

SENATE BILL 974

R3
HB 1048/10 – JUD

7lr2049

By: **Senator Ready**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Driving With Detectable Levels of a Controlled Dangerous**
3 **Substance or Its Metabolites – Prohibition**

4 FOR the purpose of prohibiting a person from driving or attempting to drive any vehicle
5 while the person has a detectable level of a controlled dangerous substance or its
6 metabolites in the person's blood, if the person is not entitled to use the controlled
7 dangerous substance under the laws of the State; requiring the assessment of a
8 certain number of points against a person for a violation of this Act; establishing
9 certain penalties for first and subsequent violations of this Act; making conforming
10 changes; providing for the effective date of this Act; and generally relating to driving
11 with detectable levels of a controlled dangerous substance or its metabolites.

12 BY repealing and reenacting, with amendments,

13 Article – Transportation

14 Section 16–402(a)(37), 21–902(d), and 27–101(c)(25) and (26), (f)(1) and (2), (k)(1),
15 and (q)(1)

16 Annotated Code of Maryland

17 (2012 Replacement Volume and 2016 Supplement)

18 BY adding to

19 Article – Transportation

20 Section 27–101(c)(27)

21 Annotated Code of Maryland

22 (2012 Replacement Volume and 2016 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – Transportation

25 Section 21–902

26 Annotated Code of Maryland

27 (2012 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(As enacted by Chapter ____ (S.B. 165) (7lr1234) of the Acts of the General Assembly of 2017)

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

Article – Transportation

16–402.

(a) After the conviction of an individual for a violation of Title 2, Subtitle 5, § 2–209, § 3–211, or § 10–110 of the Criminal Law Article, or of the vehicle laws or regulations of this State or of any local authority, points shall be assessed against the individual as of the date of violation and as follows:

(37) Driving while under the influence of alcohol, while under the influence of alcohol per se, or while impaired by an illegally used controlled dangerous substance, **OR WHILE HAVING A DETECTABLE LEVEL OF AN ILLEGALLY USED CONTROLLED DANGEROUS SUBSTANCE OR ITS METABOLITES IN THE PERSON’S BLOOD**..... 12 points

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Transportation

21–902.

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

(2) **A PERSON MAY NOT DRIVE OR ATTEMPT TO DRIVE ANY VEHICLE WHILE THE PERSON HAS A DETECTABLE LEVEL OF A CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE, OR ITS METABOLITES, IN THE PERSON’S BLOOD, IF THE PERSON IS NOT ENTITLED TO USE THE CONTROLLED DANGEROUS SUBSTANCE UNDER THE LAWS OF THIS STATE.**

(3) A person may not violate paragraph (1) **OR (2)** of this subsection while transporting a minor.

27–101.

1 (c) Any person who is convicted of a violation of any of the provisions of the
2 following sections of this article is subject to a fine of not more than \$500 or imprisonment
3 for not more than 2 months or both:

4 (25) Title 21, Subtitle 10A (“Towing or Removal of Vehicles from Parking
5 Lots”); [or]

6 (26) § 27–107(d), (e), (f), or (g) (“Prohibited acts – Ignition interlock
7 systems”); OR

8 **(27) EXCEPT AS PROVIDED IN SUBSECTIONS (F) AND (Q) OF THIS**
9 **SECTION, § 21–902(D)(2) (“DRIVING WITH CONTROLLED DANGEROUS SUBSTANCE**
10 **IN BLOOD”).**

11 (f) (1) A person is subject to a fine not exceeding \$500 or imprisonment not
12 exceeding 1 year or both, if the person is convicted of:

13 (i) A violation of § 14–103 of this article (“Possession of motor
14 vehicle master key”); or

15 (ii) Except as provided in subsection (q) of this section, a second
16 violation of:

17 1. § 21–902(b) of this article (“Driving while impaired by
18 alcohol”); [or]

19 2. § 21–902(c) of this article (“Driving while impaired by
20 drugs or drugs and alcohol”); OR

21 **3. § 21–902(D)(2) OF THIS ARTICLE (“DRIVING WITH**
22 **CONTROLLED DANGEROUS SUBSTANCE IN BLOOD”).**

23 (2) Except as provided in subsection (q) of this section, a person who is
24 convicted of a third or subsequent violation of § 21–902(b) [or], (c), OR **(D)(2)** of this article
25 is subject to a fine not exceeding \$3,000 or imprisonment not exceeding 3 years or both.

26 (k) (1) Except as provided in subsection (q) of this section, any person who is
27 convicted of a violation of any of the provisions of § 21–902(a) of this article (“Driving while
28 under the influence of alcohol or under the influence of alcohol per se”) or **[§ 21–902(d)] §**
29 **21–902(D)(1)** of this article (“Driving while impaired by controlled dangerous substance”):

30 (i) For a first offense, shall be subject to a fine of not more than
31 \$1,000, or imprisonment for not more than 1 year, or both;

32 (ii) For a second offense, shall be subject to a fine of not more than
33 \$2,000, or imprisonment for not more than 2 years, or both; and

1 (iii) For a third or subsequent offense, shall be subject to a fine of not
2 more than \$3,000, or imprisonment for not more than 3 years, or both.

3 (q) (1) Any person who is convicted of a violation of § 21–902(a)(3) or [(d)(2)]
4 **(D)(3)** of this article is subject to:

5 (i) For a first offense, a fine of not more than \$2,000 or
6 imprisonment for not more than 2 years or both;

7 (ii) For a second offense, a fine of not more than \$3,000 or
8 imprisonment for not more than 3 years or both; and

9 (iii) For a third or subsequent offense, a fine of not more than \$4,000
10 or imprisonment for not more than 4 years or both.

11 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
12 as follows:

13 **Article – Transportation**

14 21–902.

15 (a) (1) (i) A person may not drive or attempt to drive any vehicle while
16 under the influence of alcohol.

17 (ii) A person may not drive or attempt to drive any vehicle while the
18 person is under the influence of alcohol per se.

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

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

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

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

26 (iv) For the purpose of determining subsequent offender penalties for
27 a violation of this paragraph, a prior conviction under this subsection or subsection (b), (c),
28 or (d) of this section, within 5 years before the conviction for a violation of this paragraph,
29 shall be considered a prior conviction.

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

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

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

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

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

8 (iii) For the purpose of determining subsequent offender penalties for
9 a violation of this paragraph, a prior conviction under this paragraph or subsection (b)(2),
10 (c)(2), or [(d)(2)] **(D)(3)** of this section shall be considered a prior conviction.

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

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

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

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

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

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

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

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

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

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

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

1 (iii) For the purpose of determining subsequent offender penalties for
2 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),
3 (c)(2), or ~~[(d)(2)] (D)(3)~~ of this section shall be considered a prior conviction.

4 (c) (1) (i) A person may not drive or attempt to drive any vehicle while so
5 far impaired by any drug, any combination of drugs, or a combination of one or more drugs
6 and alcohol that the person cannot drive a vehicle safely.

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

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

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

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

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

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

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

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

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

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

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

31 (iii) For the purpose of determining subsequent offender penalties for
32 a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2),
33 (b)(2), or ~~[(d)(2)] (D)(3)~~ of this section shall be considered a prior conviction.

1 (d) (1) (i) A person may not drive or attempt to drive any vehicle while the
2 person is impaired by any controlled dangerous substance, as that term is defined in §
3 5–101 of the Criminal Law Article, if the person is not entitled to use the controlled
4 dangerous substance under the laws of this State.

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

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

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

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

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

16 (2) (I) A PERSON MAY NOT DRIVE OR ATTEMPT TO DRIVE ANY
17 VEHICLE WHILE THE PERSON HAS A DETECTABLE LEVEL OF A CONTROLLED
18 DANGEROUS SUBSTANCE, AS DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE,
19 OR ITS METABOLITES, IN THE PERSON’S BLOOD, IF THE PERSON IS NOT ENTITLED
20 TO USE THE CONTROLLED DANGEROUS SUBSTANCE UNDER THE LAWS OF THIS
21 STATE.

22 (II) A PERSON CONVICTED OF A VIOLATION OF THIS
23 PARAGRAPH IS SUBJECT TO:

24 1. FOR A FIRST OFFENSE, IMPRISONMENT NOT
25 EXCEEDING 60 DAYS OR A FINE NOT EXCEEDING \$500 OR BOTH;

26 2. FOR A SECOND OFFENSE, IMPRISONMENT NOT
27 EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$500 OR BOTH; AND

28 3. FOR A THIRD OR SUBSEQUENT OFFENSE,
29 IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$3,000 OR
30 BOTH.

31 (3) (i) A person may not violate paragraph (1) OR (2) of this subsection
32 while transporting a minor.

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

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

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

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

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

11 (e) For purposes of the application of subsequent offender penalties under this
12 section, a conviction for a crime committed in another state or federal jurisdiction that, if
13 committed in this State, would constitute a violation of subsection (a)(1) or (2), (b)(1) or (2),
14 (c)(1) or (2), or (d)(1) [or], (2), **OR (3)** of this section shall be considered a violation of
15 subsection (a)(1) or (2), (b)(1) or (2), (c)(1) or (2), or (d)(1) [or], (2), **OR (3)** of this section.

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

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

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

20 1. Certified by the Department of Health and Mental
21 Hygiene;

22 2. Certified by an agency in an adjacent state that has
23 powers and duties similar to the Department of Health and Mental Hygiene; or

24 3. Approved by the court.

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

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

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

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

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

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

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

10 1. Certified by the Department of Health and Mental
11 Hygiene;

12 2. Certified by an agency in an adjacent state that has
13 powers and duties similar to the Department of Health and Mental Hygiene; or

14 3. Approved by the court.

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

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

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

21 1. Certified by the Department of Health and Mental
22 Hygiene;

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

25 3. Approved by the court.

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

28 (g) (1) In this subsection, "test" has the meaning stated in §
29 16–205.1 of this article.

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

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

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

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

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

12 SECTION 4. AND BE IT FURTHER ENACTED, That, if Section 3 of this Act takes
13 effect, Section 2 of this Act shall be abrogated and of no further force and effect.

14 SECTION 5. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take
15 effect October 1, 2017, the effective date of Chapter___(S.B. 165) of the Acts of the General
16 Assembly of 2017. If the effective date of Chapter___(S.B. 165) is amended, Section 3 of this
17 Act shall take effect on the taking effect of Chapter___(S.B. 165). If Chapter___(S.B. 165)
18 does not take effect, Section 3 of this Act shall be abrogated and of no further force and
19 effect.

20 SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions of
21 Sections 4 and 5 of this Act, this Act shall take effect October 1, 2017.