



# Michigan's Oral Fluid Roadside Testing Law

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# Background

# NHTSA ROADSIDE SURVEY– FEBRUARY 6, 2015

- Alcohol use has declined dramatically
  - Only 1.5% of weekend nighttime drivers had BACs at or above 0.08
- However, 22.5% tested positive for drugs, an increase from 16.3% in 2007; 12.6% were positive for marijuana, compared to 8.6% in 2007



# MICHIGAN

- Fatal impaired driving crashes in Michigan have been steadily increasing over the last five years
- Michigan experienced a 32% increase in impaired driving fatalities, from 179 in 2015 to 236 in 2016
- Several major incidents involving impaired drivers: five bicyclists killed in Kalamazoo, tow-truck driver killed in St. Clair County, and Detroit police officer killed in Detroit



# SWIFT FAMILY TRAGEDY

- Thomas and Barbara Swift, 73, of Escanaba, died due to injuries suffered when their car was struck by a logging truck that failed to stop for a red light on U.S. 2 and M-41 in Gladstone in March 2013
- Thomas Swift died at the scene; his wife, Barbara Swift, died several days later from injuries she sustained in the crash



# SWIFT FAMILY TRAGEDY

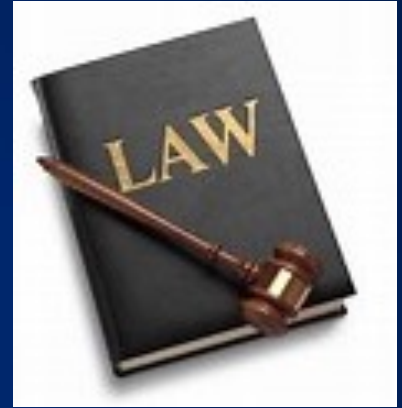
- Harley Durocher, the suspect in the deadly car crash, was found guilty on six counts after a two-day trial
- Durocher was found guilty on two counts of driving with a suspended or revoked license causing death, two counts of reckless driving causing death, and two counts of operating with the presence of THC in his system causing death (2 nanograms)



# Legislation

# Barbara J. and Thomas J. Swift Law

- Effective September 26, 2016, the law authorizes the Michigan Department of State Police (MSP) to establish a one-year pilot program in five counties for roadside drug testing
- Requires the MSP to develop a written policy for the implementation of the pilot program and the administration of roadside drug testing
- Allows the MSP to adopt rules to implement the pilot program
- Requires the MSP to report on the pilot program to certain committees of the legislature within 90 days after the pilot program concludes
- Allows the MSP, subject to appropriation, to establish additional pilot programs in other counties for up to one year





# Barbara J. and Thomas J. Swift Law

- Further, the law authorizes a peace officer who is certified as a drug-recognition expert in a county participating in the pilot program to require a person to submit to a preliminary oral fluid analysis under certain conditions
- Authorizes an officer to arrest a person based on the results of a preliminary oral fluid analysis and to make those results admissible in a criminal prosecution for limited purposes and/or an administrative hearing
- Requires an officer to use the results of an oral fluid analysis to determine whether to order a commercial motor vehicle (CMV) driver out of service and requires an officer to order out of service a CMV driver who refuses to submit to a preliminary oral fluid analysis
- Provides that a person who refuses to submit to a preliminary oral analysis is responsible for a civil infraction



# Committee

# COMMITTEE AND MEMBERS

- Committee composed of subject matter experts to assist in making the pilot program successful
- Members:
  - Prosecuting Attorneys Association of Michigan (two TSRPs)
  - Traffic Services Section
  - Alcohol Enforcement Unit
  - Impaired Driving Unit
  - Drug Recognition Expert (DRE) coordinator from the Office of Highway Safety Planning (OHSP)
  - Forensic Science Division
  - Executive Resources Section



# COUNTIES SELECTED

- The counties for the Oral Fluid Roadside Analysis were selected on the following criteria:
  - Number of serious injury and fatal impaired driving crashes
  - Number of impaired driving arrests
  - Number of DREs in the county
  - Number of DRE prosecutors in the county and their knowledge of the program
  - Geographic diversity around the state of Michigan



# FIVE COUNTIES SELECTED

- Berrien
- Delta
- Kent
- St. Clair
- Washtenaw



# DRUG RECOGNITION EXPERTS

- All law enforcement agencies were represented in this pilot program: state, local, township and county
- Twelve participating law enforcement agencies
- Only the 27 DRE officers within those five counties were participating in the Oral Fluid Roadside Analysis pilot program
- All law enforcement agencies in the selected counties agreed to participate in the pilot program



# SELECTION CRITERIA

- Portable, hand-held
- Rechargeable and fully automated analyzer
- On-screen instructions
- Results within five minutes or less
- THC cutoff level no higher than 25 ng/mL
- On-board heater
- Battery life capable of running 50 tests
- Printer included with device



# ORAL FLUID TEST INSTRUMENT

- The pilot program committee researched several vendors of Oral Fluid Roadside Analysis testing instruments
- Manufacturers were given an opportunity to give a presentation and demonstration to committee members
- Seven different oral fluid testing manufacturers gave presentations and were evaluated by committee members
- The committee members developed specifications that met the needs of the pilot program





# SELECTED INSTRUMENT

- Formally known as the DDS2

## **SoToxa™** MOBILE TEST SYSTEM



# SoToxa™ MOBILE ANALYZER



# QUALITY CONTROL

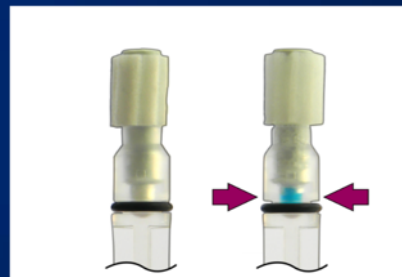
## QC testing

- QC testing to validate SoToxa™ device is correctly detecting positive and negative results each day prior to use



# SoToxa™ ORAL FLUID DEVICE

- Rapid sample collection
- Sample volume adequacy indicator
- Robustly designed for active swabbing



# BENEFITS OF THE TEST INSTRUMENT

- Compact and portable
- Easy to use
- Results within five minutes
- Easy-to-read positive or negative results
- Can store up to 10,000 tests, and comes with a printer
- Rapid, simple, noninvasive
- No medical professional required; saves time and money
- Parent drug reflects recent drug use
- Specimen taken proximate to time of driving, crash, workplace accident, etc.



# SoToxa™ DRUG PANEL

Drug Class	Cutoff (ng/mL)
Amphetamine	50
Benzodiazepines	20
Cannabis ( $\Delta^9$ THC)	25
Cocaine	30
Methamphetamine	50
Opiates	40

# ROADSIDE USE

- Test instrument will display a positive, negative or invalid test reading for each drug category
  - Positive result: Indicates presence of drug in the driver's system; it does not detect impairment
  - Negative result: Below the cutoff level; negative result does not preclude a driver from being impaired
  - Invalid result: Normally insufficient volume of oral fluid



# SoToxa™ SCREEN

12:00  
30 APR 19

RESULTS:

COC	POSITIVE
OPI	POSITIVE
MAMP	NEGATIVE
THC	NEGATIVE
BZO	NEGATIVE
AMP	NEGATIVE

OK



# VALIDATION TESTS

- A separate secondary oral fluid test is completed, when possible, from a suspect
  - The secondary test is completely voluntary
  - The voluntary test is sent to the Forensic Fluid Laboratory in Kalamazoo for analysis
    - Shipped overnight by UPS
    - Analysis results are normally returned within 24 hours



# TRAINING

- In November 2017, DREs and prosecutors from the five selected counties were trained
- Trained in the following:
  - Laws governing the Oral Fluid Roadside Analysis pilot
  - Policies and procedures of the program and MOA
  - Proper utilization of the oral fluid test instrument
  - Proper procedure to collect independent lab sample
  - Reporting requirements and forms

# BLOOD ANALYSIS

- Blood is collected when an arrest is made, either voluntarily or by search warrant
- Blood testing is done by MSP

**FROM:**  
\_\_\_\_\_  
(NAME OF PERSON SENDING KIT)  
\_\_\_\_\_  
(ORGANIZATION)  
\_\_\_\_\_  
(STREET ADDRESS)  
\_\_\_\_\_  
(CITY, STATE, ZIP CODE)

**TO: Michigan State Police  
Forensic Science Laboratory  
7320 N. Canal Road  
Lansing, MI 48913**

**ATTN: Toxicology Subunit**

  
**BIOHAZARD**

Place label here: 

**OFRAP - Pilot**

# PROGRAM PROCESS

- Participating DREs shall fully develop probable-cause factors before administering the oral fluid test (SFST, PBT)
- Quality control
- 10-minute observation period
- SoToxa™ test
- Secondary test: forensic fluids
- Blood test



# BEST PRACTICE

- DRE officer does not view the SoToxa™ results until the DRE has completed their investigation or evaluation
- DRE officer uses the SoToxa™ results in the affidavit for a blood search warrant



# ORAL FLUID PROGRAM FORMS

DI-177a (09/18) By the Authority of PA 302 of 1995 as amended  
**BREATH, BLOOD, URINE TEST REPORT**  
**LEIN INPUT PROMPT**

PERSON'S FULL NAME (As Appears On Michigan Driver's License) \_\_\_\_\_ BIRTH DATE (MM/DD/YY) \_\_\_\_\_ SEX ☐ MALE ☐ FEMALE

ADDRESS (Quarter & Street) \_\_\_\_\_ MICHIGAN DRIVER'S LICENSE NUMBER \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ OTHER STATE DRIVER'S LICENSE NUMBER \_\_\_\_\_ STATE \_\_\_\_\_

HEIGHT \_\_\_\_\_ WEIGHT \_\_\_\_\_ EYE COLOR \_\_\_\_\_ HAIR COLOR \_\_\_\_\_ ☐ OPERATOR ☐ CHAUFFEUR ☐ MOPED

ARREST DATE (MM/DD/YY) \_\_\_\_\_ MILITARY TIME \_\_\_\_\_ INCIDENT DATE (MM/DD/YY) \_\_\_\_\_ INCIDENT TIME \_\_\_\_\_

COUNTY (Or Arrest) \_\_\_\_\_ CITY OR TOWNSHIP (If Arrest) \_\_\_\_\_ COC/TYP/CP CODE \_\_\_\_\_ MICHIGAN \_\_\_\_\_

VEHICLE TYPE Was Person Involved in An Accident? ☐ YES ☐ NO INSTRUMENT NUMBER \_\_\_\_\_ BAC #1 \_\_\_\_\_ BAC #2 \_\_\_\_\_ BAC #3 \_\_\_\_\_ UCR CODE \_\_\_\_\_ COMPLAINT NUMBER \_\_\_\_\_

ARRESTING OFFICER'S NAME \_\_\_\_\_ BADGE NUMBER \_\_\_\_\_ UCR NUMBER \_\_\_\_\_

BREATH TEST OPERATOR'S NAME (Only If Not Listed Above And Necessary For Testing) \_\_\_\_\_ BADGE NUMBER \_\_\_\_\_ UCR NUMBER \_\_\_\_\_

You have been arrested for a crime described in section 625c of the Michigan Vehicle Code and submitted to a chemical test which revealed an unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance, or any combination, or have a blood or urine test pending.

This temporary driving permit is valid only if you have a valid Michigan driver's license. If your license was restricted, this permit grants the same restrictions. This permit grants you the same CDL and/or endorsements that are on your Michigan license. You may not apply for a replacement photo license.

This permit is to be used until the criminal charges against you are dismissed or until you are acquitted, or your license or permit is suspended, restricted, or revoked for a conviction. [MCL 257.625(3)]

Michigan driver's license confiscated? ☐ YES ☐ NO / license destroyed? ☐ YES ☐ NO Under 21? ☐ YES ☐ NO LICENSED OUT OF STATE ☐

Driving status on date of arrest ☐ VALID ☐ EXPIRED ☐ RESTRICTED ☐ SUSPENDED ☐ REVOKED ☐ DENIED ☐ UNLICENSED ☐ UNKNOWN ☐

License ☐ Permit ☐ A ☐ B ☐ C ☐ H ☐ N ☐ X ☐ P ☐ T COL restrictions ☐ ENDORSEMENT ☐ F ☐ R ☐ Other ☐

Officer's Signature \_\_\_\_\_ Date (MM/DD/YY) \_\_\_\_\_

VEHICLE TYPES	DR (Offical Vehicle (ATV type))	AT (Group A Double/Trip)	BP (Group 3 Passenger)
CR (Cycle)	DR (Offical Vehicle (ATV type))	AT (Group A Tank & Recreators)	BP (Group 3 School Bus)
MR (Motorcycle)	DR (Offical Vehicle (ATV type))	AT (Group A Tank & Double/Trip)	BP (Group 3 Tank & Hazardous)
PR (Passenger Car & 5-8 Wgn)	AT (Group A Hazardous Double/Trip)	AT (Group A Hazardous Double/Trip)	BP (Group 3 Hazardous)
VR (Van & Motor Home)	AT (Group A Tank)	AT (Group A Hazard Tank Double/Trip)	BP (Group 3 Passenger)
PT (Truck)	AT (Group A Tank)	AT (Group A Hazard Tank Double/Trip)	BP (Group 3 School Bus)
ST (Semi Tractor 10,000lb)	AT (Group A Passenger)	AT (Group A Hazard Tank Double/Trip)	BP (Group 3 Tank & Hazardous)
MS (Motorcycle 11 or 10,000lb non DOL)	AT (Group A School Bus)	AT (Group A Tank)	BP (Group 3 Tank & Hazardous)

Notice to officer: Complete this form when any chemical test is given.

Confiscate and destroy the arrested person's Michigan driver's license or permit, issue the third copy of this form, and destroy the second copy if a chemical test revealed an unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance or any combination. Unlawful alcohol content is:

0.08 grams or more per 210 liters of breath while operating a motor vehicle, or

0.04 grams or more per 210 liters of breath while operating a commercial motor vehicle, or

0.02 grams or more per 210 liters of breath while operating a vehicle and less than 21 years of age.

When a voluntary blood or urine test is pending, or in special cases involving an unconscious person where a search warrant has been issued, attach the Michigan driver's license or permit to the second copy of this form and issue the third copy to the arrested person.

If a chemical test is refused, use the Officer's Report of Refusal to Submit to Chemical Test form (DI-93).

For all of the above, input arrest data into the LEIN F Breath Screen, even if the driver is licensed out of state. (Do not confiscate the out of state license.)

Officer's Copy

DI-177a (09/18)

I am a peace officer. You are under arrest for the offense of: *(Read only the charge that applies)*

- Operating a vehicle while intoxicated due to the consumption of alcoholic liquor, a controlled substance, other intoxicating substance or a combination.
- Operating a vehicle while visibly impaired due to the consumption of alcoholic liquor, a controlled substance, other intoxicating substance or a combination.
- Operating with any presence of schedule 1 drugs or cocaine.
- Causing the death of another while operating a vehicle while intoxicated, or while visibly impaired by alcoholic liquor, a controlled substance, other intoxicating substance or a combination, or with an unlawful alcohol content.
- Causing serious injury to another while operating a vehicle while intoxicated, or while visibly impaired by alcoholic liquor, a controlled substance, other intoxicating substance or a combination, or with an unlawful alcohol content.
- Operating a commercial motor vehicle with an alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Operating a vehicle while less than 21 years of age and having any alcohol content.
- Murder resulting from the operation of a motor vehicle.
- Manslaughter resulting from the operation of a motor vehicle.
- Reckless driving causing death.
- Reckless driving causing serious impairment of a body function.
- Moving violation causing death.
- Moving violation causing serious impairment of a body function.
- Refusing a Preliminary Breath Test if arrested while operating a commercial motor vehicle.
- Endangerment (Operating while intoxicated or while visibly impaired with person under age of 16.)

**CHEMICAL TEST RIGHTS**

Read the rights that follow in their entirety.

I am requesting that you take a chemical test to check for alcohol and/or controlled substances or other intoxicating substances in your body. IF YOU WERE ASKED TO TAKE OR TOOK A PRELIMINARY BREATH TEST OR ORAL FLUID TEST BEFORE YOUR ARREST, YOU MUST STILL TAKE THE TEST I AM OFFERING YOU.

If you refuse to take this chemical test, it will not be given without a court order, but I may seek to obtain such a court order. Your refusal to take this test shall result in the suspension of your operator's or chauffeur's license and vehicle group designation or operating privilege, and the addition of six points to your driving record.

After taking my chemical test, you have a right to demand that a person of your own choosing administer a breath, blood, or urine test. You will be given a reasonable opportunity for such a test. You are responsible for obtaining a chemical analysis of a test sample taken by a person of your own choosing.

The results of both chemical tests shall be admissible in a judicial proceeding, and will be considered with other admissible evidence in determining your innocence or guilt.

Will you take a: (Select the appropriate test from the following list)

Breath Test? ☐ or ☐ Blood Test? ☐ or ☐ Urine Test? ☐

\*MCL 257.625c(2) provides that a person afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant shall not be considered to have given consent to the withdrawal of blood.

I am requesting that you take a chemical test to check for alcohol and/or controlled substances or other intoxicating substances in your body. IF YOU WERE ASKED TO TAKE OR TOOK A PRELIMINARY BREATH TEST OR ORAL FLUID TEST BEFORE YOUR ARREST, YOU MUST STILL TAKE THE TEST I AM OFFERING YOU.

# Phases I and II

# PHASE I INFORMATION

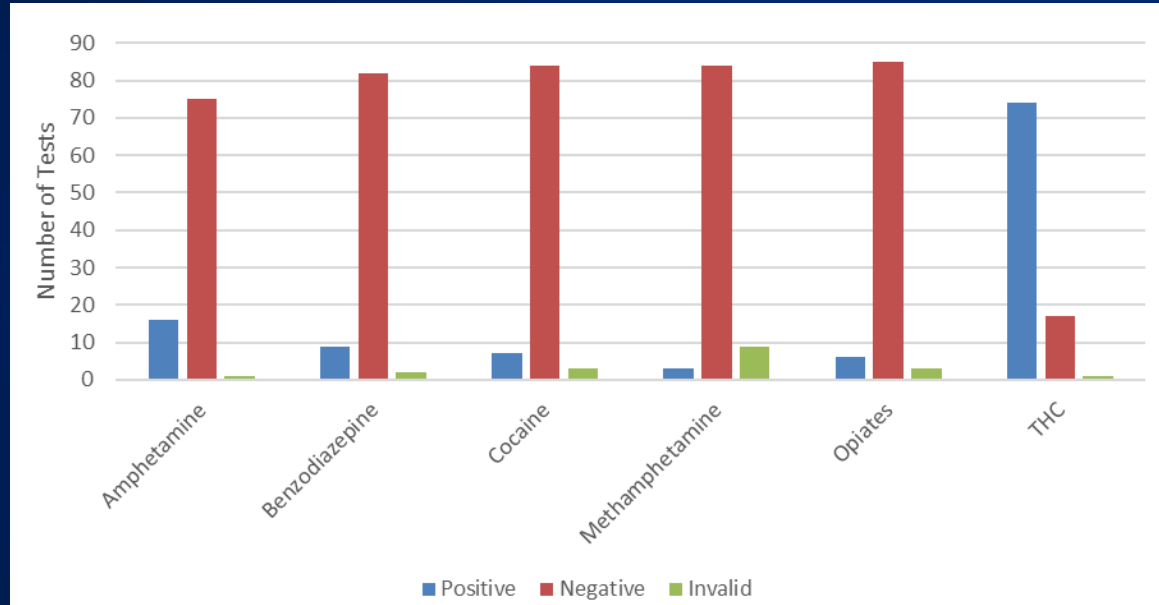
- Counties that participated: Berrien, Delta, Kent, St. Clair and Washtenaw
- 31 DREs participated
- 92 oral fluid roadside tests conducted, with one refusal
- 89 drivers were arrested during the first pilot
  - 79 drivers consented to a blood draw
  - eight search warrants were obtained





# PHASE I RESULTS

## Roadside Oral Fluid Test Results



# PHASE II RESULTS

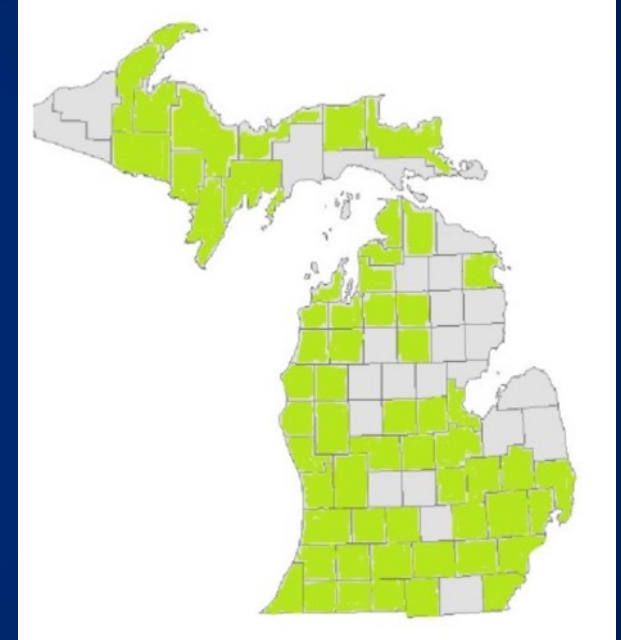
- October 1, 2019, to September 30, 2020
- 69 counties had oral fluid cases
- 131 DREs from 65 law enforcement departments participated
- 661 oral fluid incidents
- 547 voluntary oral fluid tests
- 632 blood tests



# PHASE II COUNTIES

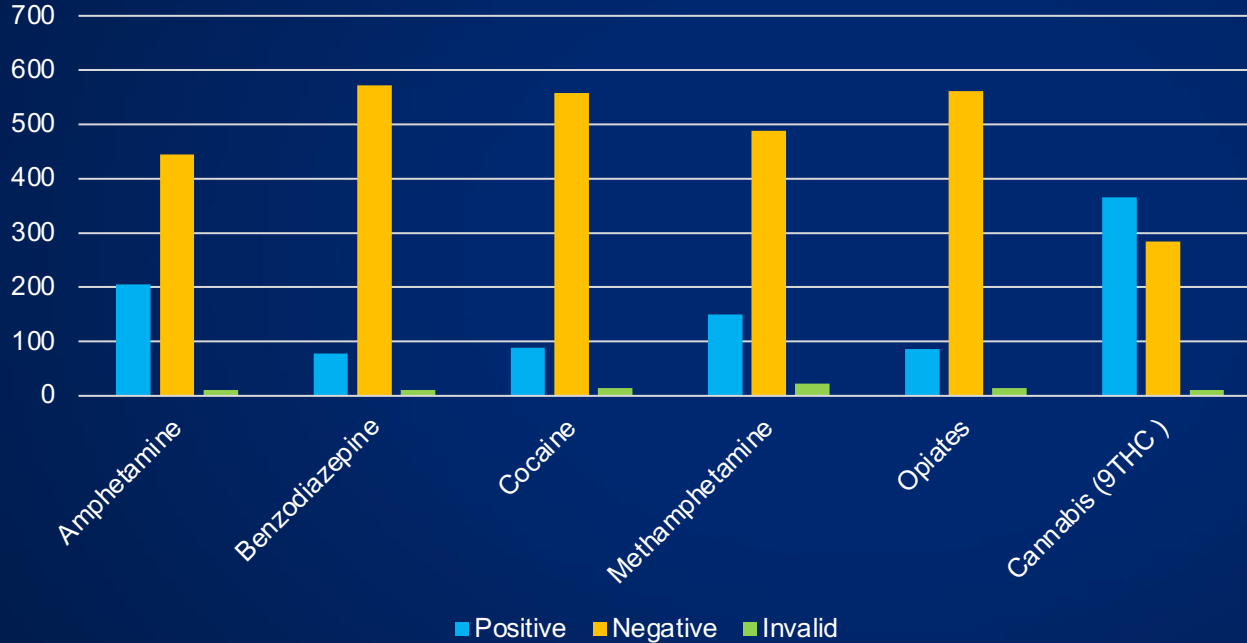
## Michigan Counties Covered by OFRAP II Expanded Oral Fluid Roadside Analysis Pilot Program

- 59 total counties covered
- 83 total DREs participating  
(30 MSP + 53 agencies)



# PHASE II RESULTS

## Roadside Oral Fluid Test Results



# SoToxa™ COMPARED TO BLOOD METHAMPHETAMINES

- 121 true positives      22 false positives
- 6 false negatives      435 true negatives
- Accuracy
  - Estimate: 95.20%
  - Lower confidence level: 93.20%
  - Upper confidence level: 96.70%

# SoToxa™ COMPARED TO BLOOD COCAINE

- 59 true positives    27 false positives
- 6 false negatives    501 true negatives
- Accuracy
  - Estimate: 94.40%
  - Lower confidence level: 92.30%
  - Upper confidence level: 96.00%

# PHASE II SUMMARY

- Oral fluid has been found to be accurate for purposes of preliminary roadside testing
- It is one of many tools that officers can use during impaired driving investigations
- Roadside oral fluid test results alone do not determine if a driver is impaired or not impaired



# ORAL FLUID TESTING IS A TEST TO DETERMINE RECENT DRUG USE

- Oral fluid testing is a test to determine drug use, not impairment
  - SFSTs, DRE evaluation, behavior noted and, poor driving, all equal signs of impairment
- Result can be used to support the DRE officer's opinion about which drug(s) is/are responsible for the observed impairment
- Oral fluid drug testing is a tool that assists with the DRE investigation, providing real-time chemical test information that can be used by the officer in questioning the subject about their drug use
- SFSTs first, followed by the oral fluid field test





# CONCLUSION

- On November 8, 2017, the Oral Fluid Roadside Analysis pilot program officially began
- With the ever-increasing impaired drivers and fatalities, the opioid epidemic, and states legalizing marijuana, it's a great time to implement the pilot program
- The Michigan State Police and the members of the committee are very proud of the accomplishments so far with the Oral Fluid pilot program
- We look forward to assisting other states and other countries



# QUOTE FROM BRIAN SWIFT

“We have worked hard over the past year to turn the horror of losing our mom and dad into saving others. Our pain never goes away, but we know my parents would want to help others, and we think it is worth the fight.”



# Kenneth Stecker

Traffic Safety Resource Prosecutor  
Prosecuting Attorneys Association of Michigan



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