

HOUSE BILL 361

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R3  
SB 450/97 - JPR

1998 Regular Session  
8lr0652  
CF 8lr0038

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By: **Delegates Genn, D. Davis, Barve, Benson, Bobo, Brinkley, M. Burns, Conroy, Conway, Crumlin, Cryor, C. Davis, Dypski, Exum, Finifter, Franchot, Frank, Goldwater, Gordon, Grosfeld, Healey, Hecht, Heller, Hixson, Howard, Hubbard, B. Hughes, Hurson, Jacobs, Jones, Kach, Kagan, Kopp, La Vay, Leopold, Mandel, Marriott, Menes, C. Mitchell, Morgan, Morhaim, Mossburg, Muse, Nathan-Pulliam, Owings, Patterson, Perry, Petzold, Pitkin, Preis, Rawlings, Rosenberg, Shriver, Snodgrass, Stocksdales, Stull, Valderrama, Watson, and Miller**

Introduced and read first time: January 30, 1998  
Assigned to: Judiciary

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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; reducing the level of alcohol  
5 concentration that will result in the suspension of a driver's license; reducing  
6 the level of alcohol concentration that constitutes prima facie evidence of driving  
7 while under the influence; reducing the level of alcohol concentration that will  
8 result in the crime of homicide by motor vehicle or vessel while intoxicated per  
9 se and the crime of life threatening injury by motor vehicle or vessel while  
10 intoxicated per se; and generally relating to offenses involving driving while  
11 intoxicated per se or driving while under the influence of alcohol.

12 BY repealing and reenacting, with amendments,  
13 Article - Transportation  
14 Section 11-127.1 and 16-205.1(b), (f)(1), (4)(i), (7), and (8)(i) and (v), and (h)  
15 Annotated Code of Maryland  
16 (1992 Replacement Volume and 1997 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - Courts and Judicial Proceedings  
19 Section 10-307  
20 Annotated Code of Maryland  
21 (1995 Replacement Volume and 1997 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article 27 - Crimes and Punishments  
24 Section 388A(a) and 388B(a)

1 Annotated Code of Maryland  
2 (1996 Replacement Volume and 1997 Supplement)

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

5 **Article - Transportation**

6 11-127.1.

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

10 16-205.1.

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

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

17 1. For a test result indicating an alcohol concentration of  
18 [0.10] 0.08 or more at the time of testing:

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

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

23 2. For a test refusal:

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

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

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

29 1. For a test result indicating an alcohol concentration of  
30 [0.10] 0.08 or more at the time of testing:

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

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

3 2. For a test refusal:

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

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

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

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

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

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

29 (i) Detain the person;

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

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

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

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

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

3 (iii) Issue a temporary license to drive;

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

6 (v) Inform the person that:

7 1. The person has a right to request, at that time or within  
8 10 days, a hearing to show cause why the driver's license should not be suspended  
9 concerning the refusal to take the test or for test results indicating an alcohol  
10 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be  
11 scheduled within 45 days; and

12 2. If a hearing request is not made at that time or within 10  
13 days, but within 30 days the person requests a hearing, a hearing to show cause why  
14 the driver's license should not be suspended concerning the refusal to take the test or  
15 for test results indicating an alcohol concentration of [0.10] 0.08 or more at the time  
16 of testing will be scheduled, but a request made after 10 days does not extend a  
17 temporary license issued by the police officer that allows the person to continue  
18 driving for 45 days;

19 (vi) Advise the person of the administrative sanctions that shall be  
20 imposed in the event of failure to request a hearing, failure to attend a requested  
21 hearing, or upon an adverse finding by the hearing officer; and

22 (vii) Within 72 hours after the issuance of the order of suspension,  
23 send any confiscated driver's license, copy of the suspension order, and a sworn  
24 statement to the Administration, that states:

25 1. The officer had reasonable grounds to believe that the  
26 person had been driving or attempting to drive a motor vehicle on a highway or on  
27 any private property that is used by the public in general in this State while  
28 intoxicated, while under the influence of alcohol, while so far under the influence of  
29 any drug, any combination of drugs, or a combination of one or more drugs and  
30 alcohol that the person could not drive a vehicle safely, while under the influence of a  
31 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
32 § 16-813 of this title;

33 2. The person refused to take a test when requested by the  
34 police officer or the person submitted to the test which indicated an alcohol  
35 concentration of [0.10] 0.08 or more at the time of testing; and

36 3. The person was fully advised of the administrative  
37 sanctions that shall be imposed, including the fact that a person who refuses to take  
38 the test is ineligible for modification of a suspension or issuance of a restrictive  
39 license.

1 (f) (1) Subject to the provisions of this subsection, at the time of, or within  
2 30 days from the date of, the issuance of an order of suspension, a person may submit  
3 a written request for a hearing before an officer of the Administration if:

4 (i) The person is arrested for driving or attempting to drive a motor  
5 vehicle while intoxicated, while under the influence of alcohol, while so far under the  
6 influence of any drug, any combination of drugs, or a combination of one or more  
7 drugs and alcohol that the person could not drive a vehicle safely, while under the  
8 influence of a controlled dangerous substance, in violation of an alcohol restriction, or  
9 in violation of § 16-813 of this title; and

10 (ii) 1. There is an alcohol concentration of [0.10] 0.08 or more at  
11 the time of testing; or

12 2. The person refused to take a test.

13 (4) If a hearing request is not made at the time of or within 10 days after  
14 the issuance of the order of suspension, the Administration shall:

15 (i) Make the suspension order effective suspending the license:

16 1. For a test result indicating an alcohol concentration of  
17 [0.10] 0.08 or more at the time of testing:

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

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

20 2. For a test refusal:

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

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

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

25 1. Whether the police officer who stops or detains a person  
26 had reasonable grounds to believe the person was driving or attempting to drive while  
27 intoxicated, while under the influence of alcohol, while so far under the influence of  
28 any drug, any combination of drugs, or a combination of one or more drugs and  
29 alcohol that the person could not drive a vehicle safely, while under the influence of a  
30 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
31 § 16-813 of this title;

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

35 3. Whether the police officer requested a test after the  
36 person was fully advised of the administrative sanctions that shall be imposed,

1 including the fact that a person who refuses to take the test is ineligible for  
2 modification of a suspension or issuance of a restrictive license;

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

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

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

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

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

15 1. The police officer who stopped or detained the person had  
16 reasonable grounds to believe the person was driving or attempting to drive while  
17 intoxicated, while under the influence of alcohol, while so far under the influence of  
18 any drug, any combination of drugs, or a combination of one or more drugs and  
19 alcohol that the person could not drive a vehicle safely, while under the influence of a  
20 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
21 § 16-813 of this title;

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

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

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

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

33 (v) The suspension imposed shall be:

34 1. For a test result indicating an alcohol concentration of  
35 [0.10] 0.08 or more at the time of testing:

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



1 influence of alcohol, but this fact may be considered with other competent evidence in  
2 determining the guilt or innocence of the defendant.

3 (d) If at the time of testing a person has an alcohol concentration of at least  
4 [0.07] 0.06 but less than [0.10] 0.08, as determined by an analysis of the person's  
5 blood or breath, it shall be prima facie evidence that the defendant was driving while  
6 under the influence of alcohol.

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

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

#### 14 **Article 27 - Crimes and Punishments**

15 388A.

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

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

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

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

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

31 388B.

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

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

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

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

8                   (5)       "Under the influence of a controlled dangerous substance" means  
9 under the influence of a controlled dangerous substance, as that term is defined in §  
10 279 of this article, if the person is not entitled to use the controlled dangerous  
11 substance under the laws of this State.

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