

SENATE BILL 127

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R3  
SB 160/98 - JPR

1999 Regular Session  
9r0292

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By: **Senators Lawlah, Jacobs, Madden, Currie, Hughes, Hollinger, Frosh,  
McCabe, Conway, Hoffman, Dorman, Stoltzfus, Van Hollen, McFadden,  
and Dyson**

Introduced and read first time: January 22, 1999  
Assigned to: Judicial Proceedings

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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.

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 (1998 Replacement Volume and 1998 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - Courts and Judicial Proceedings  
19 Section 10-307  
20 Annotated Code of Maryland  
21 (1998 Replacement Volume)

22 BY repealing and reenacting, without amendments,  
23 Article 27 - Crimes and Punishments  
24 Section 388A(a)(1) and 388B(a)(1)  
25 Annotated Code of Maryland  
26 (1996 Replacement Volume and 1998 Supplement)

27 BY repealing and reenacting, with amendments,

1 Article 27 - Crimes and Punishments  
2 Section 388A(a)(2) and 388B(a)(2)  
3 Annotated Code of Maryland  
4 (1996 Replacement Volume and 1998 Supplement)

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

7 **Article - Transportation**

8 11-127.1.

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

12 (b) If the alcohol concentration is measured by milligrams of alcohol per  
13 deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a court or an  
14 administrative law judge, as the case may be, shall convert the measurement into  
15 grams of alcohol per 100 milliliters of blood by dividing the measurement by 1000.

16 16-205.1.

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

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

23 1. For a test result indicating an alcohol concentration of  
24 [0.10] 0.08 or more at the time of testing:

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

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

29 2. For a test refusal:

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

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

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

1                                   1.       For a test result indicating an alcohol concentration of  
2 [0.10] 0.08 or more at the time of testing:

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

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

7                                   2.       For a test refusal:

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

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

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

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

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

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

33                                  (i)       Detain the person;

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

35                                  (iii)     Advise the person of the administrative sanctions that shall be  
36 imposed for refusal to take the test, including ineligibility for modification of a  
37 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this

1 section, and for test results indicating an alcohol concentration of [0.10] 0.08 or more  
2 at the time of testing.

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

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

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

9 (iii) Issue a temporary license to drive;

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

12 (v) Inform the person that:

13 1. The person has a right to request, at that time or within  
14 10 days, a hearing to show cause why the driver's license should not be suspended  
15 concerning the refusal to take the test or for test results indicating an alcohol  
16 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be  
17 scheduled within 45 days; and

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

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

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

31 1. The officer had reasonable grounds to believe that the  
32 person had been driving or attempting to drive a motor vehicle on a highway or on  
33 any private property that is used by the public in general in this State while  
34 intoxicated, while under the influence of alcohol, while so far under the influence of  
35 any drug, any combination of drugs, or a combination of one or more drugs and  
36 alcohol that the person could not drive a vehicle safely, while under the influence of a  
37 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
38 § 16-813 of this title;





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

4 (v) The suspension imposed shall be:

5 1. For a test result indicating an alcohol concentration of  
6 [0.10] 0.08 or more at the time of testing:

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

8 B. For a second or subsequent offense, a suspension for 90  
9 days; or

10 2. For a test refusal:

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

12 B. For a second or subsequent offense, a suspension for 1  
13 year.

14 (h) Notwithstanding any other provision of this section, if a driver's license is  
15 suspended based on multiple administrative offenses of refusal to take a test, or a test  
16 to determine alcohol concentration taken that indicated an alcohol concentration of  
17 [0.10] 0.08 or more at the time of testing, or any combination of these administrative  
18 offenses committed at the same time, or arising out of circumstances simultaneous in  
19 time and place, or arising out of the same incident, the Administration:

20 (1) Shall suspend the driver's license for the administrative offense that  
21 results in the lengthiest period of suspension; and

22 (2) May not impose any additional periods of suspension for the  
23 remainder of the administrative offenses.

#### 24 **Article - Courts and Judicial Proceedings**

25 10-307.

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

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

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

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

1 (3) If the amount of alcohol in the person's blood shown by analysis as  
2 provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or  
3 milligrams of alcohol per 100 milliliters of blood, a court or an administrative law  
4 judge, as the case may be, shall convert the measurement into grams of alcohol per  
5 100 milliliters of blood by dividing the measurement by 1000.

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

10 (c) If at the time of testing a person has an alcohol concentration of more than  
11 0.05 but less than [0.07] 0.06, as determined by an analysis of the person's blood or  
12 breath, this fact may not give rise to any presumption that the defendant was or was  
13 not intoxicated or that the defendant was or was not driving while under the  
14 influence of alcohol, but this fact may be considered with other competent evidence in  
15 determining the guilt or innocence of the defendant.

16 (d) If at the time of testing a person has an alcohol concentration of at least  
17 [0.07] 0.06 but less than [0.10] 0.08, as determined by an analysis of the person's  
18 blood or breath, it shall be prima facie evidence that the defendant was driving while  
19 under the influence of alcohol.

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

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

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

28 388A.

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

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

33 (ii) If the alcohol concentration is measured by milligrams of  
34 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a  
35 court shall convert the measurement into grams of alcohol per 100 milliliters of blood  
36 by dividing the measurement by 1000.

37 388B.

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



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

4                   (ii)       If the alcohol concentration is measured by milligrams of  
5 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a  
6 court shall convert the measurement into grams of alcohol per 100 milliliters of blood  
7 by dividing the measurement by 1000.

8       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 1999.