

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 1335
 Judiciary

(Delegate Niemann, *et al.*)

Vehicle Laws - Driving While License Refused, Suspended, Canceled, or Revoked - Penalty

This bill establishes a standard judicial penalty for the offenses of driving while the license is refused, suspended, canceled, or revoked. The new penalties reduce the maximum incarceration penalties associated with these violations. Also established is that these offenses are not moving violations for the purpose of assessing points, and the points associated with these offenses are repealed.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues decline by \$61,300 in FY 2010 due to reduced license reinstatement fees. General fund revenues decline by \$114,100 in FY 2010 due to reduced filing fees for administrative hearings. TTF expenditure savings of \$161,800 in FY 2010 due to fewer administrative hearings and savings on postage for notifications. General fund expenditures decrease minimally beginning in FY 2010 due to the reduction in incarceration penalties. For all estimates, out-years reflect annualization and inflation and assume a stable caseload and fees.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	(\$114,100)	(\$152,100)	(\$152,100)	(\$152,100)	(\$152,100)
SF Revenue	(\$61,300)	(\$81,700)	(\$81,700)	(\$81,700)	(\$81,700)
GF Expenditure	(-)	(-)	(-)	(-)	(-)
SF Expenditure	(\$161,800)	(\$217,900)	(\$220,100)	(\$222,300)	(\$224,500)
Net Effect	(\$13,600)	(\$15,900)	(\$13,800)	(\$11,600)	(\$9,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal decrease in expenditures due to the reduction in incarceration penalties in the bill.

Small Business Effect: None.

Analysis

Bill Summary: A person who is convicted of driving while the license is refused, suspended, canceled, or revoked is subject to maximum penalties of a \$500 fine, and/or two months imprisonment for a first offense. For a second offense, a violator is subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment. For a third or subsequent offense, a violator is subject to maximum penalties of a \$2,000 fine, and/or one year imprisonment.

In any prosecution for these offenses, the introduction of official MVA records showing that notice of the refusal, suspension, cancellation, or revocation of the defendant's license or driving privilege was sent to the last known address of the defendant is *prima facie* evidence that the defendant knew or had reason to know that the license or privilege to drive had been refused, suspended, canceled, or revoked in Maryland or any other state. The introduction of MVA records may not limit the introduction of other evidence of whether the defendant knew, or had reason to know, that the driving license or privilege had been refused, suspended, canceled, or revoked.

Current Law: A person may not drive a motor vehicle on any highway while the person's license or privilege to drive is refused, suspended, canceled, or revoked in Maryland or any other state. A violation is a misdemeanor and the violator is subject to maximum penalties of a fine of \$1,000 and/or imprisonment for one year for a first offense. For any subsequent offense, the violator is subject to maximum penalties of a fine of \$1,000 and/or two years imprisonment. If the license is suspended due to lapse of required security, noncompliance with a traffic citation issued under state or federal law, or nonpayment of a fine, however, the violation is a misdemeanor with maximum penalties of a \$500 fine and/or two months imprisonment.

For driving after a license has been refused, suspended, canceled, or revoked (except for certain types of suspensions), MVA is required to assess 12 points against the license. MVA must revoke a license that has accumulated 12 points. For driving after suspension of a license due to a lapse in required security, noncompliance with traffic citations issued under state or federal law, or nonpayment of a fine, MVA is required to assess three points against the driver's license. MVA sends a warning letter to any driver who accumulates three points in a two-year period.

Background: The District Court of Maryland has ruled, in *United States v. Haynesworth* 743 F. Supp. 388 (D. Md. 1990) that a person driving on a suspended license, who was already aware that he had been found criminally responsible, may not avoid

administrative sanctions by claiming that he had never received actual notification of the imposition of administrative sanctions. Sufficient grounds existed for his conviction because he knowingly drove in Maryland without a valid Maryland driver's license. The Court of Special Appeals ruled in *McCallum v. State*, 81 Md. App. 403 (1990) that *mens rea*, that is, an intent to do the prohibited act, is an element of the crime of driving while a license is suspended. Later, in *Rice v. State*, 136 Md. App. 593 (2001), the Court of Special Appeals ruled that, while knowledge of the suspension is required to support a conviction of driving with a suspended license, the required knowledge can be manifested by deliberate ignorance, as well as by actual notification.

State Revenues: TTF revenues are expected to decline by \$61,290 in fiscal 2010 due to the elimination of revenue from license revocations, accounting for bill's October 1 effective date. On an annual basis, revenues are reduced \$81,720. In 2008, MVA advises that 1,816 drivers were subject to license revocation due to driving while the license was suspended. MVA charges a reinstatement fee of \$45 to reinstate a license that is revoked. This estimate assumes that all drivers pay the reinstatement fee.

General fund revenues are reduced by \$114,094 in fiscal 2010, accounting for the bill's October 1 effective date, due to reduced filing fees paid for administrative hearings. On an annual basis, general fund revenues are reduced by \$152,125. Since points are no longer assessed for driving without a valid license and those who commit the offense are subject to judicial penalties only, the number of cases MVA submits to the Office of Administrative Hearings (OAH) for an administrative hearing is reduced. MVA advises that about 67% of those who receive administrative sanctions request a hearing. A person who requests a hearing must pay a filing fee of \$125 to OAH.

Any further impact on general fund revenues due to the changes in maximum fines cannot be reliably estimated.

State Expenditures: TTF expenditures are reduced by \$161,812 in fiscal 2010, accounting for the bill's October 1 effective date, due to savings in administrative hearing costs and postage from the sending of fewer notices. On an annual basis, TTF expenditures are reduced \$226,749. As noted above, 1,816 drivers were subject to license revocation in 2008 due to driving while the license was suspended. MVA advises that 67% of those subject to license revocation request a hearing. MVA is required to pay \$176 for each case appealed to OAH. Postage savings occur because these 1,816 drivers are not sent revocation notices by regular mail. In addition, MVA also advises that another 2,988 drivers who were assessed three points for driving while the license was suspended do not receive warning letters or point system conference notifications under this bill.

General fund expenditures may be reduced minimally as a result of the bill's reduced incarceration penalties due to reduced payments to counties for reimbursement of inmate costs.

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 may decrease 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: HB 1078 of 2004 passed the House, as amended, and was heard by the Senate Judicial Proceedings Committee but received no further action. A similar bill, HB 664 of 2003, passed the House as amended but received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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