

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 488

(Delegate Davis)

Judiciary

Judicial Proceedings

Motor Vehicle Accident Reports - Access

This emergency bill • prohibits a person who is not a lawyer from accessing a motor vehicle accident report for the purpose of soliciting another person to sue or to retain a lawyer to represent the other person; • provides that a violation is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000; • repeals provisions of law restricting access to and disclosure of motor vehicle accident reports; and • repeals the provisions making a violator guilty of a felony subject to a maximum penalty of 15 years imprisonment and/or a fine of \$10,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues to the extent additional cases are heard in the District Court because the new misdemeanor offense replaces the felony offenses under current law. Potential minimal increase in general fund expenditures due to the bill's incarceration provisions.

Local Effect: Potential minimal reduction in revenues to the extent cases are heard in the District Court rather than the circuit courts. Potential minimal expenditure savings to the extent fewer cases are heard in the circuit courts because the new offense created by the bill is a misdemeanor. Potential minimal expenditure increase due to the bill's incarceration provision.

Small Business Effect: None.

Analysis

Current Law: A “motor vehicle accident” is defined as an occurrence involving a motor vehicle that results in damage to property or injury to a person. “Report” is defined as a report completed by an officer of a law enforcement agency that indicates that a motor vehicle accident has occurred and includes information about the persons involved in the accident, including their names, telephone numbers, and addresses.

For 60 days following a report’s filing date, it may be accessed only by • the individuals involved in the accident or their legal representatives; • the insurance producer, insurer, or employee or agent of the insurer of an individual involved in the accident; • a State’s Attorney or other prosecutor; • a representative of a victim services program; • an employee of a radio or television station licensed by the Federal Communications Commission; • an employee of a newspaper; or • a unit of local, State, or federal government that is otherwise authorized to have access to a report in furtherance of its duties.

With specified exceptions, a person that accesses a report within 60 days must present a valid driver’s license or other identification and proof that the person is authorized to receive the report. The person also has to present a statement indicating that from the time the person is granted access until 60 days after the report’s filing date • the report will not be used for any commercial solicitation of an individual listed in the report; and • the person will not knowingly disclose any information in the report to a third party for commercial solicitation of an individual listed in the report.

The dissemination or publication of news to the general public by legitimate media entitled to access reports is not prohibited.

A person who obtains a report in violation of the law or an officer of a law enforcement agency who knowingly discloses a report to a person who is not entitled to access the report is guilty of a felony and subject to a fine of up to \$10,000 and/or imprisonment for up to 15 years.

Without an existing relationship or interest in an issue, a person may not, for personal gain, solicit another person to sue or retain a lawyer to represent another person in a lawsuit. Except as otherwise provided in the Rules of Professional Conduct and without an existing relationship or interest at issue, a lawyer may not • for personal gain, solicit another person to sue or retain the lawyer to represent the person in a lawsuit; • directly or indirectly employ, compensate or agree to employ or compensate a person as an expert witness or in another capacity for the purpose of having that person solicit or attempt to solicit clients; • knowingly represent a person who retained the lawyer as a result of

solicitation prohibited by law; or • cause a case to be instituted without the authority of a client.

Except as otherwise provided, a person who violates these provisions is guilty of a misdemeanor and is subject to maximum penalties of one year imprisonment and/or a fine of \$1,000.

State Revenues: General fund revenues could increase minimally as a result of the bill's provisions that repeal a similar offense that was a felony and replace it with a new violation that is designated as a misdemeanor.

State Expenditures: Although complying with the provision to remove restrictions on access to motor vehicle accident reports would not cause a material change in finances, repealing the current law felony penalty and creating a new offense with a misdemeanor penalty could have a fiscal impact to the extent that cases that would have been filed in the circuit courts could be filed in the District Court.

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs from additional people being committed to Division of Correction facilities. The number of people convicted of the misdemeanor created by this bill is expected to be minimal.

Although the bill repeals the current law felony and replaces it with a misdemeanor, it is still anticipated that the bill could minimally increase general fund expenditures in DOC. The current law felony was created by Chapter 651 of 2007 which took effect on October 1, 2007. Since the current law has been in effect for less than six months, it is unlikely that anyone has been convicted and sentenced to a DOC facility, so a fiscal impact due to the current law incarceration penalty is unlikely. The Department of Legislative Services advises that, to the extent people violate the bill's provisions, they would be more likely to be incarcerated than they would have been under current law, since the proposed misdemeanor penalty is limited to one year of imprisonment. As a result, general fund expenditures in DOC could minimally increase.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 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 DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

Local Revenues: Revenues could be reduced to the extent that cases that would have been heard in the circuit courts are shifted to the District Court under the bill's provisions.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty due to additional persons being committed to local jail facilities under the new misdemeanor offense created by this bill. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Somerset County, Montgomery County, Prince George's County, Frederick County, Judiciary (Administrative Office of the Courts), Maryland Insurance Administration, Maryland Department of Transportation, National Association of Insurance Commissioners, National Conference of Insurance Legislators, Department of Legislative Services

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