

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 44 (Senator Conway)
 Judicial Proceedings

Seat Belts - Operation of Motor Vehicle While Inmate or Person in Custody
Unrestrained - Prohibition

This bill prohibits a correctional officer and a law enforcement officer from operating a “motor vehicle,” as specified, in which an inmate or a person in custody is an occupant unless the inmate or person in custody is restrained by a seat belt. If a motor vehicle is equipped with a combination lap belt and shoulder harness, both must be used to restrain the inmate or person in custody.

If a violation of the bill’s provisions by a correctional officer or a law enforcement officer contributes to the serious physical injury or death of an inmate or a person in custody, the correctional officer or law enforcement officer is subject to a civil penalty of up to \$10,000. The imposition of a civil penalty does not preclude the pursuit of any other civil remedy authorized by law.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$2.7 million in FY 2017 for the Department of Public Safety and Correctional Services (DPSCS) to purchase buses that meet the bill’s requirements. Potential minimal increase in special fund expenditures if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under Maryland Tort Claims Act (MTCA) or increased litigation of MTCA cases. Minimal increase in general fund revenues due to the bill’s penalty provisions for those cases heard in the District Court.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
GF Expenditure	\$2,712,000	\$0	\$0	\$0	\$0
Net Effect	(\$2,712,000)	\$0	\$0	\$0	\$0

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

Local Effect: Minimal increase in local revenues due to the bill's penalty provisions for those cases heard in the circuit courts. In some jurisdictions, local government expenditures increase to retrofit vehicles to meet the bill's requirements. Potential increase in expenditures for local governments to pay increased insurance premiums for liability coverage against Local Government Tort Claims Act (LGTCA) claims. **This bill may impose a mandate on a unit of local government**

Small Business Effect: None.

Analysis

Bill Summary: For purposes of the bill, a "motor vehicle" is a passenger car or station wagon, a truck, a tractor, a multipurpose vehicle, or a passenger bus vehicle.

Current Law: Under the Maryland Vehicle Law, every motor vehicle registered in Maryland and assembled after June 1, 1964, must be equipped with two sets of seat belts in the front seat of the vehicle and, if assembled after June 1, 1969, must have two sets of seat belts on the rear seat of the vehicle. However, for purposes of this requirement, "motor vehicle" does not include any bus, motorcycle, truck, or taxicab. Generally, a person may not operate a motor vehicle unless the person and each occupant younger than age 16 are restrained by a seat belt or a child safety seat. A person who is age 16 or older is prohibited from being a passenger in an outboard front seat or in a rear seat of a motor vehicle unless the person is restrained by a seat belt. A person convicted of a violation is subject to a fine of up to \$50.

The mandatory seat belt provisions for motor vehicles do not apply to a person if a Maryland licensed physician determines and certifies in writing that the person's disability or another medical reason prevents appropriate restraint by a seat belt. The certification must state the nature of the physical disability and the reason that restraint by a seat belt is inappropriate. The mandatory seat belt provisions also do not apply to U.S. Postal Service and contract carriers while delivering mail to local box routes. A violation is not a moving violation nor may it be considered evidence of negligence or contributory negligence.

Local Government Tort Claims Act: LGTCA defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTCA limits the liability of a local government to \$400,000 per individual claim and

\$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees. An employee of a local government is fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice.

Maryland Tort Claims Act: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by “State personnel” performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” (Lee v. Cline, 384 Md. 245, 262 (2004)).

However, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. (Chapter 132 of 2015 increased the liability limit under MTCA from \$200,000 to \$400,000 for causes of action arising on or after October 1, 2015.) Attorney’s fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment. MTCA claims are typically paid out of SITF, which is administered by the State Treasurer. The liability for an MTCA tort claim may not exceed the insurance coverage granted to units of State government under the State Insurance Program/SITF.

In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

Background: On April 12, 2015, one day before the close of the 2015 legislative session, Freddie Carlos Gray, Jr., a 25-year-old African American man, was arrested by the Baltimore City Police Department for possessing what the police alleged was an illegal switchblade. While being transported in a police van, Mr. Gray fell into a coma and was taken to the hospital. Mr. Gray died as a result of injuries to his spinal cord on April 19, 2015.

State Fiscal Effect: Other than DPSCS, all surveyed State agencies with law enforcement units indicate that they have vehicles and policies that meet the bill’s requirements. To the extent that law enforcement units have a limited number of vehicles that do not meet the

bill's requirements, the potential costs for retrofitting are assumed to be able to be handled with existing resources.

In order for DPSCS to meet the bill's requirements, general fund expenditures increase by at least \$2,712,000 in fiscal 2017 to purchase eight new buses (two prisoner transport coach buses at \$561,000 each and six school bus type buses at \$265,000 each). The Division of Correction (DOC) needs to retrofit the department's prisoner transport vans as well. The pricing for replacement lap/shoulder harnesses range from \$31.95 each to \$64.95 each; however, DPSCS was not able to estimate the cost to retrofit the vans.

DPSCS advises that DOC currently operates eight buses that are not equipped with seat belts. Of those eight, six contain fiberglass low-back seating and two others have padded low-back seating. DPSCS reports that according to the Federal Motor Vehicle Safety Standards: Occupant Crash Protection; Final Rule (Federal Register, Vol. 78, No. 227, November 25, 2013) buses used as prison buses should be excluded from the seat belt requirement because (1) fiberglass or stainless steel low-back seats or benches are incompatible with the installation of seat-mounted lap/shoulder belts and (2) the buckle hardware and belt webbing, if installed, pose a sufficient risk to the safety of the officers and detainees/inmates when compared to prison buses without seat belts.

In the absence of malice or gross negligence on the part of a correctional officer or law enforcement officer employed by a State agency, special fund expenditures increase if the bill results in higher payments from SITF for claims filed under MTCA, increased claim volume, or increased litigation costs for MTCA cases. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill or if agencies have to employ additional Attorneys General to handle applicable MTCA cases.

To the extent a correctional officer or law enforcement officer acts outside the scope of employment, general fund revenues may increase under the bill's monetary penalty provisions for those cases heard in the District Court. Overall, the bill is not anticipated to materially affect the operations or finances of the District Court.

Local Fiscal Effect: Based on a limited survey of local jurisdictions and information from the Maryland Association of Counties, most local law enforcement vehicles meet the bill's requirements. However, some may incur additional costs to retrofit vehicles that do not meet the bill's requirements. For example, Montgomery County reports that the bill requires retrofitting two police prisoner transport vehicles with restraints. Review and planning for the retrofitting process is under way; however, the bill appears to require replacement of a complete insert at an estimated cost of \$15,000 per vehicle, or \$30,000 total. Harford County reports that the bill has a fiscal impact on the county estimated at

\$18,000, however, the county did not provide any details regarding its estimate. Many other jurisdictions may be similarly affected.

The Judiciary reports that the filing of cases that request the imposition of civil penalties against correctional and law enforcement officers results in an increased caseload for the circuit courts. Although it is difficult to reliably estimate the exact impact, it is assumed that the bill does not have a significant fiscal or operational impact on the circuit courts.

To the extent a local law enforcement officer acts within the scope of employment, local expenditures increase if the bill results in higher payments for claims under LGTCA and insurance premiums. The magnitude of this increase cannot be reliably estimated at this time but is assumed to be minimal.

To the extent a correctional officer or local law enforcement officer acts outside the scope of employment, local revenues may increase under the bill's monetary penalty provisions for those cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Baltimore, Carroll, Harford, Montgomery, and St. Mary's counties; Maryland Association of Counties; cities of Bowie and Takoma Park; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2016
md/lgc

Analysis by: Shirleen M. E. Pilgrim

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