
By: **Delegates Morhaim and M. Burns**
Introduced and read first time: January 26, 1998
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Alcohol Concentration Measurement**

3 FOR the purpose of requiring a court or an administrative law judge to convert an
4 alcohol concentration measured by milligrams of alcohol per deciliters of blood
5 or milligrams of alcohol per 100 milliliters of blood into grams of alcohol per 100
6 milliliters of blood; and generally relating to the drunk and drugged driving and
7 measurement of alcohol concentration.

8 BY repealing and reenacting, with amendments,
9 Article - Courts and Judicial Proceedings
10 Section 10-307
11 Annotated Code of Maryland
12 (1995 Replacement Volume and 1997 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article - Transportation
15 Section 11-103.2 and 11-127.1
16 Annotated Code of Maryland
17 (1992 Replacement Volume and 1997 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article 27 - Crimes and Punishments
20 Section 388A and 388B
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 1997 Supplement)

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

25 **Article - Courts and Judicial Proceedings**

26 10-307.

1 (a) (1) In a proceeding in which a person is charged with a violation of
2 Article 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting to drive
3 a vehicle in violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation
4 Article, the amount of alcohol in the person's breath or blood shown by analysis as
5 provided in this subtitle is admissible in evidence and has the effect set forth in
6 subsections (b) through (e) of this section.

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

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

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

10 (3) IF THE AMOUNT OF ALCOHOL IN THE PERSON'S BLOOD SHOWN BY
11 ANALYSIS AS PROVIDED IN THIS SUBTITLE IS MEASURED BY MILLIGRAMS OF
12 ALCOHOL PER DECILITERS OF BLOOD OR MILLIGRAMS OF ALCOHOL PER 100
13 MILLILITERS OF BLOOD, A COURT OR AN ADMINISTRATIVE LAW JUDGE, AS THE CASE
14 MAY BE, SHALL CONVERT THE MEASUREMENT INTO GRAMS OF ALCOHOL PER 100
15 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1000.

16 (b) If at the time of testing a person has an alcohol concentration of 0.05 or
17 less, as determined by an analysis of the person's blood or breath, it shall be presumed
18 that the defendant was not intoxicated and that the defendant was not driving while
19 under the influence of alcohol.

20 (c) If at the time of testing a person has an alcohol concentration of more than
21 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath,
22 this fact may not give rise to any presumption that the defendant was or was not
23 intoxicated or that the defendant was or was not driving while under the influence of
24 alcohol, but this fact may be considered with other competent evidence in determining
25 the guilt or innocence of the defendant.

26 (d) If at the time of testing a person has an alcohol concentration of at least
27 0.07 but less than 0.10, as determined by an analysis of the person's blood or breath,
28 it shall be prima facie evidence that the defendant was driving while under the
29 influence of alcohol.

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

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

Article - Transportation

11-103.2.

(A) "Alcohol concentration" means:

(1) The number of grams of alcohol per 100 milliliters of blood; or

(2) The number of grams of alcohol per 210 liters of breath.

(B) IF THE ALCOHOL CONCENTRATION IS INDICATED IN THE NUMBER OF MILLIGRAMS OF ALCOHOL PER DECILITER OF BLOOD OR THE NUMBER OF MILLIGRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD, A COURT OR AN ADMINISTRATIVE LAW JUDGE, AS THE CASE MAY BE, SHALL CONVERT THE MEASUREMENT INTO THE NUMBER OF GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1000.

11-127.1.

(A) "Intoxicated per se" means having an alcohol concentration at the time of testing of 0.10 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(B) IF THE ALCOHOL CONCENTRATION IS MEASURED BY MILLIGRAMS OF ALCOHOL PER DECILITER OF BLOOD OR MILLIGRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD, A COURT OR AN ADMINISTRATIVE LAW JUDGE, AS THE CASE MAY BE, SHALL CONVERT THE MEASUREMENT INTO GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1000.

Article 27 - Crimes and Punishments

388A.

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

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

(II) IF THE ALCOHOL CONCENTRATION IS MEASURED BY MILLIGRAMS OF ALCOHOL PER DECILITER OF BLOOD OR MILLIGRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD, A COURT SHALL CONVERT THE MEASUREMENT INTO GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1000.

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

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

4 (5) "Under the influence of a controlled dangerous substance" means
5 under the influence of a controlled dangerous substance, as that term is defined in §
6 279 of this article, if the person is not entitled to use the controlled dangerous
7 substance under the laws of this State.

8 (b) Any person causing the death of another as the result of the person's
9 negligent driving, operation, or control of a motor vehicle or vessel while intoxicated
10 or intoxicated per se is guilty of a felony to be known as "homicide by motor vehicle or
11 vessel while intoxicated", and the person so convicted shall be punished by
12 imprisonment for not more than 5 years, or by fine of not more than \$5,000 or both
13 fine and imprisonment.

14 (c) A person who causes the death of another as the result of the person's
15 negligent driving, operation, or control of a motor vehicle or vessel while under the
16 influence of alcohol is guilty of a felony to be known as "homicide by motor vehicle or
17 vessel while under the influence", and on conviction shall be punished by
18 imprisonment for not more than 3 years or a fine of not more than \$5,000 or both.

19 (d) (1) A person who causes the death of another as the result of the person's
20 negligent driving, operation, or control of a motor vehicle or vessel while under the
21 influence of drugs is guilty of a felony to be known as "homicide by motor vehicle or
22 vessel while under the influence of drugs", and on conviction shall be punished by
23 imprisonment for not more than 3 years or a fine of not more than \$5,000 or both.

24 (2) It is not a defense to any charge of violating this subsection that the
25 person charged is or was entitled under the laws of this State to use the drug,
26 combination of drugs, or combination of one or more drugs and alcohol, unless the
27 person was unaware that the drug or combination would make the person incapable
28 of safely driving, operating, or controlling a motor vehicle or vessel.

29 (e) A person who causes the death of another as the result of the person's
30 negligent driving, operation, or control of a motor vehicle or vessel while under the
31 influence of a controlled dangerous substance is guilty of a felony to be known as
32 "homicide by motor vehicle or vessel while under the influence of a controlled
33 dangerous substance", and on conviction shall be punished by imprisonment for not
34 more than 3 years or a fine of not more than \$5,000 or both.

35 (f) (1) In any indictment, information, or other charging document under
36 this section, it is not necessary to set forth the manner and means of death.

37 (2) It shall be sufficient to use a formula substantially to the following
38 effect:

39 (i) "That A-B on the day of, nineteen hundred and
40 at the County (City) aforesaid, unlawfully, while intoxicated did kill C-D,
41 against the peace, government, and dignity of the State.";

1 (ii) "That A-B on the day of, nineteen hundred and
2 at the County (City) aforesaid, unlawfully, while under the influence of
3 alcohol, did kill C-D, against the peace, government, and dignity of the State.";

4 (iii) "That A-B on the day of, nineteen hundred and
5 at the County (City) aforesaid, unlawfully, while under the influence of drugs,
6 did kill C-D, against the peace, government, and dignity of the State."; or

7 (iv) "That A-B on the day of, nineteen hundred and
8 at the County (City) aforesaid, unlawfully, while under the influence of a
9 controlled dangerous substance, did kill C-D, against the peace, government, and
10 dignity of the State.".

11 388B.

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

13 (2) (I) "Intoxicated per se" means an alcohol concentration at the time
14 of testing of 0.10 or more as measured by grams of alcohol per 100 milliliters of blood
15 or grams of alcohol per 210 liters of breath.

16 (II) IF THE ALCOHOL CONCENTRATION IS MEASURED BY
17 MILLIGRAMS OF ALCOHOL PER DECILITER OF BLOOD OR MILLIGRAMS OF ALCOHOL
18 PER 100 MILLILITERS OF BLOOD, A COURT SHALL CONVERT THE MEASUREMENT
19 INTO GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD BY DIVIDING THE
20 MEASUREMENT BY 1000.

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

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

28 (5) "Under the influence of a controlled dangerous substance" means
29 under the influence of a controlled dangerous substance, as that term is defined in §
30 279 of this article, if the person is not entitled to use the controlled dangerous
31 substance under the laws of this State.

32 (b) A person who causes a life threatening injury to another as a result of the
33 person's negligent driving, operation, or control of a motor vehicle or vessel while
34 intoxicated or intoxicated per se is guilty of a misdemeanor to be known as "life
35 threatening injury by motor vehicle or vessel while intoxicated or intoxicated per se",
36 and on conviction the person shall be punished by imprisonment for not more than 3
37 years or a fine of not more than \$5,000 or both.

38 (c) A person who causes a life threatening injury to another as a result of the
39 person's negligent driving, operation, or control of a motor vehicle or vessel while

1 under the influence of alcohol is guilty of a misdemeanor to be known as "life
2 threatening injury by motor vehicle or vessel while under the influence of alcohol",
3 and on conviction the person shall be punished by imprisonment for not more than 2
4 years or a fine of not more than \$3,000 or both.

5 (d) A person who causes a life threatening injury to another as a result of the
6 person's negligent driving, operation, or control of a motor vehicle or vessel while
7 under the influence of drugs is guilty of a misdemeanor to be known as "life
8 threatening injury by motor vehicle or vessel while under the influence of drugs", and
9 on conviction the person shall be punished by imprisonment for not more than 2 years
10 or a fine of not more than \$3,000 or both.

11 (e) A person who causes a life threatening injury to another as a result of the
12 person's negligent driving, operation, or control of a motor vehicle or vessel while
13 under the influence of a controlled dangerous substance is guilty of a misdemeanor to
14 be known as "life threatening injury by motor vehicle or vessel while under the
15 influence of a controlled dangerous substance", and on conviction the person shall be
16 punished by imprisonment for not more than 2 years or a fine of not more than \$3,000
17 or both.

18 (f) (1) In any indictment, information, or other charging document under
19 this section, it is not necessary to set forth the manner and means of the life
20 threatening injury.

21 (2) It shall be sufficient to use a formula substantially to the following
22 effect:

23 (i) "That A-B on the day of, nineteen hundred and
24 at the County (City) aforesaid, unlawfully, while intoxicated, did cause a life
25 threatening injury to C-D, against the peace, government, and dignity of the State.";

26 (ii) "That A-B on the day of, nineteen hundred and
27 at the County (City) aforesaid, unlawfully, while under the influence of
28 alcohol, did cause a life threatening injury to C-D, against the peace, government,
29 and dignity of the State.";

30 (iii) "That A-B on the day of, nineteen hundred and
31 at the County (City) aforesaid, unlawfully, while under the influence of
32 drugs, did cause a life threatening injury to C-D, against the peace, government, and
33 dignity of the State."; or

34 (iv) "That A-B on the day of, nineteen hundred and
35 at the County (City) aforesaid, unlawfully, while under the influence of a
36 controlled dangerous substance, did cause a life threatening injury to C-D, against
37 the peace, government, and dignity of the State.".

38 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
39 October 1, 1998.