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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HOUSE BILL 1392 Courts - Impaired Operation of Vehicle or Vessel – Expert Witnesses and Evidence**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 03/04/24**

The Maryland Office of the Public Defender urges an unfavorable report on HB1392.

While keeping impaired drivers off of the road is an important goal, this bill is not the way to do so. Legislation and policy should be based on science. Cases should be ruled upon based upon their individual merit and the evidence in those cases. This bill precludes a court from making such individualized case-based assessments with blanket rules on admissibility that are not based on science or evidence.

In the 2020 Rochkind case, Maryland adopted the federal Daubert standard for the admissibility of scientific evidence and expert testimony. Under this decision, Maryland trial courts are required to individually assess whether scientific evidence and expert testimony is reliable in any given case. Courts do so by reviewing the qualifications of the expert, the method utilized, and whether there is an adequate factual basis for the opinion. The Daubert Standard requires a court to determine if the method is reliable generally and, if so, whether the method was reliably applied to the facts and circumstances of the particular case. This dual analysis highlights the fact that expert admissibility must be assessed on a case-by-case basis. The appropriateness of expert testimony is a fact specific determination and courts should not be hamstrung by legislation, however well-meaning, that interferes with its gatekeeping function. This statute will strip courts of any authority or discretion to evaluate testimony in this area in individual cases.

Normally in court, an expert's qualifications are proffered to the Judge, and the Judge decides if the person is an expert before they are able to render any expert opinions. This is as it should be, as the Judge is in the best position to make that determination. Under this statute, a police officer with the qualifications set forth herein would automatically be able to render expert testimony. Critically, this statute does not require that a reliable methodology be used or that an individual be proficient and current in the field since it only requires 'successful completion' of a DRE training program.

It is also important to keep in mind what the DRE program is. It is a program designed to help officers determine if an individual is impaired by drugs, and if so, by what class of drugs. There is a 72 hour classroom component, and about 40-60 of field hours required to complete the program and

become a certified DRE. Basically, this statute would allow someone who completes a three week program to have an unassailable expert opinion about impairment no matter what methodology was used or whether the method was properly applied to the facts of the case.

Determining if a person is impaired by drugs is not an easy task, particularly when there are underlying medical conditions and incomplete data. To say that this is complex is an understatement, and every individual is different. Moreover, just like every driver is different, so is every evaluator. It does not require or even allow the judge to make a determination that the evaluator has the competence to do their job correctly.

The other part of the statute setting forth a per se limit on THC is also incredibly problematic. The research that has been done in this area shows a poor and inconsistent relationship between magnitude of impairment and THC levels. I have attached a scientific study on this issue from the website of the International Association of the Chiefs of Police (the organization behind the DRE program) to that effect.

Drugged drivers is an important issue to address, but doing so with laws that have no scientific basis and that interfere with a court's ability to weigh evidence in individual cases is not a good solution.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1392.**

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

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