

HOUSE BILL 349

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8lr0124
CF SB 296

By: **The Speaker (By Request – Administration) and Delegates Adams, Afzali, Anderton, Arentz, Aumann, Buckel, Carozza, Cassilly, Ciliberti, Clark, Cluster, Corderman, Fisher, Flanagan, Folden, Ghrist, Glass, Grammer, Hornberger, Jacobs, Kipke, Krebs, Malone, Mautz, McComas, McKay, Metzgar, Miele, Morgan, Parrott, Reilly, Rey, Rose, Shoemaker, Szeliga, Vogt, West, and Wivell**

Introduced and read first time: January 23, 2018

Assigned to: Judiciary

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)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume and 2017 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Transportation
5 Section 21–902
6 Annotated Code of Maryland
7 (2012 Replacement Volume and 2017 Supplement)

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

10 **Article – Courts and Judicial Proceedings**

11 4–301.

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

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

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

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

20 4–302.

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

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

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

29 (ii) That is a felony, as provided in § 4–301(b)(2), (6), (7), (8), (9), (10),
30 (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), **[and] (25), AND (26)**
31 of this subtitle.

32 **Article – Transportation**

1 1–101.

2 (c) “Any state” means:

- 3 (1) Any state, possession, or territory of the United States;
- 4 (2) The District of Columbia; and
- 5 (3) The Commonwealth of Puerto Rico.

6 21–902.

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

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

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

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

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

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

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

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

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

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

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

29 3. For a third [or subsequent] offense, imprisonment not

1 exceeding 4 years or a fine not exceeding \$4,000 or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 (b)(2), or (d)(2) of this section shall be considered a prior conviction.

27 (d) (1) (i) A person may not drive or attempt to drive any vehicle while the
28 person is impaired by any controlled dangerous substance, as that term is defined in §
29 5–101 of the Criminal Law Article, if the person is not entitled to use the controlled
30 dangerous substance under the laws of this State.

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

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

1 2. For a second offense, imprisonment not exceeding 2 years
2 or a fine not exceeding \$2,000 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 (c) of this section, within 5 years before the conviction for a violation of this paragraph,
8 shall be considered a prior conviction.

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

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

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

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

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

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

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

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

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

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

30 1. Certified by the Maryland Department of Health;

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

1 3. Approved by the court.

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

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

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

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

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

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

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

20 1. Certified by the Maryland Department of Health;

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

23 3. Approved by the court.

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

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

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

30 1. Certified by the Maryland Department of Health;

31 2. Certified by an agency in an adjacent state that has

1 powers and duties similar to the Maryland Department of Health; or

2 3. Approved by the court.

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

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

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

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

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

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

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

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

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

28 **(II) A VIOLATION OF § 2–209, § 2–210, § 2–503, § 2–504, § 2–505,**
29 **§ 2–506, OR § 3–211 OF THE CRIMINAL LAW ARTICLE.**

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

1 **(3) IF A PROSECUTING ATTORNEY INTENDS TO SEEK THE**
2 **ADDITIONAL PENALTIES PROVIDED IN THIS SUBSECTION, THE PROSECUTING**
3 **ATTORNEY SHALL HAVE THE DEFENDANT CHARGED BY INFORMATION OR**
4 **INDICTMENT.**

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

9 **(I) ACCEPTANCE OF A PLEA OF GUILTY OR NOLO CONTENDERE;**
10 **OR**

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

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