

TESTIMONY OF Lt. John Flannigan (Ret).
ON BEHALF OF Flannigan Safety Consulting, LLC.
IN SUPPORT OF House Bill 808

House Judiciary Committee
Maryland General Assembly
February 26, 2020

Thank you to Chairman Clippinger and the Maryland House Judiciary Committee for the opportunity to share my law enforcement experience and insight on the importance of oral fluid testing. As you consider HB 808, I urge you to continue to demonstrate leadership in addressing impaired driving and pass this important pilot study bill into law.

My name is John Flannigan and I am a retired commander from the Vermont State Police. During my 28-year career in law enforcement, I have seen firsthand the tragedy that results from drug-impaired driving. As a state trooper and drug recognition expert, I have significant experience dealing with the offense of impaired driving, a crime that is entirely preventable. Each year, communities across this country are negatively impacted by decisions to get behind the wheel after consuming impairing substances. In my home state of Vermont and here in Maryland, so many families have experienced grief and hardship due to the loss of loved ones who are innocent victims of selfish behavior. I devoted my career to protecting public safety and, in my retirement, I continue to advocate for laws and strategies that are effective in reducing impaired driving, particularly those that can assist law enforcement. In order to reduce DUI fatalities, law enforcement agencies must have the resources, training, and tools necessary to effectively and efficiently identify and remove impaired drivers from the roadways. It is also important that the public understands that officers can identify drug impairment and that they are likely to be arrested if they choose to drive under the influence of drugs or a combination of substances.

Oral fluid drug testing is technology that can aid officers in conducting impaired driving investigations and accomplish the aforementioned goals. Prior to my retirement, I had the opportunity to participate in an oral fluid pilot study in Vermont. Our pilot involved the deployment of two devices – Abbot's SoToxa (it was the Alere DDS-2 at the time of the pilot), and Draeger's DT2000. Both instruments utilize lateral flow immunoassay and produce results in less than 10 minutes that indicate whether a driver is positive or negative for the presence of common drugs/drug classes. The number of tests completed during the pilot were limited, but we experienced good overall accuracy and reliability rates when the oral fluid screening results were compared to confirmatory quantitative blood and oral fluid tests conducted in a forensic laboratory. These findings were promising and added to the growing body of literature that identifies oral fluid screening as a viable law enforcement tool.

Roadside oral fluid testing has numerous advantages and benefits and many law enforcement agencies and traffic safety advocates view this technology as holding great potential for use in drug-impaired driving investigations. The testing is easy, quick, non-invasive, and can assist a law enforcement officer to rule in or rule out whether observed impairment is being caused by drugs. These devices generally test for the most commonly abused drugs found in drugged driving cases including amphetamine,

benzodiazepines, cannabis (THC), cocaine, methamphetamine, and opiates. While not exhaustive, oral fluid screening has the ability to test for the majority of what we see on the roadways.

As a law enforcement officer, I want tools at my disposal that can be of assistance during investigations. As a DRE, I firmly believe that there is no substitute for proper training. Oral fluid testing cannot and should not replace the Drug Evaluation and Classification program or Advanced Roadside Impaired Driving Enforcement (ARIDE) training but it can supplement training and assist officers who are not certified DREs especially in cases where they observe impairment and believe drugs to be the cause.

While having tools available to law enforcement that will help officers do their job more effectively is important, creating general deterrence is also key. To discourage people from engaging in dangerous and criminal behavior, they must believe that there is a significant likelihood that they will be caught. This is one of the primary reasons why law enforcement agencies engage in high visibility enforcement efforts like sobriety checkpoints and saturation patrols. We do this type of enforcement to raise awareness and deter people from driving impaired.

In examining drug-impaired driving public opinion research, a common perception on the part of respondents is that law enforcement does not have the ability to identify or test for drug impairment. In other words, people realize that law enforcement officers can test for alcohol and an arrest for DUI is likely, but they believe that there are no tools available to test for drug use and that officers are unable to determine if someone is high behind the wheel. This, of course, is untrue. But having the ability to test for alcohol at the roadside for decades has been an important strategy in reducing the number of alcohol-impaired driving crashes. If comparable measures were available for drug testing, this could be publicized and shift public opinion. If people realize that law enforcement do have the means to accurately and quickly test for drugs, it will likely make them think twice before using and driving.

Many other countries already rely on oral fluid testing as part of impaired driving investigations, including our neighbors to the north in Canada. Roadside testing has been approved and is being implemented across the country following the legalization of recreational cannabis. While the program is still new and is being rolled out slowly in many provinces, the Canadian government and law enforcement agencies believe this is a necessary countermeasure to address an increasing public safety threat. Here in the United States, oral fluid pilots have been implemented in numerous states aside from Vermont. Currently, Michigan is leading the way with the largest pilot to date – an initiative that is statewide involving more than 50 law enforcement agencies and more than 100 DREs. Michigan's pilot has grown over time and the program advocated in HB 808 is similar to the initial oral fluid legislation in Michigan. The results from that year-long study produced data revealing a high degree of accuracy.

One of the reasons why Vermont law enforcement and policymakers were interested in oral fluid testing is because our state is one of the now 11 jurisdictions that has legalized recreational cannabis. While Maryland has yet to expand its medicinal program and permit recreational use, those discussions are ongoing. States that have legalized cannabis, such as Colorado and Washington, have seen a rise in cannabis-related social harms, especially in impaired driving injuries and deaths. Legislators have the ability to protect public safety and ensure that the resources and tools needed to improve drug-impaired driving enforcement are put in place before policy advances. By passing HB 808 and establishing an oral fluid pilot program, Maryland will be taking a proactive approach and can make data-driven decisions moving forward. Vote yes on HB 808 to protect public safety.