

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 383

(Senator Ruben, *et al.*)

Judicial Proceedings

Judiciary

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Alcohol- or Drug-Related Offenses - Prohibition on Driving (John's Law)

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This bill prohibits a person who has been arrested for certain alcohol- or drug-related driving offenses from driving within 12 hours after arrest.

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Fiscal Summary

**State Effect:** Potential minimal increase in Transportation Trust Fund (TTF) revenues due to Motor Vehicle Administration (MVA) fees. Potential minimal increase in general fund revenues from fees charged for administrative hearings. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential minimal increase in TTF expenditures for processing activities.

**Local Effect:** Potential minimal increase in expenditures due to the bill's incarceration provision.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** This bill provides that a person may not drive a motor vehicle within 12 hours after arrest if the person is arrested for any of the following violations:

- driving or attempting to drive while under the influence of alcohol, while under the influence of alcohol per se, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance;

- homicide by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol per se, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance; and
- life-threatening injury by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol per se, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance.

If convicted of this offense, the person is guilty of a misdemeanor and is subject to imprisonment for up to two months, a maximum fine of \$500, or both. The MVA is also required to assess eight points against the person's driver's license.

**Current Law:** There is no statutory provision prohibiting a person arrested for alcohol- and/or drug-related driving from driving for a certain period of time after arrest. It is, however, normal practice to release someone from custody 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.

With certain exceptions, the MVA must suspend the driver's license of an individual who accumulates eight points.

**Background:** This bill is entitled "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 man who killed John Elliott and critically injured his companion had been arrested three hours earlier on a drunk driving charge. That person 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 was charged with manslaughter, vehicular homicide, and aggravated assault.

Generally, the reference "John's Law" refers, in part, to drunk driving legislation that requires a third party to take protective custody of a person arrested for drunk driving. The reference also refers to drunk driving legislation that requires the person's immediate detainment or the vehicle's impoundment upon arrest for a drunk driving violation until it is presumed safe for the arrestee to continue driving. To date, New Jersey is the only state to enact a law that requires a "custodian" or 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 custodian allows the arrested driver to regain access to a motor vehicle before the driver can safely drive.

The District of Columbia and the states of Alaska, Florida, Illinois, Kentucky, Maine, Minnesota, 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:

- Alaska prohibits a minor who has been arrested for alcohol offenses from driving for 24 hours.
- 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 .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.
- Minnesota prohibits commercial vehicle drivers who have been arrested for an alcohol offense from driving for 24 hours.
- North Carolina requires an arrested driver to be detained until the person has a .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 .04 BAC.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court and from the \$15 fee

charged by the Office of Administrative Hearings (OAH) for additional individuals who may request administrative hearings.

The MVA advises that it anticipates 6,000 people could be subject to license suspension and would pay the MVA's \$20 fee to obtain a reissued license after the suspension period had elapsed. This was projected to generate fiscal 2004 revenues of \$31,050, with out-year revenues of \$120,000 annually. This estimate appears to be generated from the assumption that out of the approximately 23,000 people who are stopped and formally charged with these offenses annually, 25% of those, or about 6,000, would be subject to the bill's provisions and the MVA would receive revenue from a license reissuance in every instance.

However, the Department of Legislative Services (DLS) believes that an increase of that magnitude is not likely. Of those who are arrested for a drunk or drugged driving violation and detained, it is likely that only a small portion of that group would be arrested again and become subject to the additional criminal penalties and license suspension provided in the bill. Factors upon which this assessment is based include:

- the bill applies only to those who are arrested for drunk or drugged driving, not to all those who have been charged and released. The number of people actually "arrested" for drunk or drugged driving is not known, but would be somewhat less than those charged;
- some drivers who are arrested for drunk/drugged driving offenses remain in detention until they meet conditions of pretrial release set by a court commissioner or judge, and in some of those instances, the release of the driver does not occur until at least 12 hours after the arrest;
- some drivers who are arrested have been involved in accidents in which the vehicle is inoperable and they may not have ready access to another vehicle;
- some drivers who are arrested are injured as a result of an accident and are not released from a medical facility until more than 12 hours after their arrest;
- some drivers who are arrested have a friend or family member pick them up;
- some drivers arrested for drunk and drugged driving are charged with other offenses discovered at the time of arrest ( e.g., possession of drugs or handgun) or have other outstanding warrants or detainers which result in their detention beyond the 12-hour period provided for in the bill; and
- the apprehension of any arrestees who violate the 12-hour prohibition would be dependant on law enforcement resources and capacities.

While some increase in TTF revenues from reissuances of licenses after a suspension is possible, DLS believes any potential increase would be minimal.

**State Expenditures:** The MVA advises that two additional personnel would be needed to process the estimated 6,000 people they believe are subject to license suspension under this bill. Also, \$190,440 would be needed to pay OAH for administrative hearings, based on the projection that of the 6,000 subject to suspension, 46% or 2,760 would request administrative hearings. However, DLS advises that any new expenditures for the MVA pursuant to this bill are likely to be significantly less than the MVA has projected. As noted above, DLS advises that the number of those likely to be subject to suspension under this bill, while not predictable, is likely to be substantially smaller than the projection of 6,000 provided by the MVA. TTF expenditures could potentially increase to accommodate some additional demand to process and mail suspension notices and provide for administrative hearings; however, DLS advises that the increase in expenditures is likely to be minimal and additional personnel would not be needed to address the requirements of this bill.

Persons sentenced to a term of incarceration of one year or less in Baltimore City are generally incarcerated in a Division of Correction (DOC) facility. Currently, DOC 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 \$350 per month.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. Persons sentenced to a term of incarceration in a jurisdiction other than Baltimore City are generally incarcerated in a local facility. The number of persons convicted of and incarcerated for this offense is not expected to be significant. Counties pay the full cost of incarceration for the first 90 days of a sentence. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

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### **Additional Information**

**Prior Introductions:** This bill is similar to SB 389 of the 2002 session. SB 389 was referred to the Judicial Proceedings Committee, where it received an unfavorable report. HB 47, a bill that was cross filed with SB 389, was passed by the House and was referred to the Judicial Proceedings Committee, where it was not reported out. Another similar bill from the 2002 session, HB 60, was referred to the Judiciary Committee, but was withdrawn. During the 2001 session, another similar bill, HB 69, received an unfavorable report from the Judiciary Committee.

**Cross File:** None. However, a similar bill, HB 6, has passed the House and has been referred to the Judicial Proceedings Committee.

**Information Source(s):** Wicomico County, Allegany County, Montgomery County, Prince George's County, Talbot County, Department of State Police, Baltimore City, Office of the Attorney General, Department of Transportation, Mothers Against Drunk Driving, National Conference of State Legislatures, Department of Legislative Services

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