

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 1051

(Charles County Delegation)

Judiciary

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**Vehicle Laws - Fleeing or Eluding a Police Officer - Penalty and Forfeiture**

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This bill changes the offense of fleeing and eluding a police officer from a misdemeanor to a felony and subjects a violator to forfeiture of the motor vehicle used in the offense.

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**Fiscal Summary**

**State Effect:** Potential minimal revenue increase from the proceeds of forfeited motor vehicles. Although additional hearings may be required to determine whether forfeiture is appropriate, it is anticipated that the provisions of this bill could be implemented with existing resources.

**Local Effect:** Potential minimal revenue increase from the proceeds of forfeited motor vehicles. Although the bill could cause an increase in search and seizure activity and an increase in judicial hearings to determine whether forfeiture should take place, it is anticipated that local authorities would be able to implement the bill's provisions with existing resources.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A law enforcement officer may seize and recommend for forfeiture a motor vehicle when making an arrest or issuing a citation for fleeing and eluding a police officer. However, a motor vehicle used to flee or elude police is not subject to forfeiture if, without knowledge of the vehicle's registered owner, an individual who is not the registered owner committed the offense.

The chief law enforcement officer may recommend forfeiture of a motor vehicle only after:

- determining the names and addresses of all secured parties;
- personally reviewing the facts and circumstances of the seizure;
- writing to the forfeiting authority that forfeiture is warranted; and
- the individual arrested or cited for fleeing and eluding a police officer is convicted of the offense.

In a forfeiture proceeding for the seized motor vehicle, a sworn affidavit from the chief law enforcement officer that requirements for the forfeiture recommendation have been met is admissible into evidence. The chief law enforcement officer may not be subpoenaed or compelled to testify if another law enforcement officer with personal knowledge of the circumstances testifies at the proceeding. If the forfeiting authority makes an independent determination that an individual other than the registered owner committed the violation, then the forfeiting authority must surrender the vehicle to an owner. If the forfeiting authority determines that forfeiture is warranted, the forfeiting authority must file a complaint with the circuit court in the county where the motor vehicle was seized, the court must schedule a hearing, and the registered owner must be given an opportunity to testify. The registered owner must receive notice at least 10 days before the forfeiture hearing.

After a hearing, if the court determines that the motor vehicle should not be forfeited, then the court must order that the motor vehicle be released to a registered owner. If the court determines that the motor vehicle should be forfeited, the court must order that the motor vehicle be forfeited to the appropriate governing body.

If the court determines that the motor vehicle is subject to a lien that was created without actual knowledge that the motor vehicle was used to flee and elude a police officer, the court must order that the motor vehicle be released within five days to the first priority lienholder and the lienholder must sell the motor vehicle in a commercially reasonable manner. The proceeds of the sale must be applied first to court costs; then to the balance due to the lienholder, including all reasonable costs incident to the sale; then to payment of all other expenses including seizure, maintenance, and custody; and finally to the general fund of the State or the political subdivision that seized the motor vehicle.

If a claim for the motor vehicle is not submitted by the lienholder, then the political subdivision where the vehicle was seized may sell the forfeited vehicle. The proceeds of the sale must be applied first to court costs of the forfeiture proceeding, then to the general fund of the political subdivision.

**Current Law:** A visual or audible signal includes a signal by hand, voice, emergency light, or siren. If a police officer gives an audible or visual signal to stop and the police officer is in uniform, prominently displaying a badge or other insignia, the vehicle driver may not attempt to elude the police officer by willfully failing to stop the vehicle, fleeing on foot, or any other means. If a police officer gives an audible or visual signal to stop and the officer is in an appropriately marked official police vehicle, whether or not the officer is in uniform, the vehicle driver may not attempt to elude the officer by willfully failing to stop the vehicle, fleeing on foot, or any other means. A person who is convicted of fleeing or eluding police is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. For any subsequent offense, a person is subject to maximum penalties of imprisonment for two years and/or a fine of \$1,000.

A vehicle driver is also prohibited from attempting to elude a police officer by willfully failing to stop the vehicle such that it results in the bodily injury to or death of another person. A person who causes bodily injury in this manner is subject to imprisonment for up to three years and/or a maximum fine of \$5,000. A person who causes death of another person after fleeing or eluding police is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

All of the above-mentioned offenses require a court appearance, and the Motor Vehicle Administration is required to assess 12 points against the driver's license, which subjects the driver to license revocation.

State laws authorizing search and seizure of property, money, or valuables do not apply to property that may have been used in furtherance of a violation of the Maryland Vehicle Law. Search and seizure provisions apply to property used or intended to be used to violate controlled dangerous substance, gambling, gun, and explosives laws.

Procedures vary for the search, seizure, and forfeiture of property depending on whether the offense involves controlled dangerous substances, gambling, guns, or explosives. Generally, raw materials, equipment, books, records, research, motor vehicles, other vehicles or vessels, real property, money, contraband, negotiable instruments, as well as other items of value may be subject to search, seizure, and forfeiture. Once the property is seized, a law enforcement authority must file a complaint seeking forfeiture. The owner of the seized property is entitled to notice and opportunity for hearing on the forfeiture claim. The courts are authorized to mitigate the impact of forfeiture or return all seized property to the owner. The courts are also authorized to take appropriate measures to safeguard and maintain forfeited property.

Once forfeiture is authorized, the governing body where the property was seized may keep the property for official use, dispose of, or sell the property. If the property is sold by a State law enforcement unit, then proceeds from the sale must be deposited into the

general fund of the State. If the property is sold by a local law enforcement unit, then proceeds from the sale must be deposited into the general fund of the political subdivision that has jurisdiction over the law enforcement unit.

**State Effect:** Changing crimes from misdemeanors to felonies means: (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under the bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense. In any case, this bill would shift some unknown number of cases from the District Court to the circuit courts.

**Local Expenditures:** The counties of Cecil, Harford, and Prince George's advise that the bill's provisions would not have a fiscal impact. Carroll County advises that any fiscal impact would be minimal. Montgomery County advises that storage space is not available to hold vehicles for long periods of time. Typically, a seized motor vehicle may stay at the impound lot for a month before it is either returned (with charges assessed for storage) or sold. If a vehicle is in good condition, the county may convert it to police official use.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Cecil County, Montgomery County, Prince George's County, Carroll County, Harford County, St. Mary's County, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2006  
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