

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 1073

(Senator Miller, *et al.*)

Judicial Proceedings

Vehicle Laws - Eluding a Police Officer - Offenses, Penalties, and Forfeiture

This bill provides that causing property damage while fleeing and eluding a police officer in a motor vehicle is a felony and establishes penalties. It changes the offenses of causing bodily injury or death to another while fleeing and eluding a police officer in a motor vehicle from misdemeanors to felonies and increases the penalties for those offenses. The bill provides that willfully failing to stop a motor vehicle after a signal to do so by a police officer while attempting to elude a police officer who has signaled the driver to stop due to the commission of a felony or violent crime is a felony and establishes penalties. The bill also subjects a driver who commits the felony of fleeing and eluding the police to forfeiture of the motor vehicle used in the offense.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. 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 increase in revenues and expenditures due to the bill's penalty provisions. 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.

Analysis

Bill Summary: If the willful failure to stop a motor vehicle after a visual or audible signal by a police officer results in property damage to another, the driver has committed a felony and is subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000.

The willful failure to stop a motor vehicle after a visual or audible signal to stop by a police officer that results in bodily injury to another person is a felony. A violator is subject to maximum penalties of imprisonment for 15 years and/or a fine of \$15,000.

The willful failure to stop a motor vehicle after an audible or visual signal to stop by a police officer that results in death to another is a felony. A violator is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000.

A driver is guilty of a felony if he/she willfully fails to stop a motor vehicle after an audible or visual signal to stop by a police officer while attempting to elude a police officer who has signaled the driver to stop to apprehend the driver for the commission of a felony or a violent crime. A violator is subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000.

A person who commits the felony of fleeing and eluding a police officer as provided in this bill is subject to forfeiture of the motor vehicle used in the offense.

A law enforcement officer may seize a motor vehicle and recommend forfeiture to a forfeiting authority when making an arrest or issuing a citation for the felony of fleeing and eluding a police officer as provided in this bill. A “forfeiting authority” means the office or person designated by agreement between the State’s Attorney for a county and the chief executive officer of the political subdivision that seizes a motor vehicle. A motor vehicle used to commit the felony of fleeing and eluding police is not subject to forfeiture, however, 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 to a forfeiting authority 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 the felony of 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 the 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: This bill has a fiscal impact on the Judiciary and the Department of Public Safety and Correctional Services because it (1) creates new aspects of the fleeing and eluding crime and makes them felonies; and (2) makes causing property damage, bodily injury, or death while fleeing and eluding a felony and increase the penalties for those offenses.

Judiciary: General fund revenues could increase minimally as a result of the bill's monetary penalties from cases heard in the District Court.

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.

General fund expenditures could increase minimally as a result of the bill's incarceration penalty 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 convicted of the new felonies created by this bill is expected to be minimal.

Department of Public Safety and Correctional Services: 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 \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 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 2007 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.

Local Fiscal Effect: Montgomery County advises that revenue could potentially be realized due to the bill's forfeiture provisions. Baltimore City advises that some minimal increase in revenues could potentially be realized from forfeiture and the bill's provisions could be enforced with existing resources.

Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Expenditures could increase minimally as a result of the bill's incarceration penalty. 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 2007.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Caroline County, Calvert County, Howard County, Baltimore City, 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

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