

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 368
Judiciary

(Delegate Valentino-Smith, *et al.*)

Criminal Law - Life-Threatening Injury Involving a Vehicle or Vessel - Criminal Negligence

This bill establishes the offense of life-threatening injury by vehicle or vessel – criminal negligence. A person is prohibited from causing a life-threatening injury to another as a result of driving, operating, or controlling a vehicle or vessel in a criminally negligent manner. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of imprisonment for 18 months and/or a fine of \$5,000. A person who commits this offense after having been previously convicted of this offense or other specified vehicle or vessel offenses involving homicide, manslaughter, life-threatening injury, or alcohol and/or drugs, as specified, is, as a subsequent offender, guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures and revenues due to additional convictions, as discussed below. Otherwise, enforcement can be handled with existing budgeted resources.

Local Effect: Minimal increase in revenues and expenditures due to additional convictions, as discussed below. Otherwise, enforcement can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The prior offenses that subject a violator to the bill's more stringent subsequent offender penalties are (1) manslaughter by vehicle or vessel – gross negligence; (2) manslaughter by vehicle or vessel – criminal negligence; (3) homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; (4) homicide by motor vehicle or vessel while impaired by alcohol; (5) 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; (6) homicide by motor vehicle or vessel while impaired by a controlled dangerous substance (CDS); (7) causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*, or while impaired by alcohol, drugs, or a CDS; and (8) 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 CDS.

A conviction for any crime committed in another state or federal jurisdiction that, if committed in Maryland, would constitute a violation of any of the prior offender violations listed in the bill is considered a violation for purposes of applying the subsequent offender penalty provisions in the bill.

Under the bill, a person acts in a criminally negligent manner with respect to a result or a circumstance when (1) the person should be aware, but fails to perceive, that the person's conduct creates a substantial and unjustifiable risk that such a result will occur and (2) the failure to perceive constitutes a gross deviation from the standard of care that is exercised by a reasonable person. The bill does not apply to simple negligence.

Current Law:

Definitions

“Vehicle” includes a motor vehicle, a streetcar, a locomotive, an engine, and a train.
“Vessel” means any watercraft that is used or is capable of being used as a means of transportation on water or ice but 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.

Manslaughter, Homicide, and Life-threatening Injury by Vehicle or Vessel Offenses

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.

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 violates the Maryland Vehicle Law by causing 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.

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

Penalties for first offenses as well as the more stringent penalties for subsequent offenses of the manslaughter, homicide, and life-threatening injury by vehicle or vessel offenses are shown in **Exhibit 1**.

Driving Under the Influence of Alcohol or While Impaired by Alcohol/Drugs/CDS

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.

With a conviction for an alcohol- and/or drug-related driving offense a violator is subject to a range of penalties involving fines and imprisonment, as well as suspension or revocation of the driver's license by the Motor Vehicle Administration (MVA). A person convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS is subject to fines ranging from \$1,000 to \$3,000 and/or a maximum imprisonment term of one to three years – depending on whether it is a first or subsequent offense. 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.

A conviction for lesser included offenses subjects the violator to a fine of up to \$500 and/or imprisonment for up to two months. However, for repeat offenders, maximum fines increase to \$3,000 and maximum prison terms increase to three years. If an offender is transporting a minor at the time of the alcohol- and/or drug-related driving offense, fines and sanctions increase beyond those already specified for lesser included 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	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	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. 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 maximum penalties noted in Exhibit 1, all of the listed offenses are subject to points assessment by MVA, which makes the driver subject to either suspension or revocation of the driver's license.

For convictions of all 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 conviction of driving under the influence of alcohol, under the influence of alcohol *per se*, or 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.

Recklessness and Negligence

A person is guilty of reckless driving if a motor vehicle is driven in wanton or willful disregard for the safety of persons or property or in a manner that indicates a wanton or willful disregard for the safety of persons or property. A violation is a misdemeanor, subject to a maximum fine of \$1,000. MVA is also required to assess six points against the driver's license upon conviction for this offense. The District Court prepayment penalty, including court costs, is \$510 for this offense.

A person is guilty of negligent driving if the motor vehicle is driven in a careless or imprudent manner that endangers any property or the life or safety of any individual. This violation is a misdemeanor, subject to a maximum fine of \$500. Upon conviction, MVA must assess one point against the driver's license, or three points if the offense contributes to an accident. The District Court assesses a prepayment penalty of \$140 for this offense or \$280 if the offense contributes to an accident.

Background: Exhibit 2 shows the sentencing and incarceration information from the circuit courts, for fiscal 2018, for homicide, manslaughter, and life-threatening injury by vehicle or vessel offenses. The Judiciary also reports that, in fiscal 2018, there were a total of 23 cases in the District Court and 20 cases in the circuit courts for the offense of life-threatening injury by vehicle/vessel (under the influence of alcohol, under the influence *per se*, or impaired by alcohol, drugs, or a CDS). The Department of Public Safety and Correctional Services advises that, during fiscal 2018, there were 14 intakes for homicide by motor vehicle or vessel while under the influence of alcohol or while impaired by alcohol, with an average sentence of 8.4 years.

Exhibit 2
**Fiscal 2018 Sentencing and Incarceration Rates for Homicide, Manslaughter, 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>
Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	5	5	3.24 years
Homicide by motor vehicle or vessel while impaired by alcohol, drugs, or a CDS	2	2	2.16 years
Manslaughter by vehicle or vessel – gross negligence	16	18	3.48 years
Manslaughter by vehicle or vessel – criminal negligence	17	18	1.13 years
Life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	5	7	1.37 years
Life-threatening injury by motor vehicle or vessel while impaired by alcohol	2	2	1.37 years
Life-threatening injury by motor vehicle or vessel while impaired by drugs or CDS	1	1	0.03 years

CDS: controlled dangerous substance

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

Source: Maryland State Commission on Criminal Sentencing Policy

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

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime 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 \$3,800 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. 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 or who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 406 of 2018 and its cross file, SB 734 of 2018, each received an unfavorable report from the House Judiciary and Senate Judicial Proceedings committees, respectively. HB 585 of 2017 passed the House as amended and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 1114, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 248 (Senator Carozza, *et al.*) - Judicial Proceedings.

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 Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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