

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1385
Judiciary

(Delegate Shoemaker)

Drunk and Drugged Driving - Testing - Warrants and Authorized Police Officers

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. In addition, the bill authorizes a police officer who has successfully completed specified advanced roadside impaired driving enforcement (ARIDE) training to request, require, or direct a person to take a test for drug or CDS content relating to an alcohol- and/or drug-related driving offense, as specified. Finally, the bill repeals the authorization for a police officer who is a *trainee* of or direct or indirect *participant* in a specified drug recognition expert (DRE) training program to request, require, or direct a test.

Fiscal Summary

State Effect: General fund expenditures for the Department of State Police (DSP) increase beginning in FY 2023, as discussed below. Revenues are not directly affected.

Local Effect: The bill is not expected to materially affect local government finances, as discussed below.

Small Business Effect: None.

Analysis

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. 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.

Testing for Drug and Controlled Dangerous Substance Content

A test for drug or CDS content relating to an alcohol- and/or drug-related driving offense may not be requested, required, or directed by a police officer unless the law enforcement agency of which the officer is a member has the capacity to have such tests conducted. Additionally, a police officer may not request, require, or direct a test for drug or CDS content in such circumstances unless the officer is a trainee, has been trained, or is participating directly or indirectly in a program of training that is (1) designed to train and certify police officers as DREs and (2) conducted by a law enforcement agency of the State

or other specified law enforcement agency – either in conjunction with the National Highway Traffic Safety Administration (NHTSA) or as a program of training with requirements that are substantially equivalent to the requirements of the Drug Recognition Training Program developed by NHTSA.

A police officer who is a trainee or participant in a DRE program must be a member of and designated as a trainee or participant by the head of one of a list of specified law enforcement agencies. Similar certification requirements apply to a police officer who has been trained as a DRE.

State Expenditures: Among other things, the bill expands the authorization to request, require, or direct a test to include specified law enforcement officers who are not trained DREs but who have completed ARIDE training. ARIDE, developed by NHTSA, is designed to train law enforcement officers to observe, identify, and articulate the signs of impairment related to drugs and/or alcohol. The course is not a substitute for DRE training and does not qualify or certify an individual as a DRE. According to DSP, 1,035 evaluations were conducted by Maryland DREs in 2021. DSP further advises that there are currently 174 DREs in the Maryland DRE program. In addition, DSP advises that 1,741 officers have been trained in ARIDE.

The bill is anticipated to result in an increase in the number of tests for drug or CDS content requested. However, DSP advises that the Toxicology Unit is currently operating at maximum capacity and cannot absorb additional blood drug casework. In November 2020, in response to the *2020 Joint Chairmen's Report*, DSP issued a [report](#) on the operations of the department's Toxicology Unit. According to the report, since 2017, toxicology case submissions have increased while the unit's testing output has decreased due to staffing turnover, resulting in a backlog of cases. DSP advises that, between 2017 and 2019, blood drug case submissions increased by 70%. According to DSP, the significant increase is believed to be partially due to a statewide increase in the number of officers trained in ARIDE, who are better able to identify drug-impaired drivers and are more likely to request DRE evaluations.

The Pikesville laboratory is currently the only laboratory in the State that conducts blood drug testing. DSP plans to expand Toxicology Unit operations to the Hagerstown laboratory and, once completed, the new Berlin laboratory. Currently, in order to address the existing backlog, DSP continues to outsource a portion of its blood drug cases at an average cost of approximately \$289 per kit.

To the extent that the bill results in a significant increase in blood drug cases, DSP advises that additional resources, including equipment and personnel, are needed. However, it is assumed that, in the short term, additional blood drug testing that may result from the bill is outsourced. *Under one illustrative scenario*, based on the current average cost per blood

drug kit, if the bill's changes result in an additional 200 tests per year, general fund expenditures for DSP increase by at least \$57,800 annually.

At such time that DSP expands its capacity to conduct in-house testing of blood drug cases to meet its existing caseload, and otherwise reduces its reliance on outsourcing, additional personnel and/or equipment may be needed to the extent that the bill results in a significant increase in blood drug cases. The timing of that transition is uncertain. *For illustrative purposes*, one-time costs associated with purchasing necessary equipment could total as much as \$500,000 or more, and costs associated with hiring a forensic chemist could total upward of \$100,000 annually.

The bill may result in minimal savings in overtime expenses to the extent that DREs no longer need to be requested to evaluate whether an individual should be requested to take a test for drug or CDS content. Any such impact, however, cannot be reliably estimated.

The bill is not otherwise expected to materially affect State finances. The Judiciary can handle any increase in court workloads with existing budgeted resources.

Local Expenditures: The bill may result in minimal savings in overtime expenses for local law enforcement agencies to the extent that DREs no longer need to be requested to evaluate whether an individual should be requested to take a test for drug or CDS content. Any such impact cannot be reliably estimated. However, the bill is generally not expected to materially affect local government finances.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Caroline and Montgomery counties; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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