

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 564

(Senator Feldman, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Providing Alcohol to Underage Drinkers - Penalties

This bill enhances the criminal penalties for an adult who (1) obtains or attempts to obtain an alcoholic beverage from any person licensed to sell alcoholic beverages for an individual who the adult knows is younger than age 21; (2) furnishes an alcoholic beverage for an individual who the adult knows is younger than age 21; or (3) knowingly and willfully allows an individual younger than age 21 to possess or consume an alcoholic beverage at a residence or within the curtilage of a residence that the adult owns or leases and in which the adult resides. The bill establishes penalties of imprisonment for up to one year and/or a fine of up to \$5,000 for a first offense and imprisonment for up to two years and/or a fine of up to \$7,500 for a second or subsequent offense.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Under the Criminal Law Article, an individual may not obtain, or attempt to obtain, an alcoholic beverage from any person licensed to sell alcoholic beverages for another who the individual knows is younger than age 21.

Additionally, a person may not furnish an alcoholic beverage to an individual if the person knows that the individual is younger than age 21. An adult may not knowingly and willfully allow an individual younger than age 21 to possess or consume an alcoholic beverage at a residence or within the curtilage of a residence that the adult owns or leases and in which the adult resides. These prohibitions do not apply if the person furnishing, or allowing the possession or consumption of, the alcoholic beverage and the individual to whom the alcoholic beverage is furnished, or who possesses or consumes the alcoholic beverage, (1) are members of the same immediate family and the alcoholic beverage is furnished, possessed, or consumed in a private residence or the residence's curtilage or (2) are participants in a religious ceremony.

Adults who violate these provisions are guilty of a misdemeanor and on conviction are subject to a fine of up to \$2,500 for a first offense or a fine of up to \$5,000 for a second or subsequent offense. These penalties do not apply to licensed alcoholic beverage retailers who sell or furnish alcoholic beverages to individuals younger than age 21 and who are subject to penalties under the Alcoholic Beverages Article.

A minor who obtains, attempts to obtain, or furnishes an alcoholic beverage to an individual that the minor knows is younger than age 21 is subject to a citation. The bill does not alter the penalties for minors.

Background: According to a December 2015 *Washington Post* article, two 18-year-olds, Alex Murk and Calvin Li, were both killed in a high-speed, drunk-driving crash in June 2015 in Montgomery County. Police stated that the teenage driver of the car, in which Murk and Li were passengers, had a blood alcohol concentration level of between 0.07 and 0.09 and tested positive for drugs. The night of the crash, all of the teenagers had attended a party at a student's home where alcohol was served; the student's parent, who was present at the party, was later issued two criminal citations for allowing underage drinking in his home. The parent pled guilty and was ordered to pay the maximum \$5,000 fine.

According to the *Daily Record*, the Court of Appeals is considering two cases involving whether a parent or other adult who hosts an underage drinking party can be held civilly liable for the death of an intoxicated attendee of the party or injuries sustained by a person who was struck by an inebriated teenager driving from the event. Attorneys for one of the plaintiffs argued that the criminal statute that makes it a misdemeanor for an adult to knowingly and willfully allow a person younger than age 21 to possess or consume an alcoholic beverage at the adult's home also creates a civil cause of action against the adult host. Defense counsel argued that the applicable criminal statute cannot be interpreted to create a civil cause of action, and that the legislature has the authority to enact a statute creating a civil cause of action in these situations. The court is expected to announce its decisions by August 2016.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: The bill enhances the criminal penalties for existing offenses to include possible imprisonment, rather than only fines. The Judiciary notes that due to the bill's incarceration penalties, law enforcement officials may no longer charge violations by citation. The Judiciary is unable to estimate the number of arrests that may result instead of a citation event but does not anticipate a significant fiscal or operational impact on the Judiciary's caseload. Likewise, the Department of State Police advises no fiscal or operational impact.

General fund expenditures increase minimally as a result of the bill's incarceration penalties 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 under this proposed incarceration penalty 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 \$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 increase minimally as a result of the bill's monetary penalty provisions from 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: None.

Cross File: Although designated as a cross file, HB 409 (Delegate Fraser-Hidalgo, *et al.* – Judiciary) is different.

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, Department of State Police, *Daily Record*, *Washington Post*, Department of Legislative Services

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