

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 783

(Senator Haines)

Judicial Proceedings

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Vehicle Laws - Driving While Under the Influence of Drugs or Controlled  
Dangerous Substances

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This bill creates the offense of driving while under the influence of a drug, a combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance and makes conforming changes as necessary to establish the offense and to apply specified administrative and judicial penalties that apply to homicide or causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or alcohol *per se* and driving or attempting to drive any vehicle while under the influence of alcohol or alcohol *per se*.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions to the extent additional cases are heard in the District Court. Potential minimal increase in Transportation Trust Fund (TTF) revenues to the extent any additional license suspensions and revocations result in additional fees. Otherwise, the Judiciary, the Department of State Police (DSP) and the Motor Vehicle Administration (MVA) can handle the bill's changes with existing resources.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's penalty provisions for homicide by motor vehicle or vessel and causing life-threatening injury by motor vehicle or vessel while under the influence or drugs and/or drugs and alcohol or a controlled dangerous substance.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** While under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance, a person may not:

- cause the death of or life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel; or
- drive or attempt to drive any vehicle.

A person may not rent a motor vehicle to any other person if he or she knows that the other person is under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance or if the person knows that the individual who will drive the rented vehicle is under such an influence.

A person who drives or attempts to drive a motor vehicle on a highway or private property used by the public is deemed to have consented to take a test of blood or breath if the person is detained on suspicion of driving under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance. Such a person is subject to specified administrative and judicial penalties for refusing to take a requested test of blood or breath or for providing a test result that indicates that the person was driving while under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance and must be so advised by the detaining officer. A person subject to these administrative and judicial penalties must also be advised of the person's right to request a hearing within specified time limits.

MVA is required to assess 12 points against the driver's license of a person who is convicted of driving or attempting to drive a motor vehicle while under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance and the person is then subject to license revocation. MVA is authorized to suspend or revoke the license of any person who is convicted of this new offense or convicted of the new offense and other specified alcohol- and/or drug-related driving offenses. MVA must revoke the driver's license of a person convicted of homicide or life-threatening injury by motor vehicle while under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance.

If a police officer has probable cause to believe that a person is driving or attempting to drive while under the influence of a drug and/or drugs and alcohol or a controlled dangerous substance, the person may be arrested without a warrant and the court may find the person guilty of any lesser included offense. Such a person is subject to a

maximum penalty of imprisonment for one year and/or a fine of \$1,000 for a first offense and more stringent penalties for the second, third, and subsequent offenses.

**Current Law:** A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while under the influence of alcohol or alcohol *per se*. A person who commits such an offense is guilty of the felony of homicide by motor vehicle or vessel while under the influence of alcohol or alcohol *per se* and is subject to maximum penalties of five years imprisonment and/or a \$5,000 fine. A person who causes life-threatening injury by motor vehicle or vessel while under the influence of alcohol or alcohol *per se* is guilty of a misdemeanor and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of blood or breath and *may* be requested to take such 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. A person *must* submit to a test of blood or breath, or both, as directed by a police officer if the person is involved in a motor vehicle accident that results in death or life-threatening injury to another person and the police officer detains the person due to a reasonable belief that the person was driving or attempting to drive while under the influence of alcohol or alcohol *per se*. If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

Enhanced criminal penalties apply if a person is convicted of an alcohol- and/or drug-related driving offense and the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take a requested test of blood or breath. A maximum penalty of imprisonment for two months and/or a fine of \$500 may be imposed in addition to the penalty for the underlying alcohol- and/or drug-related driving offense.

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 MVA. A person convicted of driving under the influence of alcohol 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 for up to 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- and/or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

**State Revenues:** General fund revenues increase minimally as a result of the monetary penalty provisions made applicable to the new offenses created in the bill for those cases heard in the District Court. Potential minimal increase in TTF revenues to the extent additional fees for corrected licenses are paid (\$20 fee) after the expiration of any additional suspensions of driver's licenses that may occur under the bill. Potential minimal increase in TTF revenues to the extent additional fees are paid to reinstate driver's licenses (\$75 fee). *By way of illustration*, according to the District Court, 11 citations were issued in fiscal 2008 for driving while impaired by drugs and/or drugs and alcohol or a controlled dangerous substance. According to the Department of Public Safety and Correctional Services, there were 28 intakes in fiscal 2008 for all homicides with a motor vehicle (including those committing the offense while impaired). If these 39 people had their licenses revoked and paid the reinstatement fee, TTF revenues increase by \$2,925 annually. Alternatively, DSP reports that 708 people in 2008 were arrested for driving while impaired by drugs and/or drugs and alcohol or a controlled dangerous substance. If all of these people were convicted and had their driver's licenses revoked and they paid the \$75 fee to reinstate their licenses, TTF revenues increase by \$53,100.

### **State Expenditures**

*DSP, Judiciary, and MVA:* The Department of Legislative Services (DLS) advises that this bill may cause a minimal increase in general fund expenditures due to the incarceration penalties for this new offense. Any workload generated for arresting, convicting, and imposing administrative sanctions on any additional people that are subject to this bill's provisions can be handled with existing resources of DSP, the Judiciary, and MVA.

For 2008, DSP reports that a total of 24,380 people were arrested for driving (1) under the influence of alcohol or under the influence *per se*; (2) while impaired by alcohol; (3) while impaired by drugs and/or drugs and alcohol; or (4) while impaired by a controlled dangerous substance. Of that total, 708 or 2.9% were arrested for driving while impaired by drugs and/or drugs and alcohol or driving while impaired by a controlled dangerous substance. The District Court reports that it processed six citations in fiscal 2008 for driving while impaired by drugs and drugs and/or alcohol and five citations for driving while impaired by a controlled dangerous substance. DLS advises that the provisions of the bill are not likely to result in significantly greater numbers of people arrested for the new offenses established by the bill. It is likely that those who might be arrested for driving "under the influence" under the bill might have otherwise been charged with "driving while impaired" under current law. Given the State's

historical experience with the relatively small numbers of people likely to be prosecuted for driving while impaired by drugs or controlled dangerous substances, it is likely that only a small number of additional people will be arrested, prosecuted, and subjected to administrative and judicial sanctions under this bill's new offenses. Accordingly, DLS advises that the Judiciary, DSP, and MVA can handle the bill's changes with existing resources.

*Department of Public Safety and Correctional Services:* General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the new offenses created in the 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.

**Local Revenues:** Potential minimal increase as a result of the bill's monetary penalty provisions to the extent there are any additional cases that are heard in the circuit courts of homicide or causing life-threatening injury by motor vehicle or vessel while under the influence of drugs and/or drugs and alcohol or while under the influence of a controlled dangerous substance.

**Local Expenditures:** Expenditures 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. Enforcement can be handled with existing resources.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** 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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Analysis by: Karen D. Morgan

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