

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1278
 Judiciary

(Delegate McComas)

Vehicle Laws - Drugged Driving - Test

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 police officer can request, require, or direct such a test or tests as long as the police officer has reasonable grounds to believe that the person was driving or attempting to drive while (1) impaired by drugs and/or drugs and alcohol; or (2) impaired by a controlled dangerous substance. A test or tests may also be requested, required, or directed if the police officer has evidence of use by the person of alcohol, a drug, a combination of one or more drugs and alcohol, or a controlled dangerous substance.

Fiscal Summary

State Effect: Expenditures increase by approximately \$8.0 million in FY 2011 for capital expansion of the Department of State Police (DSP) toxicology facility to accommodate the additional functions required by the bill. General fund expenditures increase in DSP by \$1.3 million in FY 2012 for additional personnel and equipment to process additional blood tests for drug content. Out-years include annualization and inflation. Enforcement can be handled with existing resources. No effect on revenues.

(\$ in millions)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	1.3	1.3	1.2	1.2
Bond Exp.	8.0	0	0	0	0
Net Effect	(\$8.0)	(\$1.3)	(\$1.3)	(\$1.2)	(\$1.2)

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

Local Effect: Minimal increase in expenditures to the extent that blood tests are submitted to DSP for processing. Enforcement can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

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

- impaired by drugs and/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 (NHTSA) or conducted as a training program that is substantially equivalent to the Drug Recognition Training Program developed by NHTSA.

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: Expenditures increase by \$8 million in fiscal 2011 for expansion of the toxicology facility to process the additional required tests and for additional staff, likely through general obligation bonds. The estimate assumes that construction for facility expansion takes place in fiscal 2011. Due to space and security considerations, additional staff could not be hired nor could additional equipment be acquired until the expansion is completed. This estimate assumes that all additional personnel and equipment are acquired by fiscal 2012.

DSP has a toxicology unit that is staffed to process about 300 blood samples annually. Based on arrest rates for calendar 2009, it is estimated that 1,245 additional tests kits would need to be purchased and processed to meet the bill's requirements. Processing costs are \$120 per blood sample.

DSP advises that, due to chain of custody requirements, blood samples may not be batch processed; therefore, one scientist only must process a sample from the beginning of the process. The toxicology unit comprises two rooms. One room has a gas chromatography-mass spectrometer. Two additional spectrometers would likely be needed to process the additional tests required by the bill. The other room is used for sample preparation and extraction and houses three staff scientists (two forensic scientists and one supervisor).

General fund expenditures in fiscal 2012 increase by \$1,306,843. 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, any officer with reasonable grounds to suspect drug impairment or has evidence of drug impairment, as specified, 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 content.

The expenditure increase is for nine forensic scientists, one supervisor, one office clerk, additional blood test kits, increased contractual costs for withdrawal of blood samples by hospital personnel, and analysis of blood tests. DSP may also process blood test kits for

local law enforcement agencies. The office clerk would complete paperwork and invoice local law enforcement agencies for the additional tests that they submit to DSP for analysis. The estimate includes the salaries, fringe benefits, one-time start-up costs, and other ongoing operating expenses.

Positions	11
Salary and Fringe Benefits	\$928,885
Blood Test Kits	6,225
Substance Analysis	149,400
Gas Chromatography Equipment	200,000
Other Operating Expenses	<u>22,333</u>
Total FY 2012 State Expenditures	\$1,306,843

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% increases in ongoing operating expenses.

Laboratory Expansion: Included in this fiscal estimate is the impact of expanding the toxicology unit to accommodate additional staff and testing. DSP advises that the construction of the existing lab, which was completed in 2006, cost about \$30 million. The lab capacity was determined based on a projected annual processing of 300 samples. As noted above, the facility has two rooms – one room (about 600 square feet) houses gas chromatography equipment and other instruments. The other room, which is about 450 square feet, has room for three scientists who conduct extractions. DSP advises that the extraction room would have to be expanded more than three times to accommodate the additional staff and testing required by the bill. The unit was designed to process up to 300 samples annually. In fiscal 2008, 154 samples were processed. In fiscal 2009, 209 samples were processed.

Local Fiscal Effect: Baltimore City and Kent, Montgomery, Washington, and Worcester counties advise that the bill's provisions can be met with existing resources.

Additional Information

Prior Introductions: SB 763 of 2007, a similar bill, was heard by the Senate Judicial Proceedings Committee but received no further action. SB 454 of 2006, another similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Department of State Police; Morgan State University; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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