

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 914

(Senator Bailey)

Judicial Proceedings

Grossly Negligent or Drunk or Drugged Operation of Vehicle or Vessel –
Penalties and Prior Convictions

This bill increases the maximum penalties for the offenses of manslaughter by vehicle or vessel (gross negligence) and homicide by vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*. The bill also specifies that a conviction for specified drunk and drugged driving offenses constitutes a prior conviction for purposes of determining subsequent offender penalties for unlawfully operating or attempting to operate a vessel while under the influence of alcohol or while impaired by alcohol and/or drugs. Vice versa, 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 increased subsequent offender penalties for specified drunk and drugged driving offenses. Finally, the bill 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: Minimal increase in general fund revenues and expenditures, as discussed below.

Local Effect: Minimal increase in local government revenues from fines imposed in the circuit courts. The bill is not expected to materially affect local incarceration expenditures.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Manslaughter and Homicide by Vehicle or Vessel Offenses

The bill increases the maximum incarceration and monetary penalties for the offenses of manslaughter by vehicle or vessel (gross negligence) and homicide by vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*, including penalties for subsequent offenses. **Exhibit 1** displays (1) the current maximum incarceration and monetary penalties for manslaughter by vehicle or vessel (gross negligence) and homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; (2) the increased maximum penalties established by the bill for these offenses; and (3) fiscal 2020 sentencing and incarceration data for these offenses.

Under current law, manslaughter by vehicle or vessel (gross negligence) and homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se* are both felonies.

Exhibit 1
Maximum Penalties (Under Current Law and Under the Bill) and Fiscal 2020 Sentencing and Incarceration Data for Specified Manslaughter and Homicide by Vehicle or Vessel Offenses

<u>Offense</u>		<u>Maximum Incarceration and Monetary Penalties</u>		<u>FY 2020 Sentencing and Incarceration Data</u>		
		<u>Under Current Law</u>	<u>Under The Bill</u>	<u>Persons Sentenced</u>	<u>Counts</u>	<u>Average Length of Incarceration</u>
Manslaughter by vehicle or vessel (gross negligence)	First offense	10 years and/or \$5,000	20 years and/or \$10,000	21	26	5.1 years
	Subsequent offense	15 years and/or \$10,000	30 years and/or \$25,000	1	1	15 years
Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	First offense	5 years and/or \$5,000	10 years and/or \$10,000	6	6	1.6 years
	Subsequent offense	10 years and/or \$10,000	20 years and/or \$20,000	1	1	3 years

Notes: “Average Length of Incarceration” refers to the average nonsuspended sentence. Fiscal 2020 data, the most recent data available for this fiscal and policy note, may have been affected by the COVID-19 pandemic.

Source: Maryland Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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 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. (*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 2** 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 2
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 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 for affected offenses, general fund expenditures increase minimally due to people 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.

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 \$4,700 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 from cases heard in the circuit courts to the extent that increased monetary penalties are imposed for affected offenses.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 967 (Delegate Valentino-Smith) - Judiciary.

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

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