

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 970 (Senator Kagan, *et al.*)
Judicial Proceedings

Drugged Driving - Oral Fluid Tests - Pilot Program

This bill establishes a two-year pilot program to examine the testing of oral fluid samples by police officers who are drug recognition experts for the purpose of determining if a person is operating a motor vehicle while impaired by a controlled dangerous substance (CDS). The pilot program applies to (1) the Baltimore County Police Department; (2) the Montgomery County Department of Police; (3) the Prince George's County Police Department; and (4) the Ocean City Police Department. The bill requires the State coordinator for the Drug Recognition Expert Program to submit a report to the General Assembly regarding the data collected from the pilot program by December 1, 2018.

Fiscal Summary

State Effect: None. The bill only affects local government operations; however, the required report can be submitted with existing resources.

Local Effect: Minimal increase in local government expenditures to participate in the pilot program. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: "Oral fluid test" means the testing of the oral fluid of a driver who is the subject of a traffic stop for the purpose of detecting the presence of a CDS.

A police officer who has reasonable grounds to believe that a person is or has been driving or attempting to drive a motor vehicle while impaired by a CDS may request the person to

submit an oral fluid sample for testing by an officer who is a certified drug recognition expert. A requesting officer is required to advise the person being tested that neither a refusal to submit nor submitting the sample prevents or requires a subsequent blood test under State law.

The results of the oral fluid test must be used as a guide for a police officer in deciding whether charges should be filed, but they may not be used as evidence in any court action. Similarly, submitting to or a refusal to submit an oral fluid sample is not admissible as evidence in any court action, including a civil action. A refusal to submit to a test of oral fluid is not a violation of the State implied consent law. Submitting an oral fluid sample, however, does not relieve a person from the obligation under State law to submit to a blood test if required under State law.

Current Law: A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, 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 and/or drugs and alcohol; or
- impaired by a CDS.

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 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.

A test for drugs or CDS is admissible as evidence. However, there are no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

Background: According to the Foundation for Advancing Alcohol Responsibility, with the advent of state laws loosening penalties for and allowing legal access to marijuana, concern is growing for the increasing number of drivers who combine CDS and alcohol. No state has passed any comprehensive laws on what the foundation calls "polysubstance" abuse, but at least one state, California, has introduced legislation that would increase penalties.

Chapter 351 of 2015 states that if a court finds that the use or possession of marijuana was due to medical necessity, the court must dismiss the charge. Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. However, the law also established that the use or possession of

marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

Local Fiscal Effect: Montgomery County advises that most of the costs for the pilot program are covered by the manufacturers of the testing equipment, including training, instrumentation, laboratory analysis, and expert witness support. The county is responsible for the costs of the individual tests kits and laboratory confirmation of individual tests. These costs depend on the number of tests performed in each participating county, but Montgomery County estimates them to be \$10,000 in both fiscal 2017 and 2018, the duration of the pilot program under the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1367 (Delegates Valentino-Smith and Smith) - Judiciary.

Information Source(s): Montgomery County, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Foundation for Advancing Alcohol Responsibility, Department of Legislative Services

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min/kdm

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