develop probable cause and decide when to pursue laboratory-based confirmation testing or call a drug recognition expert (DRE), which is a law enforcement officer trained to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol. The DRE program in Washington state is coordinated by the WSP.

Oral fluid confirmation testing may be conducted in a laboratory to obtain more accurate and detailed information, such as quantifiable drug levels, that can be used in an evidentiary capacity.

Approximately two dozen countries and over a dozen states have implemented or are prepared to implement oral fluid roadside testing. Washington State neither statutorily prohibits nor authorizes the use of oral fluid roadside testing in DUI enforcement.

Summary of Bill (First Substitute): The Washington State Patrol (WSP) must establish a pilot program to evaluate the outcomes and effectiveness of oral fluid roadside information used as part of the enforcement of DUI laws.

By March 1, 2025, WSP must select and initiate a minimum of ten geographical locations as part of the field sobriety evaluation used in the investigation of suspected violations of DUI laws. WSP must establish specific requirements for such locations including:

- selection of a valid and reliable oral fluid test instrument or instruments to be used;
- training for its law enforcement officers allowed to administer the test; and
- measures to protect personally identifying information from unnecessary and improper dissemination.

WSP must submit a report detailing the results of the pilot program to the appropriate committees of the Legislature by June 30, 2026.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (First Substitute):

- Makes clarifying amendments to the pilot program relating to testing locations, testing instruments to be used, law enforcement training, and protection of personally identifying information.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Recent increases in state traffic fatalities are shocking and at their highest since 1996. Polydrug impairment is also on the rise for contributing to fatal crashes, while there is some progress or stagnation with DUI violations. The pilot will implement voluntary tests. Approximately 90 percent of drivers tested in other oral fluid roadside testing programs consented to such tests. Such testing represents one more tool for law enforcement in addressing impaired driving. Such testing programs are recommended by NHTSA, do not require medical professionals for testing, and helps establish probable cause for a later blood draw. A reduction in violations occurred after DREs and ARIDE trained officers received oral swab training. Oral swab testing promotes proper reporting with the state becoming more informed regarding DUI cases. WSP is providing suggested changes to the bill and will do initial program roll out with later engagement with law enforcement partners. There were 181 fatalities involving poly drug drivers last year. Public buy-in is essential on this new technology with importance of new data. Drunk driving is preventable. Cannabis is the most frequently tested substance in impaired driving nationally. Almost two dozen states have some form of authorized oral swab testing, whether permanent or as pilots. Some programs showed increases in DRE program and impaired driving training. This pilot will deter impaired driving. Typical costs of testing devices are under \$5,000. Oral fluid testing is complementary to other impaired driving prevention strategies. The Indiana program had over a 90 percent accuracy rate with oral swab testing. Data limitations exist in drug impaired crashes.

OTHER: A recent Washington Traffic Safety Commission report on impaired driving report devotes a section to oral fluid roadside testing. Impaired driving is the number one risk factor in fatal crashes. Oral swab testing is an emerging technology that helps screen potential drug use, but it is not as accurate as breathalyzer test. It is most helpful to establish probable cause for a blood draw warrant or arrest. Such technology is being adopted by more and more states as the technology improves.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Chuck DeWeese, Responsibility.Org Contractor; Christopher Kirby, Indiana Criminal Justice Institute; Ashley Bonus; Deion Glover, Washington State Patrol.

OTHER: Mark McKechnie, Washington Traffic Safety Commission.

Persons Signed In To Testify But Not Testifying: No one.