

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1521 (Chairman, Judiciary Committee) (By Request – Departmental – Crime Control and Prevention, Office of and State Police)

Judiciary

Criminal Procedure - Drugged Driving - Chemical Testing

This departmental bill authorizes the use of a urine sample to test for the presence of drugs or controlled dangerous substances in drivers suspected of committing an alcohol-and/or drug-related driving offense. The bill provides that a police officer, police employee, or qualified medical person is authorized to administer a urine test. Notice and hearing procedures and administrative sanctions relating to refusal to take a test of blood or breath or a test result indicating impairment are applied to a test of a person's urine. A commercial driver's license holder is subject to disqualification for refusal to submit to a urine test for drugs or controlled dangerous substances.

Fiscal Summary

State Effect: Minimal decrease in general fund expenditures to process urine tests by the Department of State Police. Minimal increase in Transportation Trust Fund (TTF) expenditures for training of law enforcement personnel.

Local Effect: Minimal increase in expenditures for training of law enforcement personnel.

Small Business Effect: The Department of State Police and the Governor's Office of Crime Control and Prevention have determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: A test or tests of urine may be administered and taken to determine the drug or controlled dangerous substance content of the person's urine. The urine must be taken within four hours after the accused person is apprehended. This applies to prosecution for the following offenses:

- driving in violation of an alcohol and/or drug restriction on the driver's license;
- driving in violation of alcohol- and/or drug-related provisions applicable to commercial vehicle drivers;
- driving while under the influence of alcohol, under the influence of alcohol per se, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance;
- homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol per se, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance;
- manslaughter by motor vehicle or vessel;
- life-threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes.

A police officer or police employee may obtain a specimen of urine from a person arrested for driving while impaired or under the influence of drugs or controlled dangerous substances. A qualified medical person may obtain a specimen of urine if the test would not jeopardize the health or well-being of the person being tested and if directed to do so by a police officer who has reasonable grounds to suspect that the person has committed an alcohol- and/or drug-related driving offense.

A person must be required to submit to a test or tests if the person is involved in a motor vehicle accident that results in the death of, 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 committed an alcohol- and/or drug-related driving offense. To determine drug or controlled dangerous substance content, the type of test is a specimen of the person's urine or one specimen of the person's blood.

The administrative sanctions for refusal to take a test of blood are applied to refusal to take a urine test. Before the Motor Vehicle Administration (MVA) may apply administrative sanctions, the police officer who detained the person must notify the person of the sanctions for test refusal and the opportunity to request a hearing within

specified time frames. This also applies to individuals who drive commercial motor vehicles.

The Department of State Police may adopt regulations for examination and certification of individuals trained to administer urine tests and for training police officers or employees on procedures to obtain and preserve a specimen of urine.

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 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 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 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 of refusal to take a test 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. 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.

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.

A person who violates the provision of driving while impaired by a controlled dangerous substance is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or imprisonment for up to one year. Maximum penalties for second or subsequent offenses range from fines of \$2,000 to \$3,000 and imprisonment terms from two to three years. A person who commits this offense subsequently within 5 years of a previous offense is subject to mandatory imprisonment penalties ranging from 5 to 10 days, is required to undergo a comprehensive drug abuse assessment, and may be required to participate in a court-approved and a Department of Health and Mental Hygiene certified

drug program. The MVA must assess 12 points against the license after a conviction for this offense and the license is subject to revocation.

Background: A similar bill (HB 372) was sponsored by House Special Committee on Drug and Alcohol Abuse in 2004. During the 2003 interim, the special committee heard testimony indicating that the problem of drivers impaired by drug use is a serious offense that is rarely identified or prosecuted. The testimony indicated that Maryland and Texas are the only two states that limit driver drug testing to blood. The committee also heard testimony that indicated that the use of illegal drugs accounts for 90% of the problem of drugged driving. Testing technology has advanced significantly and rapid urine and saliva tests are available and inexpensive to use. Breath and hair tests for drug detection are in the development stages.

At one time, the State authorized the use of urine tests to detect alcohol concentration in motor vehicle drivers. The authority to conduct urine tests was repealed by Chapter 164 of 1977.

State Expenditures: The Judiciary advises that 1,321 charges of driving or attempting to drive while impaired by a controlled dangerous substance were filed in fiscal 2004. No fiscal impact from this bill is expected for the Judiciary.

TTF expenditures could increase minimally to train law enforcement officers in the collection and preservation of urine samples. Law enforcement units are attached to the Maryland Port Administration, the Mass Transit Administration, and the Maryland Transportation Authority.

Implementation of this bill could result in minimal savings for the State Police. The State Police advise that blood tests for drugs or controlled dangerous substances are not analyzed in Maryland, but sent to a lab in Virginia. The average cost for a blood test ranges from \$150 to \$200. About 300 tests are analyzed annually at a maximum cost of \$60,000. If all those tests were converted to urine tests, the lab charges would be about \$25 per test, including any necessary rescreening of samples. The general fund expenditure for controlled dangerous substance testing would be \$7,500 under this bill.

The State Police also advise that a fee of \$13.50 is paid for each blood sample withdrawn by qualified medical personnel for a test. If law enforcement personnel collected and preserved 300 urine samples for blood testing annually, instead of requesting medical personnel to withdraw blood, that could result in an additional savings of \$4,050.

For illustrative purposes only, if all blood testing for controlled dangerous substances was converted to urine testing, and specimens were collected and preserved by police

officers and police employees, total annual savings could be \$56,550 compared to current procedures. The savings would be slightly offset by any necessary expenditure for the training of police officers and employees to implement the bill.

Local Fiscal Effect: Expenditures could increase minimally for local law enforcement agencies to provide training for the collection and preservation of urine samples.

Small Business Effect: The Department of State Police advises that current available personnel would not be able to test all urine samples. The department would continue to send some samples to a private lab for analysis. Though this bill could create additional business opportunities for Maryland labs to analyze urine specimens, the department would probably continue its contract with a lab in Chantilly, Virginia that currently conducts blood sample analysis. Accordingly, this bill is projected to have minimal or no impact on Maryland small businesses.

Additional Information

Prior Introductions: A similar bill, HB 372 of 2004, was given an unfavorable report by the Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Governor's Office of Crime Control and Prevention, Maryland Department of Transportation, Department of Legislative Services

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Analysis by: Karen D. Morgan

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