

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 732
Judiciary

(Delegate Parrott, *et al.*)

Vehicle Laws - Fleeing or Eluding Police

This bill creates a felony offense for a driver who attempts to elude a police officer in a way that poses a risk of imminent bodily injury (in addition to the existing prohibitions against doing so in a way that results in bodily injury or death). The bill specifies that a driver may not flee or elude a police officer who, while not in an appropriately marked vehicle, is displaying an activated flashing blue or red and blue light and gives a visual signal or an audible signal to the driver to stop. The bill establishes an exemption, however, to this prohibition if the driver, while obeying traffic laws, proceeds directly to a nearby police station or any other lighted public location to stop. The bill also clarifies what an appropriately marked police vehicle is when an officer is signaling a driver to stop.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues due to additional cases shifted to the circuit courts. Minimal increase in general fund expenditures due to additional people incarcerated under the bill's penalty provisions. It is expected that any increase in enforcement activity can be handled with existing resources.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions. It is expected that any increase in enforcement activity can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill clarifies that, if a police officer gives a visual signal or an audible signal to stop and the police officer is in an “appropriately marked” police vehicle, the driver may not attempt to flee or elude the police officer by willfully failing to stop the driver’s vehicle, fleeing on foot, or any other means.

An “appropriately marked police vehicle” is an official police vehicle that displays the official emblem or insignia of a police or sheriff’s department or the official emblem or insignia of the State or a local government in the State.

Established penalties for willfully failing to stop a vehicle in a way that causes bodily injury or death apply to the felony offense.

Current Law: A visual or audible signal includes a signal by hand, voice, emergency light, or siren. If a police officer gives an audible or visual signal to stop and the police officer is in uniform, prominently displaying a badge or other insignia, the vehicle driver may not attempt to flee or elude the police officer by willfully failing to stop the vehicle, fleeing on foot, or any other means. If a police officer gives an audible or visual signal to stop and the officer is in a vehicle appropriately marked as an official police vehicle, whether or not the officer is in uniform, the vehicle driver may not attempt to flee or elude the officer by willfully failing to stop the vehicle, fleeing on foot, or any other means. A person who is convicted of fleeing or eluding police is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. For any subsequent offense, a person is subject to maximum penalties of imprisonment for two years and/or a fine of \$1,000.

A driver may not willfully fail to stop a vehicle while attempting to elude a police officer who is signaling the driver to stop to apprehend the driver for committing a crime of violence, for which the driver was subsequently convicted. A vehicle driver is also prohibited from attempting to elude a police officer by willfully failing to stop the vehicle such that it results in the bodily injury to or death of another person. A person who commits either of these offenses is subject to maximum penalties of three years imprisonment and/or a fine of \$5,000. A person who causes the death of another person as a result of fleeing or eluding police is guilty of a misdemeanor and is subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000.

All of the above-mentioned offenses require a court appearance, and, after a conviction, the Motor Vehicle Administration is required to assess 12 points against the driver’s license, which subjects the driver to license revocation.

Background: This bill (and other similar bills introduced during the 2012 legislative session) is in response to a Court of Special Appeals decision in *Williams v. State*, 200 Md. App. 73 (2011). In this case, the appellant, Gregory Williams, was convicted in the Circuit Court for Montgomery County of possession of cocaine and fleeing and eluding.

A police officer was conducting surveillance of the appellant in an unmarked police car at a gas station in Montgomery County. The police officer testified at trial that he saw the appellant's vehicle "lap slowly around" the gas station before exiting at a high rate of speed. The police officer pursued and initiated a traffic stop by turning on the police siren and flashing red and blue lights on the windshield visor of the vehicle. The vehicle moved to the shoulder of the road and then accelerated back into the travel lane. The appellant's vehicle stopped after colliding with a curb off an exit ramp. The appellant and his passenger then left the vehicle and ran toward nearby woods. The appellant was eventually apprehended by a K-9 unit that was dispatched to the area.

The circuit court imposed (1) a sentence of four years imprisonment, with 30 months suspended and three years of supervised probation, for the cocaine charge; and (2) one year of imprisonment to be served concurrently, for the fleeing and eluding charge. The case was appealed to the Court of Special Appeals and, among the issues, the following question was presented for consideration:

Was the evidence insufficient to sustain a conviction for fleeing and eluding in violation of section 21-904(c) of the Transportation Article?

The Court of Special Appeals answered the question in the affirmative and reversed the appellant's conviction for the fleeing and eluding charge.

The appellant contended that the fleeing and eluding statute prohibits fleeing and eluding a police officer who is in a vehicle "appropriately marked as an official police vehicle." Appellant argued that the legislature failed to define the phrase "a vehicle appropriately marked as an official police vehicle." Accordingly, the evidence was factually and legally insufficient to sustain his conviction.

The court, after noting that the meaning of "an appropriately marked police vehicle" had not been defined in statute or in Maryland case law, reviewed the case law of numerous other states and the legislative history of the statute. The court concluded that "a vehicle appropriately marked as a police vehicle" is not synonymous with a vehicle that is equipped with lights and sirens. Furthermore, the activation of lights and sirens alone did not transform an unmarked police vehicle into a vehicle "appropriately marked" as an official police vehicle. If only the activation of sirens and lights were enough to satisfy the statutory requirement that a police vehicle be "appropriately marked," then the

language of the statute requiring that the vehicle be “appropriately marked” would be without meaning and, therefore, unnecessary. The court ruled that, “...without proof of each of the statutory elements, appellant’s conviction of fleeing and eluding...cannot stand.”

State Fiscal Effect: The bill expands the offense to include a prohibition on the willful failure to stop a vehicle in a way that poses a risk of imminent bodily injury. This expansion may increase the number of arrests and convictions for fleeing and eluding police. The magnitude of increase cannot be reliably estimated. It is anticipated however, that any increase in enforcement of this expansion can be handled with existing resources.

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 these offenses.

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

General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to more people being committed to State correctional 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.

Persons serving a sentence longer than 18 months are incarcerated in State correctional 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 State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 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 State correctional facility. 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 State 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 State correctional 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 additional 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 the State 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.

Additional Information

Prior Introductions: HB 1338 of 2012, a similar bill, was withdrawn after being heard by the House Judiciary Committee. HB 1179 of 2012, another similar bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 254, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 205 (Senator Shank) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

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mc/ljm

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