

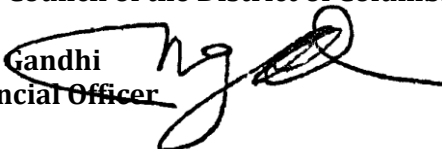
Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: November 26, 2012

SUBJECT: Fiscal Impact Statement - "Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012"

REFERENCE: Bill 19-828 - Draft Committee Print shared with the Office of Revenue Analysis on November 23, 2012

Conclusion

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

The bill clarifies provisions that govern the use of such tests in criminal proceedings, and outlines minimum criteria that must be met for breath test results to be admitted in criminal proceedings.

First, the bill requires that the Office of the Chief Medical Examiner (OCME)¹ and Department of Forensic Sciences (DFS)² certify the accuracy of each breath test instrument at least once every 180 days. Current law requires that this occur once every 3 months.

Second, the bill outlines³ the following seven criteria for admissibility of chemical test results in criminal proceedings:

¹ The bill amends § 2918b of D.C. Law 13-172, Establishment of the Office of the Chief Medical Examiner Act of 2000, which was added by the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012 (D.C. Act 19-489; 59 DCR 12957). This Act was signed by the Mayor on October 24, 2012.

² The bill amends § 5-1501.07(a) of The Department of Forensic Science Establishment Act of 2011, which was added by the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012 (D.C. Act 19-489; 59 DCR 12957). This Act was signed by the Mayor on October 24, 2012.

1. A certified breath test operator or certified technician operated the breath test instrument on which the breath test was conducted;
2. A certified breath test operator or certified technician observed the administration of the breath test and determined that no contamination by mouth alcohol occurred;
3. Each test includes a baseline analysis in conjunction with the subject analysis, and the results for the baseline analysis fall within the acceptable range set by regulation;⁴
4. Each test includes duplicate breath specimens collected from the person and the results of the paired breath specimens fall within the acceptable range set by regulation;⁵
5. The breath test instrument is demonstrably free of ethanol prior to the testing of each breath specimen;
6. Analytical results are expressed in grams of alcohol per 210 liters of breath (g/210L); and
7. The instrument on which the breath test was conducted had been tested within 180 days prior to the breath test and had been found to be accurate.

The only requirements under current law is that the police officer or the technician who conducted the test certifies that the breath test was conducted in accordance with the manufacturer's specifications, and that the equipment on which the breath test was conducted has been tested within the past 3 months and has been found to be accurate.⁶

The bill also clarifies that records of breath test instrument maintenance are to be admissible in any criminal proceeding as evidence of the operating condition of the instrument and the inability to obtain the schematics or software from the manufacturer of a breath test instrument does not affect the admissibility of the results.

The bill broadens the language on persons who may be compelled to provide testimony pertaining to the operations of a breath test instrument. Current law refers to "police officers" and "forensic pathologists" as potential court witnesses. However, agencies have different terms for employers who are responsible for maintaining the breath test instrument's proper operating condition. This addition ensures that the appropriate person can be sent to provide testimony in a court proceeding. This language also now allows for breath tests conducted by both the Metropolitan Police Department (MPD) and federal authorities such as the Park Police.

The bill maintains the current requirements that a record of the analytical results of a breath test must be presented to a defendant within 15 calendar days of the later of arraignment or notice of appearance of counsel, and the analytical results of the breath test be provided more than 30 calendar days prior to trial.

The bill clarifies that any person who provides a breath specimen is to be notified, in writing, of the requirements for admissibility and the ways in which the defendant can compel testimony, *at the time they are charged*. This requirement is already a part of current law.

³ The bill amends the Anti-Drunk Driving Act of 1982, effective September 14, 1982 (D.C. Law 4-145; D.C. Official Code § 50-2205.02 *et seq.*) as amended by section 103(e)(3) of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957).

⁴ This range is set by Section 8 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07).

⁵ *Ibid.*

⁶ D.C. Official Code § 50-2205.03.

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FIS: Bill 19-828, "Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012," Draft Committee Print shared with the Office of Revenue Analysis on November 23, 2012.

Lastly, the bill provides language supporting the use of blood or urine tests as admissible evidence in criminal proceedings.

Financial Plan Impact

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

The bill clarifies and updates the D.C. Official Code statutes regarding the use and admissibility of breath chemical test results in criminal changes. Nothing in the bill is expected to change the way OCME, MPD, or DFS conducts various components of the Breath Test program. Therefore, the bill can be implemented with existing resources.