

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 1362

(Delegate Conway, *et al.*)

Judiciary

Vehicle Laws - Fatality or Life-Threatening Injury - Tests for Alcohol, Drugs, or
 Controlled Dangerous Substances

This bill specifies that a person must submit to a test of blood or breath, or both, if a police officer detains the person due to reasonable grounds to believe that the person contributed to causing a motor vehicle accident that results in death or life-threatening injury to another person.

The bill repeals the requirement that the police officer must have reasonable grounds to believe that the person committed an alcohol- and/or drug-related driving offense if the person was involved in an accident that results in life-threatening injury or death before directing that the person submit to a test of blood and/or breath.

Fiscal Summary

State Effect: General fund expenditures increase by \$441,700 for the Department of State Police in FY 2009 for one-time equipment expenditures and additional positions to process blood samples for alcohol and drug content. Out-years include annualization and inflation.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	441,700	178,800	186,800	195,100	203,900
Net Effect	(\$441,700)	(\$178,800)	(\$186,800)	(\$195,100)	(\$203,900)

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 alcohol and drug content.

Small Business Effect: None.

Analysis

Bill Summary: This bill also applies provisions that require a police officer to direct that a blood test be taken if a person is unconscious or otherwise incapable of refusing to take a test to those situations where a police officer has reasonable grounds to believe that a person contributed to causing a motor vehicle accident that resulted in death or life-threatening injury to another person. The detaining officer must advise a person who is directed to take a test of blood or breath under the provisions of this bill of the administrative sanctions that must be imposed for test refusal or if the test result indicates a blood alcohol concentration of 0.08 or higher. The police officer must also advise the person of notice and hearing requirements.

If the person was detained while operating a commercial vehicle or holding a commercial driver's license, the requirement that the Motor Vehicle Administration disqualify a person from driving a commercial motor vehicle applies if the police officer stopped or detained the person due to reasonable grounds to believe that the person contributed to causing a motor vehicle accident that resulted in death or life-threatening injury to another person. If a person who is licensed to drive a commercial vehicle refuses to take a test after being detained by a police officer who had reasonable grounds to believe that the person violated the prohibition on alcohol, but did not have reasonable grounds to believe that the person contributed to causing a motor vehicle accident that resulted in death or life-threatening injury to another person, then MVA is required to disqualify the person from driving a commercial vehicle, but may not impose a license suspension.

Current Law: A person must submit to a test of blood or breath, or both, as directed by a police officer if the person is involved in a motor vehicle accident that results in death or life-threatening injury to another person and the police officer detains the person due to a reasonable belief that the person was driving or attempting to drive 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;

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical

personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

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.

A person who is stopped by a police officer 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 permit a test to be taken. 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. Refusal to take a test is an "administrative per se" offense. An offender's license or driving privilege must be suspended by MVA for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle or who holds a commercial driver's license (even if not operating a commercial vehicle at the time of detention) is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for refusal unless the driver participates in the Ignition Interlock System Program for at least one year.

If, after being informed of the administrative sanctions that must be imposed and notice and hearing requirements, a person takes a breath or blood test that indicates an alcohol concentration of 0.08 or more at the time of testing, MVA must suspend the driver's license or privilege for 45 days for a first offense, and 90 days for a second or subsequent offense.

Enhanced criminal penalties apply 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 a requested test. A maximum penalty of imprisonment for two months and/or a fine of \$500 may be imposed in addition to the penalty for the underlying alcohol-and/or drug-related driving offense.

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 reports a total of 24,909 people arrested for alcohol and/or

drugged driving violations in calendar 2007. Of those arrests, 24,857 were requested to take a test and 6,758 people, or 27.1%, 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. Sixteen states have made refusal to submit to a blood alcohol test a separate crime (Alaska, Arizona, Arkansas, California, Idaho, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Hampshire, North Dakota, Oregon, Rhode Island, Vermont, and Virginia). 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 Fiscal Effect: General fund expenditures could increase \$441,660 in fiscal 2009 in DSP due to the substantial increase in testing that could be required by the bill. The expenditure increase is for two additional forensic chemists, blood analysis equipment, and related expenses.

DSP advises that, in 2006, there were 593 drivers involved in fatal motor crashes in Maryland. Of those drivers, about half were tested for alcohol and/or drugs. Under this bill, all drivers involved in fatal crashes would likely be tested, since the bill requires the testing of any person who the officer believes contributed to causing a life-threatening or fatal accident, regardless of any indication of alcohol or drug use. This would result in 297 additional tests for accidents with fatalities.

DSP advises that, in 2006, there were 37,483 personal injury crashes in Maryland. Of those crashes, 8,200 were presumed to be life-threatening because a driver and/or passengers were transported to a trauma center. This estimate assumes that half of the 8,200 injured were passengers and half (4,100) would be drivers that an officer might reasonably believe contributed to the cause of an accident. DSP historical experience indicates that a significant portion, possibly 66%, of these drivers would likely be tested under current law, due to reasonable grounds to believe that alcohol and/or drug violations occurred. Under these assumptions, about 1,394 new tests of drivers involved in accidents with severe injuries could be required under the bill. The total number of new tests of alcohol and/or drug content that could be required and analyzed for fatal and life-threatening accidents under this bill is 1,691.

Currently, one full-time equivalent Forensic Chemist II can analyze 700 to 800 blood samples annually to determine blood alcohol content and about 700 samples to determine

drug content. Two additional forensic chemists would be needed to complete the additional tests required by this bill.

Under current law, DSP takes relatively few blood samples to test for drug content. The samples that are taken are sent to a lab in Virginia for analysis. Because of the additional number of drug tests that would be required under this bill, the contractual arrangement would be terminated and testing of all samples would instead be completed in the DSP lab. This would result in a savings of \$1,125 in fiscal 2009 and a savings of \$1,500 annually in the out-years.

Because all testing would be completed by DSP under this bill's provisions, DSP would need to purchase one gas chromatograph at \$150,000 for drug testing, an automated sampler at \$50,000 for barcoding of samples and a Fourier Transform Infrared to break down molecules for analysis at a cost of \$100,000. To store samples, one commercial refrigerator (\$5,000) and one smaller refrigerator (\$1,000) would be needed. A pipetter/diluter at a cost of \$1,000 would also be needed to dilute samples for testing.

Hospital medical personnel draw the blood from a person when directed to do so by a police officer. Hospital personnel draw samples from about 800 to 900 people annually, at a cost of \$10 per person. To provide 1,691 additional samples for blood alcohol and/or drug content analysis would cost about \$16,910 annually and \$12,683 in fiscal 2009, accounting for the bill's October 1 effective date.

Positions	2
Salaries and Fringe Benefits	\$110,971
Blood Withdrawal Services	12,683
Specialized Equipment	309,400
Contract Termination Savings	(1,125)
Other Operating Expenditures	<u>9,731</u>
Total FY 2007 State Expenditures	\$441,660

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 417 of 2006, which received an unfavorable report from the House Judiciary Committee. A similar bill, HB 939 of 2005, was heard by Judiciary but then withdrawn.

Cross File: None.

Information Source(s): Anne Arundel County, Garrett County, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Health and Mental Hygiene, Traffic Injury Research Foundation, National Conference of State Legislatures, Department of Legislative Services

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ncs/ljm

Analysis by: Karen D. Morgan

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