

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 163

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Judiciary

Vehicle Laws - Drunk and Drugged Driving - Subsequent Offenders - Felonies
(Repeat Drunk Driving Offenders Act of 2019)

This Administration bill increases the penalties for a person who is convicted of 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 controlled dangerous substance (CDS) and either (1) has three or more prior convictions for any of the above-mentioned offenses or (2) was previously convicted of a specified homicide or life-threatening injury by motor vehicle or vessel offense. A violator is guilty of a felony and on conviction is subject to imprisonment for up to 10 years and/or a fine of up to \$10,000.

Fiscal Summary

State Effect: General fund revenues may decrease due to fewer cases heard in the District Court, which may be offset by the bill's higher monetary penalty for cases that continue to be heard in the District Court. Minimal increase in general fund expenditures due to the bill's incarceration penalty.

Local Effect: Minimal increase in revenues due to the bill's monetary penalty provision for cases heard in the circuit courts. Minimal decrease in expenditures due to the bill's incarceration penalty.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill specifies that the District Court and circuit courts have concurrent jurisdiction over these cases. In addition, a conviction for a crime committed in another state or under federal jurisdiction that, if committed in Maryland, would constitute a violation of any of the specified provisions is considered a violation for purposes of the subsequent offender penalties imposed under the bill.

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.

Under Maryland Rule 4-245, a court may not sentence a defendant as a subsequent offender unless the State’s Attorney serves notice of the alleged prior conviction on the defendant or defendant’s counsel. The notice must be served before the acceptance of a guilty plea or plea of *nolo contendere*, or at least 15 days before trial in circuit court or 5 days before trial in the District Court, whichever is earlier. Before sentencing and after giving the defendant a chance to be heard, the court must determine whether the defendant is a subsequent offender.

Driving Under the Influence of Alcohol or While Impaired by Alcohol/Drugs/CDS

Under the Transportation Article, 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 maximum penalties for these 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	One year imprisonment and/or fine of \$1,000
Second Offense	Two years imprisonment and/or fine of \$2,000
Third or Subsequent Offense	Three 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	Two years imprisonment and/or fine of \$2,000
Second Offense	Three years imprisonment and/or fine of \$3,000
Third or Subsequent Offense	Four 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	Two months imprisonment and/or fine of \$500
Second Offense	One year imprisonment and/or fine of \$500
Third or Subsequent Offense	Three 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	Six months imprisonment and/or fine of \$1,000
Second Offense	One year imprisonment and/or fine of \$2,000
Third or Subsequent Offense	Four 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

Homicide and Life-threatening Injury by Vehicle or Vessel Offenses

Penalties for first and subsequent offenses of the homicide and life-threatening injury by vehicle or vessel offenses, as well as manslaughter offenses, are shown in **Exhibit 2**.

Exhibit 2
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	5 years	5,000	felony	10 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

CDS: controlled dangerous substance

Notes: Chapters 517 and 518 of 2016 established subsequent offender offenses and more stringent penalties for these offenses. Chapters 167 and 168 of 2017 increased the maximum incarceration penalties for homicide by motor vehicle or vessel while impaired by a CDS. 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

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.

Life-threatening Injury by Motor Vehicle or Vessel While 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 impaired by (1) alcohol; (2) a drug, any combination of drugs, or any combination of drugs and alcohol; or (3) a CDS.

Administrative Penalties

In addition to the current maximum penalties noted in Exhibits 1 and 2, all of the listed offenses are subject to points assessment by the Motor Vehicle Administration (MVA), which makes the driver subject to either suspension or revocation of the driver's license.

For convictions of all 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 driving 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.

District Court and Circuit Court Jurisdiction

Generally, misdemeanors are heard in the District Court and felonies are heard in the circuit courts. The District Court also generally has exclusive original jurisdiction over SB 163/ Page 5

violations of vehicle and boating laws. The District Court has concurrent jurisdiction with the circuit courts for some cases, including (1) misdemeanors for which the penalty may be confinement for three years or more or a fine of \$2,500 or more; (2) manslaughter by vehicle or vessel – gross negligence; and (3) homicide by vehicle or vessel while under the influence of alcohol or impaired by alcohol, drugs, or a CDS. Additionally, if the charge is one for which the defendant is entitled to and demands a jury trial, the case goes to circuit court.

Background: Exhibit 3 shows the number of violations brought in the District Court and circuit courts for specified offenses in fiscal 2018. Additionally, in fiscal 2018, there were 5,130 guilty dispositions for alcohol- and/or drug-related driving offenses in the District Court. The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) reports that there were six individuals sentenced for a third or subsequent offense in circuit courts for alcohol- and/or drug-related driving offenses in fiscal 2018.

Exhibit 3
Violations for Specified Offenses in the District Court and Circuit Courts
Fiscal 2018

<u>Offense</u>	<u>District Court</u>	<u>Circuit Court</u>
Driving Under the Influence of Alcohol	18,521	2,310
Driving Under the Influence of Alcohol <i>Per Se</i>	3,376	816
Driving Under the Influence of Alcohol/Transporting Minor	77	27
Driving While Impaired by Alcohol	10,384	2,277
Driving While Impaired by Alcohol/Transporting Minor	239	49
Driving While Impaired by Drugs or Drugs and Alcohol	4,501	661
Driving While Impaired by Drugs or Drugs and Alcohol/Transporting Minor	20	12
Driving While Impaired by a CDS	2,341	416
Driving While Impaired by a CDS/Transporting Minor	40	19
Homicide by Vehicle/Vessel – Under the Influence of Alcohol or Under the Influence <i>Per Se</i>	1	26
Homicide by Vehicle/Vessel – Impaired (by Alcohol, Drugs, or a CDS)	3	19
Life-threatening Injury by Vehicle/Vessel (Under the Influence of Alcohol, Under the Influence <i>Per Se</i> , or Impaired by Alcohol, Drugs, or a CDS)	23	20

CDS: controlled dangerous substance

Note: Circuit court violations include jury trials and appeals from cases that originated in the District Court. Therefore, there may be some overlap between the number of District Court and circuit court violations.

Source: Judiciary (Administrative Office of the Courts)

Further, according to the Department of Public Safety and Correctional Services, in fiscal 2018, there were 14 intakes for homicide by motor vehicle or vessel while under the influence of alcohol or while impaired by alcohol with an average sentence of 8.4 years.

Exhibit 4 shows MSCCSP’s sentencing and incarceration information, for fiscal 2018, for homicide and life-threatening injury by vehicle or vessel offenses that would also be considered prior offenses under the bill.

Exhibit 4
Sentencing and Incarceration Rates for Homicide and
Life-threatening Injury by Motor Vehicle or Vessel Offenses
Fiscal 2018

<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	3.24 years
Homicide by motor vehicle or vessel while impaired by alcohol, drugs, or a CDS	2	2	2.16 years
Life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	5	7	1.14 years
Life-threatening injury by motor vehicle or vessel while impaired by alcohol	2	2	1.37 years
Life-threatening injury by motor vehicle or vessel while impaired by drugs or CDS	1	1	0.03 years

CDS: controlled dangerous substance

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

Source: Maryland State Commission on Criminal Sentencing Policy

State Fiscal Effect: The establishment of concurrent jurisdiction for these charges may result in an increase in trials in both the District Court and circuit courts. Any increase in trial caseloads for these violations and possible appeals may result in additional clerical

and court time to adjudicate these cases. However, the Judiciary advises that this legislation is not likely to have a significant fiscal or operational impact on the trial courts.

Although establishing concurrent jurisdiction for the subsequent offenses in the bill may increase District Court trials, changing crimes from misdemeanors to felonies also means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

General fund revenues decrease to the extent cases shift from the District Court to the circuit courts. However, any such decrease may be offset as a result of the bill's higher maximum monetary penalty provision from cases that continue to be heard in the District Court.

While there were 5,130 guilty dispositions in the District Court, it is unknown how many of these individuals had three or more prior convictions for those offenses, although that number is expected to be minimal. For example, MSCCSP advises that, in the circuit courts, it is known that only six individuals were sentenced for third or subsequent violations of alcohol- and/or drug-related driving offenses. However, it is unknown how many individuals convicted of alcohol- and/or drug-related driving offenses in fiscal 2018 had a prior conviction for specified homicide, manslaughter, or life-threatening injury by motor vehicle offenses that are considered prior offenses under the bill. Given the relatively low number of violations brought in the District Court and circuit courts and the low number of convictions for these offenses in the circuit courts in fiscal 2018 (see Exhibits 3 and 4), this analysis assumes that the number of individuals with such prior convictions is minimal.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and for longer periods of time. The number of people convicted and subject to the more stringent penalties under the bill is expected to be minimal. Moreover, any impact depends on changes in sentencing practices due to the bill.

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 \$3,800 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. The State provides

assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or 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 provision from cases heard in the circuit courts.

Local Expenditures: Expenditures decrease minimally as a result of the bill's incarceration penalty due to more people being committed to State facilities instead of local facilities. The number of people convicted and subject to the more stringent penalties in the bill is expected to be minimal. Any impact depends on changes in sentencing practices due to the bill.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: Similar legislation has been considered in recent legislative sessions. SB 296 of 2018 passed the Senate and the House, as amended. The Senate refused to concur with the House amendments and requested that the House recede, but no further action was taken. Its cross file, HB 349, received a hearing in the House Judiciary Committee, but no further action was taken. SB 312 of 2017 passed the Senate and the House, as amended. Its cross file, HB 371, also passed the House and the Senate, as amended. Although a conference committee was appointed to reconcile the differences between the two bills, its work was not finalized prior to Sine Die.

Cross File: HB 230 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland 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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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Vehicle Laws - Drunk and Drugged Driving - Subsequent Offenders - Felonies (Repeat Drunk Driving Offenders Act of 2019)

BILL NUMBER: SB 163/HB 230

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS