

**ESHB 1493** - S AMD TO TRAN COMM AMD (S-5448.1/24) **859**  
By Senator Padden

**PULLED 02/29/2024**

1 On page 78, after line 5, insert the following:

2 "NEW SECTION. **Sec. 33.** (1) The Washington state patrol shall  
3 establish a pilot program to evaluate the outcomes and effectiveness  
4 of oral fluid roadside information used as part of the enforcement of  
5 driving under the influence laws. The state patrol must select a  
6 minimum of 10 geographical locations to implement the pilot program  
7 as part of the field sobriety evaluation used in the investigation of  
8 suspected violations of driving under the influence laws. Pilot  
9 program locations must be initiated by March 1, 2025.

10 (2) The state patrol must ensure the pilot program complies with  
11 the requirements of administering oral fluid roadside tests  
12 established in section 34 of this act.

13 (3) By June 30, 2026, the Washington state patrol must submit a  
14 report detailing the results of the pilot program to the appropriate  
15 policy and fiscal committees of the legislature.

16 (4) This section expires January 1, 2027.

17 NEW SECTION. **Sec. 34.** A new section is added to chapter 46.61  
18 RCW to read as follows:

19 (1) The Washington state patrol, in administering the pilot  
20 program authorized in section 33 of this act, must ensure the  
21 following:

22 (a) The oral fluid test instrument or instruments to be used are  
23 valid and reliable;

24 (b) Any of its law enforcement officers who may administer an  
25 oral fluid test is properly trained in the administration of the  
26 test;

27 (c) Prior to the administration of the test, the administering  
28 law enforcement officer advises the subject of the following  
29 information:

30 (i) The test is voluntary;

1 (ii) Test results may not be used against the person in a court  
2 of law; and

3 (iii) Submission to the test is not an alternative to any  
4 evidentiary breath or blood test; and

5 (d) The agency establishes policies to protect personally  
6 identifying information from unnecessary and improper dissemination,  
7 including, but not limited to:

8 (i) Destruction of biological samples from oral fluid tests as  
9 soon as practicable after collection of test results; and

10 (ii) Prohibitions against using oral fluid samples for the  
11 purpose of collecting DNA samples.

12 (2) Any law enforcement agency administering an oral fluid  
13 roadside test as authorized in this section or section 33 of this act  
14 is strictly liable for (a) any failure to destroy biological samples  
15 from such tests after collection of the test results or (b) unlawful  
16 use of samples collected for entry into a DNA database."

17 Renumber the remaining sections consecutively and correct any  
18 internal references accordingly.

19 On page 78, line 10, after "**34.**" strike "This act takes" and  
20 insert "(1) Sections 1 through 32 of this act take"

21 On page 78, after line 10, insert the following:

22 "(2) Sections 33 and 34 of this act take effect July 1, 2024."

23 On page 78, line 18, after "10.05 RCW;" insert "adding a new  
24 section to chapter 46.61 RCW; creating a new section;"

25 On page 78, line 19, after "providing" strike "an effective date"  
26 and insert "providing effective dates; providing an expiration date"

EFFECT: (1) Directs the Washington State Patrol to establish a pilot program to evaluate the outcomes and effectiveness of oral fluid roadside information used as part of the enforcement of driving under the influence (DUI) laws.

(2) Specifies the minimum number of locations, start date, the associated administering requirements, reporting requirements, and termination date of the oral fluid roadside test pilot program.

(3) Establishes the requirements for the Washington State Patrol (WSP) utilizing oral fluid roadside information as part of the enforcement of DUI laws, including those used in its pilot program.

(4) Specifies that the WSP in utilizing oral fluid roadside information as part of the enforcement of DUI laws must ensure: (a) The oral fluid tests are valid and reliable; (b) any WSP officer administering the test is properly trained; and (c) policies are in

place to protect personally identifying information from unnecessary and improper dissemination, including destruction of biological samples as soon as practicable after collection of test results and that oral fluid samples may not be used for collecting DNA samples.

(5) Prescribes that prior to administering the test, the individual must be advised that the test: (a) Is voluntary; (b) the test results may not be used against the person in a court of law; and (c) that submission to the test is not an alternative to any evidentiary breath or blood test.

(6) Creates strict liability for any law enforcement agency administering an oral fluid roadside test for: Failure to destroy biological samples from such tests after test results collection, or for unlawful use of biological samples collected for entry into a DNA database.

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