

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 229

(Senator Cassilly, *et al.*)

Judicial Proceedings

Judiciary

**Criminal Law - Homicide by Motor Vehicle or Vessel While Impaired by
Controlled Dangerous Substance - Penalties**

This bill increases the maximum incarceration penalty for homicide by motor vehicle or vessel while impaired by a controlled dangerous substance (CDS) from 3 years to 5 years. Additionally, the bill increases the maximum incarceration penalty, from 5 years to 10 years, for those who commit this offense after having previously been convicted of committing that same offense or any of the following offenses: (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 drugs; (6) 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; or (7) 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.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures in the out-years due to the bill's penalty provisions. Revenues are not affected.

Local Effect: Enforcement can be handled with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

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.

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.

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.

Life-threatening Injury by Motor Vehicle or Vessel 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 1**.

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	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

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

Driving Under the Influence of Alcohol or While Impaired by Alcohol/Drugs/Controlled Dangerous Substance: 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 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 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.

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 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 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.

Background: According to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP), in fiscal 2016, one individual was convicted on one count for homicide by a motor vehicle or vessel while impaired by a CDS, for a sentence of three years. Additionally, **Exhibit 2** shows the sentencing and incarceration information, for fiscal 2016, for homicide, manslaughter, and life-threatening injury by vehicle or vessel offenses that would be considered prior offenses under the bill.

Exhibit 2
Fiscal 2016 Length of Incarceration 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
Manslaughter by vehicle or vessel – gross negligence	25	33	4.1 years
Manslaughter by vehicle or vessel – criminal negligence	8	8	0.69 years
Life-threatening injury by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol <i>per se</i> , or impaired by alcohol, drugs, or a CDS	12	14	0.66 years

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

Source: Maryland State Commission on Criminal Sentencing Policy

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). MSCCSP reports that 62 individuals were convicted in circuit courts for alcohol- and/or drug-related driving offenses in fiscal 2016.

State Expenditures: General fund expenditures increase minimally beginning in fiscal 2021 as a result of the bill's incarceration penalties due to people being committed to State correctional facilities for longer periods of time, to the extent that judges impose longer sentences under the bill. The number of people convicted and subject to the increased penalties under the bill 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.

Additional Information

Prior Introductions: None.

Cross File: HB 635 (Delegate Valentino-Smith, *et al.*) - Judiciary.

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

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