

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 371

(Delegate Menes, *et al.*)

(Chairman, Special Committee on Drug and Alcohol Abuse)

Judiciary

Crimes - Driving or Boating While Impaired by a Controlled Dangerous Substance Per Se - Penalties

This bill establishes the offense of driving or attempting to drive while impaired by an illegally used controlled dangerous substance *per se* and specifies penalties.

The bill is effective January 1, 2005.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. The Judiciary, State Police, and the Motor Vehicle Administration (MVA) should be able to handle the bill's requirements with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that any amount of a controlled dangerous substance in a person's body, as shown by appropriate analysis, is admissible into evidence. At the time of testing, if a person has any amount of a controlled dangerous substance in the

person's body, that person must be considered impaired by a controlled dangerous substance *per se*.

A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while the person is impaired by a controlled dangerous substance *per se*. A person who violates this provision is guilty of homicide by motor vehicle or vessel while impaired by a controlled dangerous substance *per se* and is guilty of a felony. The person is subject to imprisonment not exceeding three years and/or a maximum fine of \$5,000. The prohibition does not apply to a person who is legally authorized to use the controlled dangerous substance. The bill sets forth the elements necessary for an indictment, information, or other charging document.

A person who causes a life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel with any controlled dangerous substance in the body is impaired by a controlled dangerous substance *per se*. A person who commits this crime is guilty of a misdemeanor and is subject to imprisonment not exceeding two years and/or a maximum fine of \$3,000. The bill sets forth the elements necessary for an indictment, information, or other charging document.

The bill specifies that a person may not drive or attempt to drive any vehicle while impaired by a controlled dangerous substance *per se*, if that person is not entitled to use the controlled dangerous substance by law.

The MVA is authorized to revoke the license of any person who is convicted of driving or attempting to drive while impaired by a controlled dangerous substance *per se* or, who, within a three-year period has been convicted of an alcohol- or drug-related driving offense and was previously convicted of two or more alcohol- or drug-related driving offenses, including driving or attempting to drive while impaired by a controlled dangerous substance *per se*. If the person was convicted of specified alcohol- or drug-related driving offenses and was previously convicted of another alcohol- or drug-related driving offenses, including driving or attempting to drive while impaired by a controlled dangerous substance, then that person's license may be suspended for 120 days by the MVA.

The bill applies provisions relating to testing due to suspicion of driving or attempting to drive while impaired to the violation of driving or attempting to drive while impaired by a controlled dangerous substance *per se*. Procedures relating to notice and hearing and the imposition of administrative sanctions are applied to a person who refuses a test after being detained on suspicion of being impaired by a controlled dangerous substance *per se* or after providing a test result that indicates that any amount of a controlled dangerous substance was present in the person's body, at the time of testing. The administrative

sanctions that apply based on multiple refusals to take a test, or multiple test results that indicate impairment, apply to a person detained on suspicion of driving or attempting to drive while impaired by a controlled dangerous substance per se.

After a conviction for driving while impaired by a controlled dangerous substance per se, the MVA is required to assess 12 points against the driver's license, and the license is subject to revocation. The prohibition against assessing points against the holders of certain out-of-state licenses does not apply to the offense of driving or attempting to drive while impaired by a controlled dangerous substance per se. If a person is charged with a violation of driving or attempting to drive while impaired by a controlled dangerous substance per se, a court may find the person guilty of any lesser included offense.

Current Law: "Controlled dangerous substance" means a drug listed in Schedules I through V or an immediate precursor to such a drug or substance that: (1) by regulation, the Department of Health and Mental Hygiene designates as being the principal compound commonly used or produced mainly to manufacture a drug or substance listed in Schedules I through V; (2) is an immediate chemical intermediary used or likely to be used to manufacture a controlled dangerous substance; and (3) must be controlled to prevent or limit the manufacture of a controlled dangerous drug or substance. A controlled dangerous substance does not include distilled spirits, wine, malt beverages, or tobacco.

A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while the person is impaired by a controlled dangerous substance. A person who violates this provision is guilty of a felony and is subject to imprisonment not exceeding three years and/or a maximum fine of \$5,000. A person may not cause a life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while the person is impaired by a controlled dangerous substance. A person who violates this provision is guilty of a misdemeanor and is subject to imprisonment not exceeding two years and/or a maximum fine of \$3,000.

A person may not drive or attempt to drive while impaired by an illegally used controlled dangerous substance. A violation is a misdemeanor and the person is subject to imprisonment not exceeding two months and/or a maximum fine of \$500. A conviction for driving while impaired by an illegally used controlled dangerous substance requires the assessment of 12 points against the license. The MVA must revoke a license with an assessment of 12 points.

The MVA is authorized to revoke the license of someone who, within a three-year period has an alcohol- or drug-related driving conviction and who was previously convicted of

two or more specified alcohol- or drug-related driving offenses, including driving or attempting to drive while impaired by a controlled dangerous substance. The MVA is authorized to suspend, for up to 120 days, the license of someone who, within a three-year period, has an alcohol- or drug-related driving conviction and was previously convicted of another specified alcohol- or drug-related driving offense, including driving or attempting to drive while impaired by a controlled dangerous substance.

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 may not 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 police officer who stops a driver 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 take a test. 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.

With a conviction of an alcohol- or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the MVA. A person convicted of driving under the influence or under the influence *per se* is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of from one year to three years. A conviction for lesser included offenses subjects the violator to a fine of \$500 and/or imprisonment not exceeding two months. However, for repeat offenders maximum prison terms increase to a year. If an offender was transporting a minor at the time of the alcohol- or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Background: This bill is one of several bills sponsored by the House Special Committee on Drug and Alcohol Abuse.

During the 2003 interim, the committee heard testimony indicating that the problem of drivers impaired by drug use is a serious, unrecognized offense that is rarely identified or prosecuted. The testimony also pointed out that Maryland law imposes no additional penalty if a person tests positive for both drugs and alcohol and a conviction for drugged driving carries lesser penalties than a conviction for driving while under the influence of alcohol. According to the report *Driving Under the Influence of Drugs Legislation in the United States*, the National Household Survey on Drug Abuse indicates that about 12

million adult Americans are users of illegal drugs. The majority of these people are also licensed drivers. As of the year 2000, eight states, Arizona, Georgia, Iowa, Indiana, Illinois, Minnesota, Rhode Island, and Utah, have enacted legislation which specifies that any amount of a controlled dangerous substance while driving a motor vehicle is a per se offense.

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.

State Expenditures: The Judiciary advises that some increase in caseload could result from the bill's implementation. However, in fiscal 2003, only 1,231 charges of driving or attempting to drive while impaired were filed in the District Court. Accordingly, the Judiciary should be able to handle any workload changes within existing resources.

The MVA advises that reprinting of forms due to the bill's requirements would require an increase in special fund expenditures of \$25,390 in fiscal 2005 only. However, the Department of Legislative Services advises that the MVA must revise its forms to include law changes, thus forms reprinting is simply a cost of doing business and can be handled within the existing resources of the MVA.

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 and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed 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 \$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. Excluding medical care, the average variable costs total \$120 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. 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 2005 are estimated to range from \$14 to \$58 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.

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

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 \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Natural Resources, Maryland Department of Transportation, Department of Public Safety and Correctional Services, The Walsh Group, American Bar Association, Department of Legislative Services

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