

HOUSE BILL 1367

R3

6lr3053
CF SB 970

By: **Delegates Valentino-Smith and Smith**
Introduced and read first time: February 12, 2016
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drugged Driving – Oral Fluid Tests – Pilot Program**

3 FOR the purpose of establishing a pilot program to examine the testing of oral fluid samples
4 by certain police officers to assist in determining if an individual is operating a motor
5 vehicle while impaired by a controlled dangerous substance; providing that the pilot
6 program applies only to the Baltimore County Police Department, the Montgomery
7 County Department of Police, the Prince George’s County Police Department, and
8 the Ocean City Police Department; authorizing a police officer who has reasonable
9 grounds to believe that an individual is or has been driving or attempting to drive a
10 motor vehicle while impaired by a controlled dangerous substance to request the
11 individual to submit a certain oral fluid sample subject to certain standards;
12 requiring a police officer who requests an oral fluid sample to advise the individual
13 of certain matters related to subsequent blood tests; requiring a police officer to use
14 the results of an oral fluid test for certain purposes; prohibiting the use of the results
15 of an oral fluid test as evidence in any court action; providing that the submission or
16 refusal to submit an oral fluid sample is not admissible as evidence in any court
17 action; prohibiting the use of any evidence pertaining an oral fluid test in a civil
18 action; establishing that refusal to submit an oral fluid sample does not constitute a
19 certain violation; establishing that submission to an oral fluid test does not relieve
20 the individual of certain obligations; requiring the State Coordinator for the Drug
21 Recognition Expert Program to submit certain reports to the General Assembly by a
22 certain date; defining the term “oral fluid test”; providing for the termination of
23 certain provisions of this Act; making certain stylistic changes; and generally
24 relating to authorization for the use of oral fluid tests by police officers of the
25 Baltimore County Police Department, the Montgomery County Department of
26 Police, the Prince George’s County Police Department, and the Ocean City Police
27 Department to detect the presence of a controlled dangerous substance.

28 BY repealing and reenacting, with amendments,
29 Article – Transportation
30 Section 16–205.2

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2012 Replacement Volume and 2015 Supplement)

3 BY adding to
4 Article – Transportation
5 Section 16–205.3
6 Annotated Code of Maryland
7 (2012 Replacement Volume and 2015 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland read as follows:

10 **Article – Transportation**

11 16–205.2.

12 (a) A police officer who has reasonable grounds to believe that an individual is or
13 has been driving or attempting to drive a motor vehicle while under the influence of alcohol
14 or while impaired by alcohol may, without making an arrest and prior to the issuance of a
15 citation, request the individual to submit to a preliminary breath test to be administered
16 by the officer using a device approved by the State Toxicologist.

17 (b) The police officer requesting the preliminary breath test shall advise the
18 person to be tested that neither a refusal to take the test nor the taking of the test shall
19 prevent or require a subsequent chemical test pursuant to § 16–205.1 of this subtitle.

20 (c) **(1)** The results of the preliminary breath test [shall]:

21 **(I)** **SHALL** be used as a guide for the police officer in deciding
22 whether an arrest should be made [and may];

23 **(II)** **MAY** not be used as evidence by the State in any court action[.
24 The results of the preliminary breath test may]; **AND**

25 **(III)** **MAY** be used as evidence by a defendant in a court action.

26 **(2)** The taking of or refusal to submit to a preliminary breath test is not
27 admissible in evidence in any court action.

28 **(3)** Any evidence pertaining to a preliminary breath test may not be used
29 in a civil action.

30 (d) Refusal to submit to a preliminary breath test shall not constitute a violation
31 of § 16–205.1 of this subtitle and the taking of a preliminary breath test shall not relieve
32 the individual of the obligation to take the test required under § 16–205.1 of this subtitle if
33 requested to do so by the police officer.

1 **16-205.3.**

2 (A) "ORAL FLUID TEST" MEANS THE TESTING OF THE ORAL FLUID OF A
3 DRIVER WHO IS THE SUBJECT OF A TRAFFIC STOP FOR THE PURPOSE OF DETECTING
4 THE PRESENCE OF A CONTROLLED DANGEROUS SUBSTANCE.

5 (B) THERE IS A PILOT PROGRAM TO EXAMINE THE TESTING OF ORAL FLUID
6 SAMPLES BY POLICE OFFICERS WHO ARE DRUG RECOGNITION EXPERTS TO ASSIST
7 IN DETERMINING IF AN INDIVIDUAL IS OPERATING A MOTOR VEHICLE WHILE
8 IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

9 (C) THE PILOT PROGRAM APPLIES ONLY TO:

10 (1) THE BALTIMORE COUNTY POLICE DEPARTMENT;

11 (2) THE MONTGOMERY COUNTY DEPARTMENT OF POLICE;

12 (3) THE PRINCE GEORGE'S COUNTY POLICE DEPARTMENT; AND

13 (4) THE OCEAN CITY POLICE DEPARTMENT.

14 (D) A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT
15 AN INDIVIDUAL IS OR HAS BEEN DRIVING OR ATTEMPTING TO DRIVE A MOTOR
16 VEHICLE WHILE THE INDIVIDUAL IS IMPAIRED BY A CONTROLLED DANGEROUS
17 SUBSTANCE MAY REQUEST THE INDIVIDUAL TO SUBMIT AN ORAL FLUID SAMPLE TO
18 BE TESTED BY A POLICE OFFICER CERTIFIED AS A DRUG RECOGNITION EXPERT.

19 (E) THE POLICE OFFICER REQUESTING THE ORAL FLUID SAMPLE SHALL
20 ADVISE THE INDIVIDUAL TO BE TESTED THAT NEITHER A REFUSAL TO SUBMIT THE
21 SAMPLE NOR SUBMITTING THE SAMPLE SHALL PREVENT OR REQUIRE A
22 SUBSEQUENT BLOOD TEST UNDER § 16-205.1 OF THIS SUBTITLE.

23 (F) (1) THE RESULTS OF THE ORAL FLUID TEST:

24 (I) SHALL BE USED AS A GUIDE FOR A POLICE OFFICER IN
25 DECIDING WHETHER CHARGES SHOULD BE FILED; AND

26 (II) MAY NOT BE USED AS EVIDENCE IN ANY COURT ACTION.

27 (2) SUBMITTING TO OR REFUSING TO SUBMIT AN ORAL FLUID SAMPLE
28 IS NOT ADMISSIBLE IN EVIDENCE IN ANY COURT ACTION.

1 **(3) NO EVIDENCE PERTAINING TO AN ORAL FLUID TEST MAY BE USED**
2 **IN A CIVIL ACTION.**

3 **(G) REFUSAL TO SUBMIT AN ORAL FLUID SAMPLE SHALL NOT CONSTITUTE**
4 **A VIOLATION OF § 16-205.1 OF THIS SUBTITLE AND SUBMITTING AN ORAL FLUID**
5 **SAMPLE SHALL NOT RELIEVE THE INDIVIDUAL OF THE OBLIGATION TO TAKE THE**
6 **BLOOD TEST REQUIRED UNDER § 16-205.1 OF THIS SUBTITLE IF REQUESTED TO DO**
7 **SO BY THE POLICE OFFICER.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,
9 2018, the State Coordinator for the Drug Recognition Expert Program shall submit, in
10 accordance with § 2-1246 of the State Government Article, a report to the General
11 Assembly for the period from October 1, 2016, through September 30, 2018, stating:

12 (1) the number of traffic stops that later resulted in a police officer
13 requesting an oral fluid sample from an individual;

14 (2) (i) the number of individuals charged after a positive oral fluid test
15 who subsequently received a positive blood test for the presence of a controlled dangerous
16 substance; and

17 (ii) the number of individuals charged after a positive oral fluid test
18 who subsequently received a positive oral fluid laboratory confirmation test for the presence
19 of a controlled dangerous substance;

20 (3) (i) the number of individuals charged after a negative oral fluid test
21 who subsequently received a positive blood test for the presence of a controlled dangerous
22 substance; and

23 (ii) the number of individuals charged after a negative oral fluid test
24 who subsequently received a positive oral fluid laboratory confirmation test for the presence
25 of a controlled dangerous substance;

26 (4) the number of individuals charged after a negative oral fluid test who
27 subsequently received a negative blood or oral fluid laboratory confirmation test for the
28 presence of a controlled dangerous substance; and

29 (5) the final disposition of matters, and the number of pending matters, for
30 which an individual was charged with driving while impaired by a controlled dangerous
31 substance after an oral fluid test was used on the individual.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2016. Section 1 of this Act shall remain effective for a period of 2 years and, at
34 the end of September 30, 2018, with no further action required by the General Assembly,
35 Section 1 of this Act shall be abrogated and of no further force and effect.