

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 757
Judiciary

(Delegate Eckardt, *et al.*)

Criminal Law - Manslaughter by Vehicle or Vessel - Fatigued Driving

This bill establishes that driving, operating, or controlling a vehicle or vessel while knowingly fatigued is the offense of driving, operating, or controlling a vehicle in a grossly negligent manner. "Fatigued" means having been without sleep for more than 24 hours. Establishing this offense does not limit the conduct or conditions that may otherwise be found to constitute controlling, operating, or driving a vehicle in a grossly negligent manner. A person who commits this offense is guilty of a misdemeanor and is subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000.

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

Current Law: 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: In 2008, the National Sleep Foundation conducted the "Sleep in America" poll and reported that 60% of Americans admitted to driving while feeling sleepy and 37% said they actually fell asleep while driving in the past year. The foundation also surveyed the 50 states to determine what actions had been taken to address drowsy driving. The survey reports that only one state (New Jersey) has a law (known as Maggie's Law) that criminalizes drowsy driving in a fatal crash. No state has a law that targets nonfatal crashes caused by drowsy driving. Every state except Missouri includes a code for fatigue or sleepiness on the police report crash form. In 46 states, the graduated driver licensing systems impose a nighttime curfew for drivers younger than age 18. According to the foundation, young people are the largest at-risk group for sleep-related crashes due to active school, work, and social schedules and chronic sleep deprivation. Seventeen states mandate that instruction on drowsy driving be given in state-sponsored driver's education classes.

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 the Department of Correction (DOC) 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: SB 293 of 2004 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Maryland Department of Transportation, National Sleep Foundation, Department of Legislative Services

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