

DSP Support Position Paper for SB0216.pdf

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Position: FAV



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: January 13, 2022

BILL NUMBER: Senate Bill 216 **Position:** Support

BILL TITLE: Evidence – Approval of Breath and Blood Tests for Alcohol, Drugs, or Controlled Dangerous Substances

REVIEW AND ANALYSIS:

This legislation seeks to transfer the responsibilities for approval of the blood and breath testing programs from the Toxicologist under the Postmortem Examiners Commission to the Toxicologist in the Department of State Police Forensic Sciences Division. The bill transfers the authority to approve testing procedures, equipment and training programs for the administration of the program.

Under current law, the blood and breath testing program is approved and certified by the Toxicologist under the Postmortem Examiner's Commission. All equipment and procedures used for breath testing as well as testing the blood for alcohol and drugs requires the approval of the State Toxicologist. The current configuration of Toxicology oversight by the Office of the Chief Medical Examiner (OCME) was established by law in 1962.

The Department of State Police (DSP) was tasked by the Legislature to develop a plan to eliminate a backlog in blood testing for drugs and alcohol related to drunk and drugged driving. In 2020, the DSP submitted a report in response to a Joint Chairmen's Report request. The report outlined a plan by the DSP Forensic Sciences Division to reduce and ultimately eliminate the backlog of cases as well as provide for future improvements to the program. The improvements are designed to increase efficiencies in the program while ensuring integrity and case preparation timeliness. The DSP worked with our partners at the Maryland Department of Health to submit Senate Bill 216, transferring certain duties and responsibilities to the DSP as part of the overall plan.

The Forensic Scientists employed by Forensic Sciences Division (FSD) are qualified to analyze blood samples for drugs and alcohol, report the results, and testify to those results in court; but they do not have the pharmacological education and experience of a PhD Toxicologist. Having a PhD Toxicologist on staff will bring this education and experience to FSD along with the knowledge needed to lead the DSP Toxicology program into the future both strategically and technically. The OCME has been hit particularly hard by the opioid crisis and the time available for the State Toxicologist to oversee FSD's current operations as well as guide those operations forward is significantly limited. Furthermore, the OCME deals with post-mortem Toxicology in support of death investigations while the DSP deals with ante-mortem Toxicology in support of impaired driving investigations. Creating an Ante-Mortem Toxicologist position, equivalent to the existing Post-Mortem Toxicologist position used by the OCME would provide the level of oversight needed to ensure DSP can provide the best product possible now and in coming years.

For these reasons, the Department of State Police urges the Committee to give Senate Bill 216 a favorable report.

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Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

January 13, 2021

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East Miller Office Building
Annapolis, MD 21401-1991

RE: SB 216 – Evidence - Approval of Breath and Blood Tests for Alcohol, Drugs, or Controlled Dangerous Substances – Letter of Support

Dear Chairman Smith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support for Senate Bill (SB) 216 – Approval of Breath and Blood Tests for Alcohol, Drugs, or Controlled Dangerous Substances. This bill transfers the authority to approve testing procedures, equipment and training programs for the administration of the blood and breath testing program from the Office of the Chief Medical Examiner (OCME) to the Maryland Department of State Police (DSP).

OCME's oversight of the program is a legacy from 1962 when its toxicologist was the only state position that required expertise in toxicology testing and therefore was designated as the State Toxicologist by proxy. The State Toxicologist, under the Postmortem Examiner's Commission, approves and certifies blood and breath testing, as well as all equipment and procedures used for it. This bill will transfer the approval from the post-mortem State Toxicologist to a newly created and fully funded, ante-mortem toxicologist within DSP.

MDH worked collaboratively with the DSP to draft SB 216, which creates efficiencies in government. Furthermore, this bill aligns the units with their missions, as the OCME primarily focuses on post-mortem toxicology during death investigations while the DSP focuses on ante-mortem toxicology related to impaired driving investigations.

I hope this information is useful. If you would like to discuss this further, please contact Heather Shek, Director, Office of Governmental Affairs at (443) 695-4218 or heather.shek@maryland.gov.

Sincerely,

Dennis R. Schrader
Secretary