

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 612
Judiciary

(Delegate Vallario, *et al.*)

Judicial Proceedings

Manslaughter by Motor Vehicle or Vessel While Under the Influence or
Impaired - Penalty

This bill establishes the following felony offenses: (1) manslaughter by motor vehicle or vessel while under the influence of alcohol; (2) manslaughter by motor vehicle or vessel while under the influence of alcohol *per se*; (3) manslaughter by motor vehicle or vessel while impaired by drugs; and (4) manslaughter by motor vehicle or vessel while impaired by a controlled dangerous substance (CDS). The maximum penalty for each offense is 15 years imprisonment and/or a \$5,000 fine. The bill also specifies the information to be included in charging documents for the new offenses.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration provision. Enforcement can otherwise be handled with existing resources. No effect on revenues.

Local Effect: Enforcement can be handled with existing resources. No effect on revenues.

Small Business Effect: None.

Analysis

Bill Summary:

Manslaughter by Motor Vehicle or Vessel While Under the Influence of Alcohol: A person is prohibited from causing the death of another as a result of the person's grossly negligent driving, operating, or controlling a vehicle or vessel while under the influence of alcohol.

A violator on conviction is guilty of a felony and is subject to a maximum penalty of 15 years imprisonment and/or a \$5,000 fine.

Manslaughter by Motor Vehicle or Vessel While Under the Influence of Alcohol Per Se: A person is prohibited from causing the death of another as a result of the person's grossly negligent driving, operating, or controlling a vehicle or vessel while under the influence of alcohol *per se*. A violator on conviction is guilty of a felony and is subject to a maximum penalty of 15 years imprisonment and/or a \$5,000 fine.

Manslaughter by Motor Vehicle or Vessel While Impaired by Drugs: A person is prohibited from causing the death of another as a result of the person's grossly negligent driving, operating, or controlling a vehicle or vessel while the person is so far impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol that the person cannot, drive, operate or control a motor vehicle or vessel safely. A violator on conviction is guilty of a felony and is subject to a maximum penalty of 15 years imprisonment and/or a \$5,000 fine.

The bill precludes an affirmative defense for this violation that the person was entitled to use a drug, combination of drugs, or a combination of one or more drugs and alcohol under State law, unless the person was unaware that the drug, or the combination of drugs and alcohol, would make the person incapable of safely operating a motor vehicle or vessel.

Manslaughter by Motor Vehicle or Vessel While Impaired by a CDS: A person is prohibited from causing the death of another as a result of the person's grossly negligent driving, operating, or controlling a vehicle or vessel while impaired by a CDS. A violator on conviction is guilty of a felony and is subject to a maximum penalty of 15 years imprisonment and/or a \$5,000 fine. This provision does not apply to persons entitled to use a CDS under State Law.

Current Law:

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.

Alcohol Concentration – Presumptions: A test is admissible at trial to show a driver's specific blood alcohol concentration. Alcohol concentration is measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. If a test of blood or breath is admitted as evidence, statutory provisions establish the applicable evidentiary presumption based on the specific test results. An alcohol test requested by a

police officer after detaining a driver on suspicion of committing an alcohol-related driving offense test is usually a breath test, but sometimes it is a blood test.

If a person has an alcohol concentration at the time of testing of 0.08 or more, the person is considered under the influence of alcohol *per se*. A test result of 0.08 or more also subjects a driver to an administrative *per se* license suspension. An alcohol concentration at the time of testing of at least 0.07 but less than 0.08 constitutes *prima facie* evidence that the person was driving while impaired by alcohol. An alcohol concentration at the time of testing of more than 0.05 but less than 0.07 may not give rise to any presumption that the person was or was not under the influence of alcohol or that the person was or was not driving while impaired by alcohol. An alcohol concentration at the time of testing of 0.05 or less creates the presumption that the person was not under the influence of alcohol and was not driving while impaired by alcohol.

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. 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 Gross Negligence Standard: 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.

Manslaughter by Motor Vehicle or Vessel – Criminal Negligence: Pursuant to Chapter 334 of 2011, a person is prohibited from committing manslaughter by vehicle by causing the death of another due to driving, operating, or controlling a vehicle in a “criminally negligent” manner. A person acts in a criminally negligent manner when (1) 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 (2) that failure to perceive is a gross deviation from the standard of care that would be exercised by a reasonable person. A violation is a misdemeanor, subject to maximum penalties of three years imprisonment and/or a fine of \$5,000. Upon conviction, MVA must assess 12 points against the license of the person, and the license is subject to revocation.

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*. A violator is guilty of a felony and subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

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 one or more 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. A violator is guilty of a felony and subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

For convictions of all homicide by motor vehicle or vessel offenses, MVA must assess 12 points against the driver’s license, and the license is subject to revocation.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, in fiscal 2015, a total of 11 people were sentenced on 12 counts of manslaughter by motor vehicle or vessel. The sentences imposed ranged from 4 to 10 years, with an average sentence of 8.7 years, including suspended time. Excluding suspended time, the average sentence imposed for the 12 counts was 3.8 years and ranged from 1.5 to 8 years. The Judiciary advises that, in fiscal 2015, there were 50 filings for the charge of manslaughter by motor vehicle or vessel. Ten charges were filed in the District Court, and 40 charges were filed in the circuit courts.

According to the Judiciary, the following charges were filed in fiscal 2015 for homicide by motor vehicle or vessel offenses:

- homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se* – 36 charges (26 in the circuit courts and 10 in District Court);
- homicide by motor vehicle or vessel while impaired by alcohol – 25 charges (18 in circuit courts and 7 in District Court);
- homicide by motor vehicle while impaired by drugs and/or drugs and alcohol – 4 charges (all in the circuit courts); and
- homicide by motor vehicle or vessel while impaired by a CDS – 3 charges (all in circuit courts).

Of the above charges, the Judiciary reports that 11 citations of homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se* were disposed of with findings of guilt.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to State correctional facilities for longer periods of time. The number of people convicted of these proposed crimes is expected to be minimal.

The State's Attorneys' Association advises that the new offenses under the bill are a subset of existing gross negligence manslaughter offenses. Specifically, the bill establishes an alcohol-related, gross negligence subcategory of felonies. An individual involved in an alcohol-related accident that causes the death of another is likely to be charged with all of the offenses under existing law that might apply to account for the varying standards of negligence: simple negligence; criminal negligence; and gross negligence. A judge or jury would likely determine which offense applies based on the level of negligence it finds. A defendant may be found guilty of one or more offenses but is likely to be sentenced for the greater offense. Thus, the bill's provisions are not likely to result in increased convictions overall but may result in longer sentences of imprisonment.

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.

Additional Information

Prior Introductions: None.

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 Public Safety and Correctional Services, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2016
mel/kdm Revised - House Third Reader - March 29, 2016

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