

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 181  
Judiciary

(Delegate Kelly)

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**Hunting - Shooting of Another While Under the Influence of Alcohol or Drugs -  
Required Test**

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This bill requires an individual who a police officer has reasonable grounds to believe shot and killed or injured another individual while carrying a firearm to hunt while intoxicated or under the influence of alcohol or any narcotic drug to submit to an alcohol and/or drug test. A person who refuses such a test is subject to a civil penalty of up to \$2,500.

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**Fiscal Summary**

**State Effect:** None. The bill codifies existing practices as the Maryland State Police currently administer alcohol and drug tests for allied agencies when necessary. Also, it is assumed that this bill would apply in a limited number of cases, as the Department of Natural Resources (DNR) and the State Police estimate that historically there have been a small number of hunting accidents that result in death or injury.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill provides that a breath or blood test may be administered in a prosecution for a violation of the prohibition on carrying a firearm for hunting while intoxicated for the purpose of determining alcohol concentration and narcotic drug content of the person's blood.

“Test” means a test of a person’s breath or of one specimen of a person’s blood to determine alcohol concentration, a test or tests of one specimen of a person’s blood to determine the drug or controlled dangerous substance content of the person’s blood, or both.

A police officer directing a test for determining alcohol concentration must have reasonable grounds to believe that the test is administered within two hours, or four hours for narcotic content, after the person being tested shot and killed or injured another person.

Breath tests must be administered by a qualified person with the equipment approved by the postmortem examiner’s toxicologist. The police officer directing the test may not administer the test of breath. Blood must be drawn by a qualified medical person using similarly approved equipment. Certified statements by the medical person are *prima facie* evidence of the person’s qualifications and that the blood was properly obtained and is admissible without the presence or testimony of the qualified medical person who obtained the blood. If the State offers the statement as evidence without the testimony of the medical person, it must provide notice and a copy of the statement to the defendant at least 30 days prior to trial. The defendant may require that the person attend the trial and must file notice to the court and the State in writing no later than 20 days before trial. If proper notice is provided, the statement is inadmissible without the testimony of the medical person. Failure to provide the notice constitutes a waiver of the right to require the medical person’s presence.

Certified statements of the toxicologist are also admissible without the testimony of the toxicologist. The defendant may require the attendance of the toxicologist and must file a request for a subpoena at least 20 days prior to trial. If the district court loses jurisdiction, another subpoena must be filed at least 20 days prior to trial in the circuit court.

The person tested is permitted to have a physician of the person’s own choosing administer additional tests; if no test is offered or requested by the officer, the person may request one or more of the tests. Medical personnel performing a test required by the bill are not liable for civil damages as the result of any act or omission related to the test, not amounting to gross negligence.

The reports prepared and signed by the technician or analyst who performed the tests are admissible as substantive evidence without the testimony of the technician or analyst. The State must provide notice of its intent to use the report and a copy of the report to the defendant no later than 30 days prior to the start of trial. The defendant may require the analyst or technician to be present at trial and must provide notice to the State and the court.

The alcohol concentration is measured by: (1) grams of alcohol per 100 milliliters of blood; or (2) grams of alcohol per 210 liters of breath. If the amount shown in the analysis is measured using another unit, the court may convert the measurements into grams of alcohol per milliliters of blood.

Evidence of a test is not admissible if it is not obtained pursuant to this Act. Refusal to submit to a test is admissible at trial.

**Current Law:** A person may not carry a firearm to hunt any wild bird, mammal, amphibian, or reptile while intoxicated or under the influence of alcohol or any narcotic drug.

There is no requirement for a hunter to submit to an alcohol or drug test. Current law requires a driver of a motor vehicle to submit to a test if the person is involved in a motor vehicle accident resulting in the death of, or a life threatening injury to, another person, under specified conditions.

**Background:** According to DNR, there were 118 hunting-related accidents, including 11 fatalities, from fiscal 2000 through 2004. (See **Exhibit 1**.) In 2004, there were two fatalities from accidental shootings (the third fatality was a self-inflicted injury involving a crossbow); both of the accidental shootings involved the victim being mistaken for game. There is no indication of the number of persons, if any, who may have been under the influence at the time of the accident.

**Exhibit 1  
Hunting Incidents  
Fiscal 2000 – 2004**

<u>Year</u>	<u>Total Number of Accidents</u>	<u>Accidents from Falls, etc.*</u>	<u>Accidental Shootings**</u>	<u>Total Fatalities</u>	<u>Fatalities from Shooting</u>
FY 2000	17	7	10	4	2
FY 2001	18	15	3	1	0
FY 2002	30	19	11	2	0
FY 2003	27	16	11	1	1
FY 2004	26	9	17	3	2
<b>Total</b>	<b>118</b>	<b>66</b>	<b>52</b>	<b>11</b>	<b>6</b>

\*Falls from tree stands, ricochet, and accidents not involving a direct shooting with a firearm.

\*\*Accidental shooting does not include firearms falling and discharging or barrel obstruction.

The Administrative Office of the Courts knows of only five instances of persons charged with violating the prohibition on carrying a firearm to hunt while intoxicated or under the influence of drugs.

**State Expenditures:** This bill is not expected to affect State expenditures. DNR police, when suspecting a hunter or boater is under the influence, routinely take the individual into custody and transport him or her to the nearest police station to be tested. The Maryland State Police advise that it is routine procedure to assist other police agencies with drug and alcohol testing and that assisting in these matters would not require any additional manpower or equipment.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Department of State Police, Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2005  
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