

HOUSE BILL 1438

R3

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CF SB 699

By: **Delegates Shewell, Elliott, Krebs, and Stocksdale**

Introduced and read first time: February 24, 2010

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Drug-Related Driving Offense – Penalties**

3 FOR the purpose of altering certain penalties for an offense of driving or attempting to
4 drive while impaired by a drug, a combination of drugs, or a combination of one
5 or more drugs and alcohol under certain circumstances; making technical and
6 stylistic changes; and generally relating to penalties for a certain drug-related
7 driving offense.

8 BY repealing and reenacting, with amendments,
9 Article – Transportation
10 Section 16–402(a)(25) and (34), 21–902(c), and 27–101(c)(24), (25), and (26), (f),
11 (j), (k), and (q)
12 Annotated Code of Maryland
13 (2009 Replacement Volume and 2009 Supplement)

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

16 **Article – Transportation**

17 16–402.

18 (a) After the conviction of an individual for a violation of Title 2, Subtitle 5, §
19 2–209, or § 3–211 of the Criminal Law Article, or of the vehicle laws or regulations of
20 this State or of any local authority, points shall be assessed against the individual as
21 of the date of violation and as follows:

22 (25) [Driving while impaired by alcohol or while impaired by a drug,
23 combination of drugs, or a combination of one or more drugs and alcohol,] **ANY**
24 **VIOLATION OF § 21–902(B) OF THIS ARTICLE** or driving within 12 hours after
25 arrest under § 21–902.1 of this article.....8 points

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (34) [Driving while under the influence of alcohol, while under the
2 influence of alcohol per se, or while impaired by an illegally used controlled dangerous
3 substance] **ANY VIOLATION OF § 21-902(A), (C), OR (D) OF THIS**
4 **ARTICLE.....12 points**

5 21-902.

6 (c) (1) A person may not drive or attempt to drive any vehicle while [he]
7 **THE PERSON** is so far impaired by any drug, any combination of drugs, or a
8 combination of one or more drugs and alcohol that [he] **THE PERSON** cannot drive a
9 vehicle safely.

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

15 (3) A person may not violate paragraph (1) [or (2)] of this subsection
16 while transporting a minor.

17 27-101.

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

21 (24) [Except as provided in subsections (f) and (q) of this section, §
22 21-902(c) (“Driving while impaired by drugs or drugs and alcohol”);

23 (25)] § 21-902.1 (“Driving within 12 hours after arrest”); or

24 [(26)] **(25)** § 27-107(d), (e), (f), or (g) (“Prohibited acts – Ignition
25 interlock systems”).

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

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

30 (ii) Except as provided in subsection (q) of this section, a second
31 or subsequent violation of[:

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

3 2. § 21–902(c) of this article (“Driving while impaired by
4 drugs or drugs and alcohol”)].

5 (2) Except as provided in subsection (q) of this section, for the purpose
6 of second or subsequent offender penalties for a violation of § 21–902(b) of this article
7 provided under paragraph (1) of this subsection, a prior conviction of § 21–902(a), (c),
8 or (d) of this article shall be considered a conviction of § 21–902(b) of this article.

9 [(3) Except as provided in subsection (q) of this section, for the purpose
10 of second or subsequent offender penalties for a violation of § 21–902(c) of this article
11 provided under paragraph (1) of this subsection, a prior conviction of § 21–902(a), (b),
12 or (d) of this article shall be considered a conviction of § 21–902(c) of this article.]

13 (j) (1) In this subsection, “imprisonment” includes confinement in:

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

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

17 1. Certified by the Department of Health and Mental
18 Hygiene;

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

21 3. Approved by the court.

22 (2) (i) A person who is convicted of a violation of § 21–902(a) of this
23 article within 5 years after a prior conviction under that subsection is subject to a
24 mandatory minimum penalty of imprisonment for not less than 5 days.

25 (ii) A person who is convicted of a third or subsequent offense
26 under § 21–902(a) of this article within 5 years is subject to a mandatory minimum
27 penalty of imprisonment for not less than 10 days.

28 **(3) (I) A PERSON WHO IS CONVICTED OF A VIOLATION OF §**
29 **21–902(C) OF THIS ARTICLE WITHIN 5 YEARS AFTER A PRIOR CONVICTION**
30 **UNDER THAT SUBSECTION IS SUBJECT TO A MANDATORY MINIMUM PENALTY OF**
31 **IMPRISONMENT FOR NOT LESS THAN 5 DAYS.**

32 **(II) A PERSON WHO IS CONVICTED OF A THIRD OR**
33 **SUBSEQUENT OFFENSE UNDER § 21–902(C) OF THIS ARTICLE WITHIN 5 YEARS IS**

1 **SUBJECT TO A MANDATORY MINIMUM PENALTY OF IMPRISONMENT FOR NOT**
 2 **LESS THAN 10 DAYS.**

3 **[(3)] (4)** (i) A person who is convicted of a violation of § 21–902(d)
 4 of this article within 5 years after a prior conviction under that subsection is subject to
 5 a mandatory minimum penalty of imprisonment for not less than 5 days.

6 (ii) A person who is convicted of a third or subsequent offense
 7 under § 21–902(d) of this article within 5 years is subject to a mandatory minimum
 8 penalty of imprisonment for not less than 10 days.

9 **[(4)] (5)** A person who is convicted of an offense under § 21–902(a) of
 10 this article within 5 years of a prior conviction of any offense under that subsection
 11 shall be required by the court to:

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

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

15 1. Certified by the Department of Health and Mental
 16 Hygiene;

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

19 3. Approved by the court.

20 **(6) A PERSON WHO IS CONVICTED OF AN OFFENSE UNDER §**
 21 **21–902(C) OF THIS ARTICLE WITHIN 5 YEARS OF A PRIOR CONVICTION OF ANY**
 22 **OFFENSE UNDER THAT SUBSECTION SHALL BE REQUIRED BY THE COURT TO:**

23 **(I) UNDERGO A COMPREHENSIVE ALCOHOL ABUSE**
 24 **ASSESSMENT OR A COMPREHENSIVE DRUG ABUSE ASSESSMENT, OR BOTH; AND**

25 **(II) IF RECOMMENDED AT THE CONCLUSION OF THE**
 26 **ASSESSMENT, PARTICIPATE IN AN ALCOHOL PROGRAM OR A DRUG PROGRAM OR**
 27 **BOTH AS ORDERED BY THE COURT THAT IS:**

28 1. **CERTIFIED BY THE DEPARTMENT OF HEALTH**
 29 **AND MENTAL HYGIENE;**

30 2. **CERTIFIED BY AN AGENCY IN AN ADJACENT**
 31 **STATE THAT HAS POWERS AND DUTIES SIMILAR TO THE DEPARTMENT OF**
 32 **HEALTH AND MENTAL HYGIENE; OR**

1 conviction under § 21–902(a), (b), or (c) of this article, within 5 years of the conviction
2 for a violation of § 21–902(d) of this article, shall be considered a conviction under §
3 21–902(d) of this article].

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

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

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

10 (iii) For a third or subsequent offense, a fine of not more than
11 \$4,000 or imprisonment for not more than 4 years or both.

12 (2) Any person who is convicted of a violation of § 21–902(b)(2) [or
13 (c)(3)] of this article is subject to:

14 (i) For a first offense, a fine of not more than \$1,000 or
15 imprisonment for not more than 6 months or both; and

16 (ii) For a second or subsequent offense, a fine of not more than
17 \$2,000 or imprisonment for not more than 1 year or both.

18 (3) For the purpose of determining second or subsequent offender
19 penalties provided under this subsection, a prior conviction of any provision of §
20 21–902 of this article that subjected a person to the penalties under this subsection
21 shall be considered a prior conviction.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2010.