

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 650

(Senator Giannetti, *et al.*)

Judicial Proceedings

Judiciary

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**Drunk and Drugged Driving - Test Refusal - Enhanced Criminal Penalties**

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This bill establishes, upon conviction for an alcohol- and/or drug-related driving offense, an additional criminal penalty for an individual who knowingly refuses to take a test at the time of the suspected violation after being detained and requested to do so by a police officer.

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**Fiscal Summary**

**State Effect:** Potential general fund increase due to the bill's monetary penalty provision. Potential significant increase in general fund expenditures for additional trials. Minimal increase in general fund expenditures as a result of the bill's incarceration provision.

**Local Effect:** Potential minimal increase in expenditures due to the bill's penalty provision.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill requires a police officer 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 a maximum fine of \$500, imprisonment for up to two months, or both. 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.

**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- 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 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 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. 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 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 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.

The 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- and/or drug-related driving offense.

A person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol per se;
- impaired by alcohol;
- impaired by drugs, or drugs and alcohol; or
- impaired by a controlled dangerous substance.

With a conviction for an alcohol- and/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 one to three years. A repeat conviction within 5 years requires a mandatory minimum penalty of imprisonment from 5 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 is 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:** According to the National Conference of State Legislatures, blood and breath test refusal rates vary by jurisdiction. Data from the Traffic Injury Research Foundation indicate that nationally, more than 20% of arrested drivers refuse a test. In Maryland, the State Police report a total of 22,597 people arrested for alcohol and/or drugged driving violations in calendar 2004. Of those arrests, 7,125 people, or 31.5%, refused to take a requested test.

To increase the number of drivers who will take a blood or breath test, 17 states have enacted stronger civil or criminal penalties for alcohol or drug test refusal. Fourteen of the 17 states have imposed criminal penalties for test refusal (Alaska, Arkansas, California, Delaware, Florida, Indiana, Minnesota, Nebraska, New Jersey, New York, Ohio, Rhode Island, Tennessee, and Vermont). 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. During their 2004 legislative sessions, the states of Alaska, Florida, Maryland, New Jersey, Rhode Island, South Carolina, South Dakota, and Virginia considered legislation to strengthen the penalties for test refusal.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

## **State Expenditures:**

*Judiciary:* General fund expenditures for the District Court could increase significantly under this bill. According to the State Police, 7,125 people refused tests of blood or breath in calendar 2004. If that number of people refused tests under this bill, those defendants could elect to contest the additional criminal penalties that could be imposed. Although the number of trials for alcohol and/or drugged driving violations is not likely to increase, this could result in trials that would consume more judicial and clerical time. Although the bill could have a deterrent effect, it is likely that a substantial portion of people already likely to refuse a test would continue to do so under this bill's provisions.

*Department of Transportation:* The MVA advises that it would cost \$10,086 to update existing forms and handbooks. However, the Department of Legislative Services advises that because the MVA must revise its forms annually to include various law changes, reprinting is simply a cost of doing business and could be handled with MVA's existing resources.

*Public Safety and Correctional Services:* General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal. The Division of Parole and Probation advises that enactment of the bill could place more offenders under the supervision of the division. The actual cost for supervision of offenders assigned to the Drinking Driver Monitor Program is \$203 per year. That cost is not expected to change due to the provisions of this bill.

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 2006 are estimated to range from \$17 to \$65 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 \$310 per month.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. 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 \$33 to \$119 per inmate in fiscal 2006.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 103 (Delegate Simmons, *et al.*) – Judiciary.

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

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Analysis by: Karen D. Morgan

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510