

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 974

(Senator Ready)

Judicial Proceedings

---

Vehicle Laws - Driving With Detectable Levels of a Controlled Dangerous  
Substance or Its Metabolites - Prohibition

---

This bill establishes that a person may not drive or attempt to drive any vehicle with a *detectable level* of a controlled dangerous substance (CDS) or its metabolites in the person's blood, if the person is not legally entitled to use the CDS. A person who commits this offense is subject to (1) for a first offense, maximum imprisonment of 60 days and/or a fine of \$500; (2) for a second offense, maximum imprisonment of one year and/or a fine of \$500; and (3) for a third or subsequent offense, imprisonment of three years and/or a fine of up to \$3,000. A person who commits this offense while transporting a minor is subject to the same penalties as a person who commits the offense of driving while impaired by a CDS while transporting a minor. This offense is also considered a prior conviction for the purpose of determining specified subsequent offender penalties for those who commit alcohol- and/or drug-related driving offenses. The Motor Vehicle Administration (MVA) is required to assess 12 points against the license of a person who is convicted of this offense, or this offense while transporting a minor. The violator's driver's license is then subject to revocation.

---

**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential minimal increase in Transportation Trust Fund (TTF) revenues due to license reinstatement fees.

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

**Small Business Effect:** None.

---

## Analysis

**Bill Summary:** 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 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.

*Administrative Penalties:* In addition to the current maximum penalties noted in Exhibit 1, all of the listed offenses are subject to assessment of points by MVA, which makes the driver subject to either suspension or revocation of the driver's license.

A conviction of driving under the influence of alcohol, under the influence of alcohol *per se*, or driving while impaired by a CDS 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.

*Judicial Sanctions:* With a conviction for an alcohol- and/or drug-related driving offense under the Transportation Article, 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 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**

### **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

---

***Breath or Blood Test:*** A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense.

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

However, a person may not be compelled to submit to a test to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person. Further, in a 2016 case, the U.S. Supreme Court held that a blood test cannot be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances.

A test for drugs or CDS is admissible as evidence. However, there are no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

### **Background:**

*Drugged Driving Enforcement Issues:* Decriminalization and legalization of marijuana in any state raises the issues of (1) whether more permissive laws regarding marijuana will increase the prevalence of driving while impaired by drugs or CDS and (2) how to determine what levels of marijuana consumption result in driver impairment.

Measuring the extent of drugged driving in the states is limited by several factors, including the underreporting of drugged driving incidents in cases where a driver is impaired by both drugs and alcohol. An individual impaired by a combination of drugs and alcohol is likely to be tested and prosecuted only for the alcohol offense, regardless of any additional drug by which he or she may be impaired. Also, arrest data in most states is not separated into alcohol and drug categories, making it difficult to accurately track drug impaired driving trends. Moreover, there are no federal lab certification requirements for toxicology testing; thus, standards for measuring and testing drug impairment by state and local enforcement vary.

Although marijuana legalization and decriminalization efforts continue in the United States, some states have strengthened penalties for the drugged driving offense. According to the National Conference of State Legislatures, as of August 2016, 17 states have enacted zero tolerance *per se* laws that criminalize driving with any detectable amount of a drug or drugs in the body or driving with a drug that exceeds a specific amount. Colorado and Washington, despite legalizing the recreational use of marijuana, have *per se* laws which make it an offense to drive with over five nanograms of THC (tetrahydrocannabinol) in the blood or urine. Nevada and Ohio have set their *per se* limits to two nanograms, and Pennsylvania specifies one nanogram. Montana also enacted a *per se* law but has only legalized marijuana for medicinal use.

*Drugged Driving Violations in Maryland:* According to the Judiciary, in fiscal 2016, there were 2,193 violations in the District Court and 508 violations in the circuit courts for driving while impaired by a CDS, and there were 54 violations in the District Court and 17 violations in the circuit courts for driving while impaired by a CDS while transporting a minor (the Judiciary advises that there may be some overlap between District Court and circuit court data). Additionally, according to the Department of Public Safety and Correctional Services, in fiscal 2016, there were three intakes for which the most serious offense was driving while impaired by a CDS, with an average sentence of 20 months.

**State Revenues:** General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. TTF revenues may increase minimally to the extent that those convicted of this crime apply for license reinstatement after revocation of the driver's license. The number of people that may apply for license reinstatement due to the bill's provisions cannot be reliably predicted but is expected to be minimal.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalties 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 \$3,600 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 \$800 per month. Excluding all health care, the average variable costs total \$210 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; 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.

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 provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's 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; 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.

---

### **Additional Information**

**Prior Introductions:** SB 740 of 2010, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1048, received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; National Conference of State Legislatures; Government Accounting Office; Governors Highway Safety Association; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2017  
mm/kdm

---

Analysis by: Sasika Subramaniam

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