

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 708

(Senator Ruben, *et al.*)

Judicial Proceedings

Vehicle Laws - Finding of High Alcohol Concentration - Prohibition on
Probation Before Judgment - Mandatory Penalties

This bill prohibits a court from entering a stay of judgment and granting probation before judgment if the defendant committed an alcohol-related driving offense with a blood alcohol concentration of 0.15 or more. The bill also subjects a person who commits an alcohol-related driving offense with a blood alcohol concentration of 0.15 or more to mandatory imprisonment penalties, in addition to any other applicable mandatory minimum penalties.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's penalty provisions. Potential expansion of State-funded alcohol and drug treatment programs could be absorbed within existing resources.

Local Effect: Local expenditures would increase to the extent that the mandatory imprisonment provisions increase the number of inmates in local jails.

Small Business Effect: None.

Analysis

Bill Summary: This bill prohibits a court from granting probation before judgment if the trier of fact finds, beyond a reasonable doubt, that the person committed an alcohol- and/or drug-related driving offense and that the defendant had a test result indicating a blood alcohol concentration of 0.15 or more at the time of the violation. A finding by the trier of fact, beyond a reasonable doubt, that the defendant had a blood alcohol

concentration of 0.15 or more from a test result at the time of the violation also subjects the defendant to the following mandatory imprisonment penalties in addition to any other mandatory minimum penalties:

- for a first violation with a test result of 0.15 or more, imprisonment for a minimum of 7 days;
- for a second violation within 10 years, imprisonment for a minimum of 14 days;
- for a third offense within 10 years, imprisonment for a minimum of 21 days; and
- for a fourth or subsequent offense within 10 years, imprisonment for a minimum of 28 days.

“Imprisonment” includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring for the purpose of participation in an alcohol treatment program that is certified by the Department of Health and Mental Hygiene (DHMH), certified by an agency in an adjacent state that is similar to DHMH, or approved by the court.

A prior conviction for driving while under the influence of or impaired by alcohol, while impaired by alcohol and/or drugs and alcohol, or while impaired by a controlled dangerous substance is considered a prior conviction for purposes of the mandatory minimum penalties imposed by the bill. The imprisonment penalties are mandatory and are not subject to suspension or probation.

Current Law: A person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol per se;
- impaired by alcohol;
- impaired by drugs, or drugs and alcohol; or
- impaired by a controlled dangerous substance.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. This applies to a person who is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. However, a person may not be compelled to submit to a test 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. If, after being informed of the administrative sanctions that must be imposed and notice and hearing requirements, a person takes a test of blood or breath that indicates an alcohol concentration of 0.08 or more at the time of testing, the Motor Vehicle Administration (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.

A court may enter a stay of judgment and grant probation before judgment unless the defendant is charged with any of the following offenses, and the defendant has been convicted of, or given probation for, any of these 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.

With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the MVA. A person convicted of driving under the influence or under the influence per se is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of one to three years. A repeat conviction within 5 years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as well as a mandatory alcohol abuse assessment. A conviction for lesser included offenses subjects the violator to maximum penalties of a \$500 fine and/or two months imprisonment. However, for repeat offenders maximum prison terms increase to a year. If an offender is transporting a minor at the time of the alcohol- and/or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Background: According to the National Conference of State Legislatures, at least 32 states have enacted high blood alcohol content laws (also known as high BAC laws). States with high BAC laws generally establish a two-tier system for drunk driving offenses. The standard drunk driving limit is still set at 0.08 BAC, but a second, higher BAC level is established for drivers who are extremely drunk. These high BAC levels range from 0.15 to 0.20. Some states impose stiffer penalties for a high BAC offense, while others establish high BAC as a separate offense with separate penalties. At least 11 states considered bills to establish a high BAC threshold in 2005, but the only state to pass such a law was Texas, which imposed higher fines and required ignition interlock for drivers with a BAC higher than 0.15.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC)

facilities. The number of people convicted of this proposed crime 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 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 a DOC facility. Currently, the DOC 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.

The bill contains no provisions that designate which entity is responsible for funding any drug or alcohol treatment that may be mandated. The Alcohol and Drug Abuse Administration (ADAA) 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 Services, DOC and the Division of Parole and Probation. The bill is silent on how courts may view any drug or alcohol treatment a violator may voluntarily complete before trial. It is common practice for a person to complete this type of treatment before trial. For fiscal 2007, the budget allowance for ADAA in DHMH is \$136.0 million, most of which is used to pay alcohol and drug treatment providers. Any expansion of alcohol and drug treatment programs that may result from this bill can be handled within the existing resources of DHMH.

Local Expenditures: Court-ordered drug and alcohol assessments would be conducted by county health departments using existing resources.

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

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Maryland Department of Transportation, Department of Public Safety and Correctional Services, National Conference of State Legislatures, Department of Legislative Services

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