

Good morning Rep. Grad:

I am writing in connection with H.237 and the concerns that have been raised regarding racial profiling in the event oral fluid testing is implemented in Vermont.

From our perspective, oral fluid testing would be a tool to be used by officers when there is reasonable suspicion or probable cause indicating that a motor vehicle operator might be impaired by marijuana or some other drug. Oral fluid testing could best be compared to preliminary breath testing (PBT) which has been utilized for years by officers roadside in conjunction with other measures for the investigation of driving while impaired by alcohol.

Racial profiling is the use of race or ethnicity as grounds for suspecting someone of having committed an offense. In addition to being illegal, it violates the U.S. and Vermont Constitutions and the Code of Conduct for members of our department and I suspect for all police departments in Vermont and across the country. Racial profiling also violates a police officer's sworn duties and is an offense for which a police officer should lose his/her job.

I am having difficulty making a nexus between the illegal act of racial profiling (a racist act of stopping someone for no lawful reason) and the proposed use of a tool such as a saliva test, to help keep impaired drivers off the roadways. The same claim could also be made with respect to the PBT, yet the opponents of H.237 have made no assertion the PBT has resulted in racial profiling (nor are there any facts supporting such an assertion). Racial profiling by an officer will normally manifest itself when a person of color is pulled over for an ostensible legitimate reason when the real reason for the stop is influenced by a prejudiced, stereotyped, and racist view of that person. Such "legitimate" reasons would be normally minor traffic offenses not the possibility of a PBT or an oral fluid test well after the stop has been effectuated. Again, one is illegal and unethical, and the other is a tool for detecting impairment once a driver is lawfully stopped and suspected to be impaired.

I know of no data or studies that show that Vermont police officers engage in racial profiling. I have read the comments by those who raise concern that data collected by Vermont law enforcement agencies indicate "massive racial disparities" in traffic stops and searches and their concerns about these disparities in relation to stops and searches for suspected marijuana impairment. It is true that recent traffic stop data within the Vermont State Police and other department does indicate racial disparities in traffic stops in some, not all, regions within Vermont. The VSP data also show some racial disparities in car searches for contraband. These data have been and will continue to be investigated and examined closely for improper practices, but racial disparities are not the same thing as racial profiling. Our examination of our traffic stop data has not resulted in findings to show improper policing practices have been occurring. Any type of disparity gives one a starting point from which to closely examine for any improper practices resulting in the disparity, but a disparity alone is not a conclusion of improper practices.

An analogy would be the gender disparity between male and female senators in Vermont, or male and female troopers in the Vermont State Police. To cite these gender disparities as being the result solely of gender-based discrimination would be inaccurate.

Again, there MUST always be a lawful reason for a police officer to stop any vehicle, and therefore lawful reason(s) to utilize any sort of roadside tool to detect impairment, be it a PBT or an oral fluid test. Race or perceived race of a driver or vehicle occupants is NEVER a lawful reason to stop a car. There is no data to show that this type of police action is occurring in Vermont. It is inaccurate to state that racial disparities are the same as racial profiling.

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