

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 758

(Delegate Dumais, *et al.*)

Judiciary

Judicial Proceedings

Task Force to Combat Driving Under the Influence of Drugs and Alcohol

This bill establishes the Task Force to Combat Driving Under the Influence of Drugs and Alcohol. The task force must submit an interim report of its findings and recommendations to the Governor and the General Assembly by December 31, 2007. A final report is due by October 31, 2008.

The bill is effective July 1, 2007 and terminates on December 31, 2008.

Fiscal Summary

State Effect: Any expense reimbursements for task force members are assumed to be minimal and absorbable with existing resources. The Maryland Department of Transportation (MDOT) should be able to provide staffing with existing resources.

Local Effect: Minimal. The bill calls for local representatives to serve on the task force.

Small Business Effect: Minimal.

Analysis

Bill Summary: Staff for the task force will be provided by MDOT and the Secretary of Transportation (or designee) will be the chairman.

The task force is required to:

- review achievements in combating impaired driving within the past 20 years;
- identify and assess current efforts to address impaired driving;
- identify national best practices for combating impaired driving;
- determine if any gaps exist between current State efforts and the identified national best practices;
- recommend necessary actions to implement national best practices in Maryland;
- recommend new State initiatives to address populations that are disproportionately responsible for driving fatalities due to impaired driving;
- recommend actions to sustain and enhance public awareness and concern for the dangers imposed by impaired driving; and
- recommend strategies for the improved coordination of management, funding, and resources at State and local levels.

A task force member may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law:

Impaired Driving: 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.

An individual is deemed to be under the influence of alcohol “per se” if an alcohol test result indicates a blood alcohol concentration of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Since driving with a 0.08 blood alcohol concentration is a “per se” offense, the focus of a prosecution is limited to whether or not a person had an alcohol concentration of 0.08 at the time of testing rather than whether or not the person was under the influence of alcohol.

If an alcohol test for an individual indicates a blood alcohol concentration of 0.07, but less than 0.08, the test is *prima facie* evidence that the individual was driving while

impaired by alcohol. If the individual has a blood alcohol concentration above 0.05, but less than 0.07, there is no presumption, but the blood alcohol concentration may be considered with other competent evidence. If an individual has a blood alcohol concentration of 0.05 or less, there is a presumption that the individual was neither under the influence of or impaired by alcohol.

Testing of Impaired Drivers: A “test” is • a test of the person’s breath or one specimen of the person’s blood to determine alcohol concentration; • a test or tests of one specimen of a person’s blood to determine drug or controlled dangerous substance content; or • both a test of the person’s breath or a test of one specimen of blood to determine alcohol concentration and a test or tests of one specimen of the person’s blood to determine drug or controlled dangerous substance concentration.

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 alcohol or drug concentration unless there is a motor vehicle accident that results in death or a life-threatening injury to another person. Further, a test for drug or controlled dangerous substance content may not be requested, required, or directed by a police officer unless the officer’s law enforcement agency has the capacity to have such tests conducted. The tests may only be requested, required, or directed by a police officer who is a trainee, has been trained, or is directly or indirectly participating in a program designed to train and certify police officers as drug recognition experts.

Judicial Sanctions: With a conviction for an alcohol- and/or drug-related driving offense, a violator is subject to a range of criminal penalties involving fines and imprisonment, as well as administrative penalties involving suspension or revocation of the driver’s license by the Motor Vehicle Administration (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 five 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 a fine of \$500 and/or imprisonment not exceeding two months. However, for repeat offenders maximum prison terms increase to a year. If an offender is transporting a minor at the time of the alcohol- or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Enhanced criminal penalties may be imposed on a driver convicted of an alcohol- and/or drug-related driving offense if the trier of fact finds, beyond a reasonable doubt, that the

driver knowingly refused to take a test of blood or breath that was requested at the time of the violation. In addition to any penalties that may be imposed for the drunk- or drugged-driving violation, the driver is also subject to a maximum \$500 fine and/or two months imprisonment for the test refusal.

Maryland Rule 4-245 provides that when the law permits but does not mandate additional penalties due to a specified previous conviction, the court may not sentence the defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel before acceptance of a guilty plea or plea of *nolo contendere*, or at least 15 days before trial in a circuit court or 5 days before trial in District Court, whichever is earlier.

Administrative Sanctions: Independent from the outcome of a criminal proceeding, if a licensed driver takes a test of breath or blood that indicates an alcohol concentration of 0.08 or more, the MVA must suspend the person's driver's license for 45 or 90 days, for a first or subsequent offense, respectively. If a person refuses to take a test, the MVA must suspend the license for 120 days or 1 year, for a first or subsequent offense, respectively. These sanctions are imposed prior to the criminal trial and apply even if the person is not convicted of the offense.

If a driver takes a test of blood or breath that indicates a blood alcohol concentration of 0.15 or greater, the MVA is required to suspend the driver's license for 90 days for a first offense and 180 days for a subsequent offense. The MVA may not modify the suspension and issue a restrictive license unless the driver consents to have an ignition interlock device installed in the motor vehicle and participates in the Ignition Interlock program for one year. However, a driver sanctioned under these circumstances may not be able to participate in the Ignition Interlock program and obtain a restrictive license unless other specified conditions are met.

The MVA may revoke, suspend, or restrict the license of the offender who is convicted of a alcohol- and/or drug-related driving offense. The MVA may revoke the license of a person convicted of driving while under the influence of alcohol or alcohol per se or while impaired by a controlled dangerous substance. The MVA may suspend the license of a person convicted of driving while impaired by alcohol, drugs, or drugs and alcohol for up to 60 days. Subsequent offenders are subject to longer terms of suspension or to revocation. Participation in the MVA's Ignition Interlock program may be required as a condition of issuance of a restrictive license.

Drivers under the age of 21 are subject to mandatory license suspensions and revocations that do not apply to drivers 21 or older. For an alcohol- and/or drug-related driving

offense, the MVA is required to suspend the license of a young driver for one year. A subsequent offense mandates a driver's license suspension for two years.

Other Sanctions: In addition to the sanctions of fines, imprisonment, and license suspension and/or revocation, alternative sanction programs have been established that include drug and alcohol assessment and treatment, weekend confinement as a condition of probation, probation with home detention and electronic monitoring, and ignition interlock restrictions. Offenders may also be referred to the Drinking Driver Monitor Program as a condition of court-ordered probation or assigned by the MVA as a condition for reinstatement of a driver's license. A court or the MVA may also require a drunk driving offender to install an ignition interlock device. The device connects a motor vehicle ignition to a breath analyzer that measures the driver's alcohol level and prevents the ignition from starting if the driver's blood alcohol level exceeds the device setting.

Background: According to the National Highway Traffic Safety Administration, 16,885 alcohol-related traffic fatalities occurred in calendar 2005, about 39% of the total traffic fatalities for that year. This represents 0.56 fatalities per 100 million vehicle miles traveled. Traffic fatalities in alcohol-related crashes declined, however, by 0.2% from the 16,919 alcohol-related traffic fatalities in calendar 2004. Alcohol-related traffic fatalities represented 42% of total fatalities for that year. This was 0.57 fatalities per 100 million vehicle miles traveled. Nationally, an average of one alcohol-related fatality occurs every 31 minutes.

According to the U.S Department of Transportation, alcohol-impaired driving is one of the nation's deadliest crimes. The Insurance Institute for Highway Safety reports that although some progress has been made in reducing alcohol-impaired driving, most of that progress occurred during the 1980s and 1990s. From about 1982 to 1995, the percentage of fatally injured alcohol-impaired drivers who were 16 to 20 years old declined by more than half. Since then, the proportion of those fatalities has hovered around 25%. In 2005, half of all fatally injured drivers in the 21 to 30 year age group had alcohol concentrations at or above 0.08 %.

Alcohol-related traffic fatalities in Maryland were somewhat below national rates. In 2005, 614 traffic fatalities occurred in Maryland, of which 235 were alcohol-related. This represents 0.42 fatalities per 100 million vehicle miles traveled. Out of the 614 fatalities, 161 occurred when the driver had a blood alcohol concentration of 0.08% or greater. Eighty-seven of those fatalities involved a driver with blood alcohol concentration of 0.16 or greater. In calendar 2004, 643 traffic fatalities occurred, of which 286 involved alcohol. This represented 0.52 fatalities per 100 million vehicle miles traveled.

According to the District Court, 63,315 traffic cases involving alcohol- and/or drug-related driving were filed in calendar 2005. There were guilty dispositions in 8,693 of those cases. The majority of cases were disposed of with either a probation before judgment finding (11,403 such dispositions in calendar 2005) or *nolle prosequi* (28,338 *nolle prosequi* dispositions in calendar 2005). In a *nolle prosequi* disposition, the prosecutor declines to go forward with a case, but retains the right to bring charges at a later date.

State Expenditures: The State Highway Administration advises that if it is required to staff the task force, additional special fund expenditures of \$60,000 in fiscal 2008 and \$40,000 in fiscal 2009 would be required, in addition to the cost of the administrator's participation. However, the Department of Legislative Services advises that MDOT should have the resources available to determine how best to staff this task force within existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 198 (Senator Forehand, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of Administrative Hearings, Department of State Police, Department of Health and Mental Hygiene, Maryland Institute for Emergency Medical Services Systems, Maryland Department of Transportation, Office of the Attorney General, Department of Public Safety and Correctional Services, National Highway Traffic Safety Administration, Insurance Institute for Highway Safety, U.S. Department of Transportation, Department of Legislative Services

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Analysis by: Karen D. Morgan

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