

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 959

(Senator Getty)

Judicial Proceedings

Drugged Driving - Drug Recognition Expert - Testimony

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 (CDS) 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 (DRE), 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 entitled to *request* a drug or CDS content test, a police officer who is certified as a DRE at the time the police officer conducted the evaluation may be qualified to testify in any case in which the testimony may be relevant. The police officer's opinion as to whether a person driving or attempting to drive a vehicle was impaired by one or more drugs or CDSs and the category of that drug or CDS may be admissible in a criminal proceeding. The bill deems the drug evaluation and classification protocol used by a DRE as generally accepted within the scientific community and based on generally accepted scientific principles. The admission of drug or CDS 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 CDS.

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.

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 police officer is authorized, as specified by statute, to require or direct the driver to submit to a test to determine drug or CDS content, then the officer may require or direct that a test be taken without being a certified DRE, 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If a police officer is otherwise authorized to direct that blood be withdrawn for a test of drug or CDS content, because the driver is unconscious or incapable of refusing to take a test, then the police officer may issue that direction without being a certified DRE, 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.

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 CDS.

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 CDS 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 CDS concentration in the person's blood.

A test for drug or CDS 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 DREs. 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: This bill is in response to a 2012 Circuit Court for Carroll County case in which a judge granted a motion by defendants that challenged the accuracy and reliability of assessments of driver impairment made by DREs. According to news reports, the judge issued a 37-page ruling in which he wrote that the training that DREs receive does not enable them to accurately observe the signs and symptoms of drug impairment. According to the Maryland State's Attorneys' Association, similar challenges to the protocols of DREs have occurred in Calvert, Frederick, Montgomery, and St. Mary's counties.

The National Institute on Drug Abuse (NIDA) reports that 44 states and the District of Columbia have implemented Drug Evaluation and Classification programs, which train police officers as DREs.

If a police officer determines that a driver's impairment is more substantial than is indicated by a low test of blood alcohol concentration and/or there is other evidence of impairment, the driver may be detained on suspicion of driving while impaired by a drug or CDS. However, only a DRE may administer a 12-step evaluation that is used to investigate whether a driver is impaired by a drug or CDS. After the 12-step evaluation, the DRE may request the driver to take a blood test to determine whether the driver ingested one or more drugs or CDSs.

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 vehicle crash victims. Other implicated drugs include benzodiazepines, cocaine, opiates, and amphetamines.

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 these states, it is not necessary to prove that ingestion of the drug impaired the driver's ability to operate a motor vehicle; the presence of the drug in the body is enough in and of itself to establish that the driver was impaired. Not all of these laws establish the same standards, however. According to the National Conference of State Legislatures, the Minnesota drug content *per se* law exempts marijuana. The laws of Nevada, Ohio, Pennsylvania, and Virginia establish content thresholds for certain drugs that range between two and five nanograms. In other states, including Maryland, drugged driving is linked to a demonstrated impairment of the driver's ability to operate a motor vehicle.

According to the District Court, in fiscal 2012, there were 7,245 guilty dispositions for drunk and/or drugged driving. Of those guilty dispositions, 211 were for driving while impaired by drugs and/or drugs and alcohol and 125 were for driving while impaired by a CDS.

Additional Information

Prior Introductions: HB 1082 of 2012, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: HB 765 (Delegate McDermott, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Carroll, Charles, and Frederick counties; Maryland State's Attorneys' Association; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; *Carroll County Times*; National Conference of State Legislatures; National Highway Traffic Safety Administration; National Institute on Drug Abuse; Department of Legislative Services

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