

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 818
 Judiciary

(Delegate Shriver, *et al.*)

Drunk and Drugged Driving - Criminal Penalties, Driving Restrictions, and Tests For Alcohol, Drugs, or Controlled Dangerous Substances

This bill makes a number of substantive changes to various provisions of law dealing with alcohol and drug-related driving offenses. These changes include several criminal and administrative penalty enhancements. The bill requires a driver to take an alcohol and/or blood test if the driver is detained and directed to do so by a law enforcement officer. The bill requires courts and the Motor Vehicle Administration (MVA) to order restrictions on driver's licenses and driving privileges under various circumstances, and applies sanctions for convictions of various offenses equally to pleas of nolo contendere and orders of probation before judgment for those offenses.

Fiscal Summary

State Effect: Potential general fund revenue increase due to the bill's monetary penalty provisions and fees for administrative hearings. Minimal additional increase in general fund expenditures as a result of the bill's incarceration provisions. Potential significant increase in general fund expenditures for additional trials. Increase of \$491,300 in Transportation Trust Fund revenues in FY 2003 for placement of license restrictions and processing of reinstatements. Out-year revenues reflect annualization. Transportation Trust Fund expenditures increase by \$509,400 in FY 2003 due to additional administrative hearings, license revocations, and license reinstatements.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	\$24,400	\$32,500	\$32,500	\$32,500	\$32,500
SF Revenue	491,300	655,000	655,000	655,000	655,000
GF Expenditure	-	-	-	-	-
SF Expenditure	509,400	628,800	640,100	651,900	664,200
Net Effect	\$6,300	\$58,700	\$47,400	\$35,600	\$23,300

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

Local Effect: Potential minimal increase in local expenditures from the incarceration penalty provision of this bill. Potential minimal increase in revenues from fines for those cases heard in circuit court.

Small Business Effect: None.

Analysis

Bill Summary:

Court Ordered Alcohol Restrictions for Causing Death or Life Threatening Injuries

The bill authorizes a court to order an individual not to drive or attempt to drive with any alcohol in the individual's blood if that individual is convicted or adjudicated delinquent of, pleads nolo contendere to, or receives probation before judgment for causing the death of, or a life threatening injury to, another individual as a result of negligent driving while under the influence of alcohol, under the influence of alcohol per se, or while impaired by alcohol.

The bill requires a court to order an individual not to drive or attempt to drive with any alcohol in the individual's blood if that individual is convicted or adjudicated delinquent of, pleads nolo contendere to, or receives probation before judgment for causing the death of, or a life threatening injury to, another individual as a result of negligent driving under the influence of alcohol, or under the influence of alcohol per se, and having a alcohol concentration of more than 0.15 at the time of testing.

The bill also authorizes a court to order an individual not to drive or attempt to drive a motor vehicle with alcohol in the individual's blood for a period of three years. The MVA must have a licensee's driving license or privilege reflect the court-ordered restriction.

Probation Before Judgment

This bill prohibits a court from staying an entry of judgment and placing an individual on probation if the individual was found driving or attempting to drive with an alcohol concentration of more than 0.15 at the time of testing. The court's prohibition also applies to a defendant who has refused to take an alcohol and/or drug related test, or violated the prohibitions against alcohol and/or drug-related driving if, within the preceding five years, the defendant has been convicted of or placed on probation for either of those violations.

Motor Vehicle Administration Imposition of Alcohol Restrictions

This bill requires the MVA to impose an alcohol restriction on a driver's license or driving privilege for a period of three years which orders an individual not to drive or attempt to drive with any alcohol in the individual's blood, if the driver was found to have an alcohol concentration of more than 0.15 at the time of testing, and if the individual within five years was convicted of any combination of two or more violations of: driving under the influence, driving under the influence of alcohol per se, driving while impaired, committing homicide or a life threatening injury to another individual as a result of negligent driving while under the influence of alcohol, under the influence of alcohol per se, or while impaired by alcohol. If not otherwise required, the MVA is authorized to impose an alcohol restriction for three years which prohibits driving or attempting to drive with any alcohol in the blood on the driving privilege of an unlicensed or non-resident person, for good cause.

Mandatory Testing

Any person who drives a motor vehicle on a highway or other public use property is deemed to have consented to a test if that person is detained on reasonable grounds for driving or attempting to drive a motor vehicle: (1) while under the influence of alcohol; (2) while impaired by alcohol; (3) while impaired by any combination of drugs and alcohol that a vehicle may not be operated safely; (4) while impaired by a controlled dangerous substance; (5) in violation of an alcohol restriction; or (6) after ingesting any alcohol while operating a commercial vehicle.

The detaining officer must advise the person that, on receipt of the officer's sworn statement that the person was so charged and refused a test, or was tested and the result was an alcohol concentration of at least 0.08, but not more than 0.15, the MVA must impose a suspension of 45 days for a first offense and 90 days for a second offense. For a first offense of a test result exceeding 0.15, the MVA must suspend the driver's license or driver's privilege for 60 days and impose an alcohol restriction on the driver's license. For a second or subsequent offense, the MVA must suspend the driver's license or driver's privilege for 120 days and impose an alcohol restriction. For a test refusal, the MVA must suspend the person's driving license or driving privilege for one year. Unless the person is incapable of refusing, if a police officer stops or detains any person who the police officer has reasonable grounds to believe has committed the specified alcohol and/or drug-related offense, the police officer must detain the person and direct the person to take a test. The person must be advised of specified administrative sanctions that may be imposed and notice and hearing requirements.

The bill repeals the requirement that a person must be involved in an accident resulting in life-threatening injury or death, to be subject to detention by a police officer and a requirement to take a test, due to the police officer's belief, on reasonable grounds, that the person committed an alcohol and/or drug-related driving offense.

If a police officer directs a person to take a test, that person may not refuse to take the test. Twelve points must be assessed against a person who is convicted of refusing to take a test. Any person refusing to take a test is subject to a maximum fine of \$1,000, or imprisonment for up to one year, or both.

Driver's License or Driving Privilege Suspension

The bill increases administrative penalties for a violation of driving under the influence of alcohol per se offenses when a driver is tested with an alcohol concentration of more than 0.15 at the time of testing. If a hearing request is not made within ten days after issuance of a suspension, the bill requires the MVA to: (1) for a first offense, suspend the driver's license or driving privilege for 60 days, and for a second or subsequent offense, suspend the driver's license or driving privilege for 120 days; and (2) impose an alcohol restriction on the license or driving privilege which prohibits the individual from driving or attempting to drive a motor vehicle while having alcohol in the individual's blood. For a test refusal, the MVA must impose a suspension of one year. The same sanctions apply after a hearing if there is evidence of violation of alcohol and/or drug provisions and the test result either exceeds 0.15 or the person refuses to take a test.

Limitations on MVA Modification of Administrative Per Se Suspensions

Unless otherwise required by a court order, the bill authorizes the MVA, under specified circumstances, to modify suspensions or issue a restrictive license for a licensee who has not:

- (1) refused to take a test;
- (2) within the last five years, had a license suspended for an alcohol-related offense;
or
- (3) within the last five years, been convicted of, entered a plea of nolo contendere for, or received a probation before judgment for either:
 - a. causing the death of, or life threatening injury to, another individual as a result of negligent driving when the individual was driving under the influence of alcohol, under the influence of alcohol per se, driving while impaired by alcohol, driving while impaired by any combination of drugs and alcohol, or while impaired by a controlled dangerous substance; or
 - b. comparable offenses under federal law or the law of another state.

Offenses Considered Subsequent Offenses for Criminal Penalty Determination

The bill generally provides that individuals who are convicted of or enter a plea of nolo contendere for certain offenses are considered prior offenses for the purposes of subsequent offender criminal penalties for driving under the influence or under the influence per se, driving while impaired by alcohol, driving while impaired by any combination of drugs and alcohol, or impaired by a controlled dangerous substance. Those offenses that qualify as prior offenses for subsequent offender criminal penalties are: (1) causing the death of, or life threatening injury to, another individual as a result of negligent driving when the individual was driving under the influence or under the influence per se, or driving while impaired by any combination of drugs and/or alcohol, or impaired by a controlled dangerous substance; (2) driving while under the influence of alcohol or under the influence of alcohol per se, or driving while impaired by alcohol, while impaired by any combination of drugs and alcohol, or while impaired by a controlled dangerous substance; or (3) comparable offenses under federal law or the law of another state.

Increased Criminal Penalties for Driving While Under the Influence of Alcohol or Under the Influence of Alcohol Per Se Above 0.15

In addition to any other sanctions, this bill authorizes a court to order an individual not to drive or attempt to drive a motor vehicle with alcohol in the blood if the person is convicted of, adjudicated delinquent of, pleads nolo contendere to, or receives probation before judgment for driving or attempting to drive: (1) under the influence of alcohol; (2) under the influence of alcohol per se; or (3) while impaired by alcohol.

If the person violated the provisions against driving under the influence or under the influence of alcohol per se with an alcohol concentration of more than 0.15, a court must order the individual not to drive or attempt to drive a motor vehicle with any alcohol in the blood.

The bill creates the following new penalties for individuals who have been convicted of or plead nolo contendere for driving or attempting to drive a motor vehicle while under the influence of alcohol or under the influence of alcohol per se with an alcohol concentration of more than 0.15 at the time of testing:

- (1) for a first offense, a maximum fine of \$1,500, or imprisonment for up to 18 months, or both;
- (2) for a second offense, a maximum fine of \$3,000, or imprisonment for up to three years, or both;

- (3) for a third or subsequent offense, a maximum fine of \$4,000, or imprisonment for up to four years, or both.

The bill applies the existing criminal penalties for a conviction of driving under the influence of alcohol or under the influence per se to an individual who also enters a plea of nolo contendere for those offenses. The bill also extends the existing criminal penalties for conviction of certain driving offenses while transporting a minor to encompass pleas of nolo contendere.

Current Law: Current law prohibits a person from driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se (§ 21-902(a) of the Transportation Article). A first offense is punishable with a maximum fine of \$1,000 or imprisonment up to one year, or both. Second and third offense maximum penalties each increase by \$1,000 and an additional year of imprisonment, but subsequent offenses have a maximum penalty of a fine up to \$3,000 or imprisonment for up to three years, or both.

Additionally, the MVA may revoke the license of any person convicted of a violation of § 21-902(a) or issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. This applies to a person who is detained by a police officer on suspicion of committing an alcohol or drug-related driving offense. However, a person cannot be compelled to submit to a test or analysis 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.

A person who is stopped by a police officer 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 that the person permit a test to be taken. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and inform the person of notice and hearing procedures. Refusal to take a test is an "administrative per se" offense. An offender's license or driving privilege must be suspended by the MVA for 120 days for a first offense and one year 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.

If the person stopped by the police officer is unconscious or otherwise incapable of refusing to take a test, the officer must obtain prompt medical attention, arrange for

removal of a person to a medical facility, if necessary, and 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 to not 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.

Currently, if a licensee takes a breath or blood test that indicates an alcohol concentration of 0.08 or more at the time of testing, the MVA must suspend the driver's license for 45 days for a first offense, and 90 days for a second or subsequent offense. If a licensee refuses to take a test, the MVA shall suspend the driver's license for 120 days for a first offense and one year for subsequent offenses.

Additionally, current law prohibits a person from driving or attempting to drive any vehicle while impaired by alcohol (§ 21-902(b) of the Transportation Article). A first offense is punishable with a maximum fine of \$500 or imprisonment for up to two months, or both. Subsequent offenses have a maximum fine of \$500 or imprisonment for up to one year, or both.

Additionally, the MVA may revoke the license of any person convicted of two or more violations within a three-year period of § 21-902(b) or (c), suspend the license for 60 days for a first offense, or 120 days for two or more violations within three years, or issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood.

Background: According to the organization "Mothers Against Drunk Driving" and the National Conference of State Legislatures, 21 states, including Virginia and Florida, impose enhanced penalties for drivers who have been tested and have a concentration of alcohol that exceeds 0.15. Thirty states, including Maryland, the District of Columbia, Delaware, and Pennsylvania, do not impose enhanced penalties for drivers with alcohol concentrations above 0.15.

According to the January 2001 edition of the *Digest of State Alcohol-Highway Safety Related Legislation* issued by National Highway Traffic Safety Administration, 39 states sanction drivers for a first offense of refusing a test to determine alcohol and/or drug concentration. Twenty-two states issue a mandatory suspension, while 17 states mandate license revocation. For a second offense of refusing an alcohol and/or drug concentration test, 43 states impose sanctions. Twenty-four states mandate suspension and 19 states mandate revocation.

State Revenues:

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

MVA: Potential increase in Transportation Trust Fund revenues from additional license reinstatements. The MVA collects \$75 for every license reinstatement. For production of new licenses (required after reinstatement), the MVA charges \$30. The MVA charges \$20 to reissue a license after an alcohol or drug-related suspension. The MVA advises that it anticipates \$491,250 in fiscal 2003 for placement of alcohol restrictions and processing of license reinstatements. Future year revenues reflect annualization and assume no change in caseload or fees.

General Fund: The Office of Administrative Hearings charges a \$15 fee to all individuals for all administrative hearings. The MVA advises that it anticipates 2,164 additional administrative hearings as a result of the bill. Fiscal 2003 revenues would be \$24,345. Out-year revenues would annualize to \$32,460.

State Expenditures:

District Court: The Administrative Office of the Courts advises that requests for District Court trials could increase significantly, due to the bill's provisions. Mandatory penalties for second and subsequent convictions may result in more defendants who elect to plead not guilty. This could also result in more trials and have a potentially significant fiscal impact on the District Court.

Public Safety and Correctional Services: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs.

Generally, persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 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 medical care and variable costs) is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are

generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

MVA: The MVA advises that there would be a significant workload increase related to administrative hearings, license revocations and reinstatements, and license suspensions. The MVA currently employs two individuals to process hearing requests related to license revocations. The MVA anticipates a 25% increase in hearing requests. In 2001, 8,308 individuals refused an alcohol or drug concentration test. If 25% more people request hearings, the MVA would require an additional customer service agent to process the requests.

The MVA also anticipates an increase in the number of reinstatement cases. Currently the MVA processes 7,000 reinstatement cases annually. The MVA advises that the cases could increase by 7,000 per year. One new nurse administrator would be needed to process additional reinstatements. For the function of placing alcohol restrictions on licenses, the MVA advises that one-half of a customer agent II processes about 2,300 alcohol restrictions annually. To accommodate an anticipated increase of 6,500 licenses for which restrictions will need to be placed, one additional customer service agent II would be required. The MVA also expects additional expenditures for hearings related to license suspension and license reinstatement, conducted by the Office of Administrative Hearings (OAH). The MVA anticipates a 25% increase in hearing requests. The MVA expenditures for hearings conducted by OAH could increase by \$349,692 in fiscal 2003, accounting for the October 1, 2002 effective date of the bill.

Salaries	\$95,629
Contractual Services	349,692
Other Operating Expenses	<u>64,080</u>
Total FY 2003 Expenditures	\$509,401

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% turnover; and (2) annual increases in ongoing operating expenses.

The MVA advises that computer programming expenditures could increase by an estimated \$40,000 to modify computer programs to account for the identification of records and the application of restrictions. The Department of Legislative Services (DLS) advises that if other legislation is passed requiring computer programming changes, economies of scale could be realized. This would reduce computer programming costs associated with this bill and other legislation affecting the MVA system. Further, DLS advises that the increased computer expenditure is simply an

estimate and the MVA may be able to handle the changes with either less money or with existing resources.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

Additional Information

Prior Introductions: Provisions in HB 834 and HB 1052 of the 2001 session are similar to this bill. HB 834 was withdrawn after a hearing in the Judiciary Committee. HB 1052 received an unfavorable report from the Judiciary Committee. Another similar bill, SB 474, was withdrawn from the Judicial Proceedings Committee

Cross File: None. However, SB 515 has similar provisions and is referred to the Judicial Proceedings Committee.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Transportation (Motor Vehicle Administration), Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2002
mam/cer

Analysis by: Karen D. Morgan

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510