

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 559
(Senator Ready)
Judicial Proceedings

Drunk and Drugged Driving - Testing - Warrants

This bill generally specifies that a person may be compelled to take a test for alcohol, drug, or controlled dangerous substance (CDS) content relating to an alcohol- or drug-related motor vehicle or vessel offense as required by a valid warrant.

Fiscal Summary

State Effect: The bill does not materially affect governmental finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law: Section 10-302 of the Courts and Judicial Proceedings Article specifies that, in a prosecution for a violation of specified alcohol- and drug-related motor vehicle and vessel offenses, or for manslaughter by vehicle or vessel involving gross negligence, a test of the person's breath or blood may be administered for the purpose of determining drug and/or alcohol content.

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. Similarly, a person who operates or attempts to operate a vessel on the waters of the State is deemed to have consented to take a test of blood or breath for alcohol or drug content if the person is detained by a police officer who has reasonable grounds to believe that the person has been

operating or attempting to operate a vessel while under the influence of alcohol, while impaired by alcohol and/or drugs, or while impaired by a CDS.

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 the person is:

- involved in a motor vehicle accident that results in death or a life-threatening injury to another person, and the person is detained by a police officer who has reasonable grounds to believe that the person has been driving or attempting to drive a motor vehicle 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; or
- involved in an accident while operating or attempting to operate a vessel that results in death or a life-threatening injury to another person, and the person is detained by a police officer who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence of alcohol; 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.

In *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), the U.S. Supreme Court determined that, absent exigent circumstances, a blood test cannot be administered without the consent of a suspected drunk driver unless a search warrant is obtained. In *Missouri v. McNeely*, 569 U.S. 141 (2013), the U.S. Supreme Court held that the natural dissipation of alcohol from a suspected drunk driver's blood does not create a *per se* exigency; exigent circumstances must be evaluated on a case-by-case basis based on a totality of the circumstances.

Additional Information

Prior Introductions: SB 498 of 2020, a similar bill, passed the Senate and was referred to the House Judiciary Committee, but no further action was taken. Its cross file, HB 1529, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2021
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