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WRITTEN TESTIMONY IN FAVOR OF HOUSE BILL 352

The Maryland State's Attorneys' Association lends its support to Senate Bill 352, Life – Threatening Injury Involving a Motor Vehicle or Vessel.

As the law currently stands, a person who causes death as the result of driving their vehicle in a "criminally negligent manner" is subject to three years of incarceration and a fine of \$5,000. "Criminally Negligent" driving is defined as "acting in a criminally negligent manner with respect to a result or circumstance when the person should be aware, but fails to perceive, that the person's conduct creates a *substantial and unjustifiable risk* that such a result will occur and the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person. It is not a violation if the person drives in a negligent manner. It is not even a violation if the person drives in a reckless manner.

"Negligent Driving" is defined in TR § 21-901.1(b) as "driving a motor vehicle in a *careless or imprudent* manner that endangers any property or the life or person of any individual." Criminal Negligence Resulting in a Life – Threatening Injury, on the other hand, requires a finding beyond a reasonable doubt that the bad driving created a "substantial and unjustifiable risk to human life." Think of Negligent Driving as an act of *nonfeasance* (an act of omission/inattentiveness), while Criminal Negligence could be more properly thought of as an act of *malfeasance* (an overt act that the commission of which is wholly wrongful and unlawful...evil doing...ill conduct.)

Negligent Driving does not carry jail time. The penalty is 1 point (3 points if it contributes to an accident) and a \$500 fine. The pre-payable amounts are \$140 if no accident and \$280 if there is an accident. Clearly, in the situations we are talking about here, there would have been an accident, so 3 points and a \$500 fine (\$280 *pre-payable*) is the maximum penalty. In addition, the at-fault driver can add insult to injury (literally) by not even appearing in court. The guilty party can simply mail a check to the court upon receiving a citation.

The same applies to Reckless Driving, which carries 6 points, a \$510 fine and no incarceration. "Reckless Driving" is defined as driving in a wanton or reckless disregard for the safety of persons or property.

## What is a Life –Threatening Injury?

Definition of Life Threatening Injury - This is the language that is currently used in CR §3-211, Life -Threatening Injury by Motor Vehicle While Under the Influence of Alcohol, et seq. While “life-threatening injury” is not defined by statute, it is clarified in the case of *Todd v State*, 161 Md. App. 332 (2005), in which the Maryland Court of Special Appeals held:

“The statute that separately criminalized causing a life-threatening injury while driving under the influence of alcohol was neither void for vagueness nor ambiguous despite the absence of a definition for “life threatening injury” as that term could be understood and applied in an everyday sense; therefore, evidence indicating that a child in the car defendant hit head-on suffered a serious head injury that required numerous surgeries at a famous hospital, because they were too complicated to address at the local hospital, were ample to support conviction.”

## Difference Between Criminal Negligence and Texting Violations Resulting in Serious Bodily Injury

Criminal Negligence vs. Jake’s Law (TR § 21-1124.3) – A person committing a violation of the texting or cell phone usage sections of the traffic code (TR §§ 21-1124.1 and 1124.2) that causes an accident that directly results in the death or serious bodily injury of another is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both. The proposed penalty for Criminal Negligence Resulting in a Life-Threatening Injury is 18 months.

In order to charge Criminal Negligence versus a violation of Jake’s Law, the State must prove *additional evidence of bad driving* over and above texting. Jake’s Law merely requires texting and it must be concomitant inattentiveness due to the texting “that causes” the accident. Criminal Negligence, on the other hand, requires such additional bad driving that rises to a much greater degree of negligence. As previously stated above, it must be shown that the driver should have been aware of – but failed to perceive – that his manner of driving created a substantial and unjustifiable risk to human life and that the failure to perceive that risk was a gross departure from the conduct of a reasonable person under the circumstances. In a case involving texting, in order to take it to the next level of criminal negligence, the driver must be exhibiting other bad behavior, such as significantly speeding, weaving in and out of traffic, tailgating, running a red light or stop sign, etc.

## Conclusion

It is extremely hard to explain to a victim – or to the family of a victim – that had they or their loved one been killed in a crash caused by a criminally negligent defendant, the at-fault driver would have been facing jail time and a significant fine, but because the victim may have “only” been maimed or paralyzed (but lived), the at-fault driver merely faces points on their driving record and a fine amounting to a pittance. **It is for the reasons stated above that the Maryland State’s Attorneys’ Association supports a favorable recommendation of House Bill 352.**

Respectfully Submitted,  
David Daggett, MDSAA

On June 18, 2018, My daughter, Je'ani Lyles, who was a 13 yr. old, vibrant, active, smart and funny typical teenager and I were rear-ended by an 18 wheel tractor trailer while sitting still on I95 N, Hartford County, MD in a construction zone. My car was the last car entering the construction zone. There was no warning, no horns blowing, no sounds of a vehicle skidding while trying to stop, NO WARNING at all! In the blink of an eye, my Baby Girl and I heard the loudest noise that we have ever heard in our lives and felt a force that can not be described with words. The awful sound of glass and metal shattered our worlds as we were pushed at a change in velocity from 12 miles to about 47 miles an hour in a matter of seconds. Those moments will forever be embedded in our memory and were the beginning to a new life, very different from the life we had and had planned just moments before.

As an immediate result of that horrific accident, Jelani suffered a COMPLETE transection of her spinal cord at level T8-T9, hemothorax of her right chest cavity ( a chest full of blood), all of her ribs were broken, neurogenic bladder and bowel (no bladder or bowel function at all). My Baby laid on the highway stuck in the car for almost 1 hour while many wonderful, committed firefighters rallied tirelessly to free her from the wreck with the jaws of life as I stood helplessly watching, waiting and begging her to hold on until we could get her the help she needed. Jee, as she is affectionally known, was flown off the highway to Johns Hopkins Hospital where we would learn the full extent and seriousness of her injuries! I watched at the doors of the trauma bay, doctors worked hard to stabilize her as she coded and they had to insert a chest tube to release the blood from her chest cavity! I watched in disbelief still not knowing what happened to us, how or why! I learned in the wee hours of 1/19/18 that my 13 yr. old baby, who was an avid basketball player, an accomplished green belt martial artist and a phenomenal kid who loves skateboarding and playing at the park with her friends, was not very likely that she would survive her injuries. They did not even put her on the surgery schedule because of the grim prognosis. Our whole world has been turned upside down and I had no clue as to what to do or how to feel because I could not even think about how we got here.

June 19, 2019...SHE IS STILL ALIVE and she is breathing on her own and now they plan for surgery to piece her back together and take a look at her completely mangled spinal cord. On June 21, 2018, Jee endured a 7 ½ hour surgery with 3 different surgeons. After the surgery, the doctors gathered us all to give us the news that Je'ani's entire thoracic spine had to be put back together with rods and screws and a covering was placed over the break in her spine so that she would not die from spinal fluid leaking into her body. The crushing blow was when the neurosurgeon advised that she had never seen a spinal cord so destroyed in her professional career. THERE WAS NOTHING THAT SHE COULD DO TO SALVAGE THE SPINAL CORD! She also advised that my baby's injury was so severe that even though her spine is severed at T8-T9 level that she suffered permanent damage beginning at level T4. That area is just at the breastbone! Yes, Jee was permanently paralyzed from her breastbone to her toes and there is no cure and no treatment. I was told that I needed to be mindful that she was still in very critical condition and still may not make it. The dr advised that she would NEVER sit up unsupported and that the abilities she has in her arms would diminish over a short period of time. I was told to start looking at long term pediatric facilities near me where Jee would be transferred to once she is stable enough to be released. There was NOTHING more they could do for her.

A brief look at our lives at a glance since 06/18/18... Je'ani and I spent 67 days in Baltimore, MD at John's Hopkins Hospital and Kennedy Krieger Institute for Spinal Cord Injuries. On June 29<sup>th</sup>, our new fight began! How do we live after such a catastrophic injury?

Je'ani Catherine Lyles was born on 05/11/05. At just 13 years old on June 18, 2018, Jee was excited to have just had a wonderful weekend filled with fun and activities in North Carolina and was looking forward to moving to North Carolina in August to begin a new chapter in our lives. She and I were on our way home, looking forward to attending my youngest son's high school graduation on 6/19. We had just celebrated my oldest son's college graduation in May and he was preparing to go to London to begin his quest for grad school. I was in love and looking forward to building a life with a man who is still my very good friend after living in an abusive marriage for 19 yrs. Jee's last day of 7<sup>th</sup> grade was just one day away!

Needless to say, NONE of this happened! Instead we have spent each and every day since June 18, 2018 struggling to piece our lives back together. Jee has fought like the Princess Warrior she is and had defied ALL of the odds against her! She has the following medical problems directly as a result of the accident: **paraplegia, hemothorax, multiple ribs fractures, spinal fusion, pulmonary emboli, cellulitis, sleep apnea, neurogenic bladder, neurogenic bowel, morbid obesity, deep vein thrombosis (DVT's), persistent UTI's diabetes, depression, anxiety, PTSD and increased blood clotting disorder, both of her hips are almost permanently dislocated and she is scheduled to have reconstructive bladder surgery in the next month.**

Despite all of these medical challenging conditions, multiple hospital stays and a very vigorous therapy schedule Jee has been able to accomplish the following:

- SHE IS ALIVE
- She fought hard to get back home and get back into school and is now a high school freshman
- She maintains all A average
- She was inducted into the National Junior Honor Society
- She graduated 8<sup>th</sup> grade on 06/18/19, exactly one year after the date of the accident
- She earned the ACE Award which was created in her honor: ACE stands for Accepting the Challenge of Excellence
- She skates, bowls, goes to the movies, has sleep overs, works at summer camp and is a member of the Chesilhurst Borough Junior Board
- Jee is still a Martial Artist, working hard to achieve becoming the first paraplegic Black Belt in GOJU history by mastering the techniques, skills and mental discipline with the abilities that God has blessed her with.

Although I often forget, I too was in that same accident sitting right beside Je'ani. I suffered a broken nose and a fractured scapula. I have cervical, lumbar and thoracic problems in addition to anxiety, depression and severe PTSD. I have had to fight all the way up to the head of the State of NJ for every piece of medical equipment, nursing care, home health care, medical coverage and supplies that Jee needs to stay alive. I am just now 1 ½ years later able to get some help for myself because I am breaking down day by day as a single parent and sole caregiver. I work a full time job so I can keep a roof over Je'ani's head and provide commercial benefits for her care. All of Je'ani's medical providers are in Baltimore at Hopkins or Kennedy Krieger and we travel at least 1 time a week to Baltimore for an appt. My job has tried to make me take a per diem job because I have spent a great deal of time in the hospital with Jee and fighting to keep her alive. My youngest son is a Sophomore in college on a full academic scholarship and is on the Dean's list and my oldest son has just secured a career at Winslow

Township School District. He chose this district because he has a passion for children and the way they have supported our family in helping Jee with the resources needed to succeed.

Life is very challenging each and every day for my little family and especially for my daughter Je'ani Catherine Lyles. She is my HERO! She gives me and anyone who she encounters hope in a better tomorrow after a life changing tragedy.

Today, we are gathered here to request with humble and grateful hearts that you decide to vote to pass Senate Bill 29 which will hold individuals accountable for their actions. The man who was responsible for this catastrophic accident is serving a 1 year voluntary prison sentence because he acknowledged and accepted his responsibility in this incident, however, he would not have been found guilty of any crime under the current laws. These major trucking companies are making millions of dollars and are responsible for killing people and robbing them of the quality of life they deserve because they are not being held accountable for their actions. The man who hit us was on his 2<sup>nd</sup> day of employment and had not been thoroughly screened for safety and ability. Another young 14 yr. old child died in the accident and her parents are left with nothing but memories and broken hearts. Their only child died instantly and they live in despair each and every day.

Jee is here today, I do not know if she is willing to speak but I do know that this is very important to her because she does not want anyone to ever have to experience the path that we are traveling. She desires to be and advocate and voice for anyone and everyone who is blessed to survive such a catastrophic experience.

We will leave you with this quote as you consider our request:

JOB 5:9 He performs wonders that can not be fathomed, miracles that cannot be counted.

**God is able and we are willing...we are on the move!!!**

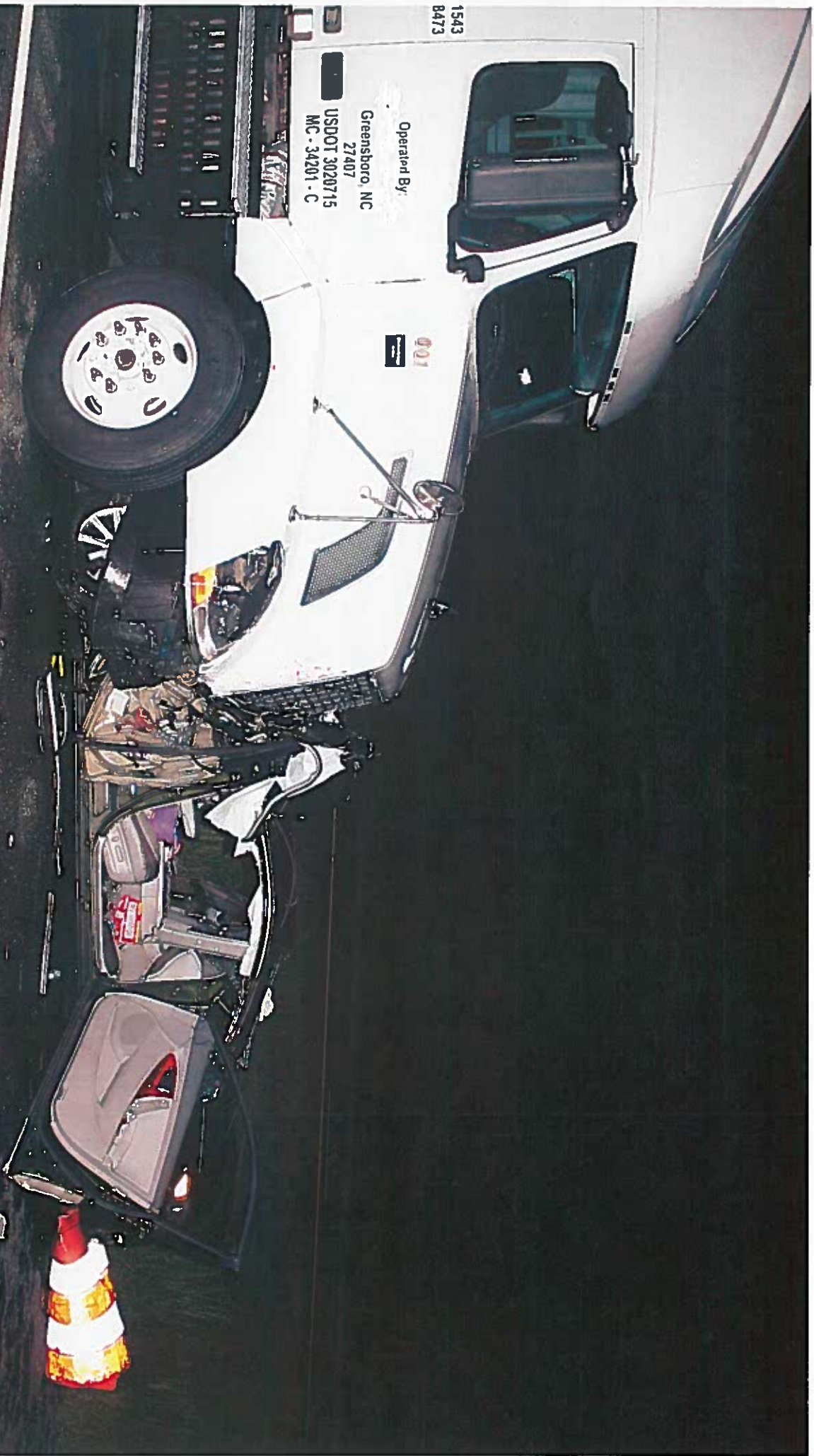
**Please help us create more opportunities for miracles like Jee and I by creating laws that make people think before they act.**

**Thank you and have a great day!**

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