

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 330
Judiciary

(Delegate Anderson, *et al.*)

Criminal Law - Manslaughter and Vehicular Manslaughter - Penalties

This bill increases the maximum terms of imprisonment for manslaughter and manslaughter by vehicle or vessel from 10 years to 30 years.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration provision. No effect on revenues.

Local Effect: The bill's changes can be handled by the circuit courts within existing resources.

Small Business Effect: None.

Analysis

Current Law: Manslaughter is a common law offense. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is generally the distinguishing factor between voluntary manslaughter and involuntary manslaughter, which is based on case law and judicially determined.

A person who commits manslaughter is guilty of a felony and subject to maximum penalties of (1) imprisonment for 10 years; or (2) imprisonment in a local correctional facility for two years and/or a fine of \$500. A manslaughter offense determined to be voluntary manslaughter is a crime of violence for purposes of sentencing and parole laws.

A person is prohibited from causing the death of another by driving, operating, or controlling a vehicle or vessel in a grossly negligent manner. "Vehicle" includes a motor

vehicle, streetcar, locomotive, engine, and train. A person who is guilty of manslaughter by vehicle or vessel is guilty of a felony and subject to a maximum of 10 years imprisonment and/or a fine of \$5,000.

Background: Although the manslaughter statute does not distinguish between voluntary and involuntary manslaughter, other provisions in the Annotated Code do make such a distinction. As a result, a defendant sentenced to the maximum of 10 years imprisonment for manslaughter is also subject to mandatory sentencing for crimes of violence that affect parole eligibility, death penalty sentencing, and firearms licensing. Manslaughter by vehicle or vessel is not defined as a crime of violence, so a person convicted of that offense is not subject to those mandatory sentencing provisions.

The standard of “gross negligence” is a common law concept. In the case *State v. Kramer*, 318 Md. 756 (1990), the Court of Appeals said that, to prove “gross negligence” as a matter of law, the evidence must be sufficient, beyond a reasonable doubt, to establish that the defendant had a wanton or reckless disregard for human life in the operation of the automobile. The conduct must be extraordinary or outrageous to meet this standard. In the case *Boyd v. State*, 22 Md. App. 539 (1974), (certiorari denied 283 Md. 729 (1978)) the Court of Special Appeals discussed factors directly relevant to the issue of guilt or innocence of manslaughter due to gross negligence in the operation of a vehicle or vessel. They include:

- drinking;
- failure to keep a proper lookout and maintain proper control of the vehicle;
- excessive speed ‘under the circumstances’;
- flight from the scene without any effort to ascertain the extent of injuries;
- the nature and force of impact;
- unusual or erratic driving prior to impact;
- the presence or absence of skid or brush marks;
- the nature of the injuries and damage to the vehicle involved; and
- the nature of the neighborhood and environment where the accident took place.

Further, the Court of Special Appeals stated in *Allen v. State*, 39 Md. App. 686 (1978) (certiorari denied 283 Md. 729 (1978)) that the post-impact conduct of the accused may properly be a relevant factor when considering the issue of gross negligence.

State Expenditures: General fund expenditures may increase minimally as a result of the bill’s incarceration penalty due to people being committed to Division of Correction (DOC) facilities for longer periods of time. DOC reports that for the charge of manslaughter (classified by DOC as voluntary manslaughter) there were 26 intakes in

fiscal 2008 and the average sentence is about 10 years. For all charges related to homicide with a motor vehicle, including manslaughter or impaired driving, there were 28 intakes in fiscal 2008 and the average sentence for these offenses is about four years. The number of people sentenced to longer periods of incarceration under this bill is expected to be minimal.

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 \$2,600 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 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 2010 are estimated to range from \$23 to \$71 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.

Additional Information

Prior Introductions: A similar bill, HB 879 of 2005, was heard by the House Judiciary Committee but received no further action.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Department of Legislative Services

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