

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1138
Judiciary

(Delegate Dumais)

Drunk and Drugged Driving Offenses - Criminal Penalties, Testing, and Evidence

This bill makes a number of substantive changes to various provisions of law dealing with alcohol- and drug-related driving offenses. These changes include several criminal and administrative penalty enhancements. The bill requires a driver to take an alcohol and/or blood test if the driver is detained and directed to do so by a law enforcement officer. The bill requires courts and the Motor Vehicle Administration (MVA) to order restrictions on driver's licenses and driving privileges under various circumstances and applies sanctions for convictions of various offenses equally to pleas of *nolo contendere* and orders of probation before judgment for those offenses.

Fiscal Summary

State Effect: Potential general fund revenue increase due to the bill's monetary penalty provisions and fees for administrative hearings. Potential significant increase in general fund expenditures for additional trials. Minimal increase in general fund expenditures as a result of the bill's incarceration provisions.

Local Effect: Potential minimal increase in local expenditures from the incarceration penalty provision of this bill. Potential minimal increase in revenues from fines for those cases heard in circuit court.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Probation Before Judgment

This bill prohibits a court from staying an entry of judgment and placing a defendant on probation if that defendant has refused to take an alcohol- and/or drug-related test, or violated the prohibitions against alcohol- and/or drug-related driving if, within the preceding five years, the defendant has been convicted of or placed on probation for any of those violations.

Mandatory Testing

A person may be compelled to submit to a test or tests. Any person who drives a motor vehicle is deemed to have consented to a test if that person is detained on reasonable grounds for driving or attempting to drive a motor vehicle: (1) while under the influence of alcohol; (2) while impaired by alcohol; (3) while so impaired by drugs or drugs and alcohol that a vehicle may not be operated safely; (4) while impaired by a controlled dangerous substance; (5) in violation of an alcohol restriction; or (6) after ingesting any alcohol while operating a commercial vehicle.

The detaining officer must advise the person that, on receipt of the officer's sworn statement that the person was so charged and refused a test, or was tested and the result was an alcohol concentration of at least 0.08, but not more than 0.15, that the MVA must impose a suspension of 45 days for a first offense and 90 days for a second offense. For a first offense of a test result exceeding 0.15, the MVA must suspend the driver's license or driver's privilege for 60 days. For a second or subsequent offense, the MVA must suspend the driver's license or driver's privilege for 120 days. For a test refusal, the MVA must suspend the person's driving license or driving privilege for 180 days for a first offense. For a second or subsequent offense, the MVA must suspend the person's driving license or privilege for one year. Unless the person is incapable of refusing, if a police officer stops or detains any person who the police officer has reasonable grounds to believe has committed the specified alcohol- and/or drug-related offense, the police officer must detain the person and direct the person to take a test. The person must be advised of specified administrative sanctions that may be imposed and notice and hearing requirements.

The bill repeals the requirement that a person must be involved in an accident resulting in life-threatening injury or death, to be subject to detention by a police officer and a

requirement to take a test, due to the police officer's belief, on reasonable grounds, that the person committed an alcohol- and/or drug-related driving offense.

If directed by a police officer, a person may not refuse to take the test. Twelve points must be assessed against a person who is convicted of refusing to take a test. Any person refusing to take a test is subject to a maximum fine of \$1,000, or imprisonment for up to one year, or both.

Driver's License or Driving Privilege Suspension

The bill increases administrative penalties for a violation of driving under the influence of alcohol per se offenses when a driver is tested with an alcohol concentration of more than 0.15 at the time of testing. If a hearing request is not made within 10 days after issuance of an order for suspension, the bill requires the MVA to: (1) for a first offense, suspend the driver's license or privilege for 60 days; and (2) for a second or subsequent offense, suspend the driver's license or privilege for 120 days. For the first offense of test refusal, the MVA must impose a suspension of 180 days. For a second or subsequent offense, the MVA must impose a suspension of one year.

Limitations on the MVA Modification of Administrative Per Se Suspensions

Unless otherwise required by a court order, the bill authorizes the MVA, under specified circumstances, to modify suspensions or issue a restrictive license for a licensee who has not:

- refused to take a test;
- within the last five years, had a license suspended for an alcohol-related offense; or
- within the last five years, been convicted of, entered a plea of *nolo contendere* for, or received a probation before judgment for either:
 - causing the death of, or life-threatening injury to, another individual as a result of negligent driving when the individual was driving under the influence of alcohol, under the influence of alcohol per se, or driving while impaired by alcohol; or
 - comparable offenses under federal law or the law of another state.

Offenses Considered Subsequent Offenses for Criminal Penalty Determination

The bill generally provides that convictions for or pleas of *nolo contendere* for certain offenses are considered prior offenses for the purposes of subsequent offender criminal penalties for driving under the influence of alcohol or under the influence of alcohol per

se, driving while impaired by alcohol, driving while impaired by drugs or drugs and alcohol, or driving while impaired by a controlled dangerous substance. Those offenses that qualify as prior offenses for subsequent offender criminal penalties are: (1) causing the death of, or life-threatening injury to, another individual as a result of negligent driving when the individual was driving under the influence of alcohol, driving under the influence of alcohol per se, or driving while impaired by alcohol; (2) driving while under the influence of alcohol or under the influence of alcohol per se, or driving while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance; or (3) comparable offenses under federal law or the law of another state.

Increased Criminal Penalties for Driving While Under the Influence of Alcohol or Under the Influence of Alcohol Per Se Above 0.15

The bill creates the following new penalties for individuals who have been convicted of or plead *nolo contendere* for driving or attempting to drive a motor vehicle while under the influence of alcohol or under the influence of alcohol per se with an alcohol concentration of more than 0.15 at the time of testing:

- for a first offense, a maximum fine of \$1,500 and/or imprisonment for up to 18 months;
- for a second offense, a maximum fine of \$3,000 and/or imprisonment for up to 3 years; and
- for a third or subsequent offense, a maximum fine of \$4,000 and/or imprisonment for up to 4 years.

The bill applies the existing criminal penalties, including repeat offender penalties, for a conviction of driving under the influence of alcohol or under the influence per se to an individual who also enters a plea of *nolo contendere* for those offenses or the offenses of causing death or 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, and related crimes. The bill also extends the existing criminal penalties for conviction of certain driving offenses while transporting a minor to encompass pleas of *nolo contendere*.

Current Law: A person is prohibited from driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se (§ 21-902(a) of the Transportation Article) or while impaired by a controlled dangerous substance (§21-902(d) of the Transportation Article). A first offense is punishable with a maximum fine of \$1,000 or imprisonment up to one year, or both. Maximum penalties for second and third offenses that occur after five years of a prior conviction, each increase by

\$1,000 and an additional year of imprisonment, but the subsequent offenses occurring after five years of a prior conviction, have a maximum penalty of a fine of up to \$3,000 and/or imprisonment for up to three years.

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, or while impaired by a controlled dangerous substance /within five years after a prior conviction for any included 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 5 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 participation in a certified or court-approved alcohol treatment program. The MVA is required to suspend for one year the license of anyone convicted of driving or attempting to drive while under the influence of alcohol or under the influence of alcohol per se more than once within a five-year period.

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 included 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 the Department of Health and Mental Hygiene, certified by an adjacent state agency, or approved by the court. For a person convicted of driving or attempting to drive while impaired by a controlled dangerous substance within five years of a prior conviction for any included offenses must undergo a comprehensive drug abuse assessment. The program must be certified and approved in the same way that an alcohol abuse assessment is certified and approved. The penalties are mandatory and are not subject to suspension or probation.

Additionally, the MVA may revoke the license of any person convicted of a violation of § 21-902(a) or (d) or issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood or with any other restriction that MVA determines necessary to ensure safe driving.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. A test means a test of the persons' breath a test or tests of the person's blood or both a test of the person's breath and blood. 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 cannot 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 person who is stopped by a police officer 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 permit a test to be taken. 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. Refusal to take a test is an "administrative per se" offense. An offender's license or driving privilege must be suspended by the MVA for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal unless the driver participates in the ignition interlock system program for at least one year.

If a person takes a breath or blood test that indicates an alcohol concentration of 0.08 or more at the time of testing, the MVA must suspend the driver's license or privilege for 45 days for a first offense, and 90 days for a second or subsequent offense. If a person refuses to take a test, the MVA shall suspend the driver's license or privilege for 120 days for a first offense and one year for subsequent offenses.

A person is prohibited from driving or attempting to drive any vehicle while impaired by alcohol (§ 21-902(b) of the Transportation Article). A first offense is punishable with a maximum fine of \$500 or imprisonment for up to two months, or both. Subsequent offenses that do not occur within five years of a prior offense have a maximum fine of \$500 or imprisonment for up to one year, or both.

Additionally, the MVA may revoke the license of any person who, within a three-year period, is convicted of driving while impaired by alcohol, or while impaired by any combination of drugs or drugs and alcohol and who was previously convicted of two or more violations within a three-year period of being convicted under § 21-902. The MVA may suspend the license for 60 days for a first offense, or 120 days for two or more violations of driving while impaired by alcohol or driving while impaired by any combination of drugs or drugs and alcohol within three years, or the MVA may issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood.

Background: According to the organization Mothers Against Drunk Driving, 34 states, including Virginia, Delaware, Pennsylvania, and North Carolina, and the District of Columbia impose enhanced penalties for drivers who have been tested and have a concentration of alcohol that is 0.15 or higher. Sixteen states, including Maryland, New

Jersey, and West Virginia, do not impose enhanced penalties for drivers with alcohol concentrations at 0.15 or above.

According to the American Automobile Association, 42 states and the District of Columbia sanction drivers for a test refusal or test results above the legal limit. The majority of sanctions are mandatory, but some states authorize discretion in the imposition of sanctions.

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. According to the District Court, in fiscal 2004 there were 66,835 citations for alcohol- and/or drug-related violations. According to the State Police, about 7,000 people refuse on an annual basis to take a test to determine alcohol and/or drug concentration. Under the bill, those who refuse to take a test would be subject to a maximum fine of \$1,000. However, because it is difficult to predict the deterrent effect of the penalties established for refusing a test, a precise estimate of the potential revenue increase cannot be made. Moreover, it is expected that many offenders would not be fined the maximum amount.

State Expenditures:

District Court: The District Court advises that requests for trials could increase. Mandatory penalties for second and subsequent convictions may result in more defendants who elect to plead not guilty. This could result in more trials and have a minimal fiscal impact on the District Court.

Public Safety and Correctional Services: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to 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 convicted of the proposed crimes 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 \$310 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 2006 are estimated to range from \$17 to \$65 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.

The MVA advises that six additional positions at a cost of \$630,894 in fiscal 2006 are needed to meet this bill's requirements. The Department of Legislative Services (DLS) disagrees with that assessment and advises that the MVA is already processing people for administrative sanctions that would also be addressed in this bill.

The MVA believes that three positions are necessary to handle an anticipated workload increase from those who refuse a test that is directed by a police officer and additional hearings. The MVA assumes that more people will request hearings after being charged with refusing a test. DLS advises, however, that the workload from test refusals can be accommodated with existing resources, in part because the number of drivers who would refuse a test for an alcohol- or drug-related driving offense could decline due to this bill's more severe sanctions. Also, under current law, drivers who refuse a test are subject to suspension. A large portion of the drivers who are stopped for a test are exhibiting signs of driving impairment that would subject them to an alcohol- or drug-related driving charge and license revocation, whether a test is taken or not. Since this type of charge requires an assessment of 12 points, the MVA is already processing license revocations under current law for much of the same population that would be subject to license revocation under this bill. Also, since the number of those refusing a test could decline, not increase under this bill, DLS advises that the workload from test refusals, including any requested hearings, could be handled with existing resources.

The MVA also advises that three additional nurse administrators would be required to process an anticipated doubling of the license reinstatement workload. DLS does not agree that the reinstatement caseload would double solely due to this bill. In fact, as noted above, the number of those refusing a test is not likely to increase under this bill. Since the population that would be subject to license revocation under this bill is already subject to license suspension under current law, and the number of those requesting hearings is already requesting hearings under current law, DLS advises that the workload from license reinstatements could be handled with existing resources.

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 \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 763/SB 617 of 2004. HB 763 was heard in the Judiciary Committee, but received no further action. SB 617 passed the Senate, as amended, but received an unfavorable report from the Judiciary Committee. This bill is similar to SB 410 of 2003, which was heard in the Judicial Proceedings Committee, but no further action was taken. Another similar bill, SB 515 from the 2002 session, was heard in the Judicial Proceedings Committee, but then withdrawn. In the same year, another similar bill, HB 818, received an unfavorable report from the Judiciary Committee.

Cross File: SB 641 (Senator Jimeno) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Public Safety and Correctional Services, Mothers Against Drunk Driving, American Automobile Association, Department of Legislative Services

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