

SENATE BILL 160

Unofficial Copy
R3
SB 450/97 - JPR

1998 Regular Session
8lr0038
CF 8lr0652

By: **Senators Ruben, Lawlah, Dyson, Forehand, Munson, Boozer, Blount, Hollinger, Kasemeyer, Madden, McCabe, Roesser, Frosh, Van Hollen, Teitelbaum, Dorman, Currie, Middleton, Astle, Middlebrooks, Craig, Stoltzfus, Hogan, Hoffman, Conway, McFadden, and Fry**

Introduced and read first time: January 23, 1998
Assigned to: Judicial Proceedings

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)
25 Annotated Code of Maryland
26 (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 - Transportation**

4 11-127.1.

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

8 16-205.1.

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

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

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

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

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

21 2. For a test refusal:

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

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

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

27 1. For a test result indicating an alcohol concentration of
28 [0.10] 0.08 or more at the time of testing:

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

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

33 2. For a test refusal:

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

3 (v) Inform the person that:

4 1. The person has a right to request, at that time or within
5 10 days, a hearing to show cause why the driver's license should not be suspended
6 concerning the refusal to take the test or for test results indicating an alcohol
7 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be
8 scheduled within 45 days; and

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

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

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

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

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

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

37 (f) (1) Subject to the provisions of this subsection, at the time of, or within
38 30 days from the date of, the issuance of an order of suspension, a person may submit
39 a written request for a hearing before an officer of the Administration if:

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

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

9 2. The person refused to take a test.

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

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

13 1. For a test result indicating an alcohol concentration of
14 [0.10] 0.08 or more at the time of testing:

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

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

17 2. For a test refusal:

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

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

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

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

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

32 3. Whether the police officer requested a test after the
33 person was fully advised of the administrative sanctions that shall be imposed,
34 including the fact that a person who refuses to take the test is ineligible for
35 modification of a suspension or issuance of a restrictive license;

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

1 blood or breath, it shall be prima facie evidence that the defendant was driving while
2 under the influence of alcohol.

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

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

10 **Article 27 - Crimes and Punishments**

11 388A.

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

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

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

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

23 (5) "Under the influence of a controlled dangerous substance" means
24 under the influence of a controlled dangerous substance, as that term is defined in §
25 279 of this article, if the person is not entitled to use the controlled dangerous
26 substance under the laws of this State.

27 388B.

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

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

32 (3) "Under the influence of alcohol" has the meaning indicated in and is
33 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts
34 Article regarding driving while under the influence of alcohol under § 21-902(b) of the
35 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 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1998.