

# SENATE BILL 296

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CF HB 349

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By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Edwards, Hershey, Hough, Jennings, Klausmeier, Mathias, Norman, Ready, Reilly, Serafini, and Simonaire**

Introduced and read first time: January 22, 2018

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Drunk and Drugged Driving – Subsequent Offenders – Felonies**  
3 **(Repeat Drunk Driving Offenders Act of 2018)**

4 FOR the purpose of increasing certain penalties for drunk and drugged driving offenses for  
5 individuals who have been convicted previously of certain other crimes under certain  
6 circumstances; making certain drunk and drugged driving offenses felonies;  
7 establishing that the District Court and circuit courts have concurrent jurisdiction  
8 over certain drunk and drugged driving offenses; requiring certain procedures;  
9 making certain conforming changes; and generally relating to drunk and drugged  
10 driving.

11 BY repealing and reenacting, with amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 4–301(b)(24) and (25) and 4–302(a) and (d)(1)  
14 Annotated Code of Maryland  
15 (2013 Replacement Volume and 2017 Supplement)

16 BY adding to  
17 Article – Courts and Judicial Proceedings  
18 Section 4–301(b)(26)  
19 Annotated Code of Maryland  
20 (2013 Replacement Volume and 2017 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article – Transportation  
23 Section 1–101(c)  
24 Annotated Code of Maryland  
25 (2015 Replacement Volume and 2017 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – Transportation  
3 Section 21–902  
4 Annotated Code of Maryland  
5 (2012 Replacement Volume and 2017 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
7 That the Laws of Maryland read as follows:

8 **Article – Courts and Judicial Proceedings**

9 4–301.

10 (b) Except as provided in § 4–302 of this subtitle, the District Court also has  
11 exclusive original jurisdiction in a criminal case in which a person at least 18 years old or  
12 a corporation is charged with:

13 (24) Violation of § 11–721 of the Criminal Procedure Article as a second or  
14 subsequent offense; [or]

15 (25) Violation of § 11–303(b) of the Criminal Law Article; **OR**

16 **(26) VIOLATION OF § 21–902 OF THE TRANSPORTATION ARTICLE**  
17 **THAT IS PUNISHABLE UNDER § 21–902(H) OF THE TRANSPORTATION ARTICLE.**

18 4–302.

19 (a) Except as provided in § 4–301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14),  
20 (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), **AND (26)** of this subtitle, the  
21 District Court does not have jurisdiction to try a criminal case charging the commission of  
22 a felony.

23 (d) (1) Except as provided in paragraph (2) of this subsection, the jurisdiction  
24 of the District Court is concurrent with that of the circuit court in a criminal case:

25 (i) In which the penalty may be confinement for 3 years or more or  
26 a fine of \$2,500 or more; or

27 (ii) That is a felony, as provided in § 4–301(b)(2), (6), (7), (8), (9), (10),  
28 (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), **AND (26)**  
29 of this subtitle.

30 **Article – Transportation**

31 1–101.

1 (c) "Any state" means:

2 (1) Any state, possession, or territory of the United States;

3 (2) The District of Columbia; and

4 (3) The Commonwealth of Puerto Rico.

5 21-902.

6 (a) (1) (i) A person may not drive or attempt to drive any vehicle while  
7 under the influence of alcohol.

8 (ii) A person may not drive or attempt to drive any vehicle while the  
9 person is under the influence of alcohol per se.

10 (iii) A person convicted of a violation of this paragraph is subject to:

11 1. For a first offense, imprisonment not exceeding 1 year or  
12 a fine not exceeding \$1,000 or both;

13 2. For a second offense, imprisonment not exceeding 2 years  
14 or a fine not exceeding \$2,000 or both; and

15 3. For a third [or subsequent] offense, imprisonment not  
16 exceeding 3 years or a fine not exceeding \$3,000 or both.

17 (iv) For the purpose of determining subsequent offender penalties for  
18 a violation of this paragraph, a prior conviction under this subsection or subsection (b), (c),  
19 or (d) of this section, within 5 years before the conviction for a violation of this paragraph,  
20 shall be considered a prior conviction.

21 (2) (i) A person may not violate paragraph (1) of this subsection while  
22 transporting a minor.

23 (ii) A person convicted of a violation of this paragraph is subject to:

24 1. For a first offense, imprisonment not exceeding 2 years or  
25 a fine not exceeding \$2,000 or both;

26 2. For a second offense, imprisonment not exceeding 3 years  
27 or a fine not exceeding \$3,000 or both; and

28 3. For a third [or subsequent] offense, imprisonment not  
29 exceeding 4 years or a fine not exceeding \$4,000 or both.

30 (iii) For the purpose of determining subsequent offender penalties for

1 a violation of this paragraph, a prior conviction under this paragraph or subsection (b)(2),  
2 (c)(2), or (d)(2) of this section shall be considered a prior conviction.

3 (b) (1) (i) A person may not drive or attempt to drive any vehicle while  
4 impaired by alcohol.

5 (ii) A person convicted of a violation of this paragraph is subject to:

6 1. For a first offense, imprisonment not exceeding 2 months  
7 or a fine not exceeding \$500 or both;

8 2. For a second offense, imprisonment not exceeding 1 year  
9 or a fine not exceeding \$500 or both; and

10 3. For a third [or subsequent] offense, imprisonment not  
11 exceeding 3 years or a fine not exceeding \$3,000 or both.

12 (iii) For the purpose of determining subsequent offender penalties for  
13 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (c),  
14 or (d) of this section shall be considered a prior conviction.

15 (2) (i) A person may not violate paragraph (1) of this subsection while  
16 transporting a minor.

17 (ii) A person convicted of a violation of this paragraph is subject to:

18 1. For a first offense, imprisonment not exceeding 6 months  
19 or a fine not exceeding \$1,000 or both;

20 2. For a second offense, imprisonment not exceeding 1 year  
21 or a fine not exceeding \$2,000 or both; and

22 3. For a third [or subsequent] offense, imprisonment not  
23 exceeding 4 years or a fine not exceeding \$4,000 or both.

24 (iii) For the purpose of determining subsequent offender penalties for  
25 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),  
26 (c)(2), or (d)(2) of this section shall be considered a prior conviction.

27 (c) (1) (i) A person may not drive or attempt to drive any vehicle while so  
28 far impaired by any drug, any combination of drugs, or a combination of one or more drugs  
29 and alcohol that the person cannot drive a vehicle safely.

30 (ii) A person convicted of a violation of this paragraph is subject to:

31 1. For a first offense, imprisonment not exceeding 2 months  
32 or a fine not exceeding \$500 or both;

1                                   2.     For a second offense, imprisonment not exceeding 1 year  
2 or a fine not exceeding \$500 or both; and

3                                   3.     For a third [or subsequent] offense, imprisonment not  
4 exceeding 3 years or a fine not exceeding \$3,000 or both.

5                                   (iii)   For the purpose of determining subsequent offender penalties for  
6 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b),  
7 or (d) of this section shall be considered a prior conviction.

8                                   (iv)   It is not a defense to any charge of violating this subsection that  
9 the person charged is or was entitled under the laws of this State to use the drug,  
10 combination of drugs, or combination of one or more drugs and alcohol, unless the person  
11 was unaware that the drug or combination would make the person incapable of safely  
12 driving a vehicle.

13                               (2)   (i)     A person may not violate paragraph (1) of this subsection while  
14 transporting a minor.

15                                   (ii)   A person convicted of a violation of this paragraph is subject to:

16                                   1.     For a first offense, imprisonment not exceeding 6 months  
17 or a fine not exceeding \$1,000 or both;

18                                   2.     For a second offense, imprisonment not exceeding 1 year  
19 or a fine not exceeding \$2,000 or both; and

20                                   3.     For a third [or subsequent] offense, imprisonment not  
21 exceeding 4 years or a fine not exceeding \$4,000 or both.

22                                   (iii)   For the purpose of determining subsequent offender penalties for  
23 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),  
24 (b)(2), or (d)(2) of this section shall be considered a prior conviction.

25                               (d)   (1)   (i)     A person may not drive or attempt to drive any vehicle while the  
26 person is impaired by any controlled dangerous substance, as that term is defined in §  
27 5-101 of the Criminal Law Article, if the person is not entitled to use the controlled  
28 dangerous substance under the laws of this State.

29                                   (ii)   A person convicted of a violation of this paragraph is subject to:

30                                   1.     For a first offense, imprisonment not exceeding 1 year or  
31 a fine not exceeding \$1,000 or both;

32                                   2.     For a second offense, imprisonment not exceeding 2 years  
33 or a fine not exceeding \$2,000 or both; and

1                   3.     For a third [or subsequent] offense, imprisonment not  
2 exceeding 3 years or a fine not exceeding \$3,000 or both.

3                   (iii)   For the purpose of determining subsequent offender penalties for  
4 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b),  
5 or (c) of this section, within 5 years before the conviction for a violation of this paragraph,  
6 shall be considered a prior conviction.

7                   (2)     (i)     A person may not violate paragraph (1) of this subsection while  
8 transporting a minor.

9                   (ii)    A person convicted of a violation of this paragraph is subject to:

10                   1.     For a first offense, imprisonment not exceeding 2 years or  
11 a fine not exceeding \$2,000 or both;

12                   2.     For a second offense, imprisonment not exceeding 3 years  
13 or a fine not exceeding \$3,000 or both; and

14                   3.     For a third [or subsequent] offense, imprisonment not  
15 exceeding 4 years or a fine not exceeding \$4,000 or both.

16                   (iii)   For the purpose of determining subsequent offender penalties for  
17 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),  
18 (b)(2), or (c)(2) of this section shall be considered a prior conviction.

19                   (e)     For purposes of the application of subsequent offender penalties under this  
20 section, a conviction for a crime committed in another state or federal jurisdiction that, if  
21 committed in this State, would constitute a violation of subsection (a)(1) or (2), (b)(1) or (2),  
22 (c)(1) or (2), or (d)(1) or (2) of this section shall be considered a violation of subsection (a)(1)  
23 or (2), (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of this section.

24                   (f)     (1)     In this subsection, "imprisonment" includes confinement in:

25                   (i)     An inpatient rehabilitation or treatment center; or

26                   (ii)    Home detention that includes electronic monitoring for the  
27 purpose of participating in an alcohol treatment program that is:

28                   1.     Certified by the Maryland Department of Health;

29                   2.     Certified by an agency in an adjacent state that has  
30 powers and duties similar to the Maryland Department of Health; or

31                   3.     Approved by the court.

1           (2)   (i)    A person who is convicted of a violation of subsection (a) of this  
2 section within 5 years after a prior conviction under that subsection is subject to a  
3 mandatory minimum penalty of imprisonment for not less than 5 days.

4           (ii)   A person who is convicted of a third or subsequent offense under  
5 subsection (a) of this section within 5 years after a prior conviction under that subsection  
6 is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

7           (3)   (i)    A person who is convicted of a violation of subsection (d) of this  
8 section within 5 years after a prior conviction under that subsection is subject to a  
9 mandatory minimum penalty of imprisonment for not less than 5 days.

10          (ii)   A person who is convicted of a third or subsequent offense under  
11 subsection (d) of this section within 5 years after a prior conviction under that subsection  
12 is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

13          (4)   A person who is convicted of an offense under subsection (a) of this  
14 section within 5 years after a prior conviction under that subsection shall be required by  
15 the court to:

16           (i)    Undergo a comprehensive alcohol abuse assessment; and

17           (ii)   If recommended at the conclusion of the assessment, participate  
18 in an alcohol program as ordered by the court that is:

19                   1.    Certified by the Maryland Department of Health;

20                   2.    Certified by an agency in an adjacent state that has  
21 powers and duties similar to the Maryland Department of Health; or

22                   3.    Approved by the court.

23          (5)   A person who is convicted of an offense under subsection (d) of this  
24 section within 5 years after a prior conviction under that subsection shall be required by  
25 the court to:

26           (i)    Undergo a comprehensive drug abuse assessment; and

27           (ii)   If recommended at the conclusion of the assessment, participate  
28 in a drug program as ordered by the court that is:

29                   1.    Certified by the Maryland Department of Health;

30                   2.    Certified by an agency in an adjacent state that has  
31 powers and duties similar to the Maryland Department of Health; or

32                   3.    Approved by the court.

1 (6) The penalties provided under this subsection are mandatory and are  
2 not subject to suspension or probation.

3 (g) (1) In this subsection, “test” has the meaning stated in § 16–205.1 of this  
4 article.

5 (2) The penalties under this subsection are in addition to any other penalty  
6 imposed for a violation of this section.

7 (3) Subject to paragraph (4) of this subsection, if a person is convicted of a  
8 violation of this section and the trier of fact finds beyond a reasonable doubt that the person  
9 knowingly refused to take a test arising out of the same circumstances as the violation, the  
10 person is subject to imprisonment not exceeding 2 months or a fine not exceeding \$500 or  
11 both.

12 (4) A court may not impose an additional penalty under this subsection  
13 unless the State’s Attorney serves notice of the alleged test refusal on the defendant or the  
14 defendant’s counsel before the earlier of:

15 (i) Acceptance of a plea of guilty or nolo contendere; or

16 (ii) At least 15 days before trial in a circuit court or 5 days before  
17 trial in the District Court.

18 **(H) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,**  
19 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON CONVICTED OF A**  
20 **VIOLATION OF ANY PROVISION OF SUBSECTION (A), (B), (C), OR (D) OF THIS SECTION**  
21 **IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**  
22 **EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH IF THE PERSON**  
23 **HAS PREVIOUSLY BEEN CONVICTED OF:**

24 **(I) THREE OR MORE VIOLATIONS OF ANY PROVISION OF**  
25 **SUBSECTION (A), (B), (C), OR (D) OF THIS SECTION; OR**

26 **(II) A VIOLATION OF § 2–209, § 2–210, § 2–503, § 2–504, § 2–505,**  
27 **§ 2–506, OR § 3–211 OF THE CRIMINAL LAW ARTICLE.**

28 **(2) FOR PURPOSES OF THIS SUBSECTION, A CONVICTION FOR A**  
29 **CRIME UNDER THE LAWS OF ANY STATE OR THE UNITED STATES THAT WOULD BE A**  
30 **CRIME INCLUDED IN PARAGRAPH (1) OF THIS SUBSECTION IF COMMITTED IN THIS**  
31 **STATE SHALL BE CONSIDERED A PRIOR CONVICTION UNDER THIS SUBSECTION.**

32 **(3) IF A PROSECUTING ATTORNEY INTENDS TO SEEK THE**  
33 **ADDITIONAL PENALTIES PROVIDED IN THIS SUBSECTION, THE PROSECUTING**

1 ATTORNEY SHALL HAVE THE DEFENDANT CHARGED BY INFORMATION OR  
2 INDICTMENT.

3           **(4) A COURT MAY NOT IMPOSE THE ADDITIONAL PENALTIES UNDER**  
4 **THIS SUBSECTION UNLESS THE PROSECUTING ATTORNEY SERVES NOTICE OF THE**  
5 **ALLEGED PRIOR CONVICTIONS ON THE DEFENDANT OR THE DEFENDANT'S COUNSEL**  
6 **BEFORE THE EARLIER OF:**

7                   **(I) ACCEPTANCE OF A PLEA OF GUILTY OR NOLO CONTENDERE;**  
8 **OR**

9                   **(II) AT LEAST 15 DAYS BEFORE TRIAL IN A CIRCUIT COURT OR 5**  
10 **DAYS BEFORE TRIAL IN THE DISTRICT COURT.**

11           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2018.