

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 1037 (Senator West)
 Judicial Proceedings

Courts - Impaired Operation of Vehicle or Vessel - Expert Witnesses and Evidence

This bill authorizes a police officer trained and certified as a drug recognition expert to testify as an expert witness on the ultimate issue of whether an individual was driving a vehicle or operating a vessel while impaired by a drug, a combination of drugs, a combination of drugs and alcohol, or a controlled dangerous substance (CDS). The bill also establishes that, in a prosecution for specified offenses, if the results of a test indicate a person has a delta-9-tetrahydrocannabinol (THC) concentration of 5 nanograms per milliliter or more, the results must be treated as *prima facie* evidence that the person was driving a vehicle or operating a vessel while impaired by THC.

Fiscal Summary

State Effect: General fund expenditures for Department of State Police (DSP) outsourced testing increase by *at least* \$37,100 in FY 2025 (excluding analyst testimony costs), as discussed below; future years reflect annualization. General fund revenues and expenditures may increase minimally from penalties imposed in drug-related driving cases.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	37,100	49,500	49,500	49,500	49,500
Net Effect	(\$37,100)	(\$49,500)	(\$49,500)	(\$49,500)	(\$49,500)

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

Local Effect: Local revenues and expenditures may increase minimally from penalties imposed in drug-related driving cases. Otherwise, the bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: Notwithstanding any other provision of law, a police officer qualified as an expert witness may testify on the ultimate issue of whether an individual was driving a vehicle or operating a vessel while impaired by a drug, a combination of drugs, a combination of drugs and alcohol, or a CDS if the police officer has successfully completed a program of training that is (1) designed to train and certify police officers as drug recognition experts and (2) conducted by a law enforcement agency, either in conjunction with the National Highway Traffic Safety Administration (NHTSA) or as a program with substantially the same requirements as the Drug Recognition Training Program developed by NHTSA.

Current Law: 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.

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 the person is involved in a motor vehicle accident that results in death or a life-threatening injury to another person, and the person is detained by a police officer who has reasonable grounds to believe that the person has been driving or attempting to drive a motor vehicle 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.

In *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), the U.S. Supreme Court determined that, absent exigent circumstances, a blood test cannot be administered without the consent of a suspected drunk driver unless a search warrant is obtained. In *Missouri v. McNeely*, 569 U.S. 141 (2013), the U.S. Supreme Court held that the natural dissipation of alcohol from a suspected drunk driver's blood does not create a *per se* exigency; exigent circumstances must be evaluated on a case-by-case basis based on a totality of the circumstances.

Admissibility of Test Results and Evidentiary Presumptions

A test for alcohol, drugs, or a CDS is admissible as evidence. If a blood alcohol concentration test is admitted as evidence, statutory provisions establish the applicable evidentiary presumption based on the specific test results. There are currently no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

Subject to specified provisions, in any criminal trial in which a violation of specified alcohol- and/or drug-related motor vehicle or vessel offenses is charged or is an issue, a copy of a report of the results of a breath or blood test to determine alcohol concentration,

or a blood test to determine drug or CDS content, that is signed by the technician or analyst who performed the test is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test. To be admissible, the report must (1) identify the technician or analyst as a qualified person; (2) state that the test was performed with equipment approved by the State Toxicologist at the direction of a police officer; and (3) state that the result of the test is as stated in the report.

State Expenditures:

Department of State Police

DSP advises that the DSP crime lab is unable to comply with the bill's requirement to test for THC concentrations of 5 nanograms per milliliter or more because its toxicology unit is only approved to provide qualitative determinations regarding the presence of THC in a person's blood. According to DSP, the crime lab's accreditation does not permit it to report the *quantity* of THC present in a person's blood; it may only report *whether* THC is present in the person's blood.

Therefore, DSP advises that it must either (1) outsource all samples that are screened positive for THC to an approved laboratory for quantitative analysis or (2) obtain a modified accreditation that permits quantitative analysis of THC. To obtain this new level of accreditation, DSP advises that it would have to revalidate its method for quantitative analysis, purchase new equipment and consumables, and recalibrate existing equipment. After obtaining its modified accreditation, DSP would need to provide applicable training to existing staff and would potentially need to hire additional staff to complete the THC testing required under the bill.

DSP advises that it cannot obtain a new accreditation in time to comply with the bill's October 1, 2024 effective date. Thus, DSP must outsource all cases that are screened positive for THC to an approved laboratory for quantitative analysis. In 2023, DSP advises that the crime lab tested 402 samples for drug analysis, of which 208 (52%) samples screened positive for THC. According to DSP, the cost of outsourcing THC testing to an approved vendor is between \$215 and \$260 per sample. DSP advises that this does not include the cost of court testimony from the analyst that performed the testing for a particular sample, which can range from \$1,444 to \$2,721 per case.

General fund expenditures for DSP increase by *at least* \$37,128 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects contractual costs of \$238 per sample that DSP incurs for outsourcing quantitative THC testing to approved laboratories. It assumes that, of the samples the DSP crime lab tests each year for drug analysis, 208 samples screen positive for THC and must be sent to an outside laboratory for quantitative THC testing.

DSP advises, and the Department of Legislative Services (DLS) concurs, that the number of samples the DSP crime lab receives for drug analysis is likely to increase each year. To the extent that DSP must outsource additional samples to outside laboratories for THC testing, general fund expenditures increase further.

This estimate does not include any costs associated with court testimony that may need to be provided by analysts from outside laboratories that test samples for THC. DLS cannot reliably estimate how many cases for which quantitative THC testing is required will go to trial annually and require testimony from an analyst. However, for each case in which an analyst from an outside laboratory must testify, DLS estimates that general fund expenditures increase by \$2,100.

For illustrative purposes only, if 40% of the cases in which quantitative THC testing is performed by an outside laboratory (an estimated 62 cases in fiscal 2025 and 83 cases in subsequent years) require an analyst to testify in court, general fund expenditures would increase by an additional \$130,200 in fiscal 2025 and \$174,300 in subsequent years.

DSP advises that it intends to eventually bring quantitative testing of THC samples in-house at the DSP crime lab; however, this analysis assumes that the State crime lab outsources all quantitative THC testing to outside laboratories through at least fiscal 2029.

Other Agencies

The Judiciary and the Office of the Public Defender can implement the bill with existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1392 (Delegate Tomlinson, *et al.*) - Judiciary.

Information Source(s): Baltimore, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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