



Maryland State's Attorneys' Association

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TO: Judicial Proceedings Committee

FROM: Joseph Riley, State's Attorney Caroline County
MSAA Legislative Committee Chair

DATE: February 26, 2021

BILL NUMBER: HB 926

POSITION: Support

The Maryland State's Attorney's Association (MSAA) supports HB 926.

Maryland's penalty for killing a human being due to the driver being under the influence or under the influence per se (an amount of BAC at .08 or higher) carry a statutory cap of 5 years of incarceration for the first offense. If the accident is caused by gross negligence, then the penalty is 10 years. Intoxication, even per se, is not enough by itself automatically to lead to a finding of gross negligence. *Lloyd v. State*, 42 Md. App. 167 (1979). The fact that there exists a charge for homicide while operating a vehicle while driving under the influence (*Maryland Criminal Law* § 2-503) certainly implies there must be more than proof of intoxication per se to obtain a conviction under *Maryland Criminal Law* §2-209. Maryland currently sits as the 46th most lenient state in the country on Driving Under the Influence. This is a distinction this bill is attempting to change.

Josette Wilson was a 2012 graduate of North Caroline High School. She was a drum major of the high school band and a member of the All-State Band team. In February of 2019, she was cut down in the prime of her life by a drunk driver. Bersai Ortiz Morales was taken to Kent General Hospital in Delaware and found to have a BAC of .27. He was later flown to Christiana Hospital and his BAC was tested again and found to be .14. Due to the crash occurring outside of the small town of Goldsboro, MD and the automobile Mr. Morales was operating lacking data recording (speed at time of collision, time of breaking, etc.) there was not sufficient evidence to reach the high bar of gross negligence. Mr. Morales entered a plea of guilty to a violation of *Maryland Criminal Law* § 2-503 and was sentenced to five years of active incarceration.

The purpose of this bill is change statutory penalties for violations of *Maryland Criminal Code* § 2-209 and § 2-503. Increasing the maximum penalties to 20 years for demonstrating gross negligence (defined legally as wanton disregard for human life) and for homicide by vehicle/vessel while driving under the influence or under the influence per se to 10 years while help bring "Justice for Josette", her family and the more 1500 people killed on Maryland streets at the hands of drunk drivers (numbers by CDC).

For these reasons the MSAA requests a favorable report on HB 926.





