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MARYLAND OFFICE OF THE PUBLIC DEFENDER

POSITION ON PROPOSED LEGISLATION

BILL: SB 676 Drugged Driving - Cannabis-Impaired Driving Test Pilot Program - Establishment
FROM: Maryland Office of the Public Defender
POSITION: Informational
DATE: 3/7/23

The Maryland Office of the Public Defender provides the following testimony in an informational capacity on Senate Bill 676. My name is Andrew Northrup, and I am an attorney in the Forensics Division and MOPD strongly supports the goal of generating data on the effects of marijuana on drivers in order to ensure that impaired drivers are not on the road. However, the data generated in by the process set forth in this bill would not assist us in this endeavor.

As an attorney in the Forensics Division, it is my job to evaluate the reliability of scientific evidence in many disciplines, from DNA to digital evidence to many things in between. The goal of these analyses is to ensure that scientifically unreliable evidence is not admitted into court.

When determining if a method or process generates reliable evidence, one looks to see if it has been scientifically tested. This involves generating a hypothesis and testing it with controlled experiments of the method on samples or subjects where the ground truth is known, and preferably, these experiments are double-blind. Once data is generated, it is interpreted and conclusions are drawn, and the results are published in a peer-reviewed journal where both the data and the conclusions are subject to scrutiny. In a substance abuse experiment, one needs to allot out the same amount of a controlled substance to a group of carefully screened subjects and allotting nothing to a control group of carefully screened subjects. Such subjects should have no medical conditions or any other attribute that might skew the result. The purpose of this is so that you know the ground truth of the ingestion of the substance with no confounding factors.

The pilot program set forth in SB 676 is an appreciated attempt to provide metrics for evaluating drivers under the influence of cannabis, but it is not a controlled experiment. Thus, the data generated will not be subject to accurate interpretation and conclusions.

Pulling drivers over based on suspicion of their impairment by marijuana does not meet the requirements of a controlled experiment. There is no controlling for the amount of marijuana, the timing of ingestion, the presence of other substances, medical conditions or whether someone is simply tired. This also assumes that the driver is honest or even remembers what was ingested, the amount that was ingested, when it was ingested, or is willing to disclose any medical condition that they may have.

There is the additional problem of sampling bias. Since the officers are only stopping people that they believe are impaired by cannabis, that will tend to reinforce preexisting biases and they may miss individuals who do not fit their prior beliefs of how cannabis impaired drivers behave.

Our office believes that generating data on how marijuana impairs driving is a worthwhile goal. However, this should be accomplished through controlled experiments, which generate reliable data. Ultimately, any data generated from this pilot program will be suspect at best. Additionally, our Office sought the input of Doug Scott, an individual who established the Drug Recognition Expert (DRE) program in North Carolina, about this bill. He is unavailable for oral testimony, but his statement is attached.

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