

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1232

(Delegate O'Donnell, *et al.*)

Judiciary

Drunk and Drugged Driving - Subsequent Offenders - Penalties

This bill requires the imposition of the mandatory minimum criminal penalties, currently required for subsequent offenses of driving while under the influence of alcohol or under the influence of alcohol *per se*, for any subsequent alcohol- or drug-related driving offense. The bill also expands the types of alcohol- and drug-related driving offenses for which an alcohol abuse or drug abuse assessment is mandated and for which participation in an alcohol or drug abuse program may be required.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's penalty provision. Potential expansion of State-funded alcohol and drug treatment programs could be absorbed within existing resources.

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 a violation of any of the following offenses 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:

- driving or attempting to a drive any vehicle while under the influence of alcohol or under the influence of alcohol *per se*;

- driving or attempting to drive any vehicle while impaired by alcohol;
- driving or attempting to drive any vehicle while so far impaired by any drug, any combination of drugs, or combination of one or more drugs and alcohol that a vehicle cannot be driven safely; unless the person was unaware that the drug or combination would make the person incapable of safely driving a vehicle; or
- driving or attempting to drive any vehicle while impaired by any controlled dangerous substance if the person is not entitled to lawfully use the controlled dangerous substance.

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 10 days.

For purposes of this bill, the definition of imprisonment is expanded to include confinement in home detention that includes electronic monitoring for the purpose of participating in a drug treatment program.

The bill expands the types of assessments that must be required of a person who is convicted of any of the aforementioned offenses within five years of a prior conviction for any of the same offenses. The person must be required by a court to undergo a comprehensive drug abuse or alcohol assessment. If recommended at the end of the assessment, the person must also participate in an alcohol or drug abuse program that is: (1) certified by the Department of Health and Mental Hygiene (DHMH); (2) certified by an agency in an adjacent state that has powers similar to DHMH; or (3) 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 five years after a prior conviction for any of those 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 those same offenses is subject to a mandatory minimum penalty of imprisonment for not less than 10 days. Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring for the purpose of participating in an alcohol treatment program.

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 that is: (1) certified by DHMH; (2) certified by an agency in an adjacent state with powers similar to DHMH; or (3) approved 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. Chapter 110 of 2002 put the State into compliance with TEA-21 standards. According to Mothers Against Drunk Driving, 37 states, including Maryland, and the District of Columbia, 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 five days imprisonment; and
- not less than 10 days imprisonment for a third or subsequent offense.

This bill would establish sanctions for repeat offenders above those required by TEA-21 by expanding the range of alcohol- and drug-related driving violations subject to mandatory minimum imprisonment and altering the definition of imprisonment to require drug or 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 drug or alcohol treatment that may be mandated. The Alcohol and Drug Abuse Administration (ADAA) within DHMH pays for most in-patient drug and 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 drug or alcohol treatment a violator may voluntarily complete before trial. It is common practice for a person to complete this type of treatment before trial. For fiscal 2005, the budget allowance for ADAA in DHMH is \$135.8 million, most of which is used to pay alcohol and drug treatment providers. Any expansion of alcohol and drug treatment programs that may result from this bill can be handled within the existing resources of DHMH.

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

Additional Information

Prior Introductions: This bill is similar to HB 584/SB 405, as introduced in the 2003 session. HB 584/SB 405, as amended, did not contain the provisions which expanded mandatory minimum penalties to a wider range of alcohol- or drug-related driving offenses and did not require mandatory assessment for drug abuse. SB 405, as amended was passed by the General Assembly and enacted as Chapter 246 of the 2003 session. HB 584, as amended, was passed by the House and referred to the Senate Rules Committee, where it received no further action.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Department of Transportation, Department of Public Safety and Correctional Services, Mothers Against Drunk Driving, Department of Legislative Services

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mh/jr

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