

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1513
Judiciary

(Delegate Valderrama)

Drunk and Drugged Driving with Child in the Vehicle - Retention of Child by
Child Care Providers

This bill authorizes a child care center employee or family day care home provider to refuse to allow a child to leave in a vehicle driven by a parent, guardian, or other authorized person, if the provider has a reasonable belief that the parent, guardian, or authorized person is under the influence of alcohol or drugs and it is unsafe for that person to drive.

The bill changes from a misdemeanor to a felony and increases the maximum penalties for transporting a minor while driving or attempting to drive a vehicle while under the influence of alcohol or under the influence of alcohol *per se*. Maximum penalties increase from the existing range of fines of \$2,000 to \$4,000 and/or two- to four-years imprisonment (depending on whether the offense is the first, second, or a third or subsequent offense); to a \$5,000 fine and/or four years imprisonment, regardless whether the offense is a first or subsequent offense.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Any savings that may result from shifting additional cases to the circuit courts due to the felony designation for the transporting minors while under the influence or impaired offense is not expected to significantly affect the finances or operations of the District Court. It is expected that the Office of Public Defender, the Department of Human Resources, the Motor Vehicle Administration (MVA), and the Department of State Police can handle the bill's requirements with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions. Any additional workload for the State's Attorneys or that may result

from shifting additional cases to the circuit courts due to the bill's felony designation for the transporting minors while under the influence or impaired offense can likely be handled with existing resources.

Small Business Effect: Minimal, to the extent that providers lose the good will of clients or are exposed to civil or criminal proceedings as a result of making the reports as specified in the bill. Providers may also incur additional costs to the extent they are required to keep children after they are scheduled to be released to a parent or other authorized person.

Analysis

Bill Summary: An “authorized person” is a parent or guardian of a child or any other person authorized by the parent or guardian to remove a child from a licensed child care center or a registered family day care home. A “provider” is an employee of a licensed child care center or a person providing care at a registered family day care home.

A provider who refuses to allow a child to leave a child care center or a family day care home must immediately call local law enforcement and request the presence of an officer to determine whether the authorized person is under the influence of alcohol or drugs and whether it is unsafe for the authorized person to drive the vehicle. The provider must remain with the child until law enforcement has arrived.

Upon receiving such a request from a provider, a law enforcement officer must determine whether the authorized person is under the influence of alcohol or drugs at a level that makes it unsafe for the authorized person to drive. If the officer determines that the authorized person is under such an influence, then the officer must attempt to locate a family member or other suitable person to take custody of the child until the authorized person is no longer under the influence of alcohol or drugs. If a family member or other suitable person cannot be found, then the officer must contact the local department of social services.

If the officer determines that the authorized person is not under the influence of alcohol or drugs at a level that makes it unsafe for the person to drive, then the officer must require the provider to allow the child to leave with the authorized person.

Current Law: The Maryland Vehicle Law has not established an offense for being “under the influence” of drugs as it relates to driving a vehicle.

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.

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 or under the influence *per se* 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 for up to 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.

State Fiscal Effect: Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court; and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

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

General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed crime or as a result of the establishment of the felony offense is expected to be minimal.

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 \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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 Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Baltimore City advises that the costs relating to retaining a child after hours may be impacted by the bill. The Baltimore City Housing Department's Child and Adult Care Food Program may reimburse registered family home day care providers for only up to two meals and a snack per day, per child. If an extra meal must be served while waiting for someone to take custody of the child, the provider will not be reimbursed.

Additional Comments: It is unclear from the bill how a law enforcement officer would establish that the authorized person was "under the influence" of drugs as it relates to operating a vehicle, since that offense does not exist in the Maryland Vehicle Law. A similar offense that does exist under the Maryland Vehicle Law is driving or attempting to drive a vehicle while "so far impaired" by any drug, any combination of drugs, or a

combination of one or more drugs and alcohol that the person cannot safely drive a vehicle.

The bill does not reference “controlled dangerous substances” which are defined differently than drugs for purposes of the Maryland Vehicle Law and for which a separate “driving or attempting to drive while impaired” offense is established. So if the provider suspected that the authorized person was “impaired” by a controlled dangerous substance, rather than a drug, it does not appear that the bill would authorize the provider to keep a child from leaving in a vehicle with the authorized person.

The bill does not specifically reference the offense of driving or attempting to drive while under the influence of alcohol *per se* which results from a determination that blood alcohol content is .08 or higher. This “*per se*” designation means that, *as a matter of law*, a person cannot drive a vehicle safely. The measurement of blood alcohol content may come from a test or tests of breath or a specimen of blood. Once a determination is made that a person is “under the influence” of alcohol, the officer does not engage in further fact finding (as the bill appears to require) to determine whether or not that person can operate a vehicle safely. The fact finding pertains to whether or not the person is or appears to be “under the influence” of alcohol or “impaired” by alcohol, drugs, or a controlled dangerous substance.

As noted, a person under the influence of alcohol is prohibited from driving, or even attempting to drive, a vehicle. Therefore, if a police officer has reasonable grounds to suspect that a person is under the influence of alcohol while driving or attempting to drive a vehicle, a process must take place which may lead to the immediate arrest and detention of the person. A police officer may request that the person take a tests or tests of breath or blood. That person is also subject to an immediate license suspension, and the police officer is required to notify the person of his or her rights regarding taking a requested test of blood or breath and his or her rights regarding a hearing on the immediate license suspension. As noted above, a person convicted of this offense receives 12 points on the driver’s license and is then subject to revocation of the driver’s license. Furthermore, a person arrested for driving or attempting to drive while under the influence of alcohol or under the influence *per se* (as well as other alcohol- and/or drug-related driving offenses) is prohibited from driving a motor vehicle within 12 hours of arrest (*See* § 21-902.1 of the Transportation Article.) A person who violates this provision is guilty of a misdemeanor, and, on conviction, must receive eight points on the driver’s license, then making the person subject to license suspension.

It does not appear that the bill’s provisions specifically establish that a provider who makes a report about the authorized person, as required, is granted immunity from civil liability or criminal penalties from making such a report, if it was determined that the provider was mistaken. For example, § 5-620 of the Courts and Judicial Proceedings

Article establishes that any person who, in good faith, makes a report about child abuse or neglect or participates in an investigation of or judicial proceeding relating to child abuse or neglect is immune from any civil liability or criminal penalty that would result from making such a report or from such participation.

It should also be noted that if a local department of social services is contacted by a law enforcement officer because the officer is unable to find a suitable person to take custody of a child, the bill is silent on what actions the local department is authorized or required to take.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Howard and Montgomery counties; Department of Human Resources; Maryland State Department of Education; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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