

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 701

(Delegate Hecht, *et al.*)

Judiciary

Vehicle Laws - Fleeing or Eluding Police - Penalties and Forfeiture

This bill specifies that if a police officer gives a visual or audible signal to stop and the officer is in an emergency vehicle used for law enforcement purposes, rather than a vehicle appropriately marked as a police vehicle, a person may not commit the offense of fleeing and eluding the police officer. The bill increases incarceration penalties, from 3 years to 15 years, for the offense of fleeing and eluding that results in bodily injury to another person. The incarceration penalty for fleeing and eluding a police officer that results in the death of another person increases from 10 years to 20 years. The bill also subjects a driver who commits the felony of fleeing and eluding the police that results in bodily injury or death to another person to forfeiture of the motor vehicle used in the offense.

Fiscal Summary

State Effect: Potential minimal increase in general fund 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 the bill can be implemented with existing resources.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provisions. Potential minimal revenue increase from the proceeds of forfeited motor vehicles. Although the bill may cause an increase in forfeiture activity and an increase in judicial hearings to determine whether forfeiture should take place, it is anticipated that local authorities can implement the bill's provisions with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: 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 the 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. If the seizing authority is a unit of the State, then the forfeiting authority is the unit or person designated by the Attorney General or designee by agreement with local officials, as specified, to act on behalf of the State.

The bill establishes a rebuttable presumption that the registered owner of the vehicle committed the fleeing and eluding violation or had knowledge that the vehicle would be used to commit the violation. The presumption may be rebutted with clear and convincing evidence that the vehicle was not operated by the registered owner and the offense was committed without the owner’s knowledge.

A motor vehicle used to commit 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 and the vehicle was not being operated by the registered owner at the time of 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; and
- writing to the forfeiting authority that forfeiture is warranted;

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 District 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 District 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 District 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 District 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 that seized the vehicle.

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 three years imprisonment 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 10 years imprisonment 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. Forfeiture provisions apply to property used or intended to be used to violate controlled dangerous substance, gambling, gun, and explosives laws.

Procedures vary for the 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 seizure. 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 Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being incarcerated for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people expected to be incarcerated due to the increased incarceration penalties 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 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 a DOC facility. Currently, the DOC 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.

Local Expenditures: Howard and Montgomery counties and Baltimore City advise that the bill's provisions can be enforced with existing resources.

Nevertheless, expenditures may 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 \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: SB 1073 of 2006 was heard in the Senate Judicial Proceedings Committee but received no further action.

Cross File: SB 685 (Senator Robey) - Judicial Proceedings.

Information Source(s): Howard and Montgomery counties; Baltimore City; Department of Natural Resources; Department of General Services; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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