

# SENATE BILL 296

R3, E1

8lr0123  
CF HB 349

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By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Edwards, Hershey, Hough, Jennings, Klausmeier, Mathias, Norman, Ready, Reilly, Serafini, and Simonaire**

Introduced and read first time: January 22, 2018

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 27, 2018

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## CHAPTER \_\_\_\_\_

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 prohibiting an individual from committing a certain drunk or drugged driving  
10 offense if the individual has been convicted previously for certain other crimes under  
11 certain circumstances; making a violation of this Act a felony; establishing certain  
12 penalties; making certain conforming changes; and generally relating to drunk and  
13 drugged driving.

14 ~~BY repealing and reenacting, with amendments,~~  
15 ~~Article – Courts and Judicial Proceedings~~  
16 ~~Section 4–301(b)(24) and (25) and 4–302(a) and (d)(1)~~  
17 ~~Annotated Code of Maryland~~  
18 ~~(2013 Replacement Volume and 2017 Supplement)~~

19 ~~BY adding to~~  
20 ~~Article – Courts and Judicial Proceedings~~  
21 ~~Section 4–301(b)(26)~~

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Annotated Code of Maryland~~  
 2 ~~(2013 Replacement Volume and 2017 Supplement)~~

3 BY repealing and reenacting, without amendments,  
 4 Article – Transportation  
 5 Section 1–101(c)  
 6 Annotated Code of Maryland  
 7 (2015 Replacement Volume and 2017 Supplement)

8 BY repealing and reenacting, with amendments,  
 9 Article – Transportation  
 10 Section 21–902  
 11 Annotated Code of Maryland  
 12 (2012 Replacement Volume and 2017 Supplement)

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

15 ~~Article – Courts and Judicial Proceedings~~

16 ~~4–301.~~

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

20 ~~(24) Violation of § 11–721 of the Criminal Procedure Article as a second or~~  
 21 ~~subsequent offense; [or]~~

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

23 ~~(26) VIOLATION OF § 21–902 OF THE TRANSPORTATION ARTICLE~~  
 24 ~~THAT IS PUNISHABLE UNDER § 21–902(H) OF THE TRANSPORTATION ARTICLE.~~

25 ~~4–302.~~

26 ~~(a) Except as provided in § 4–301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14),~~  
 27 ~~(15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), AND (26) of this subtitle, the~~  
 28 ~~District Court does not have jurisdiction to try a criminal case charging the commission of~~  
 29 ~~a felony.~~

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

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

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

#### 4 Article – Transportation

5 1–101.

6 (c) “Any state” means:

7 (1) Any state, possession, or territory of the United States;

8 (2) The District of Columbia; and

9 (3) The Commonwealth of Puerto Rico.

10 21–902.

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

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

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

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

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

20 3. For a third ~~for subsequent~~ offense, imprisonment not  
21 exceeding 3 years or a fine not exceeding \$3,000 or both.

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

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

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

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

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

3                                   3.     For a third ~~for subsequent~~ offense, imprisonment not  
4 exceeding 4 years or a fine not exceeding \$4,000 or both.

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

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

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

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

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

15                                   3.     For a third ~~for subsequent~~ offense, imprisonment not  
16 exceeding 3 years or a fine not exceeding \$3,000 or both.

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

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

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

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

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

27                                   3.     For a third ~~for subsequent~~ offense, imprisonment not  
28 exceeding 4 years or a fine not exceeding \$4,000 or both.

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

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

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

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

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

9 3. For a third ~~for subsequent~~ offense, imprisonment not  
10 exceeding 3 years or a fine not exceeding \$3,000 or both.

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

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

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

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

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

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

26 3. For a third ~~for subsequent~~ offense, imprisonment not  
27 exceeding 4 years or a fine not exceeding \$4,000 or both.

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

31 (d) (1) (i) A person may not drive or attempt to drive any vehicle while the  
32 person is impaired by any controlled dangerous substance, as that term is defined in §  
33 5–101 of the Criminal Law Article, if the person is not entitled to use the controlled  
34 dangerous substance under the laws of this State.

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

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

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

6 3. For a third ~~for subsequent~~ offense, imprisonment not  
7 exceeding 3 years or a fine not exceeding \$3,000 or both.

8 (iii) For the purpose of determining subsequent offender penalties for  
9 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b),  
10 or (c) of this section, within 5 years before the conviction for a violation of this paragraph,  
11 shall be considered a prior conviction.

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

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

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

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

19 3. For a third ~~for subsequent~~ offense, imprisonment not  
20 exceeding 4 years or a fine not exceeding \$4,000 or both.

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

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

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

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

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

1                   1.     Certified by the Maryland Department of Health;

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

4                   3.     Approved by the court.

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

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

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

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

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

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

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

23                   1.     Certified by the Maryland Department of Health;

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

26                   3.     Approved by the court.

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

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

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

3 1. Certified by the Maryland Department of Health;

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

6 3. Approved by the court.

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

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

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

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

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

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

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

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

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



1 (II) A VIOLATION OF ~~§ 2-209, § 2-210,~~ § 2-503, § 2-504, § 2-505,  
2 § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE.

3 (2) FOR PURPOSES OF THIS SUBSECTION, A CONVICTION FOR A  
4 CRIME UNDER THE LAWS OF ANY STATE OR THE UNITED STATES THAT WOULD BE A  
5 CRIME INCLUDED IN PARAGRAPH (1) OF THIS SUBSECTION IF COMMITTED IN THIS  
6 STATE SHALL BE CONSIDERED A PRIOR CONVICTION UNDER THIS SUBSECTION.

7 ~~(3) IF A PROSECUTING ATTORNEY INTENDS TO SEEK THE  
8 ADDITIONAL PENALTIES PROVIDED IN THIS SUBSECTION, THE PROSECUTING  
9 ATTORNEY SHALL HAVE THE DEFENDANT CHARGED BY INFORMATION OR  
10 INDICTMENT.~~

11 ~~(4) A COURT MAY NOT IMPOSE THE ADDITIONAL PENALTIES UNDER  
12 THIS SUBSECTION UNLESS THE PROSECUTING ATTORNEY SERVES NOTICE OF THE  
13 ALLEGED PRIOR CONVICTIONS ON THE DEFENDANT OR THE DEFENDANT'S COUNSEL  
14 BEFORE THE EARLIER OF:~~

15 ~~(i) ACCEPTANCE OF A PLEA OF GUILTY OR NOLO CONTENDERE;~~  
16 ~~OR~~

17 ~~(ii) AT LEAST 15 DAYS BEFORE TRIAL IN A CIRCUIT COURT OR 5~~  
18 ~~DAYS BEFORE TRIAL IN THE DISTRICT COURT~~ A PERSON WHO VIOLATES THIS  
19 SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO  
20 IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR  
21 BOTH.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.