

# SENATE BILL 972

R3

7lr0519  
CF 7lr3179

---

By: **Senator Kagan**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

---

## 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; requiring the State  
6 Coordinator for the Drug Recognition Expert Program to select local jurisdictions for  
7 participation in the pilot program based on certain criteria; authorizing a police  
8 officer in a participating jurisdiction who has reasonable grounds to believe that an  
9 individual is or has been driving or attempting to drive a motor vehicle while  
10 impaired by a controlled dangerous substance to request the individual to provide a  
11 certain oral fluid sample; requiring a police officer who requests an oral fluid sample  
12 to advise the individual of certain matters related to subsequent blood tests;  
13 prohibiting a police officer from using the results of an oral fluid test for certain  
14 purposes; prohibiting the use of the results of an oral fluid test as evidence in any  
15 court action; providing that the provision of or refusal to provide an oral fluid sample  
16 is not admissible as evidence in any court action; prohibiting the use of any evidence  
17 pertaining to an oral fluid test in a civil action; establishing that refusal to provide  
18 an oral fluid sample does not constitute a certain violation; establishing that  
19 submission to an oral fluid test does not relieve the individual of certain obligations;  
20 requiring the State Coordinator, in consultation with certain entities, to submit  
21 certain reports to the General Assembly by a certain date; defining the term “oral  
22 fluid test”; providing for the termination of certain provisions of this Act; making  
23 certain stylistic changes; and generally relating to the pilot program to examine the  
24 testing of oral fluid samples by police officers to detect the presence of a controlled  
25 dangerous substance.

26 BY repealing and reenacting, with amendments,  
27 Article – Transportation  
28 Section 16–205.2  
29 Annotated Code of Maryland  
30 (2012 Replacement Volume and 2016 Supplement)

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to  
2 Article – Transportation  
3 Section 16–205.3  
4 Annotated Code of Maryland  
5 (2012 Replacement Volume and 2016 Supplement)

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

8 **Article – Transportation**

9 16–205.2.

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

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

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

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

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

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

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

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

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

32 **16–205.3.**

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

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

8           **(C) THE PILOT PROGRAM SHALL TAKE PLACE IN LOCAL JURISDICTIONS IN**  
9 **THE STATE THAT APPLY TO PARTICIPATE IN THE PILOT PROGRAM AND ARE**  
10 **SELECTED BY THE STATE COORDINATOR FOR THE DRUG RECOGNITION EXPERT**  
11 **PROGRAM BASED ON:**

12                   **(1) THE NUMBER OF BLOOD TESTS ADMINISTERED IN THE**  
13 **JURISDICTION THAT SHOW THE PRESENCE OF A CONTROLLED DANGEROUS**  
14 **SUBSTANCE;**

15                   **(2) THE AVAILABILITY IN THE JURISDICTION OF POLICE OFFICERS**  
16 **WHO ARE CERTIFIED AS DRUG RECOGNITION EXPERTS; AND**

17                   **(3) THE AVAILABILITY OF ORAL FLUID TESTING DEVICES.**

18           **(D) A POLICE OFFICER IN A PARTICIPATING JURISDICTION WHO HAS**  
19 **REASONABLE GROUNDS TO BELIEVE THAT AN INDIVIDUAL IS OR HAS BEEN DRIVING**  
20 **OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE THE INDIVIDUAL IS IMPAIRED**  
21 **BY A CONTROLLED DANGEROUS SUBSTANCE MAY REQUEST THE INDIVIDUAL TO**  
22 **PROVIDE AN ORAL FLUID SAMPLE TO BE TESTED BY A POLICE OFFICER CERTIFIED**  
23 **AS A DRUG RECOGNITION EXPERT.**

24           **(E) THE POLICE OFFICER REQUESTING THE ORAL FLUID SAMPLE SHALL**  
25 **ADVISE THE INDIVIDUAL TO BE TESTED THAT NEITHER PROVIDING THE SAMPLE**  
26 **NOR REFUSING TO PROVIDE THE SAMPLE SHALL PREVENT OR REQUIRE A**  
27 **SUBSEQUENT BLOOD TEST UNDER § 16-205.1 OF THIS SUBTITLE.**

28           **(F) (1) THE RESULTS OF THE ORAL FLUID TEST MAY NOT BE USED AS:**

29                   **(i) A GUIDE FOR A POLICE OFFICER IN DECIDING WHETHER**  
30 **CHARGES SHOULD BE FILED; OR**

31                   **(ii) EVIDENCE IN ANY COURT ACTION.**

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

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

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

10           SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,  
11 2019, the State Coordinator for the Drug Recognition Expert Program, in consultation with  
12 the Montgomery County Department of Police and the Center for Forensic Science  
13 Research and Education, shall submit, in accordance with § 2–1246 of the State  
14 Government Article, a report to the General Assembly for the period from October 1, 2017,  
15 through September 30, 2019, stating:

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

17           (2) the number of traffic stops that later resulted in a police officer  
18 requesting an oral fluid sample from an individual;

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

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

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

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

31           (5) the number of individuals charged after a negative oral fluid test who  
32 subsequently received a negative blood or oral fluid laboratory confirmation test for the  
33 presence of a controlled dangerous substance; and

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

4                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2017. Section 1 of this Act shall remain effective for a period of 2 years and, at  
6 the end of September 30, 2019, with no further action required by the General Assembly,  
7 Section 1 of this Act shall be abrogated and of no further force and effect.