

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 97
Judiciary

(Delegate Simmons, *et al.*)

Criminal Law - Manslaughter by Vehicle or Vessel - Criminal Negligence

This bill creates the misdemeanor offense of criminally negligent manslaughter by vehicle or vessel.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

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

Small Business Effect: None.

Analysis

Bill Summary: A "vehicle" includes a motor vehicle, streetcar, locomotive engine, or train. A person is prohibited from causing the death of another due to driving, operating, or controlling a vehicle or vessel in "a criminally negligent manner." A person acts in a criminally negligent manner when the person should be aware, but fails to perceive, that the person's conduct creates a substantial risk that manslaughter will occur and the failure to perceive is a substantial deviation from the standard of care that would be exercised by a reasonable person.

A person who commits this offense is guilty of a misdemeanor and is subject to maximum penalties of three years imprisonment and/or a fine of \$5,000.

The bill specifies the intent of the General Assembly that the term “substantial deviation from the standard of care” be interpreted synonymously with the term “gross deviation from the standard of care” as contained in the Model Penal Code of the American Law Institute.

A person who violates the Maryland Vehicle Law by causing the death of another as a result of driving, operating, or controlling a vehicle in a negligent manner has not committed the offense of criminally negligent manslaughter by vehicle or vessel.

Current Law: State law does not contain a separate offense for criminally negligent manslaughter by vehicle or vessel. However, a person is prohibited from committing manslaughter by motor vehicle by causing the death of another as a result of driving, operating, or controlling a motor vehicle in a grossly negligent manner. A person who violates this provision is guilty of a felony and is subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. The Motor Vehicle Administration (MVA) must assess 12 points against the license of a person convicted of this offense, and the license is subject to revocation. (*See* Criminal Law Article § 2-209 and Transportation Article § 16-402.)

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.

A person is guilty of reckless driving if a motor vehicle is driven in wanton or willful disregard for the safety of persons or property or in a manner that indicates a wanton or willful disregard for the safety of persons or property. A violation is a misdemeanor, subject to a fine up to \$1,000. MVA is also required to assess six points against the driver's license. The District Court prepayment penalty, including court costs, is \$510 for this offense.

A person is guilty of negligent driving if the motor vehicle is driven in a careless or imprudent manner that endangers any property or the life or safety of any individual. This violation is a misdemeanor, subject to a maximum fine of \$500. MVA must assess one point against the driver's license, or three points, if the offense contributes to an accident. The District Court currently assesses a prepayment penalty of \$140 for this offense or \$280 if the offense contributes to an accident.

If a person accumulates five points or more on a driver's license within two years, MVA must require attendance at a driver education conference. MVA must issue a notice of suspension to a driver who accumulates eight points on the driver's license and must issue a notice of license revocation to a person who accumulates 12 points within two years. (*See* Transportation Article §§ 16-404 and 21-901.1.)

Background: Section 2.02(2)(d) of the Model Penal Code of the American Law Institute specifies:

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

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 more people being committed to Division of Correction facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal. DOC reports that for all charges related to homicide with a motor vehicle, including impaired driving or manslaughter, there were 28 intakes in fiscal 2008, 34 intakes in fiscal 2007, 20 intakes in

fiscal 2006, and 15 intakes in fiscal 2005. The average sentence for this offense is about four years.

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 Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities 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: This bill is a reintroduction of HB 667 of 2008, which was heard by the House Judiciary Committee but received no further action. This bill is identical to HB 291 of 2007, which received no action after being heard by the House Judiciary Committee. It is also identical to HB 550/SB 855 of 2006. SB 855 as amended passed the Senate and was heard in the House Judiciary Committee as was its cross file, HB 550. The House Judiciary Committee took no further action on either bill.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, American Law Institute, Department of Legislative Services

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mam/ljm

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