

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 90

(Senators Jacobs and Montgomery)

Judicial Proceedings

Crimes - Manslaughter by Vehicle - Definition of "Operating"

This bill expands the definition of “operating” as it applies to the crime of committing manslaughter by vehicle by driving, operating, or controlling a vehicle in a grossly negligent manner. The definition pertains to motor vehicles, streetcars, locomotives, engines, and trains and includes (1) the loading, unloading, or securing of a load on a vehicle; (2) attaching a trailer hitch, luggage rack, or other equipment to a vehicle; and (3) any other act required by law of a driver, operator, or person controlling a vehicle, such as marking a disabled vehicle or cargo spill or clearing a cargo spill from the roadway. Existing penalties apply to an action that is designated as an offense under the bill due to the expanded definition of “operating.”

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the expansion of the bill’s penalty provisions. Enforcement can be handled with existing resources.

Local Effect: Minimal increase in revenues and expenditures due to expansion of the bill’s penalty provisions. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Under the Maryland Vehicle Law, the term “operate” as used in reference to a vehicle, means to drive. “Drive” means to drive, operate, move, or be in actual physical control of a vehicle. This includes the exercise of control over or the steering of a vehicle being towed by a motor vehicle.

A person is prohibited from committing manslaughter by vehicle by causing the death of another as a result of driving, operating, or controlling a vehicle in a grossly negligent manner. A person who violates this provision is guilty of a felony and is subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. The Motor Vehicle Administration (MVA) must assess 12 points against the license of a person convicted of this offense, and the license is subject to revocation.

The Gross Negligence Standard: The standard of “gross negligence” is a common law concept. In the case *State v. Kramer*, 318 Md. 756 (1990), the Court of Appeals said that, to prove “gross negligence” as a matter of law, the evidence must be sufficient, beyond a reasonable doubt, to establish that the defendant had a wanton or reckless disregard for human life in the operation of the automobile. The conduct must be extraordinary or outrageous to meet this standard. In the case *Boyd v. State*, 22 Md. App. 539 (1974) (*certiorari* denied 283 Md. 729 (1978)), the Court of Special Appeals discussed factors directly relevant to the issue of guilt or innocence of manslaughter due to gross negligence in the operation of a vehicle or vessel. They include:

- drinking;
- failure to keep a proper lookout and maintain proper control of the vehicle;
- excessive speed ‘under the circumstances’;
- flight from the scene without any effort to ascertain the extent of injuries;
- the nature and force of impact;
- unusual or erratic driving prior to impact;
- the presence or absence of skid or brush marks;
- the nature of the injuries and damage to the vehicle involved; and
- the nature of the neighborhood and environment where the accident took place.

Further, the Court of Special Appeals stated in *Allen v. State*, 39 Md. App. 686 (1978) (*certiorari* denied 283 Md. 729 (1978)) that the post-impact conduct of the accused may properly be a relevant factor when considering the issue of gross negligence.

Other Negligent or Reckless Driving Offenses: Pursuant to Chapter 334 of 2011, a person is prohibited from committing manslaughter by vehicle by causing the death of another due to driving, operating, or controlling a vehicle in a “criminally negligent” manner. A person acts in a criminally negligent manner when (1) the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that manslaughter will occur; and (2) that failure to perceive is a gross deviation from the standard of care that would be exercised by a reasonable person. A violation is a misdemeanor, subject to maximum penalties of three years imprisonment and/or a fine of \$5,000. Upon conviction, MVA must assess 12 points against the license of the person, and the license is subject to revocation.

A person is guilty of reckless driving if a motor vehicle is driven in wanton or willful disregard for the safety of persons or property or in a manner that indicates a wanton or willful disregard for the safety of persons or property. A violation is a misdemeanor, subject to a fine up to \$1,000. MVA is also required to assess six points against the driver's license. The District Court prepayment penalty, including court costs, is \$510 for this offense.

A person is guilty of negligent driving if the motor vehicle is driven in a careless or imprudent manner that endangers any property or the life or safety of any individual. This violation is a misdemeanor, subject to a maximum fine of \$500. MVA must assess one point against the driver's license, or three points, if the offense contributes to an accident. The District Court currently assesses a prepayment penalty of \$140 for this offense or \$280 if the offense contributes to an accident.

If a person accumulates 5 points or more on a driver's license within two years, MVA must require attendance at a driver education conference. MVA must issue a notice of suspension to a driver who accumulates 8 points on the driver's license and must issue a notice of license revocation to a person who accumulates 12 points within two years.

Background: This bill is intended as a response to the Court of Appeals ruling in *State v. DiGennaro*, 415 Md. 551 (2010). In this case, the Court of Appeals ruled that the failure of a truck driver to mark material that spilled accidentally from his vehicle onto a public roadway or provide notice of the spill does not constitute "operating" as required for the statutory crime of manslaughter by vehicle. In the case, the defendant, while driving his dump truck to a quarry, accidentally released over 3,000 pounds of gravel onto the roadway. He pulled over and kicked some of the gravel off the road but then proceeded to the quarry. Another driver with a passenger skidded on the gravel, lost control, and collided with an oncoming vehicle. The passenger died as a result of injuries suffered in the collision.

The circuit court found the defendant guilty of manslaughter by vehicle as it reasoned that the term "operating" extended to acts and omissions by the defendant immediately after release of the gravel, including the failure to remediate the spill. The Court of Special Appeals reversed the manslaughter conviction. That reversal was upheld by the Court of Appeals. The Court of Appeals found that the term "operate" as used in the vehicular manslaughter statute is synonymous with the definition of the term "drive" in the Transportation Article. The defendant's failure to mark the area of the gravel spill or to notify the quarry about the gravel on the road had nothing to do with either starting the truck's engine or manipulating its mechanical or electrical devices. Accordingly, the defendant could not be convicted of manslaughter by vehicle.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted under the proposed expansion of this crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,920 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: SB 396 of 2011 was heard in the Senate Judicial Proceedings Committee but received no further action. Its cross file, HB 779, was withdrawn after being heard in the House Judiciary Committee.

Cross File: HB 778 (Delegate McComas, *et al.*) - Judiciary.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Commission on Criminal Sentencing Policy; Office of the Public Defender; Maryland Department of Transportation; Department of Public Safety and Correctional Services; Department of Legislative Services

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