

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 329

(Senator Ruben, *et al.*)

Judicial Proceedings

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**Drunk and Drugged Driving - Prior Convictions - Penalties and Probation  
Before Judgment**

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This bill repeals the provisions that establish a second or subsequent violation of an alcohol- and/or drug-related driving offense as one that occurs within five years of a previous conviction and provides instead that a second or subsequent offense that occurs at any time after the prior conviction is a second or subsequent offense for the implementation of repeat offender penalties.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund expenditures due to the bill's penalty provisions. Any increase in the number of required alcohol or drug abuse assessments could be handled with existing resources. The District Court could meet the bill's requirements with existing resources. No fiscal impact on the Motor Vehicle Administration.

**Local Effect:** Minimal increase in expenditures due to the bill's penalty provisions.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill prohibits a court from staying the entry of a judgment and placing a person on probation before judgment for a second or subsequent violation of an alcohol- and/or drug-related driving offense if the person previously was convicted of or placed on probation before judgment for an alcohol- and/or drug-related driving offense, regardless of when the previous conviction occurred.

The bill applies mandatory imprisonment penalties to a person who has a second or subsequent conviction for an alcohol and/or drug-related driving offense, regardless of when the previous conviction occurred.

A person who is convicted of a second or subsequent offense of driving while under the influence of alcohol or under the influence of alcohol per se is required to undergo a comprehensive alcohol abuse assessment. A person convicted of a second or subsequent offense of driving while under the influence of a controlled dangerous substance is required to undergo a comprehensive drug abuse assessment. These assessments are required regardless of when the offenses occurred.

**Current Law:** A court is prohibited from staying the entry of judgment and granting probation before judgment if a person is charged with any of the following offenses, if that person has been convicted of or given probation for any of those offenses within the preceding five years: (1) driving while under the influence of alcohol, or under the influence of alcohol per se; (2) driving while impaired by alcohol; (3) driving while impaired by drugs or drugs and alcohol; (4) driving while impaired by a controlled dangerous substance; (5) homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol per se; (6) homicide by motor vehicle or vessel while impaired by alcohol; (7) homicide by motor vehicle or vessel while impaired by drugs or drugs and alcohol; (8) homicide by motor vehicle or vessel while impaired by a controlled dangerous substance; or (9) life threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes.

A person who is convicted of driving or attempting to drive any vehicle while under the influence of alcohol, under the influence of alcohol per se, or while impaired by a controlled dangerous substance 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 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 participating in an alcohol treatment program.

A person who is convicted of driving or attempting to drive a motor 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. A person convicted of driving or attempting to drive a motor vehicle while impaired by a controlled dangerous substance within five years of a prior conviction must undergo a comprehensive drug abuse assessment. If recommended at the conclusion of the assessment, the offender must 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 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 21<sup>st</sup> 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, 39 states, including Maryland, and the District of Columbia, have enacted repeat offender laws that meet 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; 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 that are subject to mandatory minimum imprisonment penalties, comprehensive assessments for alcohol or drug abuse, and that are not eligible for probation before judgment.

**State Expenditures:** 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. The additional number of people convicted of this due to the alteration of penalties for repeat offenders is expected to be minimal.

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 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 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 \$310 per month.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. 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 \$33 to \$119 per inmate in fiscal 2006.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2005  
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