

House Judiciary
January 25, 2022
House Bill 4701: Oppose

The ACLU of Michigan is opposed to HB 4701. Although the ACLU of Michigan supports roadside safety and wants impaired drivers off the road, there are fundamental problems with expanding roadside saliva testing.

First, as detailed in the report released by Michigan State Police early last year from Michigan’s pilot program, these tests are not reliable.¹ When compared to blood tests, which are supposed to be the gold standard, these tests produced a whole host of false results. For example, around 60% of the positive results for benzodiazepines and opiates were incorrect. **Cumulatively, nearly 11% of all tests produced incorrect results, either false positives or false negatives that did not match findings from follow-up blood tests.**² These results cast doubt on the necessity of this bill given the cost to taxpayers—the pilot program required over \$600,000 in funding³—and the penalty placed on a driver if they refuse to comply—prosecution for a misdemeanor. Although the bill places some limits on the admissibility of these tests in court, someone can be arrested simply based on the results of these tests, and drivers are guilty of a crime if they refuse to comply.

Second, these tests provide no indication of a driver’s actual impairment. As made clear by the sponsor in response to questions from committee members last year, the number used as a trigger for a positive result has no connection to whether a driver is actually impaired. Indeed, a 2019 report from Michigan’s Impaired Driving Safety Commission concluded that there is “a poor correlation” between bodily THC content and driving impairment; the commission instead advocated only for the use of roadside sobriety tests.⁴

Third, this bill raises serious privacy concerns. Saliva testing is far more invasive than the use of a breathalyzer, because saliva contains a person’s DNA. Nothing in this bill prohibits the police from storing a person’s DNA gathered from these tests. And, because these tests can detect the presence of prescription medications, the government will be able to compile a record of the prescriptions people are taking.

Fourth and finally, this bill raises serious equal protection concerns. Michigan already has pronounced racial disparities in traffic stops and searches. **A recent study found that Black**

¹ Michigan State Police, *Oral Fluid Roadside Analysis Pilot Program – Phase II* (Jan. 2021), [https://www.michigan.gov/documents/msp/PHASE II Oral Fluid Report 713339 7.pdf](https://www.michigan.gov/documents/msp/PHASE_II_Oral_Fluid_Report_713339_7.pdf).

² Gus Burns, *Positive roadside drug tests wrong nearly 24% of the time in Michigan pilot*, MLive (Mar. 30, 2021), <https://www.mlive.com/public-interest/2021/03/positive-roadside-drug-tests-wrong-nearly-24-of-the-time-in-michigan-pilot-data-shows.html>.

³ *Id.*

⁴ *Report from the Impaired Driving Safety Commission* (March 2019), [https://www.michigan.gov/documents/msp/Impaired Driving Report 650288 7.pdf](https://www.michigan.gov/documents/msp/Impaired_Driving_Report_650288_7.pdf).



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individuals made up more than 22% of all traffic stops despite being just under 14% of the state's population.⁵ As this bill broadens police search authority by instituting penalties on drivers who fail to comply with these tests, it increases the chance that traffic stop, search, and arrest disparities will worsen. The bill also creates risks for people with disabilities. Because these tests will be positive for commonly-prescribed medications such as pain-management medicines and anti-depressants, they will result in the longer seizure and interrogation of drivers with disabilities who take such medications. The committee should reject the bill.

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⁵ Scott Wolfe, Travis Carter, and Jedidah Knode, *Michigan State Police Traffic Stop External Benchmarking: A Final Report on Racial and Ethnic Disparities*, Michigan State University School of Criminal Justice (Oct. 2021), https://www.michigan.gov/documents/msp/Wolfe_et_al_MSP_external_benchmark_FINAL_REPORT_2021_7_45156_7.pdf.