

Department of Legislative Services

Maryland General Assembly

2020 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 352

(Delegate Hartman, *et al.*)

Judiciary

**Criminal Law - Life-Threatening Injury Involving a Motor Vehicle or Vessel -
Criminal Negligence (Wade's Law)**

This bill establishes the offense of life-threatening injury by motor vehicle or vessel – criminal negligence. A person is prohibited from causing a life-threatening injury to another as a result of driving, operating, or controlling a motor vehicle or vessel in a criminally negligent manner. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of imprisonment for 18 months and/or a fine of \$5,000.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s penalty provision. Otherwise, enforcement can be handled with existing resources.

Local Effect: Minimal increase in revenues and expenditures due to the bill’s penalty provision. Otherwise, enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a person acts in a criminally negligent manner with respect to a result or a circumstance when (1) the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that such a result will occur and (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person. The bill does not apply to simple negligence.

“Vessel” means any watercraft that is used or is capable of being used as a means of transportation on water or ice but does not include a seaplane.

Current Law:

Definitions

“Life-threatening injury” is not defined in statute. “Vessel,” as it applies to homicide and life-threatening injury by vehicle or vessel offenses, means any watercraft that is used or is capable of being used as a means of transportation on water or ice but does not include a seaplane. The Criminal Law Article does not contain a universal definition of “motor vehicle.” However, § 3-204 of the Criminal Law Article (reckless endangerment) incorporates the definition of motor vehicle under § 11-135 of the Transportation Article (Maryland Vehicle Law). “Motor vehicle,” as it applies to the Maryland Vehicle Law, is a vehicle that is self-propelled or propelled by electric power obtained from overhead electrical wires and is not operated on rails.

Vehicle or Vessel Offenses Involving Criminal or Gross Negligence

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: Chapter 334 of 2011 created the misdemeanor offense of criminally negligent manslaughter by vehicle or vessel. 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 and unjustifiable risk that manslaughter will occur and the failure to perceive is a gross deviation from the standard of care that is exercised by a reasonable person.

Chapter 334 contained uncodified language that expressed the intent of the General Assembly that the term “gross deviation from the standard of care” (1) be interpreted synonymously with the term “gross deviation from the standard of care” as contained in the Model Penal Code of the American Law Institute and (2) is a separate and distinct standard from the “gross negligence” standard that is used for the crime of manslaughter by vehicle or vessel. Chapter 334 also established that a person who causes the death of another as a result of driving, operating, or controlling a vehicle in a negligent

manner has not committed the offense of criminally negligent manslaughter by vehicle or vessel. In an opinion dated December 21, 2011, the Attorney General concluded that (1) the “criminal negligence” standard applicable to criminally negligent manslaughter by vehicle or vessel sets forth a lower degree of culpability than the “gross negligence” standard applicable to manslaughter by vehicle or vessel and (2) “the distinction between the two crimes lies in the defendant’s consciousness of the risk associated with his or her conduct” (96 Opinions of the Attorney General 128 (2011)).

Exhibit 1 displays penalties for first and subsequent offenses of manslaughter, homicide, and life-threatening injury by vehicle or vessel offenses. Offenses related to life-threatening injury by motor vehicle or vessel involve drunk or drugged driving.

Administrative Penalties

In addition to the maximum penalties noted in Exhibit 1, all of the listed offenses are subject to points assessment by the Motor Vehicle Administration (MVA), which makes the driver subject to either suspension or revocation of the driver’s license.

For all convictions of manslaughter by 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 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.

Recklessness and Negligence

A person is guilty of reckless driving if a motor vehicle is driven in wanton or willful disregard for the safety of persons or property or in a manner that indicates a wanton or willful disregard for the safety of persons or property. A violation is a misdemeanor, subject to a maximum fine of \$1,000. MVA is also required to assess six points against the driver’s license upon conviction for this offense. The District Court prepayment penalty, including court costs, is \$510 for this offense.

A person is guilty of negligent driving if the motor vehicle is driven in a careless or imprudent manner that endangers any property or the life or safety of any individual. This violation is a misdemeanor, subject to a maximum fine of \$500. Upon conviction, MVA must assess one point against the driver’s license, or three points if the offense contributes to an accident. The District Court assesses a prepayment penalty of \$140 for this offense or \$180 if the offense contributes to an accident.

Background: **Exhibit 2** displays fiscal 2019 sentencing and incarceration information from the circuit courts for manslaughter, homicide, and life-threatening injury by vehicle or vessel offenses.

Exhibit 1
Maximum Penalties for First Offenders and Maximum Penalties for Repeat Offenders

<u>Offense</u>	<u>Maximum Penalties</u>			<u>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	felony	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	5 years	5,000	felony	10 years	10,000
Homicide by motor vehicle or vessel while impaired by a CDS	felony	5 years	5,000	felony	10 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

CDS: controlled dangerous substance

Notes: Chapters 517 and 518 of 2016 established subsequent offender offenses and more stringent penalties for these offenses. Chapters 167 and 168 of 2017 increased the maximum incarceration penalties for homicide by motor vehicle or vessel while impaired by a CDS. Chapter 20 of 2019 increased maximum incarceration penalties for homicide by motor vehicle or vessel while impaired by drugs. Maximum penalties may be the imprisonment term noted, the fine noted, or both. Maximum penalties for repeat offenders apply 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

Exhibit 2
Fiscal 2019 Sentencing and Incarceration Rates – Circuit Courts
Manslaughter, Homicide, and Life-threatening Injury by Vehicle or Vessel Offenses

<u>Offense</u>		<u>Number of Persons Sentenced</u>	<u>Number of Counts</u>	<u>Average Length of Incarceration*</u>
Manslaughter by vehicle or vessel – gross negligence	First offense	27	29	4.4 years
	Subsequent offense	0	---	---
Manslaughter by vehicle or vessel – criminal negligence	First offense	14	15	0.9 years
	Subsequent offense	0	---	---
Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	First offense	4	4	1.9 years
	Subsequent offense	1	1	5 years
Homicide by motor vehicle or vessel while impaired by alcohol	First offense	0	---	---
	Subsequent offense	0	---	---
Homicide by motor vehicle or vessel while impaired by drugs or a CDS	First offense	1	1	5 years
	Subsequent offense	0	---	---
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	First offense	5	6	1 year
	Subsequent offense	0	---	---
Life-threatening injury by motor vehicle or vessel while impaired by alcohol or drugs	First offense	0	---	---
	Subsequent offense	1	1	1.5 years

CDS: controlled dangerous substance

*“Average Length of Incarceration” refers to average nonsuspended sentence.

Source: Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

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

State Expenditures: 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 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: SB 248 of 2019 passed the Senate as amended but received no further action in the House Rules and Executive Nominations Committee. Its cross file, HB 368, a similar bill, received an unfavorable report from the House Judiciary Committee. SB 734/HB 406 of 2018, similar bills, received unfavorable reports from the Senate Judicial Proceedings Committee and House Judiciary Committee, respectively. SB 1114 of 2017, a similar bill, received a hearing in the Senate Judicial Proceedings

Committee, but no further action was taken. Its cross file, HB 585 of 2017, passed the House as amended but received no further action from the Senate Judicial Proceedings Committee.

Designated Cross File: SB 29 (Senators Carozza and Lee) - Judicial Proceedings.

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

Fiscal Note History: First Reader - January 22, 2020
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