

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1097 (Delegate Rose, *et al.*)
 Judiciary

Drug or Controlled Dangerous Substance Testing - Requirements

This bill repeals the requirement that a test for drug or controlled dangerous substance (CDS) content relating to an alcohol- and/or drug-related driving offense may only be requested by a police officer who is a trainee, has been trained, or is participating directly or indirectly in a specified training program.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$738,800 in FY 2020. Future years reflect annualization, ongoing operating costs, and the elimination of one-time costs to purchase testing equipment. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	738,800	238,500	244,700	251,300	258,100
Net Effect	(\$738,800)	(\$238,500)	(\$244,700)	(\$251,300)	(\$258,100)

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

Local Effect: The bill is not expected to materially affect local law enforcement operations or finances.

Small Business Effect: None.

Analysis

Current Law: A test for drug or CDS content relating to an alcohol- and/or drug-related driving offense (1) may not be requested unless the law enforcement agency of which the officer is a member has the capacity to have such tests conducted *and* (2) may only be

requested by a police officer who is a trainee, has been trained, or is participating directly or indirectly in a program of training, as specified. That training program has to be designed to train and certify police officers as drug recognition experts (DREs) and be conducted by a law enforcement agency of the State or other law enforcement agency, as specified – either in conjunction with the National Highway Traffic Safety Administration (NHTSA) or as a program of training that is substantially equivalent to the requirements of the Drug Recognition Training Program developed by NHTSA.

If a police officer determines that a driver's impairment is more substantial than is indicated by a low blood alcohol concentration (BAC) test and/or there is other evidence of impairment by a drug or CDS, the driver may be detained on suspicion of driving while impaired by a drug or CDS. However, only a DRE may administer the 12-step evaluation used to investigate whether a driver is impaired by a drug or CDS. After the evaluation, the DRE may request the driver to take a blood test to determine impairment by a drug or CDS. If the driver refuses, the officer must obtain a search warrant for administration of the blood test, unless exigent circumstances exist.

A 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. 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 while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol;
- impaired by drugs and/or drugs and alcohol; or
- impaired by a CDS.

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.

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. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

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. For a test refusal, an offender's license or driving privilege must be suspended by the Motor Vehicle Administration (MVA) for 270 days for a first offense and two years for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal, unless the driver participates in the Ignition Interlock System Program for at least one year.

A police officer is required to advise a person detained on suspicion of an alcohol- and/or drug-related driving offense of the additional criminal penalties that may be imposed if the person is convicted of an alcohol- and/or drug-related driving offense and knowingly refused to take a test requested at the time of the suspected violation. If a person is convicted of an alcohol- and/or drug-related driving offense and the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take the requested test, the person is subject to a penalty in addition to any other penalty that may be imposed for the alcohol- and/or drug-related driving conviction. A person who knowingly refuses to take a test of blood or breath under these circumstances is subject to maximum penalties of imprisonment for two months and/or a fine of \$500. The court may not impose the additional penalty unless the State's Attorney serves notice of the alleged test refusal on the defendant or the defendant's counsel before acceptance of a plea of *nolo contendere* or guilty, or at least 15 days before a circuit court trial or 5 days before a District Court trial, whichever is earlier.

If the person stopped by the police officer is unconscious or otherwise incapable of refusing to take a test, the officer must (1) obtain prompt medical attention; (2) arrange for removal of the person to a medical facility, if necessary; (3) obtain a search warrant, unless exigent circumstances exist; and (4) direct a qualified medical person to withdraw blood for a test, if it does not jeopardize the person's health. An initial refusal to take a test that is withdrawn as specified by statute is deemed not to be a refusal. The burden of proof rests with the person who has withdrawn the refusal to show, by a preponderance of the evidence, that the requirements for withdrawal of a refusal were met.

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.

Background: NHTSA considers Standardized Field Sobriety Tests to be the foundation for all impaired driving detection training. The first evidence of drug use is typically obtained roadside by the investigating law enforcement officer who is trained to detect

drug impairment. A trained DRE may then be requested to administer the 12-step evaluation. According to the International Association of Chiefs of Police, all 50 states, the District of Columbia, and Guam use DREs to assist in the detection of impaired driving.

In calendar 2018, the Maryland State Police Crime Laboratory analyzed 480 blood samples requested by DRE officers to determine the presence of drugs or CDS.

State Expenditures: The Maryland Transportation Authority (MDTA) advises that the bill results in minimal savings in overtime expenses, as DRE officers are no longer required to verify if an individual should undergo required drug testing. However, MDTA advises that the bill does not affect MDTA police training. MVA advises that the bill may result in more administrative hearings; however, MVA was unable to estimate this impact. Even so, this analysis assumes that any increase in hearings can be absorbed within existing budgeted resources.

The Department of State Police (DSP) advises that, since the bill allows *any* police officer to request a blood test for the presence of drugs or CDS, instead of only trained DRE officers, it expects a significant increase in the number of tests requested and that additional personnel and equipment are necessary to meet the anticipated demand. In fiscal 2018, 1,894 drivers were found to have a BAC of 0.06 or lower; DSP assumes that all such individuals are requested to provide a blood sample under the bill to determine the presence of drugs or CDS and that 40% refuse a test. Therefore, DSP estimates that 1,136 blood tests (60% of the 1,894 drivers with a BAC of 0.06 or lower) are sent for analysis, since requests could be made by any police officer, rather than only DRE officers.

The Department of Legislative Services (DLS) agrees that DSP realizes an increase in the number of testing requests under the bill. However, it is unclear whether an officer would request a blood test for the presence of drugs or CDS for *each* individual who was found to have a BAC of 0.06 or lower. Further, according to DSP's alcohol influence and preliminary breath test use summary data for 2018, there were 1,306 arrests for driving while impaired by drugs or CDS in 2018. Assuming that these individuals are requested to submit to a blood test and that there is a 40% refusal rate (the refusal rate assumed by DSP above), DSP is likely to see at least 304 additional blood test requests under the bill (in addition to the 480 requests received in calendar 2018 from DRE officers). DLS advises that, because refusal rates fluctuate, the volume of additional blood test requests could be higher – for example, at a refusal rate of 30%, another 434 tests would be done. Thus, this analysis assumes at least 350 additional requests a year, on average.

Accordingly, general fund expenditures for DSP increase by *at least* \$738,820 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost for DSP to hire two full-time forensic chemists to conduct additional blood testing under the bill. It includes salaries, fringe benefits, one-time start-up costs, and

ongoing operating expenses. It also includes one-time costs to purchase two additional testing equipment devices in fiscal 2020 and the ongoing purchase of blood sample collection kits at \$150 each.

Positions	2.0
Salaries and Fringe Benefits	\$138,727
Screening and Testing Equipment	550,000
Blood Test Kits	39,375
One-time Start-up Costs	9,780
Ongoing Operating Expenses	<u>938</u>
Total FY 2020 State Expenditures	\$738,820

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses and the elimination of one-time costs. To the extent the bill results in additional testing beyond the estimate in this analysis, expenditures further increase.

Additional Information

Prior Introductions: HB 1478 of 2018 was heard in the House Judiciary Committee but received no further action. Its cross file, SB 495 of 2018, was heard in the Senate Judicial Proceedings Committee, but no further action was taken. SB 692 of 2017 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Maryland Municipal League; University System of Maryland; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; National Highway Traffic Safety Administration; International Association of Chiefs of Police; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2019
mm/kdm

Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510