

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1151  
Judiciary

(Delegate Ciliberti, *et al.*)

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Habitual Drunk Drivers - Mandatory Minimum Penalty

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This bill increases the mandatory minimum incarceration penalty from 10 days to 1 year imprisonment for a person who is convicted of a third or subsequent offense of driving while under the influence of alcohol or under the influence of alcohol *per se* and increases the applicable time period for such subsequent offenses from 5 years to 10 years.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund expenditures due to the bill's more stringent mandatory minimum imprisonment provisions. Revenues are not affected.

**Local Effect:** Local expenditures increase significantly due to the bill's more stringent mandatory minimum imprisonment provisions. Revenues are not affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** 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 controlled dangerous substance.

“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.

A person convicted of driving under the influence of alcohol or under the influence of alcohol *per se* is subject to maximum penalties of (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.

Persons convicted of a second offense within five years are subject to a mandatory minimum penalty of 5 days imprisonment. Persons convicted of a third or subsequent offense within five years are subject to a mandatory minimum penalty of 10 days imprisonment.

Penalties increase if this offense is committed while transporting a minor. A person convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* while transporting a minor is subject to maximum penalties of (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.

**Background:** According to the Judiciary, in fiscal 2016, there were 20,023 violations in the District Court and 1,185 violations in the circuit courts for driving under the influence of alcohol; there were 11,967 violations in the District Court and 2,553 violations in the circuit courts for driving under the influence of alcohol *per se*; and there were 271 violations in the District Court and 109 violations in the circuit courts for driving under the influence of alcohol or under the influence *per se* while transporting a minor (the Judiciary advises that there may be some overlap between District Court and circuit court data). It is unclear how many of these violations involved subsequent offenders encompassed by the bill.

The Maryland State Commission on Criminal Sentencing Policy advises that, in fiscal 2016, one individual was convicted for a third or subsequent offense of driving under the influence of alcohol or under the influence of alcohol *per se* in the circuit courts; however, it is unclear whether the individual committed this subsequent offense within five years.

**State Expenditures:** General fund expenditures increase, potentially significantly, as a result of the bill’s more stringent mandatory minimum incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City for a longer period of time. The extent of the increase cannot be reliably estimated as it depends on current sentencing practices and the number of individuals who are repeat

offenders. The bill increases the minimum sentence for specified violations from 10 days to 1 year and increases the look-back period to be three offenses within a 10-year period.

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 Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

**Local Expenditures:** Expenditures increase, likely significantly, as a result of the bill's more stringent mandatory minimum incarceration penalty. The extent of the increase cannot be reliably estimated as it depends on current sentencing practices and the number of individuals who are repeat offenders. The bill increases the minimum sentence for specified violations from 10 days to 1 year and increases the look-back period to be three offenses within a 10-year period.

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; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State 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 \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**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; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2017  
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