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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 684 - Courts and Judicial Proceedings - Court Fines - Payment

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 03/03/2022

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on Senate Bill 684.

Senate Bill 684 proposes testing standards for driving while under the influence of controlled dangerous substances. In part, the bill introduces an oral fluid test as a way of measuring impairment that measures the presence of cannabis and requires notification to the Motor Vehicle Administration if the presence of cannabis is detected in an amount of 25 nanograms per milliliter or greater.

With the significant progress Maryland has made towards legalizing marijuana, the Maryland Office of the Public Defender understands the import of evaluating its impact on persons operating motor vehicles. This is a problem that states are trying to address nationwide. Currently, States differ with respect to the bodily fluids that are permitted to be tested for THC.[1] The most frequently used bodily fluids are blood, urine, or saliva.[2] A majority of the states that have statutes permitting the testing of oral fluids do not actually collect oral fluids in practice.[3] However, Indiana and Michigan—two states that have zero tolerance laws—have roadside oral fluid collection pilots or programs.[4] Roadside collection and testing of oral fluids are quicker and easier to complete than blood sampling and testing—which requires a warrant and travel to a facility where blood can be drawn.[5] This process takes an average of 2 hours between the traffic stop and blood collection.[6] The speed that oral fluid testing provides, however, does not appear to actually ensure any accurate measurement of impairment.

The fact is, that there is no consensus among the states regarding zero tolerance and per se

[1] https://www.iihs.org/topics/alcohol-and-drugs#marijuana.
[2] https://www.ncsl.org/research/transportation/drugged-driving-overview.aspx.
[3] https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx.
[4] https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx.
[5] https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx.
[6] https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx.

limits on THC and THC metabolite concentration in the body. This is primarily because—unlike alcohol—the research indicates that the level of THC in the body does not appear indicative of the level of impairment of an individual.[7] High levels of THC can remain for a period of time in the body, even after the psychoactive effects of marijuana are long gone. THC metabolites, for example, can last in the body for up to a month after marijuana use. Therefore, enforcing per se limits can lead to incrimination of persons who were not actually impaired while driving.

A report to Congress, offered by the National Highway Administration, indicated the poor correlation of THC level in the blood or oral fluid with impairment precludes using THC blood or oral fluid levels as an indicator of driver impairment. The use of BAC or BrAC as an indicator of driving impairment has assisted law enforcement and prosecutors in being able to show that an alcohol-impaired driver has a BAC that has been demonstrated to increase crash risk. THC levels in a person do not correspond to impairment in the same way. Therefore, the use of THC levels cannot serve this same role for marijuana-impaired driving (Dupont, Voas, Walsh, Shea, Talpins, & Neil, 2012).[8]

Similarly, in an evaluation conducted by AAA, all of the candidate THC concentration thresholds examined would have misclassified a substantial number of driver as impaired who did not demonstrate impairment on the SFST, and would have misclassified a substantial number of drivers as unimpaired who did demonstrate impairment on the SFST. Based on this analysis, a quantitative threshold for per se laws for THC following cannabis use cannot be scientifically supported.[9] Even a recent NHTSA Traffic Tech study that evaluated existing field oral fluid drug testing devices and found some promising results but also persistent reliability and validity issues.

In short, the scientific research in this area indicates that the use of any per se level of THC cannot establish or measure the level of impairment in an individual, and the Maryland Office of the Public Defender accordingly opposes legislation that encourages the use of such measurements for impairment determination.

We urge this Committee to consider the foregoing information and issue an unfavorable report on Senate Bill 684.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Please direct any additional questions to: Andrew Northrup, Subject Matter Expert with the Forensics Division, Maryland Office of the Public Defender, andrew.northrup@maryland.gov (312) 804-9343.

[7] https://www.iii.org/article/background-on-marijuana-and-impaired-driving.

[8] Compton, R. (2017, July). Marijuana-Impaired Driving - A Report to Congress. (DOT HS 812 440). Washington, DC: National Highway Traffic Safety Administration at 27

[9] https://aaafoundation.org/evaluation-data-drivers-arrested-driving-influence-relation-per-se-limits-cannabis/