

# SENATE BILL 309

R3

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CF HB 808

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By: **Senators Kagan and West**

Introduced and read first time: January 22, 2020

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2020

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## CHAPTER \_\_\_\_\_

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 whether an individual is operating  
5 a motor vehicle while impaired by a controlled dangerous substance; requiring the  
6 pilot program to take place in local jurisdictions in the State that volunteer to  
7 participate; establishing certain standards for oral screening instruments used  
8 under the pilot program; authorizing a police officer in a participating jurisdiction  
9 who has reasonable grounds to believe that an individual is or has been driving or  
10 attempting to drive a motor vehicle while impaired by a controlled dangerous  
11 substance to request the individual to provide a certain oral fluid sample; requiring  
12 a police officer who requests an oral fluid sample to advise the individual of certain  
13 matters related to subsequent blood tests; prohibiting a police officer from using the  
14 results of an oral fluid test for certain purposes; prohibiting the use of the results of  
15 an oral fluid test as evidence in any court action; providing that the provision of or  
16 refusal to provide an oral fluid sample is not admissible as evidence in any court  
17 action; prohibiting the use of any evidence pertaining to an oral fluid test in a civil  
18 action; establishing that refusal to provide 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 stylistic changes; and generally relating to the  
24 pilot program to examine the testing of oral fluid samples by police officers to detect  
25 the presence of a controlled dangerous substance.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,  
2 Article – Transportation  
3 Section 16–205.2  
4 Annotated Code of Maryland  
5 (2012 Replacement Volume and 2019 Supplement)

6 BY adding to  
7 Article – Transportation  
8 Section 16–205.3  
9 Annotated Code of Maryland  
10 (2012 Replacement Volume and 2019 Supplement)

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

13 **Article – Transportation**

14 16–205.2.

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

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

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

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

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

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

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

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

1 (d) Refusal to submit to a preliminary breath test [shall] **DOES** not constitute a  
2 violation of § 16–205.1 of this subtitle and the taking of a preliminary breath test [shall]  
3 **DOES** not relieve the individual of the obligation to take the test required under § 16–205.1  
4 of this subtitle if requested to do so by the police officer.

5 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
6 as follows:

7 **Article – Transportation**

8 **16–205.3.**

9 (A) IN THIS SECTION, “ORAL FLUID TEST” MEANS THE TESTING ON AN  
10 AUTHORIZED DEVICE OF THE ORAL FLUID OF A DRIVER WHO IS THE SUBJECT OF A  
11 TRAFFIC STOP FOR THE PURPOSE OF DETECTING THE PRESENCE OF A CONTROLLED  
12 DANGEROUS SUBSTANCE.

13 (B) THERE IS A PILOT PROGRAM TO EXAMINE THE TESTING OF ORAL FLUID  
14 SAMPLES BY POLICE OFFICERS WHO ARE CERTIFIED AS DRUG RECOGNITION  
15 EXPERTS TO ASSIST IN DETERMINING WHETHER AN INDIVIDUAL IS OPERATING A  
16 MOTOR VEHICLE WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

17 (C) THE PILOT PROGRAM SHALL TAKE PLACE IN LOCAL JURISDICTIONS IN  
18 THE STATE THAT VOLUNTEER TO PARTICIPATE.

19 (D) A PILOT PROGRAM SHALL USE ORAL SCREENING INSTRUMENTS THAT:

20 (1) USE AN INSTRUMENTED ANALYZER IN WHICH THE SAMPLE AND  
21 REAGENTS ARE MIXED, ASSAYS PERFORMED, AND RESULTS INTERPRETED WITHIN  
22 THE INSTRUMENT;

23 (2) HAVE THE CAPACITY TO RECORD AND STORE THE RESULTS  
24 INTERNALLY;

25 (3) ARE CAPABLE OF ACCURATELY RECORDING EACH CONTROLLED  
26 DANGEROUS SUBSTANCE BEING TESTED; AND

27 (4) COMPLETE THE TESTING PROCESS WITHIN 15 MINUTES OF THE  
28 SAMPLE BEING COLLECTED.

29 (E) A POLICE OFFICER IN A PARTICIPATING JURISDICTION WHO HAS  
30 REASONABLE GROUNDS TO BELIEVE THAT AN INDIVIDUAL IS OR HAS BEEN DRIVING  
31 OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE THE INDIVIDUAL IS IMPAIRED  
32 BY A CONTROLLED DANGEROUS SUBSTANCE MAY REQUEST THE INDIVIDUAL TO

1 PROVIDE AN ORAL FLUID SAMPLE TO BE TESTED BY A POLICE OFFICER CERTIFIED  
2 AS A DRUG RECOGNITION EXPERT.

3 (F) THE POLICE OFFICER REQUESTING THE ORAL FLUID SAMPLE SHALL  
4 ADVISE THE INDIVIDUAL TO BE TESTED THAT NEITHER PROVIDING THE SAMPLE  
5 NOR REFUSING TO PROVIDE THE SAMPLE SHALL PREVENT OR REQUIRE A  
6 SUBSEQUENT BLOOD TEST UNDER § 16-205.1 OF THIS SUBTITLE.

7 (G) (1) THE RESULTS OF THE ORAL FLUID TEST MAY NOT BE USED AS:

8 (I) ~~A~~ THE ONLY GUIDE FOR A POLICE OFFICER IN DECIDING  
9 WHETHER CHARGES SHOULD BE FILED; OR

10 (II) EVIDENCE IN ANY COURT ACTION.

11 (2) PROVIDING OR REFUSING TO PROVIDE AN ORAL FLUID SAMPLE IS  
12 NOT ADMISSIBLE IN EVIDENCE IN ANY COURT ACTION.

13 (3) NO EVIDENCE PERTAINING TO AN ORAL FLUID TEST MAY BE USED  
14 IN A CIVIL ACTION.

15 (H) REFUSAL TO PROVIDE AN ORAL FLUID SAMPLE DOES NOT CONSTITUTE  
16 A VIOLATION OF § 16-205.1 OF THIS SUBTITLE AND PROVIDING AN ORAL FLUID  
17 SAMPLE DOES NOT RELIEVE THE INDIVIDUAL OF THE OBLIGATION TO TAKE THE  
18 TEST REQUIRED UNDER § 16-205.1 OF THIS SUBTITLE IF REQUESTED TO DO SO BY  
19 THE POLICE OFFICER.

20 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 1,  
21 2022, the State Coordinator for the Drug Recognition Expert Program shall submit, in  
22 accordance with § 2-1257 of the State Government Article, a report to the General  
23 Assembly for the period from October 1, 2020, through September 30, 2022, stating:

24 (1) the local jurisdictions that participated in the pilot program;

25 (2) the number of traffic stops that later resulted in a police officer  
26 requesting an oral fluid sample from an individual and the number of oral fluid tests  
27 performed;

28 (3) the types of devices used to conduct an oral fluid test;

29 (4) (i) the number of individuals charged after a positive oral fluid test  
30 who subsequently received a positive blood test for the presence of a controlled dangerous  
31 substance; and

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

4 (5) (i) the number of individuals charged after a negative oral fluid test  
5 who subsequently received a positive blood test for the presence of a controlled dangerous  
6 substance; and

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

10 (6) the number of individuals charged after a negative oral fluid test who  
11 subsequently received a negative blood or oral fluid laboratory confirmation test for the  
12 presence of a controlled dangerous substance; and

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

16 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2020. Section 2 of this Act shall remain effective for a period of 2 years and, at  
18 the end of September 30, 2022, Section 2 of this Act, with no further action required by the  
19 General Assembly, shall be abrogated and of no further force and effect.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.