

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 644
Judiciary

(Delegate Simmons)

**Drunk and Drugged Driving - Refusal to Take a Blood or Breath Test -
Prohibition**

This bill prohibits a person who is detained on suspicion of an alcohol- and/or drug-related driving offense from knowingly refusing to take a test of blood or breath if ● the person has previously been convicted of an alcohol- and/or drug-related driving offense; ● additional penalties were imposed for the test refusal relating to the previous conviction; and ● the detention for the suspected alcohol- and/or drug-related driving offense resulted in a conviction.

In addition to any penalty imposed for the alcohol- and/or drug-related driving offense, or additional penalties imposed for test refusal, any person who is convicted of knowingly refusing to take a test of blood or breath under the provisions of this bill is subject to a maximum fine of \$1,000 and/or imprisonment for up to one year.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

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

Small Business Effect: None.

Analysis

Current Law: 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.

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.

A police officer is required 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.

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- and/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.

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: 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.

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 2007 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 \$1,974 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 \$341 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 2007.

Additional Information

Prior Introductions: None.

Cross File: SB 760 (Senator Jimeno) – Judicial Proceedings.

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

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mll/jr

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