
By: **Delegate Genn**

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Assigned to: Rules and Executive Nominations

Re-referred to: Judiciary, March 16, 1998

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 1998

CHAPTER _____

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

11 BY repealing and reenacting, without amendments,
12 Article 27 - Crimes and Punishments
13 Section 388 and 388A
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1997 Supplement)

16 BY repealing
17 Article - Courts and Judicial Proceedings
18 Section 5-106(p)
19 Annotated Code of Maryland
20 (1995 Replacement Volume and 1997 Supplement)

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Preamble

2 WHEREAS, Chapters 372 and 373 of the Acts of the General Assembly of
3 1997, identical enactments, changed from misdemeanor to felony status the crime of
4 manslaughter by a vehicle operated in a grossly negligent manner (Article 27, § 388,
5 of the Code) and the crime of homicide by motor vehicle or vessel while intoxicated or
6 under the influence of alcohol, drugs, or controlled dangerous substances (Article 27,
7 § 388A); and

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

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

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17 status of those crimes from misdemeanor to felony, should be repealed; now, therefore,

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

20

Article 27 - Crimes and Punishments

21 388.

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

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

35 388A.

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

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

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

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

11 (5) "Under the influence of a controlled dangerous substance" means
12 under the influence of a controlled dangerous substance, as that term is defined in §
13 279 of this article, if the person is not entitled to use the controlled dangerous
14 substance under the laws of this State.

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

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

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

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

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

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

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

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

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

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

18 **Article - Courts and Judicial Proceedings**

19 5-106.

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

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