

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 74

(Senator Bailey)

Judicial Proceedings

Judiciary

Grossly Negligent or Drunk or Drugged Operation of Vehicle or Vessel - Prior Convictions

This bill establishes that a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties for a person unlawfully operating or attempting to operate a vessel while under the influence of alcohol, impaired by alcohol and/or drugs, or impaired by a controlled dangerous substance (CDS). Vice versa, a conviction for unlawfully operating or attempting to operate a vessel while under the influence of alcohol, impaired by alcohol and/or drugs, or impaired by a CDS constitutes a prior conviction for purposes of determining increased subsequent offender penalties for specified drunk and drugged driving offenses. The bill also establishes that a person convicted of specified drunk and drugged driving offenses is subject to increased subsequent offender penalties if the person has previously been convicted of manslaughter by vehicle or vessel (gross negligence).

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures, as discussed below.

Local Effect: Potential minimal increase in revenues and potential minimal decrease in local incarceration expenditures, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Operating a Vessel While Under the Influence or Impaired

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 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. *Under the bill*, a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties. 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. *Under the bill*, a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties.

“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 a Controlled Dangerous Substance

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. *Under the bill*, a conviction for operating a vessel while under the influence of alcohol or while impaired by alcohol and/or drugs constitutes a prior conviction for purposes of determining subsequent offender penalties.

A person convicted of a general drunk or drugged driving violation who has previously been convicted of homicide by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol, drugs, or a CDS is subject to a fine of up to \$10,000 and/or up to 10 years imprisonment, consistent with the maximum penalties that apply to a fourth or subsequent general drunk or drugged driving violation. *Under the bill*, a person who has previously been convicted of manslaughter by vehicle or vessel (gross negligence) is also subject to these increased maximum penalties.

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 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

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 Revenues: General fund revenues may increase minimally from cases heard in the District Court if individuals receive increased monetary penalties as a result of the bill.

State Expenditures: To the extent that judges impose longer sentences as a result of the bill, general fund expenditures may increase minimally from people shifting from local facilities to State facilities or being committed to State correctional facilities for longer periods of time. The number of individuals subject to more stringent penalties under the bill is expected to be minimal.

According to the Judiciary, during fiscal 2021 and 2022, there were (1) six charges and one guilty disposition (conviction) for operating or attempting to operate a vessel while under the influence of alcohol and (2) eight charges and no guilty dispositions for operating or attempting to operate a vessel while impaired by alcohol and/or drugs, or while impaired by a CDS.

Convictions for manslaughter by vehicle or vessel (gross negligence) are more frequent, but still limited overall in the State. The Maryland State Commission on Criminal Sentencing Policy advises that it received information for 33 individuals sentenced to 35 total counts of manslaughter by vehicle or vessel (gross negligence) in the State's circuit courts during fiscal 2022. Four of these individuals and 4 of these counts were associated with subsequent offenses, as defined under that statute. The District Court has concurrent jurisdiction with the circuit court over manslaughter by vehicle or vessel (gross negligence). Information is not readily available on convictions in the District Court for this offense.

Local Revenues: Local revenues may increase minimally if the bill results in higher fines in circuit court cases.

Local Expenditures: Local incarceration expenditures may decrease minimally if overall, the bill shifts individuals from local detention facilities to State correctional facilities.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been proposed. For example, see SB 914 and HB 967 of 2022 and HB 675 of 2021.

Designated Cross File: HB 483 (Delegate Simmons, *et al.*) - Judiciary.

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

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