

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1405 (Delegate Clippinger)  
Rules and Executive Nominations

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Criminal Law - Motor Vehicles - Criminal Negligence Resulting in Death

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This bill creates the misdemeanor offense of criminal negligence resulting in death, which applies to the driving, operating, or controlling of a *motor vehicle*. It distinguishes the offense of “criminally negligent manslaughter by vehicle or vessel” by altering the definition of “vehicle” to specify that a vehicle includes a streetcar, locomotive, engine, and train, but does *not* include a motor vehicle.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures and revenues to the extent additional convictions are obtained under the bill’s provisions.

**Local Effect:** Minimal increase in revenues and expenditures to the extent additional convictions are obtained under the bill’s provisions.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** A person is prohibited from causing the death of another as a result of driving, controlling, or operating a motor vehicle in a criminally negligent manner. The bill defines “criminal negligence” by establishing that criminal negligence occurs when a person causes the death of another while violating (1) the prohibition against overtaking and passing a school vehicle; (2) the maximum speed limit by at least 30 miles per hour above the designated speed limit; or (3) the prohibition against passing in a designated no-passing zone.

The bill establishes that causing the death of another due to the driving, operating, or controlling a motor vehicle in a negligent manner is not the offense of criminal negligence resulting in death.

A person who violates the bill's provisions is guilty of a misdemeanor and is subject to maximum penalties of three years imprisonment and/or a fine of \$5,000.

### **Current Law:**

*Criminal Negligence:* Chapter 334 of 2011 created the misdemeanor offense of criminally negligent manslaughter by vehicle or vessel. A "vehicle" includes a motor vehicle, streetcar, locomotive, engine, or train. A person is prohibited from causing the death of another due to driving, operating, or controlling a vehicle or vessel in "a criminally negligent manner." A person acts in a criminally negligent manner when the person should be aware, but fails to perceive, that the person's conduct creates a substantial and unjustifiable risk that manslaughter will occur and the failure to perceive is a gross deviation from the standard of care that would be exercised by a reasonable person. A person who commits this offense is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for three years 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.

Chapter 334 expressed the intent of the General Assembly that the term "gross deviation from the standard of care" (1) be interpreted synonymously with the term "gross deviation from the standard of care" as contained in the Model Penal Code of the American Law Institute; and (2) is a separate and distinct standard from the "gross negligence" standard that is used for the crime of manslaughter by vehicle or vessel.

Chapter 334 also established that a person who violates the Maryland Vehicle Law by causing the death of another as a result of driving, operating, or controlling a vehicle in a negligent manner has not committed the offense of criminally negligent manslaughter by vehicle or vessel.

*Manslaughter by Vehicle – Gross Negligence:* 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 imprisonment for 10 years and/or a fine of \$5,000. 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" HB 1405/ Page 2

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.

*Negligence and Recklessness:* 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 of up to \$1,000. MVA is also required to assess six points against the driver’s license upon conviction for this offense. 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. Upon conviction, 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.

*Other Administrative Penalties:* 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 8 points on the driver’s license and must issue a notice of license revocation to a person who accumulates 12 points within two years.

**Background:** Section 2.02(2)(d) of the Model Penal Code of the American Law Institute specifies:

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

**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 of this proposed crime is expected to be minimal. The Department of Public Safety and Correctional Services advises that, in fiscal 2011, there were 16 intakes in DOC for the offense of manslaughter by vessel or vehicle (requires gross negligence). The average sentence for this offense is 80 months. The Division of Parole and Probation advises there were 20 probation intakes for the same offense in fiscal 2011.

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 \$2,900 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 \$385 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 approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 942 (Senator Stone) - Judicial Proceedings.

**Information Source(s):** Baltimore, Garrett, Howard, and Montgomery counties; Maryland Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys Association; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2012  
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