

Department of Legislative Services

Maryland General Assembly

2020 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

(Senators Carozza and Lee)

Senate Bill 29

Judicial Proceedings

Judiciary

Criminal Law – Workgroup on Criminal and Gross Negligence

This bill establishes the Workgroup on Criminal and Gross Negligence. The workgroup must study and make legislative recommendations for clarifying the terms “gross negligence” and “criminal negligence” as referenced in Criminal Law § 2-209 (manslaughter by vehicle or vessel – gross negligence) and § 2-210 (manslaughter by vehicle or vessel – criminal negligence), respectively. The Department of Legislative Services (DLS) must provide staff for the workgroup. A member of the workgroup may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The workgroup must report its findings and recommendations to the General Assembly by January 5, 2021. **The bill takes effect July 1, 2020, and terminates June 30, 2021.**

Fiscal Summary

State Effect: DLS can staff the workgroup with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background:

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.

Interpretation of Applicable Standard: 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)).

Criminal Penalties: **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. **Exhibit 2** displays fiscal 2019 sentencing and incarceration information from the circuit courts for these 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

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.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 352 (Delegate Hartman, *et al.*) - Judiciary.

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 13, 2020
rh/aad Third Reader - March 17, 2020
Revised - Amendment(s) - March 17, 2020

Analysis by: Elizabeth J. Allison

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