

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 216

(Chair, Judicial Proceedings Committee)(By Request -
 Departmental - Health)

Judicial Proceedings

Judiciary

**Evidence - Approval of Breath and Blood Tests for Alcohol, Drugs, or Controlled
 Dangerous Substances**

This departmental bill transfers specified approval and oversight authority relating to breath alcohol and blood alcohol and drug tests in the investigation of specified motor vehicle and vessel offenses from the State Toxicologist in the Office of the Chief Medical Examiner (OCME) under the Postmortem Examiners Commission to the toxicologist in the Department of State Police (DSP) Forensic Sciences Division (FSD) and makes various conforming changes. Qualifications and approvals issued by the State Toxicologist before the bill’s effective date remain valid through the bill’s transfer of those functions to FSD.

Fiscal Summary

State Effect: General fund expenditures increase by \$127,500 in FY 2023 for DSP to hire a chief antemortem toxicologist, as discussed below. The Governor’s proposed FY 2023 budget includes funding for a toxicologist position for this purpose. Future years reflect annualization and the elimination of one-time costs. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	127,500	155,900	160,200	164,400	168,600
Net Effect	(\$127,500)	(\$155,900)	(\$160,200)	(\$164,400)	(\$168,600)

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

Local Effect: None.

Small Business Effect: The Maryland Department of Health (MDH) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: In an investigation of a violation of specified alcohol- and/or drug-related motor vehicle and vessel offenses, a test of the person's breath or blood may be administered for the purpose of determining alcohol concentration and/or drug or controlled dangerous substances (CDS) content. For a test of blood, the blood must be obtained by a qualified medical person using equipment approved by the State Toxicologist acting at the request of a police officer. A test of breath or blood must be conducted by a qualified person using equipment approved by the State Toxicologist acting at the request of a police officer. "Qualified person" means a person who has received training in the use of the equipment in a training program approved by the State Toxicologist and who is either a police officer, a police employee, an employee of OCME, or a person authorized by the State Toxicologist.

Admissibility of Test Results

Subject to specified provisions, in any criminal trial in which a violation of specified alcohol- and/or drug-related motor vehicle or vessel offenses is charged or is an issue, a copy of a report of the results of a breath or blood test to determine alcohol concentration, or a blood test to determine drug or CDS content, that is signed by the technician or analyst who performed the test is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test. To be admissible, the report must (1) identify the technician or analyst as a qualified person; (2) state that the test was performed with equipment approved by the State Toxicologist; and (3) state that the result of the test is as stated in the report.

Preliminary Breath Tests

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 under the influence of alcohol or while impaired by alcohol may, without making an arrest and prior to the issuance of a citation, request the individual to submit to a preliminary breath test to be administered by the officer using a device approved by the State Toxicologist.

Background: MDH advises that the State Toxicologist's oversight responsibilities with respect to breath alcohol testing and blood alcohol and drug testing for drunk and drugged driving investigations place a substantial burden on the State Toxicologist and are poorly aligned with OCME's mission, which is focused on postmortem investigations. In a November 2020 [report](#) on DSP-FSD Toxicology Unit operations issued in response to the 2020 *Joint Chairmen's Report*, DSP proposed transitioning oversight functions for blood and breath testing from OCME to FSD and creating a PhD-level antemortem toxicologist position within FSD to oversee the department's toxicology program. DSP's toxicology

program includes both blood testing for alcohol and drugs conducted by FSD, as well as the statewide breath alcohol testing program coordinated by the department's Chemical Testing for Alcohol Unit.

State Expenditures: While the bill relieves the State Toxicologist of certain responsibilities, the bill does not have a fiscal impact on MDH. However, DSP must hire a chief toxicologist within FSD to assume oversight of the department's breath alcohol and blood alcohol and drug testing programs.

Accordingly, general fund expenditures for DSP increase by \$127,500 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring a chief antemortem toxicologist within FSD to oversee DSP toxicology operations. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$120,157
Operating Expenses	<u>7,343</u>
Total FY 2023 State Expenditures	\$127,500

Future year expenditures reflect a full salary with annual increases and employee turnover, as well as annual increases in ongoing operating expenses. According to the Department of Budget and Management, the Governor's proposed fiscal 2023 budget includes funding for such a position, beginning July 1, 2022.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of State Police; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - January 12, 2022
rh/aad Third Reader - February 10, 2022
Revised - Budget Information - February 17, 2022

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES
Maryland Department of Health
Session 2021

BILL TITLE: Courts and Judicial Proceedings – Approval of
Breath and Blood Tests

BILL #: SB 216

PREPARED BY:
(Program\Unit): PHS/OCME

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND

SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This proposal would have no revenue or expense impact and would not impact small businesses.