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

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Committee Report: Favorable  
House action: Adopted  
Read second time: March 23, 1998

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CHAPTER \_\_\_\_\_

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)

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

3 **Article - Courts and Judicial Proceedings**

4 10-307.

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

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

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

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

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

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

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

30 (d) If at the time of testing a person has an alcohol concentration of at least  
31 0.07 but less than 0.10, as determined by an analysis of the person's blood or breath,  
32 it shall be prima facie evidence that the defendant was driving while under the  
33 influence of alcohol.

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

37 (f) If at the time of testing a person has an alcohol concentration of 0.02 or  
38 more, as determined by an analysis of the person's blood or breath, it shall be prima

1 facie evidence that a defendant was driving in violation of § 16-113(b) of the  
2 Transportation Article.

3

### Article - Transportation

4 11-103.2.

5 (A) "Alcohol concentration" means:

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

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

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

14 11-127.1.

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

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

23

### Article 27 - Crimes and Punishments

24 388A.

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

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

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

34 (3) "Under the influence of alcohol" has the meaning indicated in and is  
35 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts

1 Article regarding driving while under the influence of alcohol under § 21-902(b) of the  
2 Transportation Article.

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

6 (5) "Under the influence of a controlled dangerous substance" means  
7 under the influence of a controlled dangerous substance, as that term is defined in §  
8 279 of this article, if the person is not entitled to use the controlled dangerous  
9 substance under the laws of this State.

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

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

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

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

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

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

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

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

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

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

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

14 388B.

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

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

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

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

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

31 (5) "Under the influence of a controlled dangerous substance" means  
32 under the influence of a controlled dangerous substance, as that term is defined in §  
33 279 of this article, if the person is not entitled to use the controlled dangerous  
34 substance under the laws of this State.

35 (b) A person who causes a life threatening injury to another as a result of the  
36 person's negligent driving, operation, or control of a motor vehicle or vessel while  
37 intoxicated or intoxicated per se is guilty of a misdemeanor to be known as "life  
38 threatening injury by motor vehicle or vessel while intoxicated or intoxicated per se",

1 and on conviction the person shall be punished by imprisonment for not more than 3  
2 years or a fine of not more than \$5,000 or both.

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

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

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

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

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

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

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

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

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

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