

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 160

(Senator Cassilly, *et al.*)

Judicial Proceedings

Judiciary

Death or Life-Threatening Injury by Motor Vehicle or Vessel - Subsequent
Offenders - Penalties

This bill establishes subsequent offender offenses and more stringent penalties for those who commit the following violations: (1) manslaughter by vehicle or vessel – gross negligence; (2) manslaughter by vehicle or vessel – criminal negligence; (3) homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; (4) homicide by motor vehicle or vessel while impaired by alcohol; (5) homicide by motor vehicle or vessel while impaired by drugs; (6) homicide by motor vehicle or vessel while impaired by a controlled dangerous substance (CDS); and (7) causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*, or while impaired by alcohol, drugs, or a CDS.

A conviction for a crime committed in another state or under federal jurisdiction that, if committed in Maryland, would constitute a violation of any of these provisions is considered a violation for purposes of the subsequent offender penalties imposed under the bill.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under the bill, a person who commits any of several specified offenses, after having previously been convicted of committing that same offense or any of the other specified offenses, is subject to enhanced penalties. These enhanced penalties also apply when such a person was previously convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a CDS. Current penalties for these offenses as well as the enhanced penalties for such a crime (subsequent to having been convicted of one of the specified crimes) are shown in **Exhibit 1**. In all cases, the maximum fine that may be imposed increases to \$10,000. Maximum prison sentences likewise increase: if currently 2 or 3 years, the maximum term is 5 years; if currently 5 years, the maximum term is 10 years; and if currently 10 years, the maximum term is 15 years.

Definitions: A “vehicle” includes a motor vehicle, streetcar, locomotive, engine, or train. A “motor vehicle” is a vehicle that is self-propelled or propelled by electric power obtained from overhead electrical wires and is not operated on rails. A “vessel” is any watercraft that is used or capable of being used as a means of transportation on water or ice, but it does not include a seaplane.

“Life-threatening injury” is not defined in statute.

“Impaired by alcohol” means *prima facie* evidence as indicated, at the time of testing, by an alcohol concentration of at least 0.07, but less than 0.08, as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

“Under the influence of alcohol *per se*” means having an alcohol concentration at the time of testing of at least 0.08 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Manslaughter by Vehicle or Vessel – Gross Negligence: A person is prohibited from committing manslaughter by vehicle or vessel by causing the death of another as a result of driving, operating, or controlling a vehicle or vessel in a grossly negligent manner. The standard of “gross negligence” is established in common law and requires that evidence show, beyond a reasonable doubt, that the offender had a wanton or reckless disregard for human life in the operation of an automobile. The conduct must be extraordinary or outrageous to meet this standard

Manslaughter by Vehicle or Vessel – Criminal Negligence: 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

Exhibit 1
Comparison of Current Maximum Penalties to Enhanced Maximum Penalties Under the Bill

<u>Offense</u>	<u>Current Maximum Penalties</u>			<u>Proposed Maximum Penalties if Previously Convicted of Any Specified Offense</u>		
		<u>Imprisonment</u>	<u>Fine</u>		<u>Imprisonment</u>	<u>Fine</u>
Manslaughter by vehicle or vessel – gross negligence	felony	10 years	\$5,000	felony	15 years	\$10,000
Manslaughter by vehicle or vessel – criminal negligence	misdemeanor	3 years	\$5,000	misdemeanor	5 years	\$10,000
Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	felony	5 years	\$5,000	felony	10 years	\$10,000
Homicide by motor vehicle or vessel while impaired by alcohol	felony	3 years	\$5,000	felony	5 years	\$10,000
Homicide by motor vehicle or vessel while impaired by drugs	felony	3 years	\$5,000	felony	5 years	\$10,000
Homicide by motor vehicle or vessel while impaired by a CDS	felony	3 years	\$5,000	felony	5 years	\$10,000
Causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i> or while impaired by a CDS	misdemeanor	3 years	\$5,000	misdemeanor	5 years	\$10,000
Causing life-threatening injury by motor vehicle or vessel while impaired by alcohol or drugs	misdemeanor	2 years	\$3,000	misdemeanor	5 years	\$10,000

Notes: Under both current law and the bill, the maximum penalties may be the imprisonment term noted, the fine noted, or both. Proposed maximum penalties apply under the bill if previously convicted of the same offense; any other offense listed in this exhibit; or driving while under the influence of alcohol, while under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a CDS.

Source: Department of Legislative Services

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.

Homicide by Motor Vehicle or Vessel Under the Influence: A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

Homicide by Motor Vehicle or Vessel While Impaired: A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while (1) impaired by alcohol; (2) so far impaired by a drug, any combination of drugs, or any combination of drugs and alcohol that the person cannot drive, operate, or control a motor vehicle or vessel safely; or (3) impaired by a CDS that the person is not entitled to use by State law.

Life-threatening Injury by Motor Vehicle or Vessel Under the Influence: A person may not cause life-threatening injury to another as a result of negligently operating or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

Life-threatening Injury by Motor Vehicle or Vessel Impaired: A person may not cause life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while (1) impaired by alcohol; (2) impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or (3) impaired by a CDS.

Driving Under the Influence of Alcohol or While Impaired by Alcohol/Drugs/Controlled Dangerous Substance: 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 a drug, any combination of drugs, or any combination of drugs and alcohol; or
- impaired by a CDS.

With a conviction for an alcohol- and/or drug-related driving offense under the Transportation Article, 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 the Motor Vehicle Administration (MVA). A person convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS 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 up to \$500 and/or imprisonment for up to two months. However, for repeat offenders, maximum prison terms increase to one 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.

Administrative Penalties: In addition to the current maximum penalties noted in Exhibit 1, all of the offenses in the bill are subject to points assessment by MVA, which makes the driver subject to either revocation or suspension of the driver's license.

For convictions of all manslaughter by motor vehicle or vessel, homicide by motor vehicle or vessel, and life-threatening injury by motor vehicle or vessel offenses, MVA must assess 12 points against the driver's license, and the license is subject to revocation. A conviction of driving under the influence of alcohol or driving while impaired by a CDS also requires assessment of 12 points against the license by MVA, and the license is subject to revocation. A conviction for driving while impaired by alcohol or impaired by a drug, any combination of drugs, or any combination of drugs and alcohol requires assessment of 8 points against the driver's license by MVA, and the license is subject to suspension. A driver who accumulates 8 or 12 points against his or her driver's license within a two-year period is subject to license suspension or revocation, respectively.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, in fiscal 2015, a total of 88 people were sentenced on 103 counts that would be considered prior offenses under the bill. Specifically, 32 people were sentenced for 43 counts of the criminal law offenses under the bill (those related to homicide, life-threatening injury, or manslaughter), and 58 people were sentenced for 60 counts of violating the alcohol- and/or drug-related offenses under the Transportation Article (driving while under the influence of alcohol or while impaired by alcohol, drugs, drugs and alcohol, or a CDS). (Because the two groups overlap, the total number of people identified by the commission is 88.)

For fiscal 2015, the Department of Public Safety and Correctional Services reported:

- 4 intakes for various homicide by motor vehicle offenses – average sentence of 43 months;
- 1 intake for manslaughter by vehicle offenses – sentence of 44 months;
- 111 intakes for driving under the influence of alcohol – average sentence of 11 months;

- 81 intakes for driving while impaired by alcohol – average sentence of 3.4 months;
- 8 intakes for driving while impaired by a drug, any combination of drugs, or any combination of drugs and alcohol – average sentence of 30 days;
- 1 intake for driving while impaired by a CDS – no average sentence can be calculated as this was not the most serious offense for this individual; and
- 5 intakes for operating a vessel under the influence or while impaired by drugs and/or alcohol – no average sentence was reported; however, one individual, for whom this was the most serious offense, served a sentence of 36 months.

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. Any impact depends on changes in sentencing practices due to the bill.

State Expenditures: General fund expenditures may increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for longer periods of time than they otherwise would be. The number of people convicted and subject to the enhanced penalties in the bill is expected to be minimal. Moreover, any impact depends on changes in sentencing practices due to the bill.

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 \$3,300 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 health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 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 a 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 had 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts. Any impact depends on changes in sentencing practices due to the bill.

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalties due to more people being committed to local facilities for longer periods than they otherwise would be. The number of people convicted and subject to the enhanced penalties in the bill is expected to be minimal; however, the average sentences were less than one year for 200 of the intakes noted above for what would be considered prior offenses under the bill. Any impact depends on changes in sentencing practices due to the bill.

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: SB 232 of 2015 was heard by the Senate Judicial Proceedings Committee but received no further action.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Natural Resources, Department of Public Safety and Correctional Services, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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