

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 405

(Senators Jimeno and Forehand)

Judicial Proceedings

Judiciary

Drunk Driving - Subsequent Offenders - Penalties

This bill repeals the authority of a court to order community service for the purpose of meeting the mandatory minimum penalties required for a person convicted of a subsequent drunk driving offense and excludes home detention as a sanction unless it is for the purpose of alcohol treatment.

The bill also expands the types of alcohol treatment programs in which an offender may be required to participate.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's penalty provision. General fund expenditures could increase by additional amounts from the alcohol treatment provision if alcohol treatment programs are expanded to specifically serve this population.

Local Effect: Local expenditures would increase to the extent that the mandatory minimum imprisonment provisions increase the number of inmates in local jails.

Small Business Effect: None.

Analysis

Bill Summary: A person who is convicted of driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se, within five years after a prior conviction for any of the same offenses, is subject to a mandatory minimum penalty of imprisonment for not less than five days.

A person who is convicted a third or subsequent time within five years of any of the aforementioned offenses is subject to a mandatory minimum penalty of imprisonment of not less than ten days. For purposes of this bill, the definition of imprisonment is altered to exclude confinement in home detention that includes electronic monitoring unless it is for the purpose of participating in: (1) an alcohol treatment program certified by the Department of Health and Mental Hygiene (DHMH); (2) an alcohol treatment program certified by an agency in an adjacent state that has powers and duties similar to DHMH; or (3) an alcohol treatment program approved by the court.

A person who is convicted of any of the aforementioned offenses within five years of a prior conviction for any of the same offenses must be required by a court to undergo a comprehensive alcohol abuse assessment. If recommended at the end of the assessment, the person must also participate in an alcohol program certified by DHMH, an alcohol program certified by an agency in an adjacent state with powers and duties similar to DHMH, or an alcohol program approved by the court.

Current Law: A person who is convicted of driving or attempting to drive any vehicle while under the influence of alcohol, or under the influence of alcohol per se, within 5 years after a prior conviction for any of those same offenses is subject to a mandatory minimum penalty of imprisonment for not less than 5 days or community service for not less than 30 days. A person who is convicted a third or subsequent time within 5 years of any of those same offenses is subject to a mandatory minimum penalty of imprisonment for not less than 10 days or community service for not less than 60 days. Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring.

A person who is convicted of driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se within five years of a prior conviction for any of those same offenses must be required by a court to undergo a comprehensive alcohol abuse assessment. If recommended at the conclusion of the assessment, the offender must participate in an alcohol program certified by DHMH, as ordered by the court. The penalties are mandatory and are not subject to suspension or probation.

Background: Provisions in the federal Transportation Equity Act of the 21st Century (TEA-21) condition the use of federal funds for highway construction projects on state enactment of laws that increase sanctions for drivers with repeat intoxicated driving offenses. The General Assembly passed a repeat offender law compliant with TEA-21 standards in the 2002 session. HB 4 was signed by the Governor and became Chapter 110 of 2002. According to Mothers Against Drunk Driving, 33 states, including Maryland, have enacted a repeat offender law that meets the minimum requirements of TEA-21.

TEA-21 establishes a range of minimum penalties for all repeat offenders convicted of violating the standard drunk driving offense. In Maryland, the standard offense is § 21-902(a) of the Transportation Article, which involves driving or attempting to drive with a blood alcohol concentration of .08 or above. Among the penalties for repeat offenders required by TEA-21 are that the offender receives a mandatory sentence of:

- not less than 5 days imprisonment or 30 days community service for a first offense; and
- not less than 10 days imprisonment or 60 days of community service for a third or subsequent offense.

This bill would establish sanctions for repeat offenders above those required by TEA-21 by eliminating community service as an option for repeat offenders. The bill also alters the definition of imprisonment to require alcohol treatment.

State Fiscal Effect: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities.

The bill contains no provisions that designate which entity is responsible for funding any alcohol treatment that may be mandated. The Alcohol and Drug Abuse Administration within DHMH pays for most in-patient alcohol treatments, but driving while under the influence of alcohol and/or driving while impaired education classes are self-pay. Other State agencies that could provide substance abuse treatment to this population include the Department of Juvenile Services, DOC, and the Division of Parole and Probation. The bill is silent on how courts may view any alcohol treatment a violator may voluntarily complete before trial. It is common practice for a person to complete this type of treatment before trial. If these treatments conform to alcohol programs as provided in the bill, then that could affect any potential State expenditures. For fiscal 2004, the budget allowance for the Alcohol and Drug Abuse Administration in DHMH is \$135.5 million, most of which is used to pay alcohol and drug treatment providers.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 2004 are estimated to range from \$14 to \$59 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the 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 Fiscal Effect: Court-ordered alcohol assessments would be conducted by the county health departments using existing resources.

Expenditures could increase as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration 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 \$28 to \$84 per inmate in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: HB 584 (Delegate O'Donnell, *et al.*) – Judiciary.

Information Source(s): Department of Public Safety and Correctional Services (Division of Parole and Probation), Department of Health and Mental Hygiene, Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2003
ncs/cer Revised - Senate Third Reader - April 1, 2003
Revised - Enrolled Bill - April 24, 2003

Analysis by: Karen D. Morgan

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