

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 371
Judiciary

(The Speaker, *et al.*) (By Request - Administration)

Judicial Proceedings

Vehicle Laws - Drunk and Drugged Driving - Subsequent Offenders (Repeat
Drunk Driving Offenders Act of 2017)

This Administration bill increases the penalties for a person who is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance (CDS) and either (1) has three or more prior convictions for any of the above-mentioned offenses or (2) was previously convicted of a specified homicide, manslaughter, or life-threatening injury by motor vehicle or vessel offense. A violator is guilty of a misdemeanor and is subject to imprisonment for up to 10 years and/or a fine of up to \$10,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues due to the bill's monetary penalty provision. Potential minimal decrease in expenditures due to the bill's incarceration penalty.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A conviction for a crime committed in another state or under federal jurisdiction that, if committed in Maryland, would constitute a violation of any of the specified provisions is considered a violation for purposes of the subsequent offender penalties imposed under the bill.

A court may not impose an additional penalty under the bill unless the State's Attorney serves notice of the alleged prior convictions on the defendant or the defendant's counsel before acceptance of a plea of guilty or *nolo contendere* or at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier.

The bill's changes apply to existing law or to the law as reflected upon passage and enactment of Senate Bill 165 of 2017, which proposes a code revision to the Transportation Article to revise, restate, and recodify the laws of the State that relate to penalties for violations of the Maryland Vehicle Law by repealing redundant provisions, clarifying language, making technical and stylistic changes, and reorganizing penalty provisions.

Current Law: A "vehicle" includes a motor vehicle, streetcar, locomotive, engine, or train. A "motor vehicle" is a vehicle that is self-propelled or propelled by electric power obtained from overhead electrical wires and is not operated on rails. A "vessel" is any watercraft that is used or capable of being used as a means of transportation on water or ice, but it does not include a seaplane.

"Life-threatening injury" is not defined in statute.

"Under the influence of alcohol *per se*" means having an alcohol concentration at the time of testing of at least 0.08 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

"Impaired by alcohol" means *prima facie* evidence as indicated, at the time of testing, by an alcohol concentration of at least 0.07, but less than 0.08, as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Driving Under the Influence of Alcohol or While Impaired by Alcohol/Drugs/Controlled Dangerous Substance: Under the Transportation Article, a person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol;

- impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or
- impaired by a CDS.

Exhibit 1 shows the current maximum penalties for these offenses.

Exhibit 1

Current Maximum Penalties for Alcohol and/or Drug-related Driving Offenses

Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or While Impaired by a CDS

First Offense	1 year imprisonment and/or fine of \$1,000
Second Offense	2 years imprisonment and/or fine of \$2,000
Third or Subsequent Offense	3 years imprisonment and/or fine of \$3,000

Driving Under the Influence of Alcohol, Under the Influence *Per Se*, or While Impaired by a CDS While Transporting a Minor

First Offense	2 years imprisonment and/or fine of \$2,000
Second Offense	3 years imprisonment and/or fine of \$3,000
Third or Subsequent Offense	4 years imprisonment and/or fine of \$4,000

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

First Offense	2 months imprisonment and/or fine of \$500
Second Offense	1 year imprisonment and/or fine of \$500
Third or Subsequent Offense	3 years imprisonment and/or fine of \$3,000

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 While Transporting a Minor

First Offense	6 months imprisonment and/or fine of \$1,000
Second Offense	1 year imprisonment and/or fine of \$2,000
Third or Subsequent Offense	4 years imprisonment and/or fine of \$4,000

CDS: controlled dangerous substance

Notes: All listed offenses are misdemeanors. Additionally, for the offense of driving under the influence of alcohol, under the influence *per se*, or while impaired by a CDS, a repeat conviction or convictions within five years requires a mandatory minimum penalty of imprisonment from 5 to 10 days or community service from 30 to 60 days, as specified, as well as a mandatory alcohol or drug abuse assessment.

Source: Department of Legislative Services

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: 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 would be exercised by a reasonable person.

Homicide by Motor Vehicle or Vessel While Under the Influence: A person may not cause the death of another as a result of negligently driving, operating, or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

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 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.

Life-threatening Injury by Motor Vehicle or Vessel While Under the Influence: A person may not cause life-threatening injury to another as a result of negligently operating or controlling a motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*.

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 drugs and alcohol; or (3) impaired by a CDS.

Chapters 517 and 518 of 2016 established subsequent offender offenses and more stringent penalties for specified homicide, manslaughter, and life-threatening injury by motor vehicle or vessel offenses. Penalties for first offenses as well as the more stringent penalties for subsequent offenses are shown in **Exhibit 2**.

Exhibit 2

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	misdemeanor	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		3 years	\$5,000	felony	5 years	\$10,000
Homicide by motor vehicle or vessel while impaired by a CDS	felony		3 years	\$5,000	felony	5 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: Under the law, the 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

Administrative Penalties: In addition to the current maximum penalties noted in Exhibits 1 and 2, 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 convictions of all manslaughter by motor 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 conviction of driving under the influence of alcohol, under the influence of alcohol *per se*, or driving while impaired by a CDS also requires assessment of 12 points against the license by MVA, and the license is subject to revocation. A conviction for driving while impaired by alcohol or impaired by a drug, any combination of drugs, or any combination of drugs and alcohol requires assessment of 8 points against the driver's license by MVA, and the license is subject to suspension. 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.

District Court and Circuit Court Jurisdiction: Generally, misdemeanors are heard in the District Court and felonies are heard in the circuit courts. The District Court also generally has exclusive original jurisdiction over violations of vehicle and boating laws. The District Court has concurrent jurisdiction with the circuit courts for some cases, including (1) misdemeanors for which the penalty may be confinement for three years or more or a fine of \$2,500 or more; (2) manslaughter by automobile or vessel – gross negligence; and (3) homicide by automobile or vessel while under the influence of alcohol or impaired by alcohol, drugs, or a CDS. Additionally, if the charge is one for which the defendant is entitled to and demands a jury trial, the case goes to circuit court.

Background: Exhibit 3 shows the number of violations brought in the District Court and circuit courts for specified offenses in fiscal 2016. Additionally, in fiscal 2016, there were 5,885 guilty dispositions for alcohol- and/or drug-related driving offenses in the District Court (this figure excludes Anne Arundel County, due to the way the District Court captured data in fiscal 2016). The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) reports that 62 individuals were convicted in circuit courts for alcohol- and/or drug-related driving offenses in fiscal 2016.

According to the Department of Public Safety and Correctional Services (DPSCS), in fiscal 2016, there were 49 intakes for which the most serious offense was driving under the influence of alcohol, with an average sentence of 12.9 months; 24 intakes for which the most serious offense was driving while impaired by alcohol, with an average sentence of 7.8 months; one intake for which the most serious offense was driving while impaired by drugs or drugs and alcohol, with a sentence of 1.5 months; and 3 intakes for which the most

serious offense was driving while impaired by a CDS, with an average sentence of 20 months.

Exhibit 3
Violations for Specified Offenses in the District Court and Circuit Courts
Fiscal 2016

<u>Offense</u>	<u>District Court</u>	<u>Circuit Court</u>
Driving Under the Influence of Alcohol	20,023	1,185
Driving Under the Influence of Alcohol <i>Per Se</i>	11,967	2,553
Driving Under the Influence of Alcohol/Transporting Minor	271	109
Driving While Impaired by Alcohol	20,137	4,381
Driving While Impaired by Alcohol/Transporting Minor	251	73
Driving While Impaired by Drugs or Drugs and Alcohol	4,349	989
Driving While Impaired by Drugs or Drugs and Alcohol/Transporting Minor	69	17
Driving While Impaired by a CDS	2,193	508
Driving While Impaired by a CDS/Transporting Minor	54	20
Manslaughter by Vehicle/Vessel – Gross or Criminal Negligence	18	62
Homicide by Vehicle/Vessel – Under the Influence of Alcohol or Under the Influence <i>Per Se</i>	3	46
Homicide by Vehicle/Vessel – Impaired (by Alcohol, Drugs, or a CDS)	9	42
Life-threatening Injury by Vehicle/Vessel (Under the Influence of Alcohol, Under the Influence <i>Per Se</i> , or Impaired by Alcohol, Drugs, or a CDS)	7	34

CDS: controlled dangerous substance

Note: Circuit court violations include jury trials and appeals from cases that originated in the District Court. Therefore, there may be some overlap between the number of District Court and circuit court violations.

Source: Judiciary (Administrative Office of the Courts)

Exhibit 4 shows MSCCSP’s sentencing and incarceration information, for fiscal 2016, for homicide, manslaughter, and life-threatening injury by vehicle or vessel offenses that would also be considered prior offenses under the bill. DPSCS reports that, in fiscal 2016, there were nine intakes for which homicide by motor vehicle was the most serious offense, with an average sentence of 43.5 months, and two intakes for which the most serious offense was manslaughter by vehicle, with an average sentence of 66 months.

Exhibit 4
Fiscal 2016 Sentencing and Incarceration Rates for Homicide, Manslaughter, and Life-threatening Injury by Motor Vehicle or Vessel Offenses

<u>Offense</u>	<u>Number of Persons Sentenced</u>	<u>Number of Counts</u>	<u>Average Length of Incarceration</u>
Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	5	5	3.2 years
Homicide by motor vehicle or vessel while impaired by alcohol	1	1	3 years
Homicide by motor vehicle or vessel while impaired by drugs	0	0	0
Homicide by motor vehicle or vessel while impaired by a CDS	1	1	3 years
Manslaughter by vehicle or vessel – gross negligence	25	33	4.1 years
Manslaughter by vehicle or vessel – criminal negligence	8	8	0.69
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 alcohol, drugs, or a CDS	12	14	0.66 years

CDS: controlled dangerous substance

Note: Information reflects those cases heard in the circuit courts.

Source: Maryland State Commission on Criminal Sentencing Policy

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

Although there were 5,885 guilty dispositions in the District Court and 62 convictions in the circuit courts for alcohol- and/or drug-related driving offenses in fiscal 2016, it is unknown how many of these individuals had three or more prior convictions for those offenses, although this number is expected to be minimal. Further, it is unknown how many individuals convicted of alcohol- and/or drug-related driving offenses in fiscal 2016 had a prior conviction for specified homicide, manslaughter, or life-threatening injury by

motor vehicle offenses that would be considered prior offenses under the bill. However, given the relatively low number of violations brought in the District Court and circuit courts and the low number of convictions for these offenses in the circuit courts in fiscal 2016 (see Exhibits 3 and 4), this analysis assumes that the number of individuals with such prior convictions is minimal.

General fund expenditures may increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and for longer periods of time. The number of people convicted and subject to the enhanced penalties under the bill is expected to be minimal. Moreover, any impact depends on changes in sentencing practices due to the bill.

Local Fiscal Effect: Revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts. However, expenditures may decrease minimally as a result of the bill's incarceration penalty due to more people being committed to State facilities instead of local facilities. The number of people convicted and subject to the enhanced penalties in the bill is expected to be minimal. Any impact depends on changes in sentencing practices due to the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 312 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2017
mm/kdm Third Reader - March 28, 2017
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Analysis by: Sasika Subramaniam

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Vehicle Laws – Drunk and Drugged Driving – Subsequent Offenders - Felonies (Repeat Drunk Driving Offenders Act of 2017)

BILL NUMBER: SB 312/HB 371

**PREPARED BY: GLO
(Dept./Agency/GLO)**

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS