

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

Senate Bill 389 (Senator Ruben, *et al.*)
 Judicial Proceedings

**Drunk and Drugged Driving - Custodian Liability Warning - Vehicle
 Impoundment (John's Law)**

This bill requires law enforcement agencies to provide custodians with a written statement advising of potential criminal or civil liability for allowing a person arrested for drunk or drugged driving to operate a motor vehicle while under the influence of alcohol or impaired by alcohol or drugs. If the custodian refuses to acknowledge the written statement then the vehicle must be impounded until the later of 12 hours after the arrest or until the offender can safely operate the vehicle.

Fiscal Summary

State Effect: General fund expenditures increase by \$13,300 in FY 2003 for printing of forms. Out-year expenditures are adjusted for inflation. Assuming that towing and storage fees are assessed on a cost recovery basis, there would be no net impact on State finances from the bill's impoundment requirement.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	0	0	0	0	0
GF Expenditure	13,300	13,400	13,600	13,700	13,800
Net Effect	(\$13,300)	(\$13,400)	(\$13,600)	(\$13,700)	(\$13,800)

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

Local Effect: Assuming that towing and storage fees are assessed on a cost recovery basis, there would be no net impact on local finances from the bill's impoundment requirement.

Small Business Effect: Potential meaningful. Operators of vehicle towing and impoundment companies may obtain additional business as a result of the bill.

Analysis

Bill Summary: This bill applies to a person arrested for driving or attempting to drive: (1) under the influence of alcohol; (2) under the influence of alcohol per se; (3) while impaired by alcohol; (4) while impaired by any combination of drugs and/or alcohol; or (5) while impaired by a controlled dangerous substance. A custodian is a person who arrives on behalf of a person arrested for an alcohol- and/or drug-related driving offense. A law enforcement agency is required to provide a custodian with a written warning of criminal and civil liability for allowing a violator to operate a motor vehicle while the violator is still under the influence of alcohol or impaired by alcohol, impaired by drugs and alcohol, or impaired by a controlled dangerous substance. A law enforcement agency is required to impound the motor vehicle that the offender was operating when arrested. The motor vehicle may not be released until the later of 12 hours after the arrest or when the offender is able to present valid driving credentials and is able to operate a motor vehicle safely.

An impounded vehicle owned or leased by the offender may be released earlier than the time specified if the offender allows a custodian who has acknowledged the written warning to take custody of the vehicle. The custodian must present valid driving credentials and be able to operate the motor vehicle safely.

An impounded vehicle that is not owned or leased by the offender may be released to the owner or lessee before the end of the impoundment period if that person has valid driving credentials and is able to operate the motor vehicle safely. Law enforcement agencies are able to impose other reasonable conditions for release, subject to review by the District Court. A reasonable fee may be charged for towing and storage of an impounded vehicle. The agency may retain the motor vehicle until the fee is paid.

The Attorney General is required to establish the content and form of the written liability statement and acknowledgement and adopt regulations to implement the legislation. The bill clarifies that a duty is not imposed on a physician or other health care provider who treats or evaluates the offender.

Current Law: There is no statutory provision relating to how long a person arrested for alcohol- and/or drug-related driving must or can be detained. It is, however, normal practice to release someone as soon as the necessary arrest procedures are completed.

Police officers are not required to arrest a person charged with an alcohol- and/or drug-related driving offense.

Background: This bill is known as “John’s Law” and is named for John Elliott, a Naval Academy graduate who was killed by a drunk driver in New Jersey in July 2000. The person who killed John Elliott and critically injured his companion had been arrested three hours earlier on a drunk driving charge. The man was released to the custody of a friend. However, the friend allowed the man to resume driving. The drunk driver was also killed instantly. The friend who picked up the drunk driver is currently awaiting trial on charges of manslaughter, vehicular homicide, and aggravated assault.

To date, New Jersey is the only state to enact a law that requires a person appearing on behalf of a person arrested for an alcohol- and/or drug-related driving offense to acknowledge the possibility of civil and criminal liability if the arrested driver is allowed access to a motor vehicle before the driver can safely drive. The District of Columbia and the states of Florida, Illinois, Kentucky, Maine, North Carolina, and Wisconsin require a minimum period of incarceration or a minimum impoundment period for a vehicle if a person has been arrested for drunk or drugged driving as follows:

- The District of Columbia requires an arrested driver’s vehicle to be impounded, but the vehicle may be released to another person judged able to drive. However, the vehicle may not be released to the arrestee for 24 hours.
- Florida requires the arrested person to be detained until the blood alcohol content (BAC) is .05 or eight hours have elapsed.
- Illinois requires the vehicle of a person arrested to be impounded for 12 hours. The vehicle may be released, however at an earlier time to another person with a valid driver’s license.
- Kentucky requires a person arrested with a BAC of 0.15 or above to be detained a minimum of four hours.
- Maine provides that a vehicle driven by a driver arrested for an alcohol- and/or drug-related driving offense may be seized and held for at least eight hours.
- North Carolina requires an arrested driver to be detained until the person has a 0.05 or less BAC or a responsible person is willing to take responsibility for the arrestee until the person’s faculties are no longer impaired.

- Wisconsin requires an arrested driver to be detained for 12 hours or until the person has a 0.04 BAC.

State Expenditures: The Department of State Police anticipates expenses for the design and printing of a three-part form to be presented to a “custodian.” In fiscal 2001, the Department of State Police arrested about 8,500 people for driving under the influence or driving while impaired by alcohol, alcohol and drugs, or a controlled dangerous substance. The Department of State Police advises that each three-part form will cost \$1.57 or \$785 per 500 forms. The estimated cost in fiscal 2003 is \$13,345 (8,500 x \$1.57). Out-year expenditures are adjusted for inflation. The number of arrests is assumed to be constant for the near future.

Small Business Effect: Generally, law enforcement agencies rely on towing and impounding companies to provide automobile towing and storage services. The Department of State Police advises that alcohol and/or driving arrests made by all law enforcement agencies statewide total about 24,000 annually. As a result, towing and impounding companies could realize significant revenue from implementation of this bill.

Additional Information

Prior Introductions: A similar bill, HB 69 of the 2001 session, received an unfavorable report from the Judiciary Committee.

Cross File: HB 47 (Delegate Boschert, *et al.*) – Judiciary. In addition, a similar bill, HB 60 has been referred to the Judiciary Committee.

Information Source(s): Somerset County, Montgomery County, Prince George’s County, Charles County, Judiciary (Administrative Office of the Courts), Department of State Police, Baltimore County, Department of Transportation, Frederick County, Department of Legislative Services

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