

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 649
Judiciary

(Delegate Stocksdales, *et al.*)

Drunk and Drugged Driving - Death or Life-Threatening Injury - Mandatory
Tests

This bill requires a police officer to direct that a person involved in an alcohol- and/or drug-related motor vehicle accident resulting in death or life-threatening injury submit to a test of blood or breath or both.

Fiscal Summary

State Effect: None. The bill codifies existing practice.

Local Effect: None. The bill codifies existing practice.

Small Business Effect: None.

Analysis

Bill Summary: If a police officer has reasonable grounds to believe that a person involved in a motor vehicle accident resulting in death or life-threatening injury has been driving or attempting to drive (1) while under the influence of alcohol; (2) while impaired by alcohol; (3) while so far impaired by any combination of drugs and alcohol that the person may not safely operate a vehicle; (4) while impaired by a controlled dangerous substance; or (5) after the ingestion of any alcohol while operating a commercial vehicle, then the police officer *must* direct that person to submit to a test, as directed by the officer. If so directed, the person must submit to a test of the person's breath or a test of one specimen of blood, to determine alcohol concentration. The person must also submit to a test or tests of one specimen of the person's blood to determine the drug or controlled dangerous substance content of the person's blood. Statutory provisions governing the qualifications of the person administering these tests apply to each test directed by a police officer.

Current Law: 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. 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.

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 police officer who stops a driver 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 the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures. An offender's license or driving privilege must be suspended by the Motor Vehicle Administration (MVA) for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal unless the driver participates in the Ignition Interlock System Program for at least one year.

A police officer is required to advise a person detained on suspicion of an alcohol- and/or drug-related driving offense of the additional criminal penalties that may be imposed if the person is convicted of an alcohol- and/or drug-related driving offense and knowingly refused to take a test requested at the time of the suspected violation. 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 the requested test, the person is subject to a penalty in addition to any other penalty that may be imposed for the alcohol- and/or drug-related driving conviction. A person who knowingly refuses to

take a test of blood or breath under these circumstances is subject to maximum penalties of imprisonment for two months and/or a fine of \$500. The court may not impose the additional penalty unless the State's Attorney serves notice of the alleged test refusal on the defendant or the defendant's counsel before acceptance of a plea of *nolo contendere* or guilty, or at least 15 days before a circuit court trial or 5 days before a District Court trial, whichever is earlier.

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 the 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.

With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by MVA. A person convicted of driving under the influence, under the influence of alcohol *per se*, or while impaired by a controlled dangerous substance is subject to maximum penalties of a fine ranging from \$1,000 to \$3,000 and/or an imprisonment term of one to three years. A repeat conviction within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as well as a mandatory alcohol or drug abuse assessment.

A conviction for lesser included offenses subjects the violator to a fine of up to \$500 and/or imprisonment for up to two months. However, for repeat offenders maximum prison terms increase to one year. If an offender is transporting a minor at the time of the alcohol- and/or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Background: According to the National Conference of State Legislatures, blood and breath test refusal rates vary by jurisdiction. Historical national data have indicated that, generally, at least 20% of arrested drivers refuse a test. For example, in Maryland, the State Police reported a total of 22,383 people arrested for alcohol- and/or drugged-driving violations in calendar 2011. Of those arrests, 22,343 people were requested to take a test. Of that number, 6,493 people, or 29.1%, refused to take a requested test.

According to the latest information available from the National Highway Traffic Safety Administration, all states have some form of implied consent statute but vary widely with respect to the administrative and criminal penalties for refusing to submit to a chemical

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 blood alcohol 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.

Additional Information

Prior Introductions: SB 263 of 2002, a similar bill, was withdrawn after being heard in the Senate Judicial Proceedings Committee. Its cross file, HB 1233, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Carroll, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; National Highway Traffic Safety Administration; National Conference of State Legislatures; Department of Legislative Services

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mc/ljm

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