

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 1150 (Senator Simonaire)
 Judicial Proceedings

Vehicle Laws - Accidents Resulting in Death - Mandatory Drug and Alcohol Testing (Danshaun's Law)

This bill expands the implied consent provision that applies to licensed drivers by specifying that any person who drives or attempts to drive a motor vehicle on a highway or private property used by the general public in Maryland is deemed to have consented to take a test if the person is detained for involvement in a motor vehicle accident that results in the death of another person. If a police officer detains a driver involved in such a motor vehicle accident, the driver is required to submit to a test of blood and breath or a test of blood as directed by the police officer. A person who refuses a test in spite of this direction is subject to administrative sanctions.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$786,100 in FY 2019. Future years reflect annualization, ongoing operating costs, and the elimination of one-time costs to purchase testing equipment. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	786,100	222,300	227,700	234,300	241,000
Net Effect	(\$786,100)	(\$222,300)	(\$227,700)	(\$234,300)	(\$241,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential minimal increase in expenditures to process additional blood tests for alcohol and drug content. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: 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 death before directing that the person submit to a test.

The detaining officer must advise a person who is required 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. A person involved in a motor vehicle accident with a fatality may submit a written request for an administrative hearing.

The bill also expands 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 was involved in a motor vehicle accident that resulted in the death of another person, and the person refused to take a test.

If the person was detained while operating a commercial vehicle, while holding a commercial driver's license, or while holding a commercial instructional permit, 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 drove a motor vehicle that was involved in an accident resulting in the death of another person.

Current Law:

Implied Consent to Be Tested

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 controlled dangerous substance (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. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

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. For a test refusal, an offender's license or driving privilege must be suspended by MVA for 270 days for a first offense and two years 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; (3) obtain a search warrant, unless exigent circumstances exist; and (4) 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.

Drug Recognition Expert Investigation

A test for drug or CDS content relating to an alcohol- and/or drug-related driving offense (1) may not be requested unless the law enforcement agency of which the officer is a member has the capacity to have such tests conducted *and* (2) may only be requested by a police officer who is a trainee, has been trained, or is participating directly or indirectly in a program of training, as specified. That training program has to be designed to train and certify police officers as drug recognition experts (DREs) and be conducted by a law enforcement agency of the State or other law enforcement agency, as specified – either in conjunction with the National Highway Traffic Safety Administration (NHTSA) or as a program of training that is substantially equivalent to the requirements of the Drug Recognition Training Program developed by NHTSA.

If a police officer determines that a driver's impairment is more substantial than is indicated by a low blood alcohol concentration test and/or there is other evidence of impairment by a drug or CDS, the driver may be detained on suspicion of driving while impaired by a drug or CDS. However, only a DRE may administer the 12-step evaluation used to investigate whether a driver is impaired by a drug or CDS. After the evaluation, the DRE may request the driver to take a blood test to determine impairment by a drug or CDS. If the driver refuses, the officer must obtain a search warrant for administration of the blood test, unless exigent circumstances exist.

Background: According to a 2016 article in the *Capital Gazette*, 14-year-old Danshaun Wells was struck and killed by a vehicle on July 15, 2016, as he was crossing the road in the area of Camp Meade Road and Baltimore Annapolis Boulevard in Linthicum, Maryland. According to the article, at the time, investigators did not find the driver (Jonathan T. Smalls) at fault and instead stated that the accident was caused by pedestrian error, as Wells was wearing dark clothing and was not in a crosswalk; drugs, alcohol, and/or speed were not believed to be a factor.

A search of public court records on *Maryland Judiciary Case Search* shows that Smalls subsequently pled guilty to several traffic offenses related to the incident, the most serious of which was failure to control vehicle speed on a highway to avoid collision; none of these was an alcohol- and/or drug-related driving offense.

State Expenditures: Under the bill, every driver involved in a fatal vehicle accident must submit to either (1) a test of breath *and* blood or (2) only a blood test. The bill applies this requirement regardless of whether a police officer has reasonable grounds to believe that the driver committed an alcohol- and/or drug-related driving offense.

The Department of State Police (DSP) advises that there were, on average, 494 fatal vehicle accidents per year between fiscal 2015 and 2017; on average, 119 of these accidents were alcohol related. DSP advises that most of the alcohol-related accidents involved a test of breath (not blood). Therefore, assuming all 494 drivers must submit to a blood test under the bill (instead of possibly only a breath test), and an average refusal rate of 40%, DSP advises that the bill results in 296 additional blood tests per year. DSP advises that it must hire two forensic chemists to perform additional testing under the bill, and that it must also purchase one additional screening equipment device and two additional testing equipment devices to handle the testing requests. Additionally, DSP advises that each blood test kit costs \$150. DSP further advises that any additional breath tests under the bill result in only an operational, rather than fiscal, impact.

The Department of Legislative Services (DLS) agrees that DSP realizes an increase in the number of testing requests under the bill. However, it is unclear how many *additional* blood tests must be performed under the bill. In fiscal 2017, the Maryland State Police Crime Laboratory analyzed 570 blood samples requested by DRE officers to determine the presence of drugs or CDS. It is assumed that this includes some portion of the average 494 fatal vehicle accidents per year; however, this information is not readily available. Further, DSP notes that the 494 accidents may also include those in which the driver was killed, which may *reduce* the number of blood tests conducted under the bill.

For illustrative purposes only, assuming 10% of the average 494 fatal vehicle accidents per year already involve a blood test for alcohol, CDS, and/or drugs, then 445 additional accidents may require a blood test under the bill. Assuming a 40% refusal rate, the bill results in an additional 267 blood tests. DLS advises that, because refusal rates fluctuate, the volume of additional blood test requests could be higher – for example, at a refusal rate of 30%, 312 tests would be done. Thus, DLS concurs in the need for *at least* two full-time forensic chemists.

Accordingly, DLS estimates that general fund expenditures for DSP increase by at least \$786,093 in fiscal 2019, which reflects the bill's October 1, 2018 effective date. This estimate reflects the cost for DSP to hire two full-time forensic chemists to conduct

additional blood testing under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes one-time costs to purchase one additional screening equipment device and two additional testing equipment devices in fiscal 2019 and the ongoing purchase of blood sample collection kits (300 on an annualized basis).

Position	2
Salary and Fringe Benefits	\$131,625
Screening and Testing Equipment	610,000
Blood Test Kits	33,750
Operating Expenses	<u>10,718</u>
Total FY 2019 DSP Expenditures	\$786,093

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses and the elimination of one-time costs. To the extent the bill results in additional testing beyond the estimate in this analysis, expenditures further increase.

Additional Information

Prior Introductions: HB 150 of 2013, a similar bill, received an unfavorable report from the House Judiciary Committee. HB 462 of 2012 also received an unfavorable report from the House Judiciary Committee. Similar bills were also introduced in 2008 and 2006.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of State Police; Maryland Department of Transportation; *Capital Gazette*; Department of Legislative Services

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