

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 35

(Senator Frosh)

Judicial Proceedings

Environmental Matters

Transportation - Highways - Federal Property

This bill alters the definition of “highway” to include property owned, leased, or controlled by the United States government for the purpose of applying State laws.

Fiscal Summary

State Effect: None. Any increase in the number of cases with concurrent jurisdiction handled by the Judiciary or the Department of State Police could be handled with existing resources.

Local Effect: None. Any change in local activities would not materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Under Maryland Vehicle Law, a “highway” is defined to mean the entire width between the boundary lines of any way or thoroughfare (road) of which any part is used by the public for motor vehicle travel. This applies regardless of whether the road is dedicated for public use and accepted by any proper authority.

A private road or driveway is any privately owned way or place that is used for vehicle travel by its owner and individuals who have the owner’s permission, but is not used by others.

The federal Assimilative Crimes Act of 1948 applies state traffic laws on federal property. It provides that, if a person commits an offense on property under federal jurisdiction that is considered a crime under state or local law where the federal property is located, the person is “guilty of a like offense and subject to a like punishment.” This is referred to as “assimilating” local laws into federal law and this only applies if the offense is not punishable by laws passed by the U.S. Congress.

Background: The Department of State Police has concurrent jurisdiction for enforcement of State laws on some federal property within Maryland where the federal government has agreed to share jurisdiction with any State law enforcement officer, including county and municipal police departments or a sheriff’s department.

The federal government retains exclusive jurisdiction on other properties, such as Fort Meade or Andrews Air Force Base. The U.S. Department of Justice advises that it has assimilated Maryland traffic laws for the purposes of traffic control and enforcement and has prosecuted violations in federal court.

Several offenses under the Maryland Annotated Code are criminal violations only if occurring on a highway or on private property open to the public. However, a road on federal property may be neither a highway nor open to the general public.

However, in two recent cases, *United States v. Smith* (2005) and *United States v. Adams* (2005), the U.S. Court of Appeals for the Fourth Circuit ruled that roads on federal reservations and installations were not highways under Virginia law. Based on this precedent, the U.S. District Court for the District of Maryland concluded that Maryland traffic laws no longer can be enforced on roads in federal reservations and installations in Maryland because such roads are not “highways” under Maryland laws since they are not open without restriction.

For example, on March 8, 2005, Edwin Robson was stopped and searched while driving on Andrews Air Force Base and, based on that search, was charged with three violations of assimilated federal law. These offenses included: (1) wearing, carrying, and transporting a loaded .45 caliber semi-automatic pistol in violation of the (assimilated) Maryland Criminal Law, Section 4-203; and (2) wearing, carrying, and transporting a loaded .45 caliber revolver in violation of the (assimilated) Maryland Criminal Law, Section 4-203. Under the Criminal Law Article, Section 4-203, it is illegal to “wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.”

The U.S. District Court for the District of Maryland acquitted Robson of the handgun charges on the grounds that the access road of Andrews Air Force Base where Robson was searched was not a road generally used by the public, as the base is not open to the public. (*United States v. Robson* (2005))

On September 14, 2005, Arthur Patrick was cited for driving with a revoked license onto the National Institute of Health's (NIH) enclave in Bethesda. The U.S. District Court for the District of Maryland acquitted Patrick on the basis that a road on the NIH enclave is neither a highway nor private property open to the public. (*United States v. Patrick* (2006))

Virginia enacted legislation in 2006 redefining highway to include roads on federal property. The U.S. Department of Justice advises that if Maryland does not resolve the issue, the federal government would have to adopt separate traffic laws unique to federal property, which could cause confusion and inconsistencies.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): United States District Court; United States Court of Appeals for the Fourth Circuit; United States Department of Justice; *Baltimore Sun*; Department of State Police; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - January 17, 2007
ncs/ljm

Analysis by: Nora C. McArdle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510