

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1133
Judiciary

(Delegate Conaway)

Criminal Procedure – Law Enforcement Procedures – Consent Search of Motor
Vehicle

This bill prohibits a police officer from basing the authority to search a motor vehicle *solely* on the officer obtaining the consent of the owner or occupant of the motor vehicle. Any search of a motor vehicle conducted in violation of the bill’s provisions is unreasonable and the evidence obtained may not be introduced in a criminal proceeding.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) may increase or decrease, as discussed below. Enforcement can be handled with existing resources. Potential minimal decrease in fine revenues.

Local Effect: Enforcement can be handled with existing resources, as discussed below. Potential minimal decrease in fine revenues.

Small Business Effect: None.

Analysis

Current Law/Background: The Fourth Amendment to the U.S. Constitution states that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” In essence, the Fourth Amendment protects individuals from unreasonable searches and seizures by the government. The reasonableness of a governmental search often depends on the location of the search and the reasonableness of the expectation of privacy on the part of the person subject to the search. Generally, U.S. Supreme Court decisions have established the

principle that a warrant issued by a “neutral and detached magistrate” must be obtained before a government authority may breach the individual privacy that the Fourth Amendment secures. However, the U.S. Supreme Court has also recognized a number of exceptions to the requirement for a warrant for a vehicle search. Such exceptions include when the officer has probable cause to believe that there is evidence of a crime in the vehicle, the officer reasonably believes that a search is necessary for the officer’s protection, the owner or occupant of the vehicle has been arrested and the search is related to the arrest, or the owner or occupant has given the officer consent for the search.

In *State of Maryland v Green*, 375 Md. 595 (2003), the Court of Appeals noted that the U.S. Supreme Court has long approved consensual searches and further noted that “an individual is not “seized” within the meaning of the Fourth Amendment if he engages in a consensual encounter with police...As long as police officers do not induce cooperation by coercive means, they may “pose questions, ask for identification, and request consent to search luggage” even if they have no basis for suspecting that a particular individual has engaged in criminal activity.”

State/Local Fiscal Effect:

Law Enforcement Agencies and the Courts

While the bill does not increase expenditures for State or local law enforcement agencies, the bill likely imposes a minimal operational impact on those agencies. Although it is not possible to determine the number of consensual searches that will be prohibited as a result of the bill, the bill’s provisions may require that State and local law enforcement agencies alter policies related to vehicle searches. The bill does not prohibit law enforcement officers from searching a vehicle when (1) probable cause exists; (2) an officer believes that a search is necessary for the officer’s protection; or (3) the owner or occupant has been arrested and the search is related to the arrest. Thus, the bill does not prohibit all vehicle searches by law enforcement.

To the extent that law enforcement officers pursue other methods to lawfully search a vehicle, agency operations may be impacted. When an officer expresses probable cause for a search, such a choice could impact court operations as additional court time may be necessary for litigation relating to whether probable cause actually existed at the time of the search. However, since the bill invalidates a motor vehicle search based solely on the owner’s consent, fewer arrests and fewer cases could also occur. Accordingly, court costs and fine impositions may decrease.

The Administrative Office of the Courts advises that the bill’s provisions can be implemented within the existing resources of the District Court and the circuit courts.

Office of Public Defender

OPD advises that the bill likely results in a decrease in cases handled by the agency. According to OPD, because the decrease in cases is unknown, the overall effect of the bill on OPD cannot be determined at this time. However, the Department of Legislative Services advises that if officers pursue other lawful methods for a vehicle search, litigation by OPD may actually increase as a result of the bill's provisions. As a result, the bill's provisions may result in an increase or a decrease in OPD expenditures, depending on implementation of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2018
mm/kdm

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510