

DUID Maryland SB 684 testimony 030322.pdf

Uploaded by: Bridget Lorenz Lemberg

Position: FAV



March 3, 2022

RE: Support of SB 684

Dear Maryland Legislators:

My name is Bridget Lorenz Lemberg, I am a Toxicologist and Lab Director at Forensic Fluids Laboratories Inc. (FFL), in Kalamazoo, Michigan and I'm writing in support of SB 684. I have been a Toxicologist for 33 years having performed and testified to drug test results for blood, urine, oral fluid, meconium, and other matrixes. I have been testifying in court about the accuracy of Oral Fluid Laboratory testing since 2005, in OH, MI, IN, IL, KY, WV, WI, ND, and AZ. This testimony has mainly been for Child Protective Services and Probation/Drug Court.

FFL is the Laboratory that performed ALL the Confirmed Quantitative Oral Fluid testing (using evidentiary LCMSMS (LCMSMS: quantitates and positively identifies what drug is in the sample)), for the two Michigan State Police Roadside pilots. The first pilot was in 2019 and consisted of 66 samples, the second was in 2020 and consisted of 550 samples (blood was collected also). The handheld roadside device used (SoToxa) was the preliminary non-evidentiary test, the sample was then sent to our Lab for LCMSMS (Mass Spectrometry). So **two** tests were performed on every Oral Fluid sample.


The handheld roadside test is called a "screen" and is non-evidentiary and considered preliminary. This is the same as a PBT for alcohol testing (non-evidentiary). Michigan used a device called SoToxa by Abbott, there is also a device called Draeger by Draeger, and another device called DrugWipe. These devices tend to be 70% to +/- 90% accurate depending on what drug is being measured, and just gives a Negative or Positive result. This is why a Laboratory test using an LCMSMS, which quantitates and positively identifies what drug is in the sample, is needed.

There are currently over 20 states using roadside Oral Fluid (most using handheld AND confirming with a Laboratory LCMSMS): New York, Alabama, Kansas, Wisconsin, Vermont, Oklahoma, Colorado, California, Massachusetts, Oregon, Texas, and Utah (Indiana, Illinois, and Kentucky are starting).

There are many European countries that are using Oral Fluid roadside collected Laboratory Quantitated values for determining IMPAIRMENT. Belgium, Canada, Germany, Norway, Spain, Italy, Portugal, and others.

Forensic Fluids Lab has offered Law Enforcement Agencies 50 to 100 free laboratory tests as a pilot to help determine their usefulness. Through our partnership with Michigan State Police, FFL did charge the State Police \$30 per test kits including Lab testing. Test kits included the collection device, paperwork, evidence sealing tape, tamper-proof specimen bag, and shipping is negotiable.

If you have any questions, please call me at 269-352-8633.

Sincerely, 
Bridget Lorenz Lemberg
Laboratory Director/Toxicologist

Senate-Bill-684-Support-Letter (1).pdf

Uploaded by: EVETTE MUNRO

Position: FAV

Chair & Vice Chair
State Senate, District 17
Rockville & Gaithersburg

March 2, 2022

**Senate Bill 684 Hearing – Written Testimony in support of Vehicle Laws –
Drugged Driving – Oral Fluid Tests**

Quinton Munro, Owner and CEO of SmarTest Labs

Thank you for the opportunity to testify. My name is Quinton Munro and I am the owner of SmarTest Labs. SmarTest Labs, a laboratory testing service provides drug and alcohol screening in the Gaithersburg and Rockville area. We operate with DOT certification and offer CLIA waived testing.

Although marijuana and other intoxicating drugs have been a concern for many decades, the legalization of medical marijuana and of recreational marijuana in many nearby jurisdictions has had the effect of normalizing and expanding the use of these drugs. The widespread use of these intoxicants has outpaced the ability of law enforcement to adequately screen drivers before the decision to make an arrest and charge suspected intoxicated drivers.

Senate Bill 684 gives law enforcement readily available screening tools that provide decision support for further testing, arrest and charging. These tools provide objective evidence for a decision that previously relied solely on an officer's subjective assessment of a driver. These objective measures will become an essential part of the impaired driver evaluation process. Further, the changes in the Bill will provide clarity on the use of appropriate equipment for testing and balance between consumer and law enforcement rights in the testing procedures.

Passage of Senate Bill 684 will promote the safety of all Maryland residents by taking impaired drivers off the road. Please conder the Bill as stated for the safety of our community.

Thank you for your consideration.

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SB684_jderbyshire-MCPD_fav.pdf

Uploaded by: Jayme Derbyshire

Position: FAV



DEPARTMENT OF POLICE

Marc Elrich
County Executive

Marcus G. Jones
Chief of Police

SB 684

DATE: March 3, 2022

SPONSOR: Senators Kagan and West

ASSIGNED TO: Judicial Proceedings

POSITION: SUPPORT (Montgomery County Department of Police)

Vehicle Laws – Drugged Driving – Oral Fluid Tests

Senate Bill 684 would allow law enforcement officers to request oral fluid samples as part of determining whether a suspected impaired driver is under the influence of a drug or drugs. Montgomery County Department of Police supports this legislation.

SB 684 would allow an officer to request a voluntary submission of oral fluid from a suspected drug impaired driver if the officer has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while under the influence of a drug or drugs. This oral fluid sample would be requested, and if consented to, collected only after substantial evidence had been obtained suggesting current drug impairment. The oral fluid test would be a roadside screening test to be completed on an authorized device. Subjects who refuse to submit to the testing would not be subject to any administrative or criminal penalty for such refusal. Should a roadside sample be provided, any result of the said screening test would not be allowed for use in any court action.

According to a 2018 National Survey on Drug Use and Health, 12.5 million people drove under the influence of illegal substances over the previous year compared to 20.5 million people who drove under the influence of alcohol that year. For drug impaired drivers, the National Institute on Drug Abuse reported that those individuals exhibited slower reaction times, impaired judgment of time and distance, aggressive and reckless behaviors, and dizziness and drowsiness. These are alarming findings that should prompt the State to seek new technologies that can be used by law enforcement to detect drugged driving and ultimately lead to improved traffic safety in Maryland.

Montgomery County Department of Police respectfully request the Committee to adopt a favorable report on SB 684.

TRAFFIC OPERATIONS DIVISION

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FINAL SB684_ DUID Testimony.pdf

Uploaded by: Sen. Cheryl Kagan

Position: FAV

CHERYL C. KAGAN
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB684: Vehicle Laws - Drugged Driving - Oral Fluid Tests

Judicial Proceedings Committee

Thursday, March 3, 2022 | 1pm

Maryland Department of Transportation's (MDOT) driver-safety program, [Zero Deaths Maryland](#), reports that in the past five years, nearly 800 citizens have died due to impaired drivers. This amounts to almost one-third of all traffic fatalities in our state. The [Rocky Mountain High Intensity Drug Trafficking Area's September 2021 Report](#) shows that from the time cannabis was legalized in 2013 through 2020, "traffic deaths where drivers tested positive for marijuana increased 138% while all Colorado traffic deaths increased 29%." The [California Office of Traffic Safety also reports](#) that in 2018, "42% of all drivers killed in motor vehicle crashes... tested positive for legal and/or illegal drugs." **These rates are alarming.**

All 50 states have laws in place for DUI arrests. Officers are able to use breathalyzers and field sobriety tests to assess the levels of alcohol in an individual's bloodstream. In order to address a potential issue before it becomes harmful to those on our roadways, [SB684](#) would implement the same framework for roadside DUI-Drugs oral fluid testing.

As of 2021, there are 103 known cannabis dispensaries across Maryland, making this extremely prevalent. As legislation moves through the General Assembly to legalize cannabis, we must take action to keep our roads safe. Passing laws to update available technology just as we did by expanding access to telehealth and strengthening our Open Meetings Act to require live streamed meetings will add another measurement tool for officers to make decisions when making arrests. These tests are accurate and usually confirmed by a second laboratory exam.

This is not a new bill. I introduced this initiative as a pilot program in 2016 and 2017, and then brought it back in 2020, where [SB309](#) passed the Senate (42-3). In 2020, there were 12 states with legislation similar to what I am proposing. An [NCSL report from 2021](#) shows that there are now **24 states that have statutes allowing their roadside officers to use oral fluid testing**. The frontrunners of incorporating this testing have a timeline that follows:

- 2018: Alabama became the first state to establish a permanent oral fluid testing program after running a successful two-year pilot;
- 2019: Michigan expanded its one-year county roadside drug testing pilot program to a statewide pilot. In 95% of cases, results were reconfirmed by a second lab; and
- 2020: Indiana began using roadside screening around the state to build probable cause and determine whether or not to call for a Drug Recognition Expert.

**We must be proactive, not reactive, in addressing impaired driving.
I urge a favorable report on SB684.**

SB 0684 MOPD Oppose.pdf

Uploaded by: Elizabeth Hilliard

Position: UNF



PAUL DeWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 684 - Courts and Judicial Proceedings - Court Fines - Payment

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 03/03/2022

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on Senate Bill 684.

Senate Bill 684 proposes testing standards for driving while under the influence of controlled dangerous substances. In part, the bill introduces an oral fluid test as a way of measuring impairment that measures the presence of cannabis and requires notification to the Motor Vehicle Administration if the presence of cannabis is detected in an amount of 25 nanograms per milliliter or greater.

With the significant progress Maryland has made towards legalizing marijuana, the Maryland Office of the Public Defender understands the import of evaluating its impact on persons operating motor vehicles. This is a problem that states are trying to address nationwide. Currently, States differ with respect to the bodily fluids that are permitted to be tested for THC.¹ The most frequently used bodily fluids are blood, urine, or saliva.² A majority of the states that have statutes permitting the testing of oral fluids do not actually collect oral fluids in practice.³ However, Indiana and Michigan—two states that have zero tolerance laws—have roadside oral fluid collection pilots or programs.⁴ Roadside collection and testing of oral fluids are quicker and easier to complete than blood sampling and testing—which requires a warrant and travel to a facility where blood can be drawn.⁵ This process takes an average of 2 hours between the traffic stop and blood collection.⁶ The speed that oral fluid testing provides, however, does not appear to actually ensure any accurate measurement of impairment.

The fact is, that there is no consensus among the states regarding zero tolerance and per se

¹ <https://www.iihs.org/topics/alcohol-and-drugs#marijuana>.

² <https://www.ncsl.org/research/transportation/drugged-driving-overview.aspx>.

³ <https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx>.

⁴ <https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx>.

⁵ <https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx>.

⁶ <https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx>.

limits on THC and THC metabolite concentration in the body. This is primarily because—unlike alcohol—the research indicates that the level of THC in the body does not appear indicative of the level of impairment of an individual.⁷ High levels of THC can remain for a period of time in the body, even after the psychoactive effects of marijuana are long gone. THC metabolites, for example, can last in the body for up to a month after marijuana use. Therefore, enforcing per se limits can lead to incrimination of persons who were not actually impaired while driving.

A report to Congress, offered by the National Highway Administration, indicated the poor correlation of THC level in the blood or oral fluid with impairment precludes using THC blood or oral fluid levels as an indicator of driver impairment. The use of BAC or BrAC as an indicator of driving impairment has assisted law enforcement and prosecutors in being able to show that an alcohol-impaired driver has a BAC that has been demonstrated to increase crash risk. THC levels in a person do not correspond to impairment in the same way. Therefore, the use of THC levels cannot serve this same role for marijuana-impaired driving (Dupont, Voas, Walsh, Shea, Talpins, & Neil, 2012).⁸

Similarly, in an evaluation conducted by AAA, all of the candidate THC concentration thresholds examined would have misclassified a substantial number of driver as impaired who did not demonstrate impairment on the SFST, and would have misclassified a substantial number of drivers as unimpaired who did demonstrate impairment on the SFST. Based on this analysis, a quantitative threshold for per se laws for THC following cannabis use cannot be scientifically supported.⁹ Even a recent [NHTSA Traffic Tech study](#) that evaluated existing field oral fluid drug testing devices and found some promising results but also persistent reliability and validity issues.

In short, the scientific research in this area indicates that the use of any per se level of THC cannot establish or measure the level of impairment in an individual, and the Maryland Office of the Public Defender accordingly opposes legislation that encourages the use of such measurements for impairment determination.

We urge this Committee to consider the foregoing information and issue an unfavorable report on Senate Bill 684.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Please direct any additional questions to: Andrew Northrup, Subject Matter Expert with the Forensics Division, Maryland Office of the Public Defender, andrew.northrup@maryland.gov (312) 804-9343.

⁷ <https://www.iii.org/article/background-on-marijuana-and-impaired-driving>.

⁸ Compton, R. (2017, July). Marijuana-Impaired Driving - A Report to Congress. (DOT HS 812 440). Washington, DC: National Highway Traffic Safety Administration at 27

⁹ <https://aaafoundation.org/evaluation-data-drivers-arrested-driving-influence-relation-per-se-limits-cannabis/>