

Department of Legislative Services  
 Maryland General Assembly  
 2012 Session

FISCAL AND POLICY NOTE

House Bill 462 (Delegate Kach)  
 Judiciary

Vehicle Laws - Accidents - 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 detaining the person has 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 \$680,000 for the Department of State Police (DSP) in FY 2013 for one-time equipment expenditures and additional positions to process blood samples for alcohol and drug content. Out-years reflect annualization, elimination of one-time costs, and inflation. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	680,000	727,000	765,400	793,700	823,200
Net Effect	(\$680,000)	(\$727,000)	(\$765,400)	(\$793,700)	(\$823,200)

*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:** The 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 (MVA) 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 MVA 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 and/or drugs and alcohol; or
- impaired by a controlled dangerous substance;

If a police officer directs that a person be tested, 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 (1) obtain prompt medical attention; (2) arrange for removal of a person to a medical facility, if necessary; and (3) 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.

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 between 0.08 and 0.15 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. If the test result is 0.15 or more, MVA must suspend the driver's license for 90 days for a first offense. For a second or subsequent offense, the license suspension must be for 180 days.

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 latest information available from the National Highway Traffic Safety Administration, all states have some form of implied consent statute but administrative and criminal penalties vary widely for refusing to submit to a test. Every state but Nevada has administrative sanctions for test refusal. Maryland and at least 14 other states (Alaska, California, Florida, Kansas, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, and

Vermont) have criminal sanctions for refusal to submit to a test for drivers age 21 and older. Three states (Arkansas, Arizona, and Michigan) have criminal penalties only if the driver is younger than 21.

In at least 16 states, refusal to submit to a blood alcohol test is a separate crime (Alaska, Arizona, Arkansas, California, Idaho, Iowa, Kansas, Michigan, New Hampshire, New Jersey, New York, 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 Expenditures:** General fund expenditures for DSP could increase \$679,975 in fiscal 2013 due to the substantial increase in testing. This estimate accounts for the bill's October 1 effective date and reflects four additional forensic chemists, one supervisor, one office clerk, blood analysis equipment, and related expenses.

DSP advises that, in 2010, there were 463 fatal crashes in Maryland and 30,500 personal injury crashes in Maryland. DSP further advises that about 10% of the crashes with injuries are presumed to be life-threatening and subject to testing under the bill. Of the total that could be subject to testing (3,513), about one-half were tested for alcohol and/or drugs under current law. It is also estimated that about 30% of driver's subject to testing will refuse the test. As a result, an additional 1,152 tests are likely required under the bill.

Currently, one full-time equivalent forensic chemist I can analyze about 300 blood samples annually to determine blood alcohol content and drug content. Due to chain of custody requirements, one scientist must handle a sample from start to completion. Batch processing is not appropriate. Thus, four additional forensic chemists are needed to complete the additional tests required by this bill. One additional supervisor is needed to manage the significant increase in workload. An office clerk is also needed to process the documentation required with blood samples.

DSP also needs to purchase one gas chromatograph at \$100,000 for drug testing and two fume hoods at \$20,000 each. Blood testing kits at \$150 per specimen are needed as well as postage for transmission of information at \$2.25 per specimen and blood collection kits at \$6 per specimen.

Hospital medical personnel draw the blood from a person when directed to do so by a police officer. DSP advises that hospital personnel draw samples from about 800 to 900 people annually, at a cost of \$12 per person. To provide 1,152 additional samples for

blood alcohol and/or drug content analysis costs about \$13,824 annually and \$10,368 in fiscal 2013, accounting for the bill's October 1 effective date.

Positions	6
Salaries and Fringe Benefits	\$390,404
Blood Withdrawal Services	10,368
Specialized Equipment	140,000
Other Operating Expenditures	<u>139,203</u>
<b>Total FY 2013 State Expenditures</b>	<b>\$679,975</b>

Future year expenditures reflect elimination of one-time-only equipment costs, full salaries with annual increases and employee turnover, as well as annual increases in ongoing operating expenses.

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### **Additional Information**

**Prior Introductions:** HB 1362 of 2008 and HB 417 of 2006, both similar bills, each received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Garrett and Montgomery counties, Judiciary (Administrative Office of the Courts), Department of State Police, Office of Administrative Hearings, National Highway Traffic Safety Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2012  
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