

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader - Revised

House Bill 349  
Judiciary

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

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Vehicle Laws - Drunk and Drugged Driving - Subsequent Offenders - Felonies  
(Repeat Drunk Driving Offenders Act of 2018)

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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, manslaughter, 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.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

**Local Effect:** Minimal increase in revenues due to the bill's monetary penalty provision. 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.

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**Analysis**

**Bill Summary:** 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.

The bill specifies that the District Court and circuit courts have concurrent jurisdiction over these cases.

To seek the additional penalty under the bill, the prosecuting attorney must charge the defendant by information or indictment. Additionally, a court may not impose an additional penalty under the bill unless the prosecuting attorney serves notice of the alleged prior convictions on the defendant or the defendant's counsel before acceptance of a plea of guilty or *nolo contendere* or at least 15 days before trial in circuit court or 5 days before trial in District Court, whichever is earlier.

**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.

#### *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.

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**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 or Subsequent Offense	3 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	2 years imprisonment and/or fine of \$2,000
Second Offense	3 years imprisonment and/or fine of \$3,000
Third or Subsequent Offense	4 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	2 months imprisonment and/or fine of \$500
Second Offense	1 year imprisonment and/or fine of \$500
Third or Subsequent Offense	3 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	6 months imprisonment and/or fine of \$1,000
Second Offense	1 year imprisonment and/or fine of \$2,000
Third or Subsequent Offense	4 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

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*Manslaughter, Homicide, and Life-threatening Injury by Vehicle or Vessel Offenses*

*Manslaughter by Vehicle or Vessel – Gross Negligence:* A person is prohibited from committing manslaughter by vehicle or vessel by causing the death of another as a result of driving, operating, or controlling a vehicle or vessel in a grossly negligent manner. The standard of “gross negligence” is established in common law and requires that evidence show, beyond a reasonable doubt, that the offender had a wanton or reckless disregard for

human life in the operation of an automobile. The conduct must be extraordinary or outrageous to meet this standard.

*Manslaughter by Vehicle or Vessel – Criminal Negligence:* A person is prohibited from causing the death of another due to driving, operating, or controlling a vehicle or vessel in “a criminally negligent manner.” A person acts in a criminally negligent manner when the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that manslaughter will occur and the failure to perceive is a gross deviation from the standard of care that would be exercised by a reasonable person.

*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 (1) impaired by alcohol; (2) impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or (3) impaired by a CDS.

Penalties for first offenses and subsequent offenses of the many manslaughter, homicide, and life-threatening injury by vehicle or vessel 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

### *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 manslaughter by motor vehicle or vessel, 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 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 2017. Additionally, in fiscal 2017, there were 5,558 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 83 individuals were convicted in circuit courts for alcohol- and/or drug-related driving offenses in fiscal 2017.

Further, according to the Department of Public Safety and Correctional Services, in fiscal 2017, there were 23 intakes for manslaughter by vehicle or vessel (gross negligence) with an average sentence of 6 years; there were 3 intakes for homicide by motor vehicle or

vessel while under the influence of alcohol or while impaired by alcohol with an average sentence of 1.6 years. None of these sentences was for subsequent offenses.

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**Exhibit 3**  
**Violations for Specified Offenses in the District Court and Circuit Courts**  
**Fiscal 2017**

<u>Offense</u>	<u>District Court</u>	<u>Circuit Court</u>
Driving Under the Influence of Alcohol	20,048	2,662
Driving Under the Influence of Alcohol <i>Per Se</i>	12,220	1,559
Driving Under the Influence of Alcohol/Transporting Minor	222	53
Driving While Impaired by Alcohol	20,134	2,855
Driving While Impaired by Alcohol/Transporting Minor	257	64
Driving While Impaired by Drugs or Drugs and Alcohol	4,280	649
Driving While Impaired by Drugs or Drugs and Alcohol/Transporting Minor	93	19
Driving While Impaired by a CDS	2,241	335
Driving While Impaired by a CDS/Transporting Minor	67	16
Manslaughter by Vehicle/Vessel – Gross or Criminal Negligence	15	111
Homicide by Vehicle/Vessel – Under the Influence of Alcohol or Under the Influence <i>Per Se</i>	9	26
Homicide by Vehicle/Vessel – Impaired (by Alcohol, Drugs, or a CDS)	11	34
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)	10	39

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)

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**Exhibit 4** shows MSCCSP's sentencing and incarceration information, for fiscal 2017, for homicide, manslaughter, and life-threatening injury by vehicle or vessel offenses that would also be considered prior offenses under the bill.

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**Exhibit 4**  
**Fiscal 2017 Sentencing and Incarceration Rates for Homicide, Manslaughter, and Life-threatening Injury by Motor Vehicle or Vessel Offenses**

<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>	2	2	4 years
Homicide by motor vehicle or vessel while impaired by alcohol, drugs, or a CDS	2	3	3 years
Manslaughter by vehicle or vessel – gross negligence	27	36	5.96 years
Manslaughter by vehicle or vessel – criminal negligence	7	8	2.63 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>	6	6	2.66 years
Life-threatening injury by motor vehicle or vessel while impaired by alcohol	1	1	1.5 years
Life-threatening injury by motor vehicle or vessel while impaired by drugs or CDS	0	0	0

CDS: controlled dangerous substance

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

Source: Maryland State Commission on Criminal Sentencing Policy

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**State Fiscal Effect:** Changing crimes from misdemeanors to felonies means that (1) such cases are more likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to the increased penalty provisions that are specified in this bill. Accordingly, it is assumed that this bill may shift 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 the offenses addressed in this bill.



General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

According to MVA, in fiscal 2017, there were a total of 719 convictions for a third or subsequent alcohol- and/or drug-related driving offense. Of these, 385 convictions were for driving while impaired by alcohol; 271 convictions were for driving while under the influence of alcohol or under the influence of alcohol *per se*; 39 convictions were for driving while impaired by drugs or a combination of drugs and alcohol; and 24 convictions were for driving while impaired by CDS.

The bill increases the penalties for a *fourth* or subsequent conviction of an alcohol- and/or drug-related driving offense from a maximum of 3 or 4 years imprisonment and/or a maximum fine of \$3,000 or \$4,000 (see Exhibit 1) to a maximum of 10 years imprisonment and/or a maximum fine of \$10,000. It is unknown how many of the 719 third or subsequent convictions in fiscal 2017 were for a fourth or subsequent offense; however, this number is expected to be minimal.

Further, it is unknown how many individuals convicted of alcohol- and/or drug-related driving offenses in fiscal 2017 had a prior conviction for specified homicide, manslaughter, or life-threatening injury by motor vehicle offenses that would be considered prior offenses under the bill. However, 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 2017 (see Exhibits 3 and 4), this analysis assumes that the number of individuals with such prior convictions is minimal.

Therefore, 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.

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### **Additional Information**

**Prior Introductions:** SB 312 of 2017, an essentially identical bill as originally introduced, 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:** SB 296 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

**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 Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 5, 2018  
mm/kdm Revised - Updated Information - March 28, 2018

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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 2018)**

BILL NUMBER: SB0296/HB0349

PREPARED BY: Melissa Ross

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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