

HOUSE BILL 1394
EMERGENCY BILL

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E2

1998 Regular Session
8lr2771

By: **Delegate Genn**

Introduced and read first time: March 6, 1998

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Manslaughter by Automobile - Homicide by Motor Vehicle - Statute of**
3 **Limitations - Corrective Repeal**

4 FOR the purpose of repealing an inoperative statute of limitations for the prosecution
5 of the offenses of manslaughter by automobile, vessel, and other vehicles
6 operated in a grossly negligent manner and homicide by motor vehicle or vessel
7 while intoxicated or under the influence of alcohol or drugs; making this Act an
8 emergency measure; and generally relating to the prosecution of certain felonies
9 relating to manslaughter by vehicle and homicide by motor vehicle or vessel.

10 BY repealing and reenacting, without amendments,
11 Article 27 - Crimes and Punishments
12 Section 388 and 388A
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1997 Supplement)

15 BY repealing
16 Article - Courts and Judicial Proceedings
17 Section 5-106(p)
18 Annotated Code of Maryland
19 (1995 Replacement Volume and 1997 Supplement)

20 Preamble

21 WHEREAS, Chapters 372 and 373 of the Acts of the General Assembly of
22 1997, identical enactments, changed from misdemeanor to felony status the crime of
23 manslaughter by a vehicle operated in a grossly negligent manner (Article 27, § 388,
24 of the Code) and the crime of homicide by motor vehicle or vessel while intoxicated or
25 under the influence of alcohol, drugs, or controlled dangerous substances (Article 27,
26 § 388A); and

27 WHEREAS, Prior to the enactment of Chapters 372 and 373, § 5-106(p) of the
28 Courts and Judicial Proceedings Article of the Code provided a three-year statute of
29 limitations on the prosecution of offenses under §§ 388 and 388A of Article 27; and

1 WHEREAS, There is no statute of limitations on the prosecution of felonies
2 under Maryland law; and

3 WHEREAS, To avoid any confusion or the inability to appropriately prosecute
4 individuals who have violated the provisions of §§ 388 or 388A of Article 27, the
5 statute of limitations for the prosecution of those offenses, which has been rendered
6 inoperative with the enactment of Chapters 372 and 373 of 1997 that changed the
7 status of those crimes from misdemeanor to felony, should be repealed; now, therefore,

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

10 **Article 27 - Crimes and Punishments**

11 388.

12 Every person causing the death of another as the result of the driving, operation
13 or control of an automobile, motor vehicle, locomotive, engine, car, streetcar, train,
14 vessel, or other vehicle in a grossly negligent manner, shall be guilty of a felony to be
15 known as "manslaughter by automobile, motor vehicle, locomotive, engine, car,
16 streetcar, train, vessel, or other vehicle," and the person so convicted shall be
17 sentenced to jail or the house of correction for not more than 10 years, or be fined not
18 more than \$5,000 or be both fined and imprisoned.

19 In any indictment or other charging document for manslaughter by automobile,
20 motor vehicle, locomotive, engine, car, streetcar, train, vessel, or other vehicle, it shall
21 not be necessary to set forth the manner and means of death. It shall be sufficient to
22 use a formula substantially to the following effect: "That A-B on the day of,
23 nineteen hundred and .. at the County (City) aforesaid, unlawfully, in a grossly
24 negligent manner did kill and slay C-D."

25 388A.

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

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

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

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

37 (5) "Under the influence of a controlled dangerous substance" means
38 under the influence of a controlled dangerous substance, as that term is defined in §

1 279 of this article, if the person is not entitled to use the controlled dangerous
2 substance under the laws of this State.

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

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

14 (d) (1) 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 drugs is guilty of a felony to be known as "homicide by motor vehicle or
17 vessel while under the influence of drugs", 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 (2) It is not a defense to any charge of violating this subsection that the
20 person charged is or was entitled under the laws of this State to use the drug,
21 combination of drugs, or combination of one or more drugs and alcohol, unless the
22 person was unaware that the drug or combination would make the person incapable
23 of safely driving, operating, or controlling a motor vehicle or vessel.

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

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

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

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

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

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

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

8 **Article - Courts and Judicial Proceedings**

9 5-106.

10 [(p) A prosecution for an offense under Article 27, § 388 or § 388A of the Code
11 shall be instituted within 3 years after the offense was committed.]

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an
13 emergency measure, is necessary for the immediate preservation of the public health
14 and safety, has been passed by a yea and nay vote supported by three-fifths of all the
15 members elected to each of the two Houses of the General Assembly, and shall take
16 effect from the date it is enacted.