

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 722 (Senator Lee)
Judicial Proceedings

Motor Vehicles – Alcohol– or Drug–Related Driving Offenses – Testing
Requirement

This bill requires a police officer who has reasonable grounds to believe that a person involved in a motor vehicle accident resulting in death or life-threatening injury has been driving or attempting to drive while under the influence of alcohol; while impaired by alcohol; while impaired by drugs and/or drugs and alcohol; or while impaired by a controlled dangerous substance (CDS) to provide a signed declaration stating as such to medical personnel. On receipt of the signed statement, medical personnel must perform a breath and/or blood test, regardless of whether the person consents.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Implied Consent to Be Tested

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, if the person is detained by a police officer on

suspicion of committing an alcohol- and/or drug-related driving offense. 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 detains the person due to a reasonable belief 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 CDS.

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

However, a person may not be compelled to submit to a test to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures. For a test refusal, an offender's license or driving privilege must be suspended by the Motor Vehicle Administration for 270 days for a first offense and two years for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal, unless the driver participates in the Ignition Interlock System Program for at least one year.

A police officer is required to advise a person detained on suspicion of an alcohol- and/or drug-related driving offense of the additional criminal penalties that may be imposed if the person is convicted of an alcohol- and/or drug-related driving offense and knowingly refused to take a test requested at the time of the suspected violation. 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 the requested test, the

person is subject to a penalty in addition to any other penalty that may be imposed for the alcohol- and/or drug-related driving conviction. A person who knowingly refuses to take a test of blood or breath under these circumstances is subject to maximum penalties of imprisonment for two months and/or a fine of \$500. The court may not impose the additional penalty unless the State's Attorney serves notice of the alleged test refusal on the defendant or the defendant's counsel before acceptance of a plea of *nolo contendere* or guilty, or at least 15 days before a circuit court trial or 5 days before a District Court trial, whichever is earlier.

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; (3) obtain a search warrant, unless exigent circumstances exist; and (4) 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 test for drugs or CDS is admissible as evidence. However, there are no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

Drug Recognition Expert Investigation

A test for drug or CDS content relating to an alcohol- and/or drug-related driving offense (1) may not be requested unless the law enforcement agency of which the officer is a member has the capacity to have such tests conducted *and* (2) may only be requested by a police officer who is a trainee, has been trained, or is participating directly or indirectly in a program of training, as specified. That training program has to be designed to train and certify police officers as drug recognition experts (DREs) and be conducted by a law enforcement agency of the State or other law enforcement agency, as specified – either in conjunction with the National Highway Traffic Safety Administration (NHTSA) or as a program of training that is substantially equivalent to the requirements of the Drug Recognition Training Program developed by NHTSA.

If a police officer determines that a driver's impairment is more substantial than is indicated by a low blood alcohol concentration test and/or there is other evidence of impairment by a drug or CDS, the driver may be detained on suspicion of driving while impaired by a drug or CDS. However, only a DRE may administer the 12-step evaluation used to investigate whether a driver is impaired by a drug or CDS. After the evaluation, the DRE may request the driver to take a blood test to determine impairment by a drug or CDS. If the driver refuses, the officer must obtain a search warrant for administration of the blood test, unless exigent circumstances exist.

State Expenditures: The Department of Legislative Services notes that it is unclear whether specified tests may be performed without an individual's consent, even with the bill's required signed declaration from a police officer. To the extent the bill results in additional tests for the Maryland State Crime Laboratory that would not otherwise be performed, general fund expenditures for the Department of State Police increase. However, any potential impact is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 1205 (Delegate Malone, *et al.*) - Judiciary.

Information Source(s): Montgomery and Harford counties; City of College Park; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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