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WRITTEN TESTIMONY IN FAVOR OF SENATE BILL 29

The Maryland State's Attorneys' Association lends its support to Senate Bill 29, 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.”

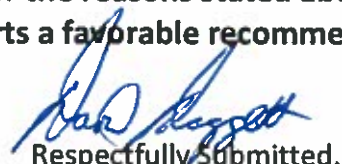
Difference Between Criminal Negligence and Texting Violations Resulting in Serious Bodily Injury

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 Senate Bill 29.**


Respectfully Submitted,
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