

**Department of Legislative Services**  
 Maryland General Assembly  
 2002 Session

**FISCAL NOTE**

House Bill 585 (Delegates Giannetti and Shriver)  
 Judiciary

**Drunk and Drugged Driving - Evidence - Tests for Alcohol, Drugs, or Controlled Dangerous Substances**

This bill makes a driver’s refusal to take a test for alcohol, drugs, or controlled dangerous substances a criminal offense punishable by up to one year’s imprisonment, a maximum fine of \$1,000, or both, and an assessment of 12 points against the driver’s license. The bill also provides that a person may be compelled to submit to a test.

**Fiscal Summary**

**State Effect:** Potential significant general fund revenue increase from fines and hearing fees. Potential significant general fund expenditure increase for additional trials and incarceration. Transportation Trust Fund (TTF) revenues increase by \$196,900 in FY 2003 due to increased revenue from license reinstatements. Out-years reflect annualization. TTF expenditures increase by \$497,100 in FY 2003 for staffing costs associated with processing test refusals, license revocations, and reinstatements. Out-years reflect annualization, salary increases, inflation, and additional equipment.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	\$39,400	\$52,500	\$52,500	\$52,500	\$52,500
SF Revenue	196,900	262,500	262,500	262,500	262,500
GF Expenditure	-	-	-	-	-
SF Expenditure	497,100	635,400	646,900	658,800	671,300
Net Effect	(\$260,800)	(\$320,400)	(\$331,900)	(\$343,800)	(\$356,300)

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

**Local Effect:** Potential minimal increase in local expenditures from the incarceration penalty provision of this bill.

**Small Business Effect:** None.

---

## **Analysis**

**Bill Summary:** The bill repeals the right of a person not to be compelled to submit to a test for an alcohol- and/or drug-related driving offense. Any person who drives a motor vehicle on a highway or other public use property is deemed to have consented to a test if that person is detained on reasonable grounds of driving or attempting to drive a motor vehicle: (1) while under the influence of alcohol; (2) while impaired by alcohol; (3) while so far impaired by any combination of drugs and alcohol that the person may not operate a vehicle safely; (4) while impaired by a controlled dangerous substance; (5) in violation of an alcohol restriction; or (6) after ingestion of any alcohol while driving a commercial vehicle. The detaining officer must advise the person that, on receipt of the officer's sworn statement that the person was so charged and refused a test, the Motor Vehicle Administration (MVA) must impose specified suspension sanctions related to a test refusal. The officer must also advise the person of notice and hearing requirements.

The bill repeals the requirement that a person must be involved in an accident resulting in life-threatening injury or death to be subject to detention by a police officer and direction to submit to a test. The bill specifically prohibits a person from refusing to take a test if so directed by a police officer. The bill makes the driver's refusal to submit to a test a misdemeanor and subjects the violator to a maximum fine of \$1,000, imprisonment for up to a year, or both. If a person is convicted of the violation of refusing to take a test, the MVA is required to assess 12 points against the driver's license.

The bill prohibits a court from staying a judgment or placing a defendant on probation for a criminal violation of an alcohol- and/or drug-related driving offense or the criminal offense of refusing to take a required test, if the defendant was convicted or received probation before judgment for these offenses within the preceding five years.

**Current Law:** A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. This applies to a person who is detained by a police officer on suspicion of committing an alcohol- or drug-related driving offense. However, a person cannot be compelled to submit to a test or analysis 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.

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 that the person permit a test to be taken. The police officer must 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. An offender's license or driving privilege must be suspended by the MVA for 120 days for a first offense and one year 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.

If the person stopped by the police officer is unconscious or otherwise incapable of refusing to take a test, the officer must obtain prompt medical attention, arrange for removal of a person to a medical facility, if necessary, and 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 to not 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.

## **State Revenues:**

### *Judiciary*

According to the MVA and the District Court, in fiscal 2001, there were 35,962 cases of alcohol- and/or drug-related violations. Out of that number, 8,308 people who were convicted refused to take a test to determine alcohol- and/or drug concentration.

Under the bill, those who refuse to take a test would be subject to a maximum fine of \$1,000. However, because it is difficult to predict the deterrent effect of the penalties established for refusing a test, a precise estimate of the potential revenue increase cannot be made. Moreover, it is expected that many offenders would not be fined the maximum amount. As a point of reference, general fund revenues could increase by as much as \$8,308,000 if every person who refused an alcohol- and/or drug concentration test in 2001 was fined the maximum amount.

### *Administrative Hearings*

General fund revenues could increase by \$39,375 in fiscal 2003. For administrative hearings, the MVA charges each individual \$15. Fiscal 2003 revenues are based on 3,500 reinstatement cases and account for the bill's October 1, 2002 effective date. Future years reflect annualization.

### *Department of Transportation*

The MVA estimates that 7,000 cases for reinstatement would be generated from the refusal cases annually. The MVA currently processes a total of 7,000 reinstatement cases annually. These are reinstatement cases generated from all possible reasons for license revocation, not just test refusal. The Department of Legislative Services (DLS) believes that it is unlikely that reinstatement cases will increase by 7,000 annually as a result of this bill. The DLS estimate is based on 3,500 new reinstatement cases annually. The MVA charges \$75 to reinstate a license. Fiscal 2003 revenue would be \$196,900, which accounts for the bill's October 1, 2002 effective date. Out-year revenues would annualize to \$262,500, assuming no changes in the reinstatement fee or in the caseload.

### **State Expenditures:**

#### *Department of Public Safety and Correctional Services*

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

#### *Department of Transportation*

TTF expenditures would increase by \$497,075 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of hiring two customer service agents and one nurse administrator to process test refusals, license revocations, and license reinstatements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses including contractual services so that the MVA can pay the Office of Administrative Hearings for each new hearing anticipated under this bill.

Salaries and Fringe Benefits	\$98,651
Contractual Services	368,190
Other Operating Expenses	<u>30,234</u>
<b>Total FY 2003 State Expenditures</b>	<b>\$497,075</b>

Future year expenditures reflect: (1) full year salaries with a 3.5% increase in fiscal 2004 and each year thereafter, with 3% turnover; and (2) 1% annual increase in contractual services for administrative hearings.

In 2001, 8,308 people refused tests of blood and breath. About 36% requested hearings. The MVA estimates there would be 2,991 hearings from people who refuse tests. In 2001, the MVA sent out 6,140 notices of revocation for point accumulation. About 36% of that number requested hearings. The MVA anticipates 2,210 hearings related to license revocations due to accumulation of points, for a total of 5,201 hearings resulting from the bill. The MVA expects to pay the Office of Administrative Hearings \$358,869 in fiscal 2003 (\$92 for each requested hearing, accounting for the October 1 start date). Other costs are related to mailing certified and regular mail notices for each license revocation and reinstatement.

A person who refuses to take a test is also subject to a 12-point assessment against his or her license. The MVA is required to revoke a license with an assessment of 12 points. TTF expenditures could increase from additional hearings that cost \$92 each and other expenditures associated with monitoring the additional revocations. DLS advises that TTF expenditures could decrease due to greater compliance from those required to take a test, resulting in fewer license revocations and suspensions.

The District Court advises that the bill could have a potentially significant impact. The mandatory penalties for second and subsequent convictions could cause more defendants to plead not guilty and more trials could occur. The District Court advises that additional judges, courtroom staff, and facilities may be needed because of this bill.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

## **Additional Information**

**Prior Introductions:** A substantially similar bill, HB 834 of the 2001 session, was withdrawn after a hearing in the Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2002  
ncs/cer

---

Analysis by: Karen D. Morgan

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510