

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 675
Judiciary

(Delegate Valentino-Smith)

Drunk and Drugged Driving - Prior Convictions - Conviction for the Drunk or
Drugged Operation of a Vessel

This bill specifies that a conviction for unlawfully operating or attempting to operate a vessel while under the influence of alcohol or while impaired by alcohol and/or drugs constitutes a prior conviction for purposes of determining enhanced subsequent offender penalties for specified drunk and drugged driving offenses.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local government finances, as discussed below.

Small Business Effect: None.

Analysis

Current Law: Under the State Boat Act, a person may not operate or attempt to operate a vessel while (1) under the influence of alcohol; (2) impaired by alcohol; (3) so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol that the person cannot operate a vessel safely; or (4) impaired by any controlled dangerous substance (CDS), unless the person is entitled to use the CDS under State law.

Any person who operates or attempts to operate a vessel on the waters of the State is deemed to have consented to take a test of blood or breath for alcohol or drug content if

the person is detained by a police officer who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence of alcohol, while impaired by alcohol and/or drugs, or while impaired by a CDS. Evidentiary presumptions applicable to drunk and drugged driving offenses also apply to the operation of a vessel while under the influence of alcohol or impaired by alcohol and/or drugs.

Operating a vessel while under the influence of alcohol is a misdemeanor punishable by (1) for a first offense, a fine of up to \$1,000 and/or imprisonment for up to one year; (2) for a second offense, a fine of up to \$2,000 and/or imprisonment for up to two years; and (3) for a third or subsequent offense, a fine of up to \$3,000 and/or imprisonment for up to three years. The court may prohibit a person convicted of a violation from operating a vessel on the waters of the State for up to one year if the person refused to take a test or was tested and the result indicated an alcohol concentration of 0.08 or more.

Operating a vessel while impaired by alcohol and/or drugs or while impaired by a CDS is a misdemeanor punishable by (1) for a first offense, a fine of up to \$500 and/or imprisonment for up to two months and (2) for a second or subsequent offense, a fine of up to \$1,000 and/or imprisonment for up to one year.

“Vessel,” as it applies to the State Boat Act, means any description of watercraft, including an ice boat but not including a seaplane, that is used or capable of being used as a means of transportation on water or ice. It includes the motors, spars, sails, and accessories of a vessel. The above provisions apply only to (1) vessels required to be registered with the Department of Natural Resources (DNR); (2) vessels required to have a valid number awarded in accordance with federal law or a federally approved numbering system in another state; and (3) vessels from a foreign country using the waters of the State. Vessels without any propulsion machinery of any type, such as nonpowered sailboats, canoes, and kayaks, are not required to be registered with DNR.

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

Under the Transportation Article, a person may not drive or attempt to drive any vehicle while (1) under the influence of alcohol or under the influence of alcohol *per se*; (2) impaired by alcohol; (3) impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or (4) impaired by a CDS. Additionally, a person may not commit any of these offenses while transporting a minor.

A person convicted of one of the above offenses is subject to higher maximum penalties when that person has specified prior convictions. Chapter 20 of 2019 increased maximum penalties for subsequent drunk and drugged driving violations. **Exhibit 1** displays the maximum penalties for alcohol and drug-related driving 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 Offense | 5 years imprisonment and/or fine of \$5,000 |
| Fourth or Subsequent Offense | 10 years imprisonment and/or fine of \$10,000 |

**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 Offense | 5 years imprisonment and/or fine of \$5,000 |
| Fourth or Subsequent Offense | 10 years imprisonment and/or fine of \$10,000 |

**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 Offense | 5 years imprisonment and/or fine of \$5,000 |
| Fourth or Subsequent Offense | 10 years imprisonment and/or fine of \$10,000 |

**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 | 1 year imprisonment and/or fine of \$1,000 |
| Second Offense | 2 year imprisonment and/or fine of \$2,000 |
| Third Offense | 5 years imprisonment and/or fine of \$5,000 |
| Fourth or Subsequent Offense | 10 years imprisonment and/or fine of \$10,000 |

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.

Source: Department of Legislative Services

Subsequent Offenders

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.

State/Local Fiscal Effect: To the extent individuals convicted of drunk and drugged driving offenses have prior convictions for unlawfully operating a vessel while under the influence of alcohol or while impaired by alcohol and/or drugs, they may be subject to higher maximum fines and/or longer maximum incarceration penalties. However, based on the minimal number of convictions in recent years for those State Boat Act offenses, as noted below, the bill is not likely to materially affect State or local revenues or expenditures.

The Judiciary advises that, in fiscal 2020, there were four violations of operating a vessel while under the influence of alcohol, four violations of operating a vessel while impaired by alcohol and/or drugs, and no guilty dispositions for either offense. In fiscal 2019, there were five violations and two guilty dispositions for operating a vessel while under the influence of alcohol, and there were five violations and one guilty disposition for operating a vessel while impaired by alcohol and/or drugs.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2021
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Analysis by: Elizabeth J. Allison

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