

Department of Legislative Services

Maryland General Assembly

2013 Session

FISCAL AND POLICY NOTE

Senate Bill 850

(Senators Forehand and Raskin)

Judicial Proceedings

Vehicle Laws - Accidents Resulting in Injury - Mandatory Drug and Alcohol Testing

This bill expands the type of injury that applies when a person, as directed by a police officer, is required to submit to a test of blood or breath, or both, after being involved in a motor vehicle accident. If the police officer detains a person because the officer has reasonable grounds to believe that the person committed an alcohol- and/or drug-related driving offense and the accident resulted in an injury to another person that requires the removal of the other person to a medical facility, rather than a life-threatening injury, then the detained person is required to submit to a test after being directed to do so by a police officer.

Fiscal Summary

State Effect: The bill's requirements can be met with existing resources as the bill generally codifies existing law enforcement policies.

Local Effect: The bill's requirements can be enforced with existing resources.

Small Business Effect: None.

Analysis

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 An initial refusal to take a test that is withdrawn as specified by statute is deemed not to be a refusal.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 the Motor Vehicle Administration (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 at least 0.08 but less than 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.

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: The University of Maryland Medical Systems (UMMS) advises that the bill substantially increases the number of drivers required to submit to breath and/or blood testing and that the estimated cost for UMMS is \$85.33 for each visit. The Department of Legislative Services disagrees with this estimate as the Department of State Police (DSP) advises that its policy is to require any driver involved in a motor vehicle accident with injuries to take a test of blood or breath, if the officer has reasonable grounds to believe that the motorist was driving under the influence of alcohol

or was impaired by alcohol, drugs, or a controlled dangerous substance. As the direction to take a test would include those motorists who are taken to a medical facility, even as a precaution, this estimate assumes that the bill's requirements can be met with existing resources. DSP further advises that, as a practical matter, it is not possible to actually force a noncompliant, combative person to submit to a directed test of blood or breath and medical personnel do not force a syringe into an actively resistant person, due to the possibility that the syringe would break in the person's arm.

Additional Information

Prior Introductions: None.

Cross File: HB 627 (Delegate Valentino-Smith, *et al.*) - Judiciary.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, University of Maryland Medical System, National Conference of State Legislatures, National Highway Traffic Safety Administration, Department of Legislative Services

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