



**House
Legislative
Analysis
Section**

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House Bill 5235 as introduced
First Analysis (4-5-90)

Sponsor: Rep. Morris W. Hood
First Committee: Transportation
Second Committee: Judiciary

THE APPARENT PROBLEM:

Authorities in a number of states and countries make use of roadblocks or checklanes in an effort to catch drunk drivers and deter people from violating drunk driving laws. In its September 1985 final report, the Michigan Drunk Driving Task Force recommended that "temporary sobriety checklanes be implemented on a trial basis." In his January 1986 State of the State address, the governor called for the development of a sobriety checkpoint pilot program. In February 1986, the then-director of the Michigan State Police appointed an advisory committee to develop recommendations for a sobriety checkpoint program in Michigan. Guidelines for the program were issued in May 1986, and on the night of May 17-18, from about 11:45 p.m. to 1:00 a.m., a sobriety checkpoint operation was conducted in Saginaw County. Of the 126 drivers who passed through the checkpoint, two were detained for sobriety field tests, and one of these was arrested for driving under the influence of alcohol. Another driver, who drove through the checkpoint without stopping, was pulled over and arrested for driving under the influence. Several drivers made U-turns or turned off to avoid the checkpoint.

On May 16, the eve of the well-publicized checkpoint operation, several legislators, as licensed drivers who regularly travel throughout the state, brought an action in Wayne County Circuit Court seeking a halt to the checkpoint program. The plaintiffs argued, among other things, that the program was unconstitutional because it violated rights against unreasonable searches and seizures that are guaranteed by both the Michigan and the United States constitutions. The circuit court agreed, and the matter proceeded to the Michigan Court of Appeals, which also held the checkpoint program to be an unreasonable seizure under the Fourth Amendment of the United States Constitution and under Article I, Section 11 of the Michigan Constitution (*Sitz v. Department of State Police* [1988] 429 N.W.2d 180, 170 Mich. App. 433). The Michigan Supreme Court refused to hear the case, and the state appealed to the United States Supreme Court, which accepted the case and heard oral arguments in February 1990.

With the issue of constitutionality soon to be decided by the United States Supreme Court, fresh attention has focused on the merits of the use of sobriety checkpoints. Many find drunk driving checklanes to be unacceptably intrusive, and question their effectiveness. Legislation has been proposed to prohibit the establishment of drunk driving checklanes.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code to forbid the establishment of sobriety checkpoints. A "sobriety checkpoint" would be a procedure by which state or local police, in order to determine whether drivers were violating drunk driving laws, detained without probable cause some or all of the vehicles traveling on a public thoroughfare.

MCL 257.625 m

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (4-3-90)

ARGUMENTS:

For:

A sobriety checkpoint program would be an ill-conceived way to combat the drunk driving problem. Drunk driving checklanes drain personnel from the roving patrols that many law enforcement professionals believe are more effective at finding and stopping drunk drivers than sobriety checklanes are. Although checkpoint proponents say that the method's purpose is not to make arrests so much as it is to prevent people from drinking and driving, empirical evidence for any deterrent effect is lacking. At best, there may be a brief deterrent effect early on in a highly-publicized program, but once people realize how small the chance of getting caught is, they will be unlikely to change their behavior in response to the program.

The questionable effectiveness of the program makes its intrusions into personal liberties and its potential for abuse all the more abhorrent. Those intrusions are considerable: a person traveling lawfully down a public road must stop and be scrutinized by a police officer, who may detain the person for a roadside sobriety test. The officer's decision could be based on the most subjective of factors, including, according to court testimony, whether the driver's face was flushed, the general appearance of the driver's clothing, and whether the driver's shirt was unbuttoned. This reliance on an officer's subjective judgment opens the door to abuses of discretion; if an officer can detain someone based on his or her appearance, it seems all too likely that minorities or the poor could be disproportionately affected. While drunk driving is a serious problem, the use of drunk driving checkpoints is not the way to combat it.

Against:

Many dispute that checklanes are ineffective; many law enforcement and safety experts, including those with experience in checkpoint programs, believe that checklanes are an effective deterrent to would-be drunk drivers and, in support of their position, cite studies conducted in other states and countries. The key to effectiveness is publicity and planning. A checkpoint would be set up in a problem area during the late-night hours when a relatively high proportion (some say one in ten) of drivers are drunk. Accompanied by appropriate publicity, a checkpoint would discourage some from driving after drinking that night, and would result in enough well-publicized arrests to deter others from drinking and driving at some other time. Inconvenience to drivers would be minimized: except for those detained, drivers are delayed for only a minute or two, at most (the average delay on the night of May 15, 1986 was less than 30 seconds). Any increased risk of collisions also would be minimal: a series of signs would alert drivers to the checkpoint ahead, and checkpoints are not as a rule set up in inclement weather. Checkpoints should not be dismissed out of hand; with 800 people dying each year in alcohol-related traffic accidents

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in this state, even a small percentage reduction in accidents could save lives. If the U.S. Supreme Court upholds the constitutionality of checklane programs that meet certain standards, Michigan should at least allow state and local police the opportunity to try them in this state.

Against:

If the legislature wants to prevent the state police from setting up sobriety checklanes, it can do as it has been doing and prohibit the use of appropriated funds for checkpoint operations. Under the bill however, state police would not be the only agency barred from using the drunk driving countermeasure; local police also would be forbidden the use of the method. Locally-planned and -executed operations could be exceptionally effective in reducing the incidence of drunk driving in problem areas, and the state should not interfere with the right of local authorities to choose an effective and (presumably) legal law enforcement technique.

Response: Many find the checkpoint concept objectionable enough to warrant prohibiting it statewide by statute.

Against:

The Michigan checkpoint program was developed and executed under a set of guidelines developed by the state police. Many people, while open to the idea of checklanes, believe that a checkpoint program should be bound by explicit standards established by statute and consistent with constitutional case law. Thus, many argue that the bill should allow checkpoints, but only under certain conditions that, for example, limited the operations to certain times and places, set strict limits on the delay involved for drivers, and demanded that use of checkpoints be safe and nondiscriminatory.

Response: Some people oppose checklanes in principle, and thus oppose this approach. Others, who believe that checklanes should be allowed, find the approach to be unduly restrictive of local options. If checkpoints are to be allowed, local authorities should be able to exercise their best judgment as to how to conduct them.

Against:

The Michigan Vehicle Code has allowed the use of temporary vehicle checklanes for some time, and there has been little controversy over the use of checklanes to identify faulty equipment or unlicensed or uninsured drivers. Similarly, the operation of truck weigh stations, where all trucks of a certain size must pull off the highway for a compliance check, are accepted as routine. Some of the offenses uncovered in these checks are criminal offenses, and many find drunk driving checklanes to be little different in concept than the widely accepted analogs of equipment checks and weigh stations.

Response: Drunk driving checklanes differ in intent and execution, and in their reliance on subjective factors.

POSITIONS:

The American Civil Liberties Union of Michigan supports the bill. (4-3-90)

The Michigan Licensed Beverage Association supports the bill. (4-3-90)

The Michigan Sheriffs' Association supports the bill. (4-3-90)

The Department of State Police opposes the bill. (4-3-90)

Mothers Against Drunk Driving opposes the bill. (4-3-90)

The Michigan Association of Chiefs of Police is reviewing the bill, and has not yet taken a position. (4-4-90)