

---

**By: Senator Dyson**

Introduced and read first time: January 29, 1997

Assigned to: Judicial Proceedings

---

A BILL ENTITLED

1 AN ACT concerning

**2 Drunk Driving - Intoxicated Per Se - Driving While Under the Influence**

3 FOR the purpose of reducing the level of alcohol concentration required for a  
4 determination of driving while intoxicated per se or driving while under the  
5 influence of alcohol; reducing the level of alcohol concentration that will result in  
6 the suspension of a driver's license; reducing the level of alcohol concentration that  
7 will result in the crime of homicide by motor vehicle or vessel while intoxicated per  
8 se and the crime of life threatening injury by motor vehicle or vessel while  
9 intoxicated per se; and generally relating to offenses involving driving while  
10 intoxicated per se or driving while under the influence of alcohol.

11 BY repealing and reenacting, with amendments,

12 Article - Transportation

13 Section 11-127.1 and 16-205.1(b), (f)(1), (4)(i), (7), and (8)(i) and (v), and (h)

14 Annotated Code of Maryland

15 (1992 Replacement Volume and 1996 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article - Courts and Judicial Proceedings

18 Section 10-307

19 Annotated Code of Maryland

20 (1995 Replacement Volume and 1996 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article 27 - Crimes and Punishments

23 Section 388A(a) and 388B(a)

24 Annotated Code of Maryland

25 (1996 Replacement Volume)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

27 MARYLAND, That the Laws of Maryland read as follows:

2

1                   **Article - Transportation**

2 11-127.1.

3                   "Intoxicated per se" means having an alcohol concentration at the time of testing of  
4 [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams  
5 of alcohol per 210 liters of breath.

6 16-205.1.

7                   (b) (1) Except as provided in subsection (c) of this section, a person may not be  
8 compelled to take a test. However, the detaining officer shall advise the person that, on  
9 receipt of a sworn statement from the officer that the person was so charged and refused  
10 to take a test, or was tested and the result indicated an alcohol concentration of [0.10 ]  
11 0.08 or more, the Administration shall:

12                                   (i) In the case of a person licensed under this title:

13   1. For a test result indicating an alcohol concentration of  
14 [0.10] 0.08 or more at the time of testing:

15   A. For a first offense, suspend the driver's license for 45 days; or

16   B. For a second or subsequent offense, suspend the driver's  
17 license for 90 days; or

18   2. For a test refusal:

19   A. For a first offense, suspend the driver's license for 120 days;  
20 or

21   B. For a second or subsequent offense, suspend the driver's  
22 license for 1 year;

23                                   (ii) In the case of a nonresident or unlicensed person:

24   1. For a test result indicating an alcohol concentration of  
25 [0.10] 0.08 or more at the time of testing:

26   A. For a first offense, suspend the person's driving privilege for  
27 45 days; or

28   B. For a second or subsequent offense, suspend the person's  
29 driving privilege for 90 days; or

30   2. For a test refusal:

31   A. For a first offense, suspend the person's driving privilege for  
32 120 days; or

33   B. For a second or subsequent offense, suspend the person's  
34 driving privilege for 1 year; and

3

1 (iii) In addition to any applicable driver's license suspensions  
2 authorized under this section, in the case of a person operating a commercial motor  
3 vehicle who refuses to take a test:

4 1. Disqualify the person's commercial driver's license for a  
5 period of 1 year for a first offense, 3 years for a first offense which occurs while  
6 transporting hazardous materials required to be placarded, and disqualify for life for a  
7 second or subsequent offense which occurs while operating any commercial motor  
8 vehicle; or

9 2. If the person is licensed as a commercial driver by another  
10 state, disqualify the person's privilege to operate a commercial motor vehicle and report  
11 the refusal and disqualification to the person's resident state which may result in further  
12 penalties imposed by the person's resident state.

13 (2) Except as provided in subsection (c) of this section, if a police officer  
14 stops or detains any person who the police officer has reasonable grounds to believe is or  
15 has been driving or attempting to drive a motor vehicle while intoxicated, while under the  
16 influence of alcohol, while so far under the influence of any drug, any combination of  
17 drugs, or a combination of one or more drugs and alcohol that the person could not drive  
18 a vehicle safely, while under the influence of a controlled dangerous substance, in  
19 violation of an alcohol restriction, or in violation of § 16-813 of this title, and who is not  
20 unconscious or otherwise incapable of refusing to take a test, the police officer shall:

21 (i) Detain the person;

22 (ii) Request that the person permit a test to be taken; and

23 (iii) Advise the person of the administrative sanctions that shall be  
24 imposed for refusal to take the test, including ineligibility for modification of a suspension  
25 or issuance of a restrictive license, and for test results indicating an alcohol concentration  
26 of [0.10] 0.08 or more at the time of testing.

27 (3) If the person refuses to take the test or takes a test which results in an  
28 alcohol concentration of [0.10] 0.08 or more at the time of testing, the police officer shall:

29 (i) Confiscate the person's driver's license issued by this State;

30 (ii) Acting on behalf of the Administration, personally serve an order  
31 of suspension on the person;

32 (iii) Issue a temporary license to drive;

33 (iv) Inform the person that the temporary license allows the person to  
34 continue driving for 45 days if the person is licensed under this title;

35 (v) Inform the person that:

36 1. The person has a right to request, at that time or within 10  
37 days, a hearing to show cause why the driver's license should not be suspended  
38 concerning the refusal to take the test or for test results indicating an alcohol  
39 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be  
40 scheduled within 45 days; and



5

1 1. For a test result indicating an alcohol concentration of  
2 [0.10] 0.08 or more at the time of testing:

3 A. For a first offense, for 45 days; or

4 B. For a second or subsequent offense, for 90 days; or

5 2. For a test refusal:

6 A. For a first offense, for 120 days; or

7 B. For a second offense or subsequent offense, for 1 year; and

8 (7) (i) At a hearing under this section, the person has the rights described  
9 in § 12-206 of this article, but at the hearing the only issues shall be:

10 1. Whether the police officer who stops or detains a person had  
11 reasonable grounds to believe the person was driving or attempting to drive while  
12 intoxicated, while under the influence of alcohol, while so far under the influence of any  
13 drug, any combination of drugs, or a combination of one or more drugs and alcohol that  
14 the person could not drive a vehicle safely, while under the influence of a controlled  
15 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of  
16 this title;

17 2. Whether there was evidence of the use by the person of  
18 alcohol, any drug, any combination of drugs, a combination of one or more drugs and  
19 alcohol, or a controlled dangerous substance;

20 3. Whether the police officer requested a test after the person  
21 was fully advised of the administrative sanctions that shall be imposed, including the fact  
22 that a person who refuses to take the test is ineligible for modification of a suspension or  
23 issuance of a restrictive license;

24 4. Whether the person refused to take the test;

25 5. Whether the person drove or attempted to drive a motor  
26 vehicle while having an alcohol concentration of [0.10] 0.08 or more at the time of  
27 testing; or

28 6. If the hearing involves disqualification of a commercial  
29 driver's license, whether the person was operating a commercial motor vehicle.

30 (ii) The sworn statement of the police officer and of the test technician  
31 or analyst shall be prima facie evidence of a test refusal or a test resulting in an alcohol  
32 concentration of [0.10] 0.08 or more at the time of testing.

33 (8) (i) After a hearing, the Administration shall suspend the driver's  
34 license or privilege to drive of the person charged under subsection (b) or (c) of this  
35 section if:

36 1. The police officer who stopped or detained the person had  
37 reasonable grounds to believe the person was driving or attempting to drive while  
38 intoxicated, while under the influence of alcohol, while so far under the influence of any  
39 drug, any combination of drugs, or a combination of one or more drugs and alcohol that

6

1 the person could not drive a vehicle safely, while under the influence of a controlled  
 2 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of  
 3 this title;

4 2. There was evidence of the use by the person of alcohol, any  
 5 drug, any combination of drugs, a combination of one or more drugs and alcohol, or a  
 6 controlled dangerous substance;

7 3. The police officer requested a test after the person was fully  
 8 advised of the administrative sanctions that shall be imposed, including the fact that a  
 9 person who refuses to take the test is ineligible for modification of a suspension or  
 10 issuance of a restrictive license; and

11 4. A. The person refused to take the test; or

12 B. A test to determine alcohol concentration was taken and the  
 13 test result indicated an alcohol concentration of [0.10] 0.08 or more at the time of testing.

14 (v) The suspension imposed shall be:

15 1. For a test result indicating an alcohol concentration of  
 16 [0.10] 0.08 or more at the time of testing:

17 A. For a first offense, a suspension for 45 days; or

18 B. For a second or subsequent offense, a suspension for 90 days;

19 or

20 2. For a test refusal:

21 A. For a first offense, a suspension for 120 days; or

22 B. For a second or subsequent offense, a suspension for 1 year.

23 (h) Notwithstanding any other provision of this section, if a driver's license is  
 24 suspended based on multiple administrative offenses of refusal to take a test, or a test to  
 25 determine alcohol concentration taken that indicated an alcohol concentration of [0.10]  
 26 0.08 or more at the time of testing, or any combination of these administrative offenses  
 27 committed at the same time, or arising out of circumstances simultaneous in time and  
 28 place, or arising out of the same incident, the Administration:

29 (1) Shall suspend the driver's license for the administrative offense that  
 30 results in the lengthiest period of suspension; and

31 (2) May not impose any additional periods of suspension for the remainder  
 32 of the administrative offenses.

33 **Article - Courts and Judicial Proceedings**

34 10-307.

35 (a) (1) In a proceeding in which a person is charged with a violation of Article  
 36 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle  
 37 in violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, the  
 38 amount of alcohol in the person's breath or blood shown by analysis as provided in this

7

1 subtitle is admissible in evidence and has the effect set forth in subsections (b) through  
2 (e) of this section.

3 (2) Alcohol concentration as used in this section shall be measured by:

4 (i) Grams of alcohol per 100 milliliters of blood; or

5 (ii) Grams of alcohol per 210 liters of breath.

6 (b) If at the time of testing a person has an alcohol concentration of [0.05] 0.04 or  
7 less, as determined by an analysis of the person's blood or breath, it shall be presumed  
8 that the defendant was not intoxicated and that the defendant was not driving while  
9 under the influence of alcohol.

10 (c) If at the time of testing a person has an alcohol concentration of more than  
11 [0.05] 0.04 but less than [0.07] 0.05, as determined by an analysis of the person's blood  
12 or breath, this fact may not give rise to any presumption that the defendant was or was  
13 not intoxicated or that the defendant was or was not driving while under the influence of  
14 alcohol, but this fact may be considered with other competent evidence in determining  
15 the guilt or innocence of the defendant.

16 (d) If at the time of testing a person has an alcohol concentration of at least  
17 [0.07] 0.05 but less than [0.10] 0.08, as determined by an analysis of the person's blood  
18 or breath, it shall be prima facie evidence that the defendant was driving while under the  
19 influence of alcohol.

20 (e) If at the time of testing a person has an alcohol concentration of 0.02 or more,  
21 as determined by an analysis of the person's blood or breath, it shall be prima facie  
22 evidence that the defendant was driving with alcohol in the defendant's blood.

23 (f) If at the time of testing a person has an alcohol concentration of 0.02 or more,  
24 as determined by an analysis of the person's blood or breath, it shall be prima facie  
25 evidence that a defendant was driving in violation of § 16-113(b) of the Transportation  
26 Article.

27 **Article 27 - Crimes and Punishments**

28 388A.

29 (a) (1) In this section the following words have the meanings indicated.

30 (2) "Intoxicated per se" means an alcohol concentration at the time of  
31 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood  
32 or grams of alcohol per 210 liters of breath.

33 (3) "Under the influence of alcohol" has the meaning indicated in and is  
34 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts Article  
35 regarding driving while under the influence of alcohol under § 21-902(b) of the  
36 Transportation Article.

37 (4) "Under the influence of drugs" means so far under the influence of a  
38 drug, a combination of drugs, or a combination of one or more drugs and alcohol that a  
39 person cannot drive, operate, or control a motor vehicle or vessel safely.

8

1                   (5) "Under the influence of a controlled dangerous substance" means under  
2 the influence of a controlled dangerous substance, as that term is defined in § 279 of this  
3 article, if the person is not entitled to use the controlled dangerous substance under the  
4 laws of this State.

5 388B.

6                   (a) (1) In this section the following words have the meanings indicated.

7                   (2) "Intoxicated per se" means an alcohol concentration at the time of  
8 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood  
9 or grams of alcohol per 210 liters of breath.

10                   (3) "Under the influence of alcohol" has the meaning indicated in and is  
11 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts Article  
12 regarding driving while under the influence of alcohol under § 21-902(b) of the  
13 Transportation Article.

14                   (4) "Under the influence of drugs" means so far under the influence of a  
15 drug, a combination of drugs, or a combination of one or more drugs and alcohol that a  
16 person cannot drive, operate, or control a motor vehicle or vessel safely.

17                   (5) "Under the influence of a controlled dangerous substance" means under  
18 the influence of a controlled dangerous substance, as that term is defined in § 279 of this  
19 article, if the person is not entitled to use the controlled dangerous substance under the  
20 laws of this State.

21                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 1997.