

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 259 (The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Judiciary

Criminal Procedure - Drunk and Drugged Driving - Probation Before Judgment

This Administration bill expands, from 5 to 10 years, the period in which a prior conviction for specified alcohol- and/or drug-related driving offenses disqualifies a person from eligibility to be placed on probation before judgment (PBJ). If a defendant is ordered into treatment as a condition of probation, the bill also expands, from 5 to 10 years, the period in which a court is prohibited from striking or staying the entry of judgment and placing the defendant on probation if, in that time, the defendant has been convicted of an alcohol- and/or drug-related driving offense or was placed on PBJ after being charged with an alcohol- and/or drug-related driving offense.

Fiscal Summary

State Effect: While this bill can slightly increase the number of related trials, as well as motor vehicle license suspensions/revocations, its requirements can be accommodated with the existing budgeted resources of the District Court and the Motor Vehicle Administration.

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A court is prohibited from staying the entry of judgment and granting PBJ if a person is charged with any of the following offenses, and if that person has been convicted of or given probation for any of those offenses within the preceding five years: (1) driving while under the influence of alcohol, or under the influence of alcohol *per se*; (2) driving while impaired by alcohol; (3) driving while impaired by drugs or drugs and/or alcohol; (4) driving while impaired by a controlled dangerous substance; (5) homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; (6) homicide by motor vehicle or vessel while impaired by alcohol; (7) homicide by motor vehicle or vessel while impaired by drugs or drugs and/or alcohol; (8) homicide by motor vehicle or vessel while impaired by a controlled dangerous substance; or (9) life-threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes.

Generally, a court is authorized to strike an entry of judgment or stay an entry of judgment and authorize PBJ if the defendant successfully completes treatment ordered as a condition of probation. However, the court may not strike the entry of a judgment and defer further proceedings or stay the entry of a judgment and place a defendant on probation for an alcohol- and/or drug-related offense if, within the preceding five years, the defendant was convicted of an alcohol- and/or drug-related driving offense or the defendant was placed on PBJ after being charged with a an alcohol- and/or drug-related driving offense.

Background:

The Task Force to Combat Driving Under the Influence of Drugs and Alcohol: The bill is recommended by the Task Force to Combat Driving Under the Influence of Drugs and Alcohol. The task force recommends extension of the time before granting another PBJ from 5 to 10 years due to concerns about the increasing number of impaired driving arrests involving repeat offenders. The task force found that data from other states indicates that recidivism rates for repeat offenders increases from 20% to 30% after 5 years to 40% to 50% after 10 years.

The task force was created by Chapters 533 and 534 of 2007 and was required to submit an interim report in December of 2007 and a final report by October 31, 2008. The task force was required to:

- review achievements in combating impaired driving within the past 20 years;
- identify and assess current efforts to address impaired driving;
- identify national best practices for combating impaired driving;

- determine if any gaps exist between current State efforts and the identified national best practices;
- recommend necessary actions to implement national best practices in Maryland;
- recommend new State initiatives to address populations that are disproportionately responsible for driving fatalities due to impaired driving;
- recommend actions to sustain and enhance public awareness and concern for the dangers imposed by impaired driving; and
- recommend strategies for the improved coordination of management, funding, and resources at State and local levels.

The task force issued 42 recommendations focusing on initiatives in the Maryland Department of Transportation, law enforcement, treatment of alcohol- or drug-impaired drivers, the courts, education, and the legislature. Seven recommendations specifically were targeted to the Maryland General Assembly:

- pass legislation to discourage and punish underage drinking by linking the privilege of driving to abstention from alcohol and drugs;
- impose incarceration for the violation of an alcohol restriction on a driver's license;
- increase the time before a person is eligible for another PBJ after receiving the first one, from 5 to 10 years;
- make all driving while impaired offenses count toward repeat offender status;
- require law enforcement to request alcohol testing of all drivers involved in life-threatening or fatal crashes;
- require from all ignition interlock users at least six months of failure-free use before release from the program; and
- recodify all laws related to driving under the influence and driving while impaired.

Impaired Driving Generally: According to the U.S. Department of Transportation, alcohol-impaired driving is one of the nation's deadliest crimes. Although some progress has been made in reducing alcohol-impaired driving, most of that progress occurred in the 1980s and 1990s. From about 1982 to 1995, the percentage of fatally injured alcohol-impaired drivers who were 16 to 20 years old declined by more than half. Since then, the proportion of those fatalities has hovered around 25%. In 2007, over half of all

fatally injured drivers in the 21 to 30 age group had blood alcohol concentration levels at or above 0.08%.

According to the Insurance Institute for Highway Safety, 20,281 alcohol-related traffic fatalities occurred nationwide in 2007, about 49% of the total traffic fatalities for that year. The nationwide number of alcohol-related traffic fatalities in 2007 declined, however, by 5.2% from the 21,497 alcohol-related traffic fatalities in 2006.

According to the Fatality Analysis Reporting System maintained by the U.S. Department of Transportation, alcohol-related fatalities in Maryland are somewhat below national rates. In 2007, a total of 614 traffic fatalities occurred in Maryland, a crash rate of 10.9 per 100,000 people. Of those fatalities, 272, or 44.2%, were alcohol-related. Ninety-four of those fatalities, or 34.5%, involved drivers with blood alcohol concentration levels at or above 0.08%. According to the District Court, 41,038 traffic citations involving alcohol- and/or drug-related driving were filed in fiscal 2008. There were guilty dispositions for 5,014 of those citations, and 6,025 citations were disposed of with PBJ.

Additional Information

Prior Introductions: SB 372 of 2006 passed the Senate and was heard in the House Judiciary Committee, but no further action was taken. HB 1137 of 2005 and HB 888 of 2004 were heard in the House Judiciary Committee but received no further action. SB 307 of 2004 passed the Senate and was heard in the House Judiciary Committee but received no further action. SB 94/HB 249 of 2003 both received unfavorable reports from the Senate Judicial Proceedings and the House Judiciary committees, respectively. SB 384 of 2002 received an unfavorable report from the Senate Judicial Proceedings Committee. SB 119 of 2001 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 301 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Maryland Department of Transportation, National Highway Traffic Safety Administration, Insurance Institute for Highway Safety, U.S. Department of Transportation, Department of Legislative Services

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ncs/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure - Drunk and Drugged Driving - Probation Before Judgment

BILL NUMBER: SB 259

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.