

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1082  
Judiciary

(Delegate Krebs, *et al.*)

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**Drugged Driving - Evidence - Drug Recognition Expert**

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This bill expands the circumstances under which a police officer is authorized to *require* or *direct* that a test for drug or controlled dangerous substance content be taken by repealing the requirements that the officer's law enforcement agency have the capacity to conduct such a test and that the officer be a certified drug recognition expert, a trainee, or a participant in certified drug recognition training, in order to do so.

The bill also specifies that, if a police officer is authorized to *request* a drug or controlled dangerous substance content test, the police officer's opinion as to whether a person driving or attempting to drive a vehicle was impaired by a drug or controlled dangerous substance is admissible in a criminal proceeding. The admission of drug or controlled dangerous substance test results or a police officer's testimony, however, does not limit the introduction of other evidence pertaining to whether a person was impaired by a drug or a controlled dangerous substance.

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**Fiscal Summary**

**State Effect:** Any increase in testing and changes in enforcement procedures resulting from the bill's provisions can be handled with existing resources.

**Local Effect:** Any changes in enforcement procedures can be handled with existing resources.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** Under the bill, if a person is involved in a motor vehicle accident that results in the death of, or life-threatening injury to, another person, and the officer is authorized, as specified by statute, to require the driver to submit to a test to determine drug or controlled dangerous substance content, then the officer may require that test without being a certified drug recognition expert, a trainee, or a participant in a drug recognition training program and without being a member of a law enforcement agency with the capacity to conduct such a test.

If a police officer is otherwise authorized to direct that blood be withdrawn for a test of drug or controlled dangerous substance content, then the police officer may issue that direction without being a certified drug recognition expert, a trainee, or a participant in a drug recognition training program and without being a member of a law enforcement agency with the capacity to conduct such a test.

If a police officer stops or detains a person because the officer has reasonable grounds to believe that the person committed an alcohol- and/or drug-related driving offense, the officer may request that a test be permitted to be taken to determine drug or controlled dangerous substance content only if the officer is a member of a law enforcement agency with the capacity to have such a test conducted and the officer is a certified drug recognition expert, a trainee, or a participant, directly or indirectly, in a certified drug recognition training program, as specified.

**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 if the person 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.

**Background:** According to NHTSA, the *2007 National Roadside Survey* indicated that more than 16% of weekend, nighttime drivers tested positive for illegal, prescription, or over-the-counter medications. In a NHTSA study completed in 2009, among fatally injured drivers nationwide, 18% tested positive for at least one drug. Generally, marijuana is the most prevalent illegal drug detected in impaired drivers, fatally injured drivers, and motor crash victims. Other implicated drugs include benzodiazepines, cocaine, opiates, and amphetamines.

The National Institute on Drug Abuse (NIDA) reports that the enforcement of laws against drugged driving has lagged behind enforcement against drunk driving, in part, due to technological limitations affecting the ability to reliably quantify drug levels and the resulting impairment. For illicit drugs, there is no agreed-upon standard for impairment that has been reliably demonstrated. Exacerbating the difficulty is that some drugs tend to remain in the human body in detectable levels for a period of days or even weeks after ingestion.

Seventeen states have enacted drug content *per se* laws (Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Nevada, North Carolina, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and Wisconsin). The laws prohibit the operation of a motor vehicle with any detectable level of a prohibited drug or its metabolites in the driver's blood. In other states, drugged driving is linked to impairment of the driver's ability to operate a motor vehicle.

NIDA also reports that 44 states and the District of Columbia have implemented Drug Evaluation and Classification Programs, which train police officers as drug recognition experts.

## **Additional Information**

**Prior Introductions:** HB 1278 of 2010, a similar bill, received an unfavorable report from the House Judiciary Committee. SB 763 of 2007, another 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):** Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, National Highway Traffic Safety Administration, National Institute on Drug Abuse, Department of Legislative Services

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