

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

Senate Bill 763 (Senator Hooper, *et al.*)
 Judicial Proceedings

Drugged Driving - Test - Police Officers

This bill repeals a requirement that a test for drugs or controlled dangerous substances may not be requested, required, or directed unless the law enforcement officer has been trained, is a trainee, or is directly or indirectly participating in a qualified program, as specified in statute, that is designed to train and certify police officers as drug recognition experts. Accordingly, any law enforcement officer can request, require, or direct such a test as long as the officer's law enforcement agency has the capacity to have such tests conducted.

The bill has prospective application and may not be applied to any test for drugs or controlled dangerous substances requested, required, or directed before the bill's October 1, 2007 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by \$167,900 in FY 2008. Out-years include annualization and inflation. No effect on revenues.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	167,900	217,800	220,700	225,200	229,900
Net Effect	(\$167,900)	(\$217,800)	(\$220,700)	(\$225,200)	(\$229,900)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal increase in expenditures to process additional blood tests for drug content.

Small Business Effect: Potential minimal.

Analysis

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

- 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 "test" is a test of the person's breath or one specimen of the person's blood to determine alcohol concentration, a test or tests of one specimen of a person's blood to determine drug or controlled dangerous substance content, or both a test of the person's breath or a test of one specimen of blood to determine alcohol concentration and a test or tests of one specimen of the person's blood to determine drug or controlled dangerous substance concentration of the person's blood.

A test for drug or controlled dangerous substance content may not be requested, required, or directed by a police officer unless the officer's law enforcement agency has the capacity to have such tests conducted. The tests may only be requested, required, or directed by a police officer who is a trainee, has been trained, or is directly or indirectly participating in a program designed to train and certify police officers as drug recognition experts. The program must be conducted by a law enforcement agency of the State or a local government or a law enforcement agency that is specified in statute. The training program must be conducted in conjunction with National Highway Traffic Safety Administration or conducted as a training program that is substantially equivalent to the Drug Recognition Training Program developed by the National Highway Traffic Safety Administration.

The test or tests may only be requested, required, or directed by a police officer who has been trained and certified as a drug recognition expert if the police officer is a member of, and certified as, a drug recognition expert by one of the State or local law enforcement agencies specified in statute. The test or tests also may only be requested, required, or

directed by a police officer who is a trainee or direct or indirect training participant, if the police officer is a member of and designated as a trainee or participant in a training program by the head of one of the State or local law enforcement agencies, as specified in statute.

State Expenditures: The Department of State Police (DSP) advises that in calendar 2006, it arrested 754 of drivers who appeared to be driving erratically but who had breath test results that indicated a blood alcohol concentration level below 0.07. Under current law, only an officer who is a certified drug recognition expert or is undergoing training to become a certified drug recognition expert can request, require, or direct that an erratic driver take a blood test when the breath test results do not indicate impairment. If the officer suspects drug impairment, but is not a drug recognition expert or trainee, then an expert must be contacted. If no drug recognition expert is available, then the detained person must be released. Under the provisions of this bill, if the officer is a member of an agency with the capacity to have tests for drugs or controlled dangerous substances conducted (DSP and county law enforcement agencies in Maryland have this capacity) then the officer who detains an erratic driver whose breath test does not indicate impairment could request, require, or direct that a blood test be taken for drug impairment.

Based on calendar 2006 arrests, DSP advises that an additional 754 blood test kits at a cost of \$5 each would be needed to meet the requirements of this bill. All blood specimen test kits would be sent to the DSP Chemical Test for Alcohol Unit to be processed and then sent to the test vendor in Virginia. Blood analysis averages about \$200 per specimen.

General fund expenditures in DSP could increase \$167,915 in fiscal 2008, accounting for the bill's October 1, 2007 effective date, due to the additional blood tests and substance analysis that could be requested, required, or directed under this bill. The expenditure increase is for additional blood test kits, increased contractual costs for withdrawal of blood samples by hospital personnel, analysis of blood tests, and one additional office secretary to process the paperwork for the additional tests. DSP would also process blood test kits for local law enforcement agencies. The Secretary would complete paperwork and invoice local law enforcement agencies for the additional tests that they submit to DSP for analysis. The estimate includes the salary, fringe benefits, one-time start-up costs, and other ongoing operating expenses.

Positions	1
Salary and Fringe Benefits	\$35,387
Blood Test Kits	2,828
Blood Withdrawal Services	5,655
Substance Analysis	113,100
Other Operating Expenses	<u>10,945</u>
Total FY 2007 State Expenditures	\$167,915

Future year expenditures reflect: ● annualization; ● full salary with 4.5% annual increases and 3% turnover; and ● 1% increases in ongoing operating expenses.

Local Expenditures: DSP advises that all local law enforcement agencies could spend a combined total of \$227,550 for purchase and analysis of up to 1,110 additional blood kits. However, DSP also advises that the fiscal impact would depend on the number of arrests made where the officer suspected drug impairment and the availability of drug recognition experts in the local jurisdiction. In a jurisdiction where police officers who are drug recognition experts are readily available, the provisions of this bill would not necessarily mean an increase in blood tests. In a jurisdiction where relatively few officers have trained or are in training to become drug recognition experts, then the provisions of this bill could mean an increase in the number of blood tests requested, required, or directed.

Anne Arundel County advises that the bill would not have a fiscal impact. Prince George's County advises that the bill could have a minimal fiscal impact due to the purchase of additional blood tests. On the other hand, Montgomery County advises that, based on the number of eligible arrests in fiscal 2006, the bill could require the purchase of about 200 additional blood test kits and each test would cost at least \$150.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 454 of 2006, which received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Baltimore City, Allegany County, Montgomery County, Prince George's County, Talbot County, Wicomico County, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Department of Public Safety and Correctional Services, Department of Legislative Services

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