

**Department of Legislative Services**  
 Maryland General Assembly  
 2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 676 (Senator Waldstreicher)  
 Judicial Proceedings

**Drugged Driving - Cannabis-Impaired Driving Test Pilot Program - Establishment**

This bill establishes a pilot program to examine the effectiveness of cannabis-impaired driving tests, administered by police officers certified as drug recognition experts (DREs), in enforcing the prohibition against driving while impaired by drugs. Local jurisdictions may volunteer to participate in the program. The State coordinator for the Drug Recognition Expert Program must submit a report on the program, as specified, to the General Assembly by December 1, 2025. The bill also expresses the intent of the General Assembly that the pilot program, subject to the availability of funds, be financed by revenues generated from the taxation of recreational cannabis. **The bill terminates September 30, 2026.**

**Fiscal Summary**

**State Effect:** Special fund expenditures for the Department of State Police (DSP) increase by \$351,400 in FY 2024, as discussed below; however, general fund expenditures may be needed to cover costs. Future years reflect annualization, elimination of one-time costs, and termination of a contractual position. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF/SF Exp.	351,400	56,600	44,300	0	0
Net Effect	(\$351,400)	(\$56,600)	(\$44,300)	\$0	\$0

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

**Local Effect:** The bill is authorizing in nature. The impact on local government finances depends on the extent to which testing is implemented, as discussed below.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** A “cannabis-impaired driving test” means a device that is capable of assessing cognitive and physical impairment of motorists.

A police officer in a participating jurisdiction who has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while impaired by cannabis may request that the individual complete a cannabis-impaired driving test administered by an officer certified as a DRE. The police officer requesting the test must advise the individual that neither completing the test nor refusing to complete the test prevents or requires subsequent blood testing under State law.

The results of the cannabis-impaired driving test may not be used as a guide for an officer in deciding whether to investigate further or file charges or as evidence in any civil or criminal court action. Similarly, submitting to or refusing to complete a cannabis-impaired driving test is not admissible as evidence in any civil or criminal court action. A refusal to submit to a cannabis-impaired driving test is not a violation of the State implied consent law. Completing a cannabis-impaired driving test, however, 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 State coordinator for the Drug Recognition Expert Program must (1) ensure that police officers from participating jurisdictions receive training on the use of cannabis-impaired driving tests; (2) ensure that each local jurisdiction participating in the program makes anonymized data on the results of the tests publicly available; and (3) submit a report on the program to the General Assembly by December 1, 2025.

The State coordinator’s report must provide the following information: (1) the local jurisdictions that participated in the program; (2) the number of traffic stops that later resulted in a police officer requesting an individual to take a cannabis-impaired driving test and the number of tests performed; (3) the types of cannabis-impaired driving tests used; (4) the number of individuals who were charged with an offense of driving while impaired by drugs after taking a cannabis-impaired driving test and the final disposition of such charges; (5) the results of any other studies on cannabis-impaired driving tests of which the State coordinator is aware; and (6) recommendations for further legislation to enhance enforcement of the prohibition on driving while impaired by drugs.

### **Current Law:**

#### *Cannabis Legalization*

Chapters 26 and 45 of 2022 initiated the process of legalization of adult-use cannabis in the State (and renamed marijuana as “cannabis” in statute). Chapter 45, a constitutional SB 676/ Page 2

amendment that was approved by the voters at the November 2022 general election, authorizes an individual who is at least age 21 to use and possess cannabis in the State beginning July 1, 2023. The authorization is subject to a requirement that the General Assembly pass legislation regarding the use, distribution, possession, regulation, and taxation of cannabis.

*Driving Under the Influence of Alcohol or While Impaired by Alcohol, Drugs, or a Controlled Dangerous Substance*

Under the Transportation Article, a person may not drive or attempt to drive any vehicle while (1) under the influence of alcohol or under the influence of alcohol *per se*; (2) impaired by alcohol; (3) impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or (4) impaired by a controlled dangerous substance (CDS). Federal law specifies that cannabis (also known as marijuana) is a Schedule I CDS.

*Breath and Blood Tests for Alcohol and/or Drug-related Driving Offenses*

Any 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 under the influence of alcohol or while impaired by alcohol, drugs, or 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.

*Smoking Cannabis in the Passenger Area of a Vehicle*

Effective July 1, 2023, the driver of a motor vehicle may not smoke or consume cannabis in the passenger area of a motor vehicle on a highway. “Passenger area” means an area that is designed to seat the driver and any passenger while the motor vehicle is in operation or is readily accessible to the driver or passenger while in their seating positions. The passenger area of a vehicle does not include (1) a locked glove compartment; (2) the trunk of a motor vehicle; or (3) if the motor vehicle does not have a trunk, the area behind the rearmost upright seat or an area that is not normally occupied by the driver or a passenger.

A violation of this prohibition is a misdemeanor subject to a maximum fine of \$500. The prepayment penalty established by the District Court is \$530, and the Motor Vehicle Administration (MVA) must assess one point against a violator’s license. If, however, the violation contributes to an accident, the prepayment penalty is \$570, and MVA must assess three points against the violator’s license.

**State Expenditures:** Special fund expenditures for DSP increase by \$351,360 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. Should special funds be insufficient or unavailable for this purpose, general fund expenditures are necessary. The pilot program may be an authorized expense for the Cannabis Public Health Fund, as discussed below.

This estimate reflects one-time computer reprogramming costs of \$300,000, which, according to DSP, are necessary to enable the department’s compliance with the bill’s reporting requirements. DSP advises that its Delta Plus computer system, as currently configured, would not allow DREs to report on their interactions with motorists in the comprehensive manner that the bill requires. The estimate also reflects the cost of hiring one full-time contractual administrative officer to assist DREs with data collection, research, and general compliance with the bill’s reporting requirements. The estimate includes a salary, fringe benefits, one-time start-up costs, one-time programming costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$43,951
Computer Programming	300,000
Other Operating Expenses	<u>7,409</u>
<b>Total FY 2024 State Expenditures</b>	<b>\$351,360</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The contractual position, which is assumed to be needed until the report is complete and for a few additional months to respond to questions related to recommendations, terminates on March 31, 2026.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Chapter 26 of 2022 established the Cannabis Public Health Fund to provide funding to address the health effects associated with the legalization of adult-use cannabis. The fund consists of revenues distributed to the fund based on revenues from adult-use cannabis, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund.

The Maryland Department of Health must administer the fund, which, among other things, may be used to provide training and equipment for law enforcement to recognize impairments due to cannabis and purchase technology proven to be effective at measuring cannabis levels in drivers. The fiscal 2023 budget included \$5.0 million for initial capitalization of the fund. If the pilot program is an acceptable expense for the Cannabis Public Health Fund, then special fund expenditures increase as described above. If not, or if funds are not available for the pilot program from the Cannabis Public Health Fund, general fund expenditures are necessary.

**Local Fiscal Effect:** The bill only affects local jurisdictions that choose to participate in the pilot program. To the extent local jurisdictions implement testing as part of their participation in the pilot program, local expenditures increase. Local jurisdictions in Maryland have historically estimated costs associated with participation in a pilot program like the one contemplated under the bill, including the costs of purchasing testing devices, to range from roughly \$10,000 to \$40,000 annually. To the extent that State funds are available from revenues generated through the taxation of recreational cannabis, participating local governments may receive an increase in revenues to offset their expenditures for implementing the pilot program, although such funding for participating local jurisdictions is neither authorized nor prohibited under the bill.

**Additional Comments:** The National Conference of State Legislatures (NCSL) advises that testing for drug impairment is problematic due to the limitations of drug-detecting technology and the lack of an agreed-upon limit to determine impairment. Besides noting that drugs do not affect people consistently, NCSL points out that certain drugs, including cannabis, can remain in an individual's system for weeks (well beyond the time in which the individual would have been impaired).

## **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of State Police; Maryland Department of Transportation; Baltimore, Charles, and Garrett counties; National Conference of State Legislatures; Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2023  
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