

SENATE BILL 241

F1
SB 756/06 – EHE

71r1649

By: **Senators Exum, Conway, Dyson, Gladden, Hooper, and Lenett**
Introduced and read first time: January 29, 2007
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Alcohol and Drug Testing for Pupils in Public or Private Schools**

3 FOR the purpose of requiring public school or private or parochial school officials to
4 implement a policy of alcohol and drug testing for high school pupils in their
5 schools; specifying that testing for alcohol or drugs is permitted only on the
6 basis of a reasonable suspicion of unlawful use; requiring school officials to
7 provide notice to certain persons of an alcohol and drug testing policy; requiring
8 school officials to maintain certain test results as confidential medical records
9 and to grant access to the records only to certain persons; requiring school
10 officials to refer certain pupils for certain treatment services; defining terms;
11 providing for the construction of this Act; and generally relating to alcohol and
12 drug testing of pupils in public or private schools.

13 BY repealing and reenacting, without amendments,
14 Article – Criminal Law
15 Section 5–101(f)
16 Annotated Code of Maryland
17 (2002 Volume and 2006 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Education
20 Section 7–308, 7–411, and 7–412
21 Annotated Code of Maryland
22 (2006 Replacement Volume)

23 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Education
2 Section 7–411.1
3 Annotated Code of Maryland
4 (2006 Replacement Volume)

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

7 **Article – Criminal Law**

8 5–101.

9 (f) (1) “Controlled dangerous substance” means:

10 (i) a drug or substance listed in Schedule I through Schedule V;
11 or

12 (ii) an immediate precursor to a drug or substance listed in
13 Schedule I through Schedule V that:

14 1. by regulation the Department designates as being the
15 principal compound commonly used or produced primarily for use to manufacture a
16 drug or substance listed in Schedule I through Schedule V;

17 2. is an immediate chemical intermediary used or likely
18 to be used to manufacture a drug or substance listed in Schedule I through Schedule
19 V; and

20 3. must be controlled to prevent or limit the
21 manufacture of a drug or substance listed in Schedule I through Schedule V.

22 (2) “Controlled dangerous substance” does not include distilled spirits,
23 wine, malt beverages, or tobacco.

24 **Article – Education**

25 7–308.

26 (a) A principal, assistant principal, or school security guard of a public school
27 may make a reasonable search of a student on the school premises or on a
28 school-sponsored trip if the searcher has a reasonable belief that the student has in
29 the student’s possession an item, the possession of which is a criminal offense under

1 the laws of this State or a violation of any other State law or a rule or regulation of the
2 county board.

3 (b) (1) Subject to the provisions of paragraph (2) of this subsection, a
4 county board may authorize a teacher of a public school to make a reasonable search of
5 a student on a school-sponsored trip if the teacher has a reasonable belief that the
6 student has in the student's possession an item, the possession of which is a criminal
7 offense under the laws of this State or a violation of any other State law or a rule or
8 regulation of the county board.

9 (2) To qualify to conduct a search under this subsection, a teacher
10 shall be designated in writing by a principal and receive training to conduct a search
11 commensurate with the training received by a principal.

12 (c) A search under subsection (a) or (b) of this section shall be made in the
13 presence of a third party.

14 (d) (1) A principal, assistant principal, or school security guard of a public
15 school may make a search of the physical plant of the school and its appurtenances
16 including the lockers of students.

17 (2) The right of the school official to search the locker shall be
18 announced or published previously in the school.

19 (e) The Department shall adopt rules and regulations relating to the
20 searches permitted under this section.

21 7-411.

22 (a) The State Board shall develop and implement a program of drug
23 education in the public schools.

24 (b) (1) This program shall be started before the sixth grade in each public
25 school by teachers who are trained in the field of drug education.

26 (2) The State Board shall establish standards for determining how a
27 teacher is considered to be "trained in the field of drug education" for the purposes of
28 this section.

29 (c) This program shall be coordinated with other State agencies that are
30 responsible for drug abuse education and control.

1 **7-411.1.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
3 MEANINGS INDICATED.

4 (2) "CONTROLLED DANGEROUS SUBSTANCE" HAS THE MEANING
5 STATED IN § 5-101 OF THE CRIMINAL LAW ARTICLE.

6 (3) (I) "REASONABLE SUSPICION" MEANS ARTICULABLE
7 FACTS, TOGETHER WITH RATIONAL INFERENCE FROM THOSE FACTS,
8 WARRANTING AN OBJECTIVE SUSPICION THAT A PUPIL IS UNLAWFULLY USING
9 OR HAS USED ALCOHOL OR A DRUG DEEMED A CONTROLLED DANGEROUS
10 SUBSTANCE.

11 (II) "REASONABLE SUSPICION" DOES NOT INCLUDE
12 SUSPICION THAT IS BASED ON A PUPIL'S:

- 13 1. RACE;
- 14 2. NATIONAL ORIGIN;
- 15 3. GENDER;
- 16 4. SOCIOECONOMIC STATUS;
- 17 5. SEXUAL ORIENTATION;
- 18 6. SUSPICION OR EVIDENCE OF DRUG USE AMONG
19 THE PUPIL'S FAMILY MEMBERS OR PEER GROUP; OR
- 20 7. RELIGION.

21 (B) THIS SECTION APPLIES TO PUPILS IN GRADE 9 THROUGH GRADE 12
22 WHO ATTEND A PUBLIC SCHOOL OR A PRIVATE OR PAROCHIAL SCHOOL IN THE
23 STATE.

24 (C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A COUNTY BOARD
25 OR THE GOVERNING BOARD OF A PRIVATE OR PAROCHIAL SCHOOL SHALL

1 REQUIRE A PUPIL TO SUBMIT TO TESTING ANY SAMPLE OF THE PUPIL'S URINE,
2 HAIR, OR OTHER BODILY TISSUE OR BODILY FLUID TO DETERMINE THE USE OF:

3 (1) ALCOHOL, INCLUDING DISTILLED SPIRITS, WINE, OR MALT
4 BEVERAGES; OR

5 (2) A DRUG DEEMED TO BE A CONTROLLED DANGEROUS
6 SUBSTANCE.

7 (D) ALCOHOL AND DRUG TESTING IS PERMITTED ONLY ON A
8 REASONABLE SUSPICION OF THE UNLAWFUL USE OF ALCOHOL OR A
9 CONTROLLED DANGEROUS SUBSTANCE.

10 (E) A COUNTY BOARD OR A GOVERNING BOARD THAT ADOPTS AN
11 ALCOHOL AND DRUG TESTING POLICY SHALL PROVIDE ADEQUATE NOTICE OF
12 THE POLICY TO THE PARENT OR GUARDIAN OF EACH PUPIL ENROLLED IN A
13 SCHOOL SUBJECT TO ITS JURISDICTION.

14 (F) A COUNTY BOARD OR A GOVERNING BOARD:

15 (1) SHALL TREAT AS CONFIDENTIAL MEDICAL RECORDS THE
16 TEST RESULTS OF ANY STUDENT SUBJECT TO ALCOHOL OR DRUG TESTING; AND

17 (2) MAY GRANT ACCESS TO THE TEST RESULTS ONLY TO:

18 (I) THE PUPIL SUBJECT TO THE TESTING;

19 (II) THE PARENT OR GUARDIAN OF THE PUPIL;

20 (III) THE PRINCIPAL OR OTHER HEAD OF SCHOOL OR THE
21 INDIVIDUAL DESIGNATED BY EITHER OF THEM, WHO IS DIRECTLY RESPONSIBLE
22 FOR SCHOOL DISCIPLINE AND SAFETY; AND

23 (IV) APPROPRIATE SCHOOL STAFF AND CERTIFIED OR
24 LICENSED HEALTH CARE PROFESSIONALS EMPLOYED BY OR WORKING WITH
25 THE SCHOOL.

26 (G) (1) A COUNTY BOARD OR THE GOVERNING BOARD OF A SCHOOL
27 SHALL ENSURE THAT ANY PUPIL WHO TESTS POSITIVE FOR THE UNLAWFUL USE

1 **OF ALCOHOL OR DRUGS IS REFERRED TO A SCHOOL COUNSELOR, A SUBSTANCE**
2 **ABUSE PROFESSIONAL, OR OTHER APPROPRIATE SCHOOL STAFF.**

3 **(2) THE PURPOSE OF THE REFERRAL IS TO DEVELOP AN**
4 **INDIVIDUALIZED COURSE OF TREATMENT THAT ADDRESSES THE STUDENT'S**
5 **UNLAWFUL USE OF ALCOHOL OR DRUGS AND SUPPORTS SCHOLASTIC SUCCESS.**

6 **(H) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ABILITY OF A**
7 **COUNTY BOARD OR THE GOVERNING BOARD OF A SCHOOL TO DISCIPLINE A**
8 **PUPIL IN ACCORDANCE WITH THIS ARTICLE OR ITS REGULATIONS AND**
9 **POLICIES.**

10 7-412.

11 (a) If a student seeks information to overcome any form of drug abuse, as
12 defined in § 8-101 of the Health – General Article, from a teacher, counselor,
13 principal, or other professional educator employed by an educational institution that
14 has received a certificate of approval under § 2-206 of this article, a statement,
15 whether oral or written, made by the student or an observation or conclusion derived
16 from the statement is not admissible against the student in any proceeding.

17 (b) A rule, regulation, or order may not require disclosure of any report,
18 statement, observation, conclusion, or other information that has been assembled or
19 obtained by an educator through this contact.

20 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
21 **July 1, 2007.**