

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1438

(Delegate Shewell, *et al.*)

Judiciary

Vehicle Laws - Drug-Related Driving Offense - Penalties

This bill increases administrative and judicial penalties for (1) driving or attempting to drive 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 drive a vehicle safely; and (2) committing this offense while transporting a minor. The bill also establishes the penalty of mandatory minimum imprisonment for specified repeat violations of this offense. Thus, the bill conforms the penalties for driving while so far impaired by any drug or any combination of drugs and/or drugs and alcohol to the penalties established for driving while under the influence of alcohol or under the influence *per se* and driving while impaired by a controlled dangerous substance.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential minimal increase in general fund revenues to the extent that additional administrative appeals are filed due to driver's license revocations. Potential minimal increase in Transportation Trust Fund (TTF) revenues due to reinstatement fees to reinstate driver's licenses subject to revocation. It is anticipated that the Judiciary, the Motor Vehicle Administration (MVA), and the Office of Administrative Hearings (OAH) can handle the bill's provisions with existing resources.

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

Small Business Effect: None.

Analysis

Bill Summary: A person who is convicted of this offense within five years after a prior conviction for any included alcohol- and/or drug-related driving offenses is subject to a mandatory minimum penalty of imprisonment for at least five days. A person who is convicted of a third or subsequent offense within five years is subject to a mandatory minimum penalty of imprisonment for at least 10 days. The imprisonment penalties are not subject to suspension or probation. In addition, the court must require a repeat offender subject to a mandatory imprisonment penalty to undergo a comprehensive alcohol abuse and/or comprehensive drug abuse assessment. If recommended at the conclusion of the assessment, the offender must participate in an alcohol and/or drug abuse program that is certified by the Department of Health and Mental Hygiene (DHMH), certified by an agency in an adjacent state that is similar to the DHMH program, or that is approved by the court. For the purpose of determining penalties for second or subsequent offenses, a prior conviction for any included alcohol- and/or drug-related driving offense is considered a prior conviction.

The penalty for a first conviction of this offense increases from a maximum of a \$500 fine and/or six months imprisonment to maximum penalties of a \$1,000 fine and/or imprisonment for one year. Maximum penalties for second and third offenses that occur more than five years after the prior conviction each increase by \$1,000 and an additional year of imprisonment with a maximum penalty of a fine of \$3,000 and/or three years imprisonment.

A person convicted of driving or attempting to drive while so far impaired by any drug or any combination of drugs and/or drugs and alcohol and transporting a minor is subject to a maximum fine of \$2,000 and/or two years imprisonment for a first offense; \$3,000 and/or three years imprisonment for a second offense; and \$4,000 and/or four years imprisonment for a third or subsequent offense.

For all of the above-mentioned offenses, the bill increases the number of points that MVA must assess against a driver's record for a conviction from 8 to 12 points. As a result, a driver convicted of this offense is subject to license revocation, rather than license suspension.

Current Law: 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;
- so far impaired by any drugs, and/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. Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring for the purpose of participation in a certified or court-approved alcohol or drug treatment program.

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.

Background: At a recent meeting of the United Nations Commission on Narcotic Drugs, the Director of the U.S. Office of National Drug Control Policy warned that drugged driving is becoming a growing threat on U.S. roads while the number of those who drink alcohol and drive has declined. The director stated that, on any weekend evening, about one in six drivers on the road will be under the influence of an illicit, prescription, or pharmaceutical drug. The director stated that drugged driving is a significant problem and called for the commission to debate the topic officially at the next meeting scheduled for 2011.

The Department of State Police reports that, in 2009, 909 people were arrested for suspicion of driving while impaired by drugs, a combination of drugs and/or alcohol, or a controlled dangerous substance. According to the District Court, 2,556 citations were filed in fiscal 2009 for driving while so far impaired by any drug or any combination of drugs and/or drugs and alcohol. There were 155 guilty dispositions for this offense in the same period.

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

Potential minimal increase in general fund revenues to the extent that drivers charged with this offense are more likely to appeal the sanction of license revocation. A person who wants to administratively appeal a Maryland Vehicle Law violation must pay a filing fee of \$125. It is expected that OAH can handle any increase in administrative hearings with existing resources.

Potential minimal increase in TTF revenues to the extent that those who have their license revoked due to this offense pay to have their licenses reinstated. The Maryland Vehicle Law authorizes MVA to charge \$75 to reinstate the license if the license was revoked due to an alcohol- and/or drug-related driving offense. While the Maryland Vehicle Law authorizes a revoked driver to apply for reinstatement of the license at any time after the day the license was revoked, MVA is not authorized to reinstate the license until six months after the effective date of revocation. Also additional examinations apply if the driver is convicted of multiple alcohol- and/or drug-related driving incidents or under other specified circumstances. Drivers are not required to apply for reinstatement of licenses within a specific time period, or at all. It cannot also be reliably predicted when revoked drivers who want reinstatement would apply for reinstatement. As noted above, in fiscal 2009, 155 drivers were convicted of this offense and would be subject to license revocation under the bill. *By way of illustration*, if 155 drivers were found guilty in fiscal 2011 and all 155 drivers paid the \$75 reinstatement fee in fiscal 2011 after having their licenses revoked, TTF revenues would increase by \$11,625.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people subject to longer incarceration sentences 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 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.

MVA budgets \$150 for each case that is referred to OAH for an administrative hearing. To the extent that additional administrative hearings are requested due to this bill, it is anticipated that the hearings can be handled within the resources budgeted by MVA.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit court.

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.

Additional Information

Prior Introductions: None.

Cross File: SB 699 (Senator Haines) - Judicial Proceedings.

Information Source(s): Charles, Frederick, and Somerset counties; Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; State's Attorneys' Association; Maryland Department of Transportation; *reuters.com*; National Highway Transportation Safety Administration; Department of Legislative Services

Fiscal Note History: First Reader - March 16, 2010
ncs/ljm Revised - Updated Information - April 2, 2010
Revised - Clarification - April 9, 2010

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