Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 875 (Delegate Sophocleus, *et al.*)
Judiciary

Drunk and Drugged Driving - Refusal to Take a Blood or Breath Test - Prohibition

This bill prohibits a person who is detained for a suspected alcohol- and/or drug-related driving offense from knowingly refusing to take a test of blood or breath if the person has been detained previously for a suspected alcohol- and/or drug-related driving offense and refused to take a test of blood or breath. A person convicted of this offense is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of $1,000. The penalty imposed is in addition to any other penalty imposed for the underlying alcohol and/or drug-related driving violation and for refusal to take a test of blood or breath.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provision.

Small Business Effect: None.

Analysis

Current Law: 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.

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 the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures. An offender's license or driving privilege must be suspended by the Motor Vehicle Administration (MVA) for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal unless the driver participates in the Ignition Interlock System Program for at least one year.

A police officer is required to advise a person detained on suspicion of an alcohol- and/or drug-related driving offense of the additional criminal penalties that may be imposed if the person is convicted of an alcohol- and/or drug-related driving offense and knowingly refused to take a test requested at the time of the suspected violation. 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 the requested test, the person is subject to a penalty in addition to any other penalty that may be imposed for the alcohol- and/or drug-related driving conviction. A person who knowingly refuses to take a test of blood or breath under these circumstances is subject to a maximum penalty of imprisonment for two months and/or a fine of $500. The court may not impose the additional penalty unless the State's Attorney serves notice of the alleged test refusal on the defendant or the defendant's counsel before acceptance of a plea of *nolo contendere* or guilty, or at least 15 days before a circuit court trial or 5 days before a District Court trial, whichever is earlier.

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, under the influence of alcohol *per se*, or while impaired by a controlled

dangerous substance 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 or drug 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- and/or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included offenses.

Background: According to the National Conference of State Legislatures, blood and breath test refusal rates vary by jurisdiction. Data from the Traffic Injury Research Foundation indicates that nationally more than 20% of arrested drivers refuse a test. For example, in Maryland, the State Police reported a total of 24,909 people arrested for alcohol and/or drugged driving violations in calendar 2007. Of those arrests, 24,857 people were requested to take a test. Of that number, 6,758 people, or 27.1%, refused to take a requested test.

All states have some form of implied consent statute but vary widely with respect to the administrative and criminal penalties for refusing to submit to a chemical test. Every state but Nevada has administrative sanctions for test refusal. Maryland and 14 other states (Alaska, California, Florida, Kansas, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, and Vermont) have criminal sanctions for refusal to submit to a blood alcohol test for drivers age 21 and older. Three states (Arkansas, Arizona, and Michigan) have criminal penalties only if the driver is younger than 21.

In 16 states, refusal to submit to a blood alcohol test is a separate crime (Alaska, Arizona, Arkansas, California, Idaho, Iowa, Kansas, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, Vermont, and Virginia). In Minnesota, Nebraska, and Vermont, the penalties for test refusal are equal to or substantially similar to the penalties for a drunk driving conviction. Enhanced criminal penalties for test refusal in California and Vermont apply to those with prior drunk driving convictions. Criminal sanctions imposed by the states include fines, community service, alcohol or drug treatment, vehicle impoundment, and jail time.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of

inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime 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: Expenditures increase as a result of the bill's incarceration penalty. 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 638 of 2008 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 1475 of 2008 was heard by the House Judiciary Committee but then withdrawn. SB 800 of 2007 was heard by the Senate Judicial Proceedings Committee but received no further action. SB 760 and HB 644 of 2006 were both withdrawn.

Cross File: SB 732 (Senator Raskin, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, National Conference of State Legislatures, National Highway Traffic Safety Administration, Department of Legislative Services

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