

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 808  
Judiciary

(Delegate Valentino-Smith, *et al.*)

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**Drugged Driving - Oral Fluid Tests - Pilot Program**

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This bill establishes a two-year pilot program to examine the testing of oral fluid samples by police officers certified as drug recognition experts (DREs) to assist in determining whether an individual is operating a motor vehicle while impaired by a controlled dangerous substance (CDS). Local jurisdictions may volunteer to participate in the program. The State coordinator for the Drug Recognition Expert Program must submit a specified report to the General Assembly on program results by December 1, 2022. **Provisions establishing the pilot program terminate September 30, 2022.**

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**Fiscal Summary**

**State Effect:** The bill's reporting requirement can be handled with existing resources. Revenues are not affected.

**Local Effect:** None, as discussed below. Participation by local jurisdictions in the pilot program under the bill is voluntary.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** "Oral fluid test" means the testing on an authorized device of the oral fluid of a driver who is the subject of a traffic stop for the purpose of detecting the presence of a CDS.

The pilot program must use oral screening instruments that (1) use an instrumented analyzer in which the sample and reagents are mixed, assays performed, and results

interpreted within the instrument; (2) have the capacity to record and store the results internally; (3) are capable of accurately recording each CDS being tested; and (4) complete the testing process within 15 minutes of the sample being collected.

A police officer in a participating jurisdiction who has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while impaired by a CDS may request the individual to provide an oral fluid sample to be tested by a police officer certified as a DRE. The police officer requesting the sample must advise the individual that neither providing the sample nor refusing to provide the sample prevents or requires subsequent blood testing under State law.

The results of the oral fluid test may not be used as a guide for a police officer in deciding whether charges should be filed or as evidence in any court action. Similarly, submitting to or a refusal to submit an oral fluid sample is not admissible as evidence in any court action, including a civil action. A refusal to submit to a test of oral fluid is not a violation of the State implied consent law. Submitting an oral fluid sample, however, does not relieve an individual from the obligation under State law to submit to a blood test if required under the State implied consent law.

**Current Law:** A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. A person must submit to a test of blood or breath, or both, as directed by a police officer if the person is involved in a motor vehicle accident that results in death or life-threatening injury to another person and the police officer detains the person due to a reasonable belief that the person was driving or attempting to drive while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol;
- impaired by drugs and/or drugs and alcohol; or
- impaired by a CDS.

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

However, a person may not be compelled to submit to a test to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent

of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures.

A test for drugs or CDS is admissible as evidence. However, there are no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

**Background:** The State of Michigan implemented a similar pilot program pursuant to 2016 legislation. Michigan State Police issued a [report](#) on the results of the program in February 2019.

**Local Expenditures:** The bill only affects local jurisdictions that choose to participate in the pilot program. Local jurisdictions in Maryland have historically estimated costs associated with participation in a pilot program like the one contemplated under the bill, including costs for purchasing test kits and laboratory confirmation testing, ranging from roughly \$10,000 to \$40,000 annually, depending on the number of tests performed.

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### Additional Information

**Prior Introductions:** SB 972 of 2017 and SB 970 of 2016, similar bills, each received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken on either bill. Their cross files, HB 1068 of 2017 and HB 1367 of 2016, both received an unfavorable report from the House Judiciary Committee.

**Designated Cross File:** SB 309 (Senators Kagan and West) - Judicial Proceedings.

**Information Source(s):** Anne Arundel, Charles, Frederick, and Montgomery counties; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Michigan State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2020  
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