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FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1039

(Senator Muse)

Judicial Proceedings

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**Drugged Driving or Operation of Vessel - Polysubstance Abuse**

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This bill alters the elements of the following offenses: (1) driving while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; (2) operating a vessel while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; (3) life-threatening injury by motor vehicle or vessel while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; and (4) homicide by motor vehicle or vessel while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol.

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**Fiscal Summary**

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

**Local Effect:** Minimal increase in revenues and expenditures due to the bill's enhanced penalty provisions. Any impact on circuit court caseloads is likely minimal.

**Small Business Effect:** Minimal. However, the bill increases the number of persons who must undergo a comprehensive drug abuse assessment and, under the bill, a mental health assessment as well. Persons may also be required to participate in a substance abuse treatment program or an appropriate drug treatment program. To the extent that small businesses provide such services, they may realize an increased demand.

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## Analysis

### Bill Summary:

*Driving While Impaired (Polysubstance Abuse)*: The bill alters the offense of driving or attempting to drive while so far impaired by a drug, combination of drugs, or combination of one or more drugs and alcohol that a person cannot drive safely, by prohibiting driving or the attempt to drive while impaired by any combination of “controlled dangerous substance” (CDS) or a combination of one or more CDS and alcohol. It removes the requirement that a driver be so impaired that he or she cannot drive the vehicle safely. The bill requires “impairment” only to qualify as a violation.

The bill also removes the affirmative defense to this violation – that a person was unaware that the drug or combination would make the person incapable of safely driving the vehicle.

The bill also alters the existing prohibition for driving or attempting to drive while the person is impaired by any CDS, if the person is not entitled to use the CDS under State law, to make the prohibition apply regardless of whether State law entitled the person to use the CDS.

Maximum penalties for this offense are increased to be (1) for a first offense, a \$1,000 fine and/or imprisonment for one year; (2) for a second offense, a \$2,000 fine and/or imprisonment for two years; and (3) for a third or subsequent offense, a \$3,000 fine and/or imprisonment for three years. A subsequent offense is defined as any offense occurring within five years of conviction for:

- driving while under the influence of alcohol or under the influence of alcohol *per se*;
- driving while impaired by alcohol;
- driving while impaired by any combination of CDS or a combination of one or more CDS and alcohol; or
- driving while impaired by a CDS.

Similarly, maximum penalties for driving or attempting to drive while the person is impaired by any combination of CDS or a combination of one or more CDS and alcohol while transporting a minor are increased to be (1) for a first offense, a \$2,000 fine and/or two years imprisonment; (2) for a second offense, a \$3,000 fine and/or three years imprisonment; and (3) for a third or subsequent offense, a \$4,000 fine and/or four years imprisonment.

The bill establishes a mandatory minimum penalty of at least five days imprisonment for a second conviction of driving while impaired by any combination of CDS or a combination

of one or more CDS and alcohol within five years. The mandatory minimum penalty increases to at least 10 days imprisonment for a third or subsequent conviction within five years.

The bill also requires a court to order any person (rather than only a repeat offender within a five-year period) who is convicted of an offense of driving while impaired by a CDS or while impaired by any combination of CDS or a combination of one or more CDS and alcohol to (1) undergo a comprehensive drug abuse assessment as well as a newly required mental health assessment and (2) if recommended at the conclusion of the assessment, participate in a substance abuse education program or an appropriate drug treatment program.

*Operating a Vessel While Impaired (Polysubstance Abuse):* Similarly, the bill alters the prohibition on operating or the attempt to operate a vessel while so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol that the person cannot operate a vessel safely, by prohibiting operating a vessel or attempting to do so, while impaired by any combination of CDS or a combination of one or more CDS and alcohol that the person cannot operate a vessel safely. The bill alters the offense of operating a vessel while impaired by any CDS unless the person is entitled to use the CDS by State law, by prohibiting operating a vessel while impaired by a CDS regardless of whether State law entitles its use. The bill also removes the affirmative defense that a person was unaware that the drug or combination would make the person incapable of safely operating the vessel.

The maximum penalty for both operating a vessel while impaired by any combination of CDS or a combination of one or more CDS and alcohol and operating a vessel while impaired by any CDS is increased to:

- for a first offense, a \$1,000 fine and/or one year imprisonment;
- for a second offense, a \$2,000 fine and/or two years imprisonment; and
- for a third or subsequent offense, a \$3,000 fine and/or three years imprisonment.

*Life-threatening Injury by Motor Vehicle or Vessel While Impaired:* The bill alters the definition of causing a life-threatening injury as a result of negligently operating a motor vehicle or vessel while impaired to causing a life-threatening injury as a result of negligently driving, operating, or controlling a motor vehicle or vessel while impaired by any combination of CDS or a combination of one or more CDS and alcohol.

*Homicide by Motor Vehicle or Vessel:* The offense of negligently driving, operating, or controlling a motor vehicle or vessel while a person is so far impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive, operate, or control a motor vehicle or vessel safely is altered to prohibit the

same while impaired by a combination of CDS or a combination of one or more CDS and alcohol. The bill removes the affirmative defense that a person was unaware that the drug or combination would make the person incapable of safely operating the vehicle or vessel.

The bill also makes conforming changes in sections of State law referring to charging documents, requirements for testing alcohol and drug concentration, points assessment, and warrantless arrest procedure.

*Administrative Penalties:* The bill authorizes the Motor Vehicle Administration (MVA) to revoke the license of any person who is convicted of the offense of driving while impaired by CDS or one or more CDS and alcohol. MVA must suspend the license of any person convicted of driving or attempting to drive a motor vehicle while impaired by a CDS or while impaired by any combination of CDS or one or more CDS and alcohol. The required suspension is 90 days for a first conviction and 180 days for a second or subsequent conviction (prior convictions for these two offenses are interchangeable). Even so, such a suspension remains in effect until the person submits proof of successful completion of the mental health assessment and the substance abuse education program or an appropriate drug treatment program required by a court.

**Current Law:** “Controlled dangerous substance” means a drug or substance listed in Schedule I through Schedule V that has a potential for abuse. Generally, this includes but is not limited to depressants, stimulants, opium derivatives, hallucinogens, narcotics, and certain steroids. It does not include distilled spirits, wine, malt beverages, or tobacco.

Under the Criminal Law Article, “drug” means:

- a substance recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary;
- a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;
- except for food, a substance intended to affect the structure or function of the body of humans or other animals; or
- a substance intended for use as a component of any substance specified above.

“Drug” does not include a device or an accessory, part, or component of a device.

A person who drives or attempts to drive a vehicle while under the influence of alcohol or under the influence of alcohol *per se*, or who drives or attempts to drive a vehicle while

impaired by a CDS, is subject to the following maximum penalties: (1) for a first offense, a \$1,000 fine and/or one year imprisonment; (2) for a second offense, a \$2,000 fine and/or two years imprisonment; and (3) for a third or subsequent offense, a \$3,000 fine and/or three years imprisonment.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while under the influence of alcohol or impaired by drugs or alcohol may count as a prior conviction if it occurs within five years of the subsequent violation.

A person who drives or attempts to drive a vehicle while impaired by alcohol or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol is subject to the following maximum penalties:

- for a first offense, a \$500 fine and/or two months imprisonment;
- for a second offense, a \$500 fine and/or one year imprisonment; and
- for a third or subsequent offense, a \$3,000 fine and/or three years imprisonment.

*Homicide by Motor Vehicle or Vessel While Impaired:* A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while (1) impaired by alcohol; (2) so far impaired by a drug, any combination of drugs, or any combination of one or more drugs and alcohol that the person cannot drive, operate, or control a motor vehicle or vessel safely; or (3) impaired by a CDS that the person is not entitled to use by State law. A violator is guilty of a felony and on conviction is subject to maximum penalties of a \$5,000 fine and/or three years imprisonment.

*Life-threatening Injury by Motor Vehicle or Vessel While Impaired:* A person may not cause life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while (1) impaired by alcohol; (2) impaired by a drug, any combination of drugs, or any combination of one or more drugs and alcohol; or (3) impaired by a CDS. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$3,000 fine and/or two years imprisonment.

*Operating a Vessel While Impaired:* A person may not operate or attempt to operate a vessel while the person (1) is so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol that the person cannot operate a vessel safely or (2) is impaired by any CDS. A violator is guilty of a misdemeanor and upon conviction subject to maximum penalties of:

- for a first offense, a \$500 fine and/or two months imprisonment; and
- for a second or subsequent offense, a \$1,000 fine and/or one year imprisonment.

*Administrative Penalties:* MVA assesses points against a driver who is convicted of any moving violation, including a drunk or drugged driving crime. A conviction for any drunk or drugged driving homicide or life-threatening injury results in the imposition of 12 points. A conviction for driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS carries with it 12 points. MVA is required to revoke the license of an individual who accumulates 12 points within a two-year period. A revocation continues indefinitely until the driver applies for and is approved by MVA for reinstatement.

A conviction for driving while impaired by alcohol; while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; or within 12 hours after an arrest for a drunk or drugged driving offense carries with it eight points. MVA is required to suspend the license of an individual who accumulates eight points within a two-year period.

MVA is required to revoke the license of any person who has been convicted of homicide by motor vehicle while under the influence of alcohol, impaired by alcohol, or impaired by a drug, any combination of drugs, a combination of one or more drugs and alcohol, or a CDS.

MVA may revoke the license of an individual who is convicted of (1) driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS or (2) driving while impaired by alcohol or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol and who was previously convicted of two or more drunk or drugged driving violations within a three-year period.

MVA may impose a suspension for up to one year if a person is convicted more than once within a five-year period of any combination of drunk or drugged driving offenses. However, a restricted license for the period of suspension may be issued to a person who participates in the Ignition Interlock Program.

**Background:** The District Court reports that, for fiscal 2015, there were 4,036 violations of driving while impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol and 2,016 violations of driving while impaired by a CDS. According to the Maryland State Commission on Criminal Sentencing Policy, in fiscal 2015, a total of eight people were sentenced on eight counts for driving while impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol and driving while impaired by a CDS. There were no convictions for homicide by vehicle or vessel, life-threatening injury by motor vehicle or vessel, or operating a vessel while impaired.

According to the Foundation for Advancing Alcohol Responsibility, with the advent of state laws loosening penalties for and allowing legal access to marijuana, concern is growing for the increasing number of drivers who combine CDS and alcohol. No state has passed any comprehensive laws on what the foundation calls “polysubstance” abuse, but at least one state, California, has introduced legislation that would increase penalties.

Chapter 351 of 2015 states that if a court finds that the use or possession of marijuana was due to medical necessity, the court must dismiss the charge. Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. However, the law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

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

**State Expenditures:** General fund expenditures increase minimally as a result of the bill’s enhanced and mandatory minimum incarceration penalties due to more people being committed to State correctional facilities for convictions in Baltimore City and increased payments to counties for reimbursement of inmate costs. The number of people convicted under this bill’s provisions 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 enhanced monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase as a result of the bill's enhanced and mandatory minimum 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1364 (Delegate Smith, *et al.*) - Judiciary.

**Information Source(s):** Maryland Association of County Health Officers, Montgomery and Prince George's counties, Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Natural Resources, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Foundation for Advancing Alcohol Responsibility, Department of Legislative Services

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