

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 724 (Senator Giannetti, *et al.*)
Judicial Proceedings

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 and/or a maximum fine of \$1,000 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 minimal general fund revenue and expenditure increase due to the bill's penalty provisions. The Motor Vehicle Administration (MVA) and the State Police could handle the bill's requirements with existing resources.

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 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 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 and/or imprisonment for up to a year. 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 specified alcohol- and/or drug-related driving offenses 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 may not 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.

Refusal to submit to a breath or blood test at the request or direction of a police officer who has reasonable grounds is admissible evidence in a prosecution for an alcohol- or drug-related driving offense.

If a person was tested and the result indicated a blood alcohol concentration of 0.08 or more, the MVA must suspend the driver's license for 45 days for a first offense. For a second or subsequent offense, the MVA must suspend the driver's license for 90 days.

The MVA must revoke a license with an assessment of 12 points.

With a conviction of an alcohol- or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the MVA. A person convicted of driving under the influence or under the influence per se is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of from one to three years. A repeat conviction within five years requires a mandatory minimum penalty of imprisonment from five to 10 days or community service from 30 to 60 days, as well as a mandatory alcohol abuse assessment. A conviction for lesser included offenses subjects the violator to a fine of \$500 and/or imprisonment not exceeding two months. However, for repeat offenders maximum prison terms increase to a year. If an offender was transporting a minor at the time of the alcohol- or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Background: This bill is identical to a bill sponsored by the House Special Committee on Drug and Alcohol Abuse (HB 375 of 2004).

During the 2003 interim, that committee heard testimony indicating that under the Maryland Vehicle Law, there is no incentive to look for drugs if the driver tests positive for alcohol, since there is no additional penalty if a driver tests positive for both drugs and alcohol, and a conviction for drugged driving carries lesser penalties than a conviction for driving under the influence of alcohol.

State Revenues:

Judiciary

According to the District Court, in fiscal 2003 there were 65,627 cases of alcohol- and/or drug-related violations. According to the State Police, about 7,000 people refuse on an annual basis 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.

State Expenditures:

Department of State Police

The State Police advise that they operate under the assumption that everyone who is stopped and requested to take a test of blood or breath will consent to the test. As a result, the State Police should be able to handle the bill's requirements within existing resources.

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. The number of people convicted of this offense is expected to be minimal.

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 2005 are estimated to range from \$14 to \$58 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 \$350 per month.

Department of Transportation

The MVA advises that it will need five additional positions and that Transportation Trust Fund expenditures will increase to \$532,272 in fiscal 2005 to handle the bill's requirements. The Department of Legislative Services (DLS) advises, however, that additional staff people will likely not be needed to comply with this bill and that its requirements can be handled with existing resources.

In the first place, under current law, drivers who refuse a test are subject to suspension for 120 days for a first offense and a suspension of one year for a second or subsequent offense. The MVA is already processing suspensions for the class of drivers who refuse to take a test after being stopped for an alcohol- or drug-related offense. Under this bill, the class of drivers that refuses a test would be subject to license revocation. The procedures required for license suspension and revocation are relatively similar. Both require notification by mail and the notification of restrictions on the driving record and processing of an administrative appeal if requested by the driver. DLS does not believe that the MVA needs additional resources to shift the function of license revocation to those drivers who likely would have been suspended and requested hearings under current law anyway.

In the second place, DLS advises that the number of drivers who could refuse a test for an alcohol- or drug-related driving offense is likely to decline. This was not accounted for at all in the MVA's estimate. In fact, the MVA could experience some savings due to the deterrent effect of this bill. The magnitude and impact of the bill's deterrent effect cannot be reliably predicted, but its existence must be accounted for in determining whether additional resources are needed.

In the third place, DLS advises that a large portion of those who are stopped by an officer who requests the driver to take a test of blood or breath, are exhibiting signs of driving impairment that could subject those stopped to an alcohol- or drug-related driving charge, whether a test is taken or not. A charge of driving under the influence of alcohol, under the influence of alcohol per se, or driving while impaired by a controlled dangerous substance all require an assessment of 12 points against the driver's license and license revocation by the MVA. A charge of driving while impaired by alcohol or while impaired by drugs or drugs and alcohol requires an assessment of eight points against the driver's license and license suspension by the MVA. As a result, the MVA is already processing administrative sanctions against a large portion of those stopped for an alcohol- or drug-related driving offense based upon a conviction for the underlying offense. Even if a large number of people accept a test of blood or breath under this bill, many of those whose tests indicate the required blood alcohol concentration would be people who would have to be processed by the MVA anyway.

In summary, it appears that the bill will basically require a shift in work by the MVA, as opposed to a workload increase.

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 \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 437/SB 399 from the 2003 session. HB 437 was referred to the Judiciary Committee, where it received an unfavorable report. SB 399 was referred to the Judicial Proceedings Committee and the bill was heard, but then subsequently withdrawn. An identical bill, HB 585 of the 2002 session, was referred to the Judiciary Committee, where it received an unfavorable report. A substantially similar bill, HB 834 of the 2001 session, was withdrawn after a hearing in the Judiciary Committee.

Cross File: None. However, HB 375 and SB 573 are identical bills. HB 375 is referred to the Judiciary Committee and SB 573 is referred to the Judicial Proceedings Committee.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2004
mh/jr

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