

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 779

(Delegate McComas, *et al.*)

Judiciary

Crimes - Manslaughter by Vehicle - Definition of "Operating"

This bill expands the definition of “operating” as it applies to the crime of committing manslaughter by vehicle. The definition pertains to motor vehicles, streetcars, locomotives, engines, and trains and includes (1) the loading, unloading, or securing of a load on a vehicle; (2) attaching a trailer hitch, luggage rack, or other equipment to a vehicle; and (3) any other act required by law of a driver, operator, or person controlling a vehicle, such as marking a disabled vehicle or cargo spill or clearing a cargo spill from the roadway. Existing penalties apply to an action that is designated an offense under the bill due to the expanded definition of “operating.”

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the expansion of the bill’s penalty provisions. Any necessary training in the Maryland Department of Transportation due to the bill’s expanded definition can be accomplished with existing resources.

Local Effect: Minimal increase in revenues and expenditures due to expansion of 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.

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.

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 (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted under the proposed expansion of this crime 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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 Division of Correction 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 provision from cases heard in the circuit courts.

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 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 the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 396 (Senator Jacobs) - Judicial Proceedings.

Information Source(s): Cecil, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; State's Attorneys' Association; Maryland Department of Transportation; Department of Legislative Services

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