

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 150 (Delegate Kipke, *et al.*)
 Judiciary

**Vehicle Laws - Accidents Resulting in Death or Life-Threatening Injury -
 Mandatory Drug and Alcohol Testing (Kara's Law)**

This bill expands the implied consent provision that applies to licensed drivers by specifying that any person who drives or attempts to drive a motor vehicle on a highway, or private property used by the general public in Maryland, is deemed to have consented to take a test if the person is detained for involvement in a motor vehicle accident that results in death or life-threatening injury to another person. If a police officer detains a driver involved in such a motor vehicle accident, the driver is required to submit to a test of blood and breath or a test of blood as directed by the police officer. A person who refuses a test in spite of this direction is subject to administrative sanctions.

The bill repeals the requirement that the police officer must have reasonable grounds to believe that the person committed an alcohol- and/or drug-related driving offense if the person was involved in an accident that results in death or life-threatening injury before directing that the person submit to a test.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.3 million for the Department of State Police (DSP) in FY 2014 for one-time equipment expenditures and additional positions to process blood samples for alcohol and drug content. Out-years reflect annualization, elimination of one-time costs, and inflation. Revenues are not affected.

| (\$ in millions) | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|------------------|---------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 1.3 | 1.4 | 1.4 | 1.5 | 1.5 |
| Net Effect | (\$1.3) | (\$1.4) | (\$1.4) | (\$1.5) | (\$1.5) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal increase in expenditures to process additional blood tests for alcohol and drug content.

Small Business Effect: None.

Analysis

Bill Summary: The detaining officer must advise a person who is required to take a test of blood or breath under the provisions of this bill of the administrative sanctions that must be imposed for test refusal or if the test result indicates a blood alcohol concentration of 0.08 or higher. The police officer must also advise the person of notice and hearing requirements. A person involved in a motor vehicle accident with a fatality or life-threatening injury may submit a written request for an administrative hearing.

The bill also expands provisions that require a police officer to direct that a blood test be taken if a person is unconscious or otherwise incapable of refusing to take a test to those situations where a police officer has reasonable grounds to believe that a person was involved in a motor vehicle accident that resulted in death or life-threatening injury to another person and the person refused to take a test.

If the person was detained while operating a commercial vehicle or holding a commercial driver's license, the requirement that the Motor Vehicle Administration (MVA) disqualify a person from driving a commercial motor vehicle applies if the police officer stopped or detained the person due to reasonable grounds to believe that the person drove a motor vehicle that was involved in an accident resulting in death or life-threatening injury to another person.

Current Law: 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 who detains the person has reasonable grounds to believe 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 controlled dangerous substance;

If a police officer directs that a person be tested, 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.

If the person stopped by the police officer is unconscious or otherwise incapable of refusing to take a test, the officer must (1) obtain prompt medical attention; (2) arrange for removal of the person to a medical facility, if necessary; and (3) direct a qualified medical person to withdraw blood for a test, if it does not jeopardize the person's health. An initial refusal to take a test that is withdrawn as specified by statute is deemed not to be a refusal. The burden of proof rests with the person who has withdrawn the refusal to show, by a preponderance of the evidence, that the requirements for withdrawal of a refusal were met.

A person who is stopped by a police officer with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must be detained by the officer, and the officer must request that the person permit a test to be taken. The police officer must also advise the person of the administrative sanctions that must be imposed for refusal to take a test and inform the person of notice and hearing procedures. Refusal to take a test is an "administrative *per se*" offense. An offender's license or driving privilege must be suspended by MVA for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle or who holds a commercial driver's license (even if not operating a commercial vehicle at the time of detention) is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for refusal unless the driver participates in the Ignition Interlock System Program.

If, after being informed of the administrative sanctions that must be imposed and notice and hearing requirements, a person takes a breath or blood test that indicates an alcohol concentration of between 0.08 and 0.15 at the time of testing, MVA must suspend the driver's license or privilege for 45 days for a first offense, and 90 days for a second or subsequent offense. If the test result is 0.15 or more, MVA must suspend the driver's license for 90 days for a first offense. For a second or subsequent offense, the license suspension must be for 180 days.

Enhanced criminal penalties apply if a person is convicted of an alcohol- and/or drug-related driving offense and the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take a requested test. A maximum penalty of imprisonment for two months and/or a fine of \$500 may be imposed in addition to the penalty for the underlying alcohol- and/or drug-related driving offense.

Background: According to the latest information available from the National Conference of State Legislatures, 39 states require post-accident testing of drivers, passengers, or pedestrians and make those tests admissible in court proceedings. Most of these states require testing when there are reasonable grounds to suspect that one or more of those involved may be under the influence of alcohol or impaired by alcohol and/or drugs. Four states, however, require testing of those involved in or contributing to the

cause of a fatal or life-threatening motor vehicle accident whether or not the use of alcohol or drugs was suspected (Alaska, Missouri, New Hampshire, and Wisconsin). In addition, three other states (Idaho, Louisiana, and New Jersey) require testing of those involved in or contributing to the cause of a motor vehicle accident if the accident results in death.

According to the latest information available from the National Highway Traffic Safety Administration (NHTSA), all states have some form of implied consent statute, but administrative and criminal penalties vary widely for refusing to submit to a test. Maryland and at least 14 other states (Alaska, California, Florida, Kansas, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, and Vermont) have criminal sanctions for refusal to submit to a test for drivers age 21 and older. Three states (Arkansas, Arizona, and Michigan) have criminal penalties only if the driver is younger than 21.

NHTSA also reports that, in at least 16 states, refusal to submit to a blood alcohol test is a separate crime (Alaska, Arizona, Arkansas, California, Idaho, Iowa, Kansas, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, Vermont, and Virginia). In Minnesota, Nebraska, and Vermont, the penalties for test refusal are equal to or substantially similar to the penalties for a drunk driving conviction. Enhanced criminal penalties for test refusal in California and Vermont apply to those with prior drunk driving convictions. Criminal sanctions imposed by the states include fines, community service, alcohol or drug treatment, vehicle impoundment, and jail time.

State Expenditures: General fund expenditures for DSP increase by \$1,306,057 in fiscal 2014 due to the substantial increase in testing. This estimate accounts for the bill's October 1, 2013 effective date and reflects eight additional forensic chemists, two supervisors, two office clerks, blood analysis equipment, and related expenses.

DSP advises that the latest year with complete information on blood tests actually administered is 2010. Thus, 2010 crash data is used to generate the estimate. DSP also advises that all tests administered under the bill are likely to be blood tests, due to existing regulations regarding the collection of blood and breath samples. Accordingly, the estimate assumes that all administered tests are blood tests.

The University of Maryland Shock, Trauma and Anesthesiology Research Center advises that, in 2010, there were 463 fatal crashes in Maryland and 30,500 personal injury crashes in Maryland. DSP further advises that about 10% of the crashes with injuries are presumed to be life-threatening and subject to testing under the bill. Of the total that could be subject to testing (3,513), about 3% would likely already be subject to blood tests for alcohol and/or drugs under current law. It is also estimated that about 30% of

drivers subject to testing will refuse the test. As a result, an additional 2,382 tests are likely required under the bill.

Currently, one full-time equivalent forensic chemist I can analyze about 300 blood samples annually to determine blood alcohol concentration and drug content. Due to chain-of-custody requirements, one scientist must handle a sample from start to completion; batch processing is not appropriate. Thus, eight additional forensic chemists are needed to complete the additional tests required by this bill. Two additional supervisors are needed to manage the significant increase in workload. Two office clerks are needed to process the documentation required with blood samples.

DSP also needs to purchase two gas chromatographs at \$100,000 each for drug testing and four fume hoods at \$20,000 each. Blood testing kits at \$200 per specimen are needed as well as postage for transmission of information at \$2.25 per specimen and blood collection kits at \$6 per specimen.

Hospital medical personnel draw the blood from a person when directed to do so by a police officer. DSP advises that hospital personnel draw samples from about 800 to 900 people annually, at a cost of \$12 per person. To provide 2,382 additional samples for blood alcohol and/or drug content analysis costs \$28,584 annually and \$21,438 in fiscal 2014, accounting for the bill's October 1, 2013 effective date.

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|---|--------------------|
| Positions | 12 |
| Salaries and Fringe Benefits | \$619,730 |
| Blood Withdrawal Services | 21,438 |
| Specialized Equipment | 280,000 |
| Other Operating Expenditures | <u>384,889</u> |
| Total FY 2014 State Expenditures | \$1,306,057 |

Future year expenditures reflect elimination of one-time-only equipment costs, full salaries with annual increases and employee turnover, as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: HB 462 of 2012, HB 1362 of 2008, and HB 417 of 2006, all similar bills, each received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore City, Montgomery County, Judiciary (Administrative Office of the Courts), Department of State Police, Office of Administrative Hearings, Maryland Department of Transportation, University of Maryland School of Medicine, National Highway Traffic Safety Administration, *lawinfo.com*, National Conference of State Legislatures, Department of Legislative Services

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