

SENATE BILL 163

R3, E1

9lr0154
CF HB 230

By: **The President (By Request – Administration) and Senators Bailey, Carozza, Cassilly, Eckardt, Edwards, Gallion, Hershey, Hough, Jennings, Ready, Salling, Serafini, Simonaire, and West**

Introduced and read first time: January 21, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 20, 2019

CHAPTER _____

1 AN ACT concerning

2 **Vehicle Laws – Drunk and Drugged Driving – Subsequent Offenders – Felonies**
3 **(Repeat Drunk Driving Offenders Act of 2019)**

4 FOR the purpose of prohibiting an individual from committing a certain drunk or drugged
5 driving offense if the individual has been convicted previously for certain other
6 crimes under certain circumstances; making a violation of this Act a felony;
7 establishing certain penalties; establishing that the District Court and circuit courts
8 have concurrent jurisdiction over certain drunk and drugged driving offenses;
9 making certain conforming changes; and generally relating to drunk and drugged
10 driving.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 4–301(b)(24) and (25) and 4–302(a) and (d)(1)
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2018 Supplement)

16 BY adding to
17 Article – Courts and Judicial Proceedings
18 Section 4–301(b)(26)
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
 2 Article – Transportation
 3 Section 1–101(a) and (c)
 4 Annotated Code of Maryland
 5 (2015 Replacement Volume and 2018 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Transportation
 8 Section 21–902
 9 Annotated Code of Maryland
 10 (2012 Replacement Volume and 2018 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 12 That the Laws of Maryland read as follows:

13 **Article – Courts and Judicial Proceedings**

14 4–301.

15 (b) Except as provided in § 4–302 of this subtitle, the District Court also has
 16 exclusive original jurisdiction in a criminal case in which a person at least 18 years old or
 17 a corporation is charged with:

18 (24) Violation of § 11–721 of the Criminal Procedure Article as a second or
 19 subsequent offense; [or]

20 (25) Violation of § 11–303(b) of the Criminal Law Article; **OR**

21 **(26) VIOLATION OF § 21–902(H) OF THE TRANSPORTATION ARTICLE.**

22 4–302.

23 (a) Except as provided in § 4–301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14),
 24 (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), **AND (26)** of this subtitle, the
 25 District Court does not have jurisdiction to try a criminal case charging the commission of
 26 a felony.

27 (d) (1) Except as provided in paragraph (2) of this subsection, the jurisdiction
 28 of the District Court is concurrent with that of the circuit court in a criminal case:

29 (i) In which the penalty may be confinement for 3 years or more or
 30 a fine of \$2,500 or more; or

31 (ii) That is a felony, as provided in § 4–301(b)(2), (6), (7), (8), (9), (10),
 32 (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), **AND (26)**
 33 of this subtitle.

Article – Transportation

1

2 1–101.

3 (a) In this article the following words have the meanings indicated.

4 (c) “Any state” means:

5 (1) Any state, possession, or territory of the United States;

6 (2) The District of Columbia; and

7 (3) The Commonwealth of Puerto Rico.

8 21–902.

9 (a) (1) (i) A person may not drive or attempt to drive any vehicle while
10 under the influence of alcohol.11 (ii) A person may not drive or attempt to drive any vehicle while the
12 person is under the influence of alcohol per se.

13 (iii) A person convicted of a violation of this paragraph is subject to:

14 1. For a first offense, imprisonment not exceeding 1 year or
15 a fine not exceeding \$1,000 or both;16 2. For a second offense, imprisonment not exceeding 2 years
17 or a fine not exceeding \$2,000 or both; and18 3. For a third or subsequent offense, imprisonment not
19 exceeding 3 years or a fine not exceeding \$3,000 or both.20 (iv) For the purpose of determining subsequent offender penalties for
21 a violation of this paragraph, a prior conviction under this subsection or subsection (b), (c),
22 or (d) of this section, within 5 years before the conviction for a violation of this paragraph,
23 shall be considered a prior conviction.24 (2) (i) A person may not violate paragraph (1) of this subsection while
25 transporting a minor.

26 (ii) A person convicted of a violation of this paragraph is subject to:

27 1. For a first offense, imprisonment not exceeding 2 years or
28 a fine not exceeding \$2,000 or both;

1 2. For a second offense, imprisonment not exceeding 3 years
2 or a fine not exceeding \$3,000 or both; and

3 3. For a third or subsequent offense, imprisonment not
4 exceeding 4 years or a fine not exceeding \$4,000 or both.

5 (iii) For the purpose of determining subsequent offender penalties for
6 a violation of this paragraph, a prior conviction under this paragraph or subsection (b)(2),
7 (c)(2), or (d)(2) of this section shall be considered a prior conviction.

8 (b) (1) (i) A person may not drive or attempt to drive any vehicle while
9 impaired by alcohol.

10 (ii) A person convicted of a violation of this paragraph is subject to:

11 1. For a first offense, imprisonment not exceeding 2 months
12 or a fine not exceeding \$500 or both;

13 2. For a second offense, imprisonment not exceeding 1 year
14 or a fine not exceeding \$500 or both; and

15 3. For a third or subsequent offense, imprisonment not
16 exceeding 3 years or a fine not exceeding \$3,000 or both.

17 (iii) For the purpose of determining subsequent offender penalties for
18 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (c),
19 or (d) of this section shall be considered a prior conviction.

20 (2) (i) A person may not violate paragraph (1) of this subsection while
21 transporting a minor.

22 (ii) A person convicted of a violation of this paragraph is subject to:

23 1. For a first offense, imprisonment not exceeding 6 months
24 or a fine not exceeding \$1,000 or both;

25 2. For a second offense, imprisonment not exceeding 1 year
26 or a fine not exceeding \$2,000 or both; and

27 3. For a third or subsequent offense, imprisonment not
28 exceeding 4 years or a fine not exceeding \$4,000 or both.

29 (iii) For the purpose of determining subsequent offender penalties for
30 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),
31 (c)(2), or (d)(2) of this section shall be considered a prior conviction.

32 (c) (1) (i) A person may not drive or attempt to drive any vehicle while so

1 far impaired by any drug, any combination of drugs, or a combination of one or more drugs
2 and alcohol that the person cannot drive a vehicle safely.

3 (ii) A person convicted of a violation of this paragraph is subject to:

4 1. For a first offense, imprisonment not exceeding 2 months
5 or a fine not exceeding \$500 or both;

6 2. For a second offense, imprisonment not exceeding 1 year
7 or a fine not exceeding \$500 or both; and

8 3. For a third or subsequent offense, imprisonment not
9 exceeding 3 years or a fine not exceeding \$3,000 or both.

10 (iii) For the purpose of determining subsequent offender penalties for
11 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b),
12 or (d) of this section shall be considered a prior conviction.

13 (iv) It is not a defense to any charge of violating this subsection that
14 the person charged is or was entitled under the laws of this State to use the drug,
15 combination of drugs, or combination of one or more drugs and alcohol, unless the person
16 was unaware that the drug or combination would make the person incapable of safely
17 driving a vehicle.

18 (2) (i) A person may not violate paragraph (1) of this subsection while
19 transporting a minor.

20 (ii) A person convicted of a violation of this paragraph is subject to:

21 1. For a first offense, imprisonment not exceeding 6 months
22 or a fine not exceeding \$1,000 or both;

23 2. For a second offense, imprisonment not exceeding 1 year
24 or a fine not exceeding \$2,000 or both; and

25 3. For a third or subsequent offense, imprisonment not
26 exceeding 4 years or a fine not exceeding \$4,000 or both.

27 (iii) For the purpose of determining subsequent offender penalties for
28 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),
29 (b)(2), or (d)(2) of this section shall be considered a prior conviction.

30 (d) (1) (i) A person may not drive or attempt to drive any vehicle while the
31 person is impaired by any controlled dangerous substance, as that term is defined in §
32 5–101 of the Criminal Law Article, if the person is not entitled to use the controlled
33 dangerous substance under the laws of this State.

1 (ii) A person convicted of a violation of this paragraph is subject to:

2 1. For a first offense, imprisonment not exceeding 1 year or
3 a fine not exceeding \$1,000 or both;

4 2. For a second offense, imprisonment not exceeding 2 years
5 or a fine not exceeding \$2,000 or both; and

6 3. For a third or subsequent offense, imprisonment not
7 exceeding 3 years or a fine not exceeding \$3,000 or both.

8 (iii) For the purpose of determining subsequent offender penalties for
9 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b),
10 or (c) of this section, within 5 years before the conviction for a violation of this paragraph,
11 shall be considered a prior conviction.

12 (2) (i) A person may not violate paragraph (1) of this subsection while
13 transporting a minor.

14 (ii) A person convicted of a violation of this paragraph is subject to:

15 1. For a first offense, imprisonment not exceeding 2 years or
16 a fine not exceeding \$2,000 or both;

17 2. For a second offense, imprisonment not exceeding 3 years
18 or a fine not exceeding \$3,000 or both; and

19 3. For a third or subsequent offense, imprisonment not
20 exceeding 4 years or a fine not exceeding \$4,000 or both.

21 (iii) For the purpose of determining subsequent offender penalties for
22 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),
23 (b)(2), or (c)(2) of this section shall be considered a prior conviction.

24 (e) For purposes of the application of subsequent offender penalties under this
25 section, a conviction for a crime committed in another state or federal jurisdiction that, if
26 committed in this State, would constitute a violation of subsection (a)(1) or (2), (b)(1) or (2),
27 (c)(1) or (2), or (d)(1) or (2) of this section shall be considered a violation of subsection (a)(1)
28 or (2), (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of this section.

29 (f) (1) In this subsection, "imprisonment" includes confinement in:

30 (i) An inpatient rehabilitation or treatment center; or

31 (ii) Home detention that includes electronic monitoring for the
32 purpose of participating in an alcohol treatment program that is:

1 1. Certified by the Maryland Department of Health;

2 2. Certified by an agency in an adjacent state that has
3 powers and duties similar to the Maryland Department of Health; or

4 3. Approved by the court.

5 (2) (i) A person who is convicted of a violation of subsection (a) of this
6 section within 5 years after a prior conviction under that subsection is subject to a
7 mandatory minimum penalty of imprisonment for not less than 5 days.

8 (ii) A person who is convicted of a third or subsequent offense under
9 subsection (a) of this section within 5 years after a prior conviction under that subsection
10 is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

11 (3) (i) A person who is convicted of a violation of subsection (d) of this
12 section within 5 years after a prior conviction under that subsection is subject to a
13 mandatory minimum penalty of imprisonment for not less than 5 days.

14 (ii) A person who is convicted of a third or subsequent offense under
15 subsection (d) of this section within 5 years after a prior conviction under that subsection
16 is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

17 (4) A person who is convicted of an offense under subsection (a) of this
18 section within 5 years after a prior conviction under that subsection shall be required by
19 the court to:

20 (i) Undergo a comprehensive alcohol abuse assessment; and

21 (ii) If recommended at the conclusion of the assessment, participate
22 in an alcohol program as ordered by the court that is:

23 1. Certified by the Maryland Department of Health;

24 2. Certified by an agency in an adjacent state that has
25 powers and duties similar to the Maryland Department of Health; or

26 3. Approved by the court.

27 (5) A person who is convicted of an offense under subsection (d) of this
28 section within 5 years after a prior conviction under that subsection shall be required by
29 the court to:

30 (i) Undergo a comprehensive drug abuse assessment; and

31 (ii) If recommended at the conclusion of the assessment, participate
32 in a drug program as ordered by the court that is:

- 1 1. Certified by the Maryland Department of Health;
- 2 2. Certified by an agency in an adjacent state that has
3 powers and duties similar to the Maryland Department of Health; or
- 4 3. Approved by the court.

5 (6) The penalties provided under this subsection are mandatory and are
6 not subject to suspension or probation.

7 (g) (1) In this subsection, “test” has the meaning stated in § 16–205.1 of this
8 article.

9 (2) The penalties under this subsection are in addition to any other penalty
10 imposed for a violation of this section.

11 (3) Subject to paragraph (4) of this subsection, if a person is convicted of a
12 violation of this section and the trier of fact finds beyond a reasonable doubt that the person
13 knowingly refused to take a test arising out of the same circumstances as the violation, the
14 person is subject to imprisonment not exceeding 2 months or a fine not exceeding \$500 or
15 both.

16 (4) A court may not impose an additional penalty under this subsection
17 unless the State’s Attorney serves notice of the alleged test refusal on the defendant or the
18 defendant’s counsel before the earlier of:

19 (i) Acceptance of a plea of guilty or nolo contendere; or

20 (ii) At least 15 days before trial in a circuit court or 5 days before
21 trial in the District Court.

22 **(H) (1) A PERSON MAY NOT VIOLATE SUBSECTION (A), (B), (C), OR (D) OF
23 THIS SECTION IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF:**

24 **(I) THREE OR MORE VIOLATIONS OF ANY PROVISION OF
25 SUBSECTION (A), (B), (C), OR (D) OF THIS SECTION; OR**

26 **(II) A VIOLATION OF § 2–503, § 2–504, § 2–505, § 2–506, OR §
27 3–211 OF THE CRIMINAL LAW ARTICLE.**

28 **(2) FOR PURPOSES OF THIS SUBSECTION, A CONVICTION FOR A
29 CRIME UNDER THE LAWS OF ANY STATE OR THE UNITED STATES THAT WOULD BE A
30 CRIME INCLUDED IN PARAGRAPH (1) OF THIS SUBSECTION IF COMMITTED IN THIS
31 STATE SHALL BE CONSIDERED A PRIOR CONVICTION UNDER THIS SUBSECTION.**

1 **(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**
2 **FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10**
3 **YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.