

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 373

(Delegate Menes, *et al.*)
(Special Committee on Drug and Alcohol Abuse)

Judiciary

Judicial Proceedings

Vehicle Laws - Driving While Impaired by Controlled Dangerous Substance -
Penalties

This bill increases the criminal penalties for driving or attempting to drive while impaired by a controlled dangerous substance.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential minimal general fund expenditure increase from the drug and alcohol treatment provision if treatment programs are expanded to specifically serve this population.

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

Small Business Effect: None.

Analysis

Bill Summary: This bill increases the penalties for driving or attempting to drive while impaired by a controlled dangerous substance by making them commensurate with the penalties for driving or attempting to drive while under the influence of alcohol or under the influence of alcohol per se.

The bill provides that a person who is convicted of a violation of driving or attempting to drive while impaired by a controlled dangerous substance within five years after a prior

conviction for the same offense is subject to a mandatory minimum penalty of imprisonment of five days. A third or subsequent conviction of driving or attempting to drive while impaired by a controlled dangerous substance subjects the violator to mandatory minimum imprisonment of 10 days.

Any person who is convicted of driving or attempting to drive while impaired by a controlled dangerous substance within five years of a prior conviction for the same offense shall be required by the court to undergo a comprehensive drug abuse assessment. If recommended at the conclusion of the assessment, the violator must participate in a drug program that is certified by the Department of Health and Mental Hygiene, certified by an equivalent agency in an adjacent state, or approved by the court.

For a first offense of driving or attempting to drive while impaired by a controlled dangerous substance, a person is subject to a maximum fine of \$1,000 and/or imprisonment not exceeding one year. For a second offense, the violator is subject to a maximum fine of \$2,000 and/or imprisonment not exceeding two years. For a third or subsequent offense, the violator is subject to a maximum fine of \$3,000 and/or imprisonment not exceeding three years. The bill also provides that for the purpose of second or subsequent offender penalties, a prior conviction of driving or attempting to drive while impaired by alcohol, while impaired by alcohol per se, while impaired by drugs, or while impaired by drugs or drugs and alcohol within five years of a conviction for driving or attempting to drive while impaired by a controlled dangerous substance shall be considered a controlled dangerous substance conviction.

The bill makes the penalties for driving or attempting to drive while impaired by a controlled dangerous substance while transporting a minor commensurate with the penalties for driving while under the influence of alcohol or under the influence of alcohol per se while transporting a minor. For a first offense, the violator is subject to a maximum fine of \$2,000 and/or imprisonment not exceeding two years. For a second offense, the violator is subject to a maximum fine of \$3,000 and/or imprisonment not exceeding three years. For a third or subsequent offense, the violator is subject to a maximum fine of \$4,000 and/or imprisonment not exceeding four years.

Current Law: A person who is convicted of driving or attempting to drive while impaired by a controlled dangerous substance is subject to a maximum fine of \$500 and/or imprisonment not exceeding two months. The MVA is required to assess 12 points against the violator's license and the license is subject to revocation. A second or subsequent violation of driving or attempting to drive while impaired by a controlled dangerous substance subjects the violator to a maximum fine of \$500 and/or imprisonment not to exceed one year.

Except as provided, for the purpose of second or subsequent offender penalties, a prior conviction of driving or attempting to drive while under the influence of alcohol or under the influence per se; while impaired by alcohol; or while impaired by drugs or drugs and alcohol, shall be considered a violation of driving or attempting to drive while impaired by a controlled dangerous substance. If a person has a prior conviction of driving or attempting to drive while impaired by alcohol, impaired by drugs or drugs and alcohol; or impaired by a controlled dangerous substance, within five years of a conviction for driving or attempting to drive while under the influence of alcohol or under the influence per se, then that violation shall be considered a conviction of driving or attempting to drive while under the influence of alcohol or under the influence per se.

Any person who is convicted of driving while impaired by alcohol, impaired by drugs or drugs and alcohol, or impaired by a controlled dangerous substance while transporting a minor is subject to a maximum fine of \$1,000 and/or imprisonment not to exceed six months. For a second or subsequent offense, the violator is subject to a maximum fine of \$2,000 and/or imprisonment not exceeding one year. For the purpose of second or subsequent offender penalties relating to an alcohol- or drug-related driving offense while transporting a minor, a prior alcohol- or drug-related driving offense shall be considered a prior conviction.

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.

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

State Expenditures:

Department of 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. The number of people subject to the longer penalties 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.

Department of Health and Mental Hygiene (DHMH): The bill contains no provisions as to which entity is responsible for funding any treatment that may be ordered. The Alcohol and Drug Abuse Administration 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 Justice, DOC, and the Division of Parole and Probation. The bill is also silent on how the courts may view any drug or alcohol treatment a violator may voluntarily complete before trial. It is a common practice for a person to complete such treatment before trial. If these treatments meet the recommendations of DHMH, then that would also affect any potential State expenditures. For fiscal 2005, the appropriation for the Alcohol and Drug Abuse Administration in DHMH is \$130.1 million, most of which is used to pay alcohol and drug treatment providers.

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): Department of Health and Mental Hygiene, Maryland
Department of Transportation, Department of Legislative Services

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