

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 684

(Senators Kagan and West)

Judicial Proceedings

Vehicle Laws - Drugged Driving - Oral Fluid Tests

This bill authorizes a police officer who has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while impaired by a controlled dangerous substance (CDS) to request that the individual provide an oral fluid sample to be tested by a police officer who is a certified drug recognition expert. The results of the oral fluid test may not be used as the only guide for a police officer in deciding whether charges should be filed or as evidence in any court action. If the results of an oral fluid test indicate the presence of a specified amount of cannabis, the law enforcement agency must provide notice to the Motor Vehicle Administration (MVA) of the results of the test. On receipt of this notice, MVA must (1) for a first offense, suspend the driver's license for 45 days or (2) for a second or subsequent offense, suspend the driver's license for 90 days.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures for the Maryland Department of Transportation (MDOT) increase by \$61,000 in FY 2023 only. Otherwise, State expenditures are only affected to the extent that State law enforcement agencies utilize oral fluid testing under the bill, as discussed below. Revenues are not materially affected.

Local Effect: The bill is authorizing in nature; local government expenditures are only affected to the extent that local law enforcement agencies utilize oral fluid testing under the bill, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: “Authorized device” means a screening instrument that (1) uses an instrumented analyzer in which the sample and reagents are mixed, assays performed, and results interpreted within the analyzer; (2) has the capacity to record and store the results internally; (3) is capable of accurately recording each CDS being tested; and (4) completes the testing process within 15 minutes after collection of the sample. “Oral fluid test” means a test done on an authorized device 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.

The police officer requesting the sample must advise the individual that neither providing the sample nor refusing to provide the sample will prevent or require subsequent blood testing under State law. A refusal to submit to a test of oral fluid is not a violation of the State implied consent law; however, providing an oral fluid sample does not relieve an individual from the obligation under State law to submit to a blood test if required under the State implied consent law. The bill further specifies that providing or refusing to provide an oral fluid sample is not admissible in evidence in any court action, and no evidence pertaining to an oral fluid test may be used in a civil action.

If an individual provides an oral fluid sample for testing, the police officer must advise the individual that the individual may request that the sample be submitted for additional laboratory confirmation of the results. If an individual submits to additional laboratory confirmation, the results of the laboratory confirmation are admissible as evidence in a criminal proceeding.

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. 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 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.

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.

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.

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.

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.

State/Local Effect: TTF expenditures for MDOT increase by \$61,000 in fiscal 2023 for one-time MVA programming changes to reflect the bill's license suspension requirements. Any license suspensions resulting from the bill are not expected to materially affect TTF revenues.

Otherwise, as noted above, the bill is authorizing in nature. State and local law enforcement agencies that choose to utilize oral fluid testing likely incur costs related to testing equipment, test kits, and laboratory confirmation testing. For context, local jurisdictions in the State have historically estimated costs associated with implementing oral fluid testing programs ranging from roughly \$10,000 to \$40,000 annually, depending on the number of tests performed.

Additional Information

Prior Introductions: Bills with similar provisions were introduced in the 2016, 2017, and 2020 sessions. Mostly recently, SB 309 of 2020 passed the Senate as amended and was referred to the House Judiciary Committee, but no further action was taken. Its cross file, HB 808, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

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

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