
By: **Delegates Vallario and Petzold**
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Assigned to: Judiciary

Committee Report: Favorable
House action: Adopted with floor amendments
Read second time: March 20, 2000

CHAPTER _____

1 AN ACT concerning

2 **Alcohol or Drug Related Offenses - Evidence - Tests**

3 FOR the purpose of providing that a copy of a report of the results of certain tests to
4 determine alcohol concentration is admissible in a criminal trial concerning a
5 violation of certain driver's license restrictions under certain circumstances;
6 providing that a certain determination of an alcohol concentration of a certain
7 amount is prima facie evidence that a defendant was driving in violation of
8 certain alcohol restrictions; providing that evidence of certain tests or analyses
9 is not admissible in prosecutions of certain alcohol or drug related offenses if the
10 evidence is obtained contrary to certain procedures; and generally relating to
11 the evidentiary use of certain tests for violations of certain alcohol or drug
12 related offenses.

13 BY repealing and reenacting, without amendments,
14 Article - Courts and Judicial Proceedings
15 Section 10-302, 10-303, 10-305, and 10-308
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 1999 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Courts and Judicial Proceedings
20 Section 10-304, 10-306, 10-307, and 10-309
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 1999 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article - Transportation

1 Section 16-113
2 Annotated Code of Maryland
3 (1999 Replacement Volume and 1999 Supplement)

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

6 **Article - Courts and Judicial Proceedings**

7 10-302.

8 In a prosecution for a violation of a law concerning a person who is driving or
9 attempting to drive a vehicle in violation of § 16-113, § 16-813, or § 21-902 of the
10 Transportation Article, or in violation of Article 27, § 388, § 388A, or § 388B of the
11 Code, a test of the person's breath or blood may be administered for the purpose of
12 determining alcohol concentration and a test or tests of 1 specimen of the person's
13 blood may be administered for the purpose of determining the drug or controlled
14 dangerous substance content of the person's blood.

15 10-303.

16 (a) (1) A specimen of breath or 1 specimen of blood may be taken for the
17 purpose of a test for determining alcohol concentration.

18 (2) For the purpose of a test for determining alcohol concentration, the
19 specimen of breath or blood shall be taken within 2 hours after the person accused is
20 apprehended.

21 (b) (1) Only 1 specimen of blood may be taken for the purpose of a test or
22 tests for determining the drug or controlled dangerous substance content of the
23 person's blood.

24 (2) For the purpose of a test or tests for determining drug or controlled
25 dangerous substance content of the person's blood, the specimen of blood shall be
26 taken within 4 hours after the person accused is apprehended.

27 10-304.

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

29 (2) "Qualified medical person" means any person permitted by law to
30 withdraw blood from humans.

31 (3) "Qualified person" means a person who has received training in the
32 use of the equipment in a training program approved by the toxicologist under the
33 Postmortem Examiners Commission and who is either a police officer, a police
34 employee, an employee of the office of the Chief Medical Examiner, or a person
35 authorized by the toxicologist under the Postmortem Examiners Commission.

1 (b) (1) The test of breath shall be administered by a qualified person with
2 equipment approved by the toxicologist under the Postmortem Examiners
3 Commission at the direction of a police officer.

4 (2) The officer arresting the individual may not administer the test of
5 breath.

6 (c) (1) (i) The blood shall be obtained by a qualified medical person using
7 equipment approved by the toxicologist under the Postmortem Examiners
8 Commission acting at the request of a police officer.

9 (ii) A certified statement by the qualified medical person who
10 obtained the blood shall be prima facie evidence of that person's qualifications and
11 that the blood was obtained in compliance with this section.

12 (iii) 1. A certified statement that complies with the requirements
13 of this paragraph is admissible as substantive evidence without the presence or
14 testimony of the qualified medical person who obtained the blood.

15 2. If the State decides to offer the certified statement without
16 the testimony of the qualified medical person, the State shall, at least 30 days before
17 trial, notify the defendant or the defendant's attorney in writing of the State's
18 intention and deliver to the defendant or the defendant's attorney a copy of the
19 certified statement to be offered.

20 3. If the District Court is deprived of jurisdiction under
21 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
22 from the District Court to a circuit court, the State is not required to file a second
23 notice.

24 (iv) 1. If the defendant desires the qualified medical person to be
25 present and testify at trial, the defendant shall notify the court and the State in
26 writing no later than 20 days before trial.

27 2. If the District Court is deprived of jurisdiction under
28 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
29 from the District Court to a circuit court, the defendant shall notify the circuit court
30 and the State in writing no later than 20 days before trial.

31 3. If the timely and proper notice required under this
32 subparagraph is provided by the defendant, the certified statement is inadmissible
33 without the testimony of the qualified medical person.

34 4. Failure to give the timely and proper notice constitutes a
35 waiver of the defendant's right to the presence and testimony of the qualified medical
36 person.

37 (2) The test of blood shall be conducted by a qualified person using
38 equipment approved by the toxicologist under the Postmortem Examiners
39 Commission in a laboratory approved by the toxicologist.

1 (d) (1) For the purpose of establishing that the test of breath or blood was
2 administered with equipment approved by the toxicologist under the Postmortem
3 Examiners Commission, a statement signed by the toxicologist certifying that the
4 equipment used in the test has been approved by him shall be prima facie evidence of
5 the approval, and the statement is admissible in evidence without the necessity of the
6 toxicologist personally appearing in court.

7 (2) (i) If a defendant desires the toxicologist to be present and testify
8 at trial as a witness, the defendant shall file a request for a subpoena for the
9 toxicologist at least 20 days before the trial in the appropriate court.

10 (ii) If the District Court is deprived of jurisdiction under
11 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
12 from the District Court to the circuit court, another subpoena must be filed at least 20
13 days before the trial in the circuit court.

14 (iii) If a trial date is postponed for any reason beyond 30 days from
15 the trial date for which the subpoena was issued, the defendant shall file a new
16 subpoena for the toxicologist.

17 (iv) In addition to the requirements of Maryland Rules 4-265 and
18 4-266, the subpoena shall contain the name, address, and telephone number of the
19 defendant or the defendant's attorney.

20 (3) A subpoena for the toxicologist may be quashed if a defendant fails to
21 comply with the requirements of this subsection.

22 (4) A motion to quash a defendant's subpoena may be filed by any party
23 or by the Attorney General.

24 (e) The person tested is permitted to have a physician of the person's own
25 choosing administer tests in addition to the one administered at the direction of the
26 police officer, and in the event no test is offered or requested by the police officer, the
27 person may request, and the officer shall have administered, one or more of the tests
28 provided for in this section.

29 (f) Nothing in this section precludes the right to introduce any other
30 competent evidence bearing upon the date of the certificate or change in the
31 equipment since the date of the certificate.

32 10-305.

33 (a) The type of test administered to the defendant to determine alcohol
34 concentration shall be the test of breath except that the test of blood shall be the type
35 of test administered if:

36 (1) The defendant is unconscious or otherwise incapable of refusing to
37 take a test to determine alcohol concentration;

1 (2) Injuries to the defendant require removal of the defendant to a
2 medical facility; or

3 (3) The equipment for administering the test of breath is not available.

4 (b) The type of specimen obtained from the defendant for the purpose of a test
5 or tests to determine drug or controlled dangerous substance content shall be a blood
6 specimen.

7 (c) Any person who is dead, unconscious, or otherwise in a condition rendering
8 him incapable of test refusal shall be deemed not to have withdrawn consent.

9 10-306.

10 (a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in
11 any criminal trial in which a violation of [§ 16-113(a)(2)] § 16-113, § 16-813, or §
12 21-902 of the Transportation Article, or a violation of Article 27, § 388, § 388A, or §
13 388B of the Code is charged or is an issue, a copy of a report of the results of a test of
14 breath or blood to determine alcohol concentration signed by the technician or analyst
15 who performed the test, is admissible as substantive evidence without the presence or
16 testimony of the technician or analyst who performed the test.

17 (ii) Subject to the provisions of § 10-308(b) of this subtitle and
18 paragraph (2) of this subsection, in any criminal trial in which a violation of § 21-902
19 of the Transportation Article or a violation of Article 27, § 388, § 388A, or § 388B of the
20 Code is charged, a copy of a report of the results of a test or tests of blood to determine
21 drug or controlled dangerous substance content signed by the technician or analyst
22 who performed the test, is admissible as substantive evidence without the presence or
23 testimony of the technician or analyst who performed the test.

24 (2) To be admissible under paragraph (1) of this subsection, the report
25 shall:

26 (i) Identify the technician or analyst as a "qualified person", as
27 defined in § 10-304 of this subtitle;

28 (ii) State that the test was performed with equipment approved by
29 the toxicologist under the Postmortem Examiners Commission at the direction of a
30 police officer; and

31 (iii) State that the result of the test is as stated in the report.

32 (b) (1) (i) Test results which comply with the requirements of subsection
33 (a) of this section are admissible as substantive evidence without the presence or
34 testimony of the technician or analyst who administered the test.

35 (II) However, if the State decides to offer the test results without
36 the testimony of the technician or analyst, it shall, at least 30 days before trial, notify
37 the defendant or his attorney in writing of its intention and deliver to the defendant
38 or his attorney a copy of the test results to be offered.

1 [(ii)] (III) If the District Court is deprived of jurisdiction under
2 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
3 from the District Court to the circuit court, the State is not required to file a second
4 notice.

5 (2) (i) If the defendant desires the technician or analyst to be present
6 and testify at trial, the defendant shall notify the court and the State in writing no
7 later than 20 days before trial.

8 (ii) If the District Court is deprived of jurisdiction under
9 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
10 from the District Court to a circuit court, the defendant shall notify the circuit court
11 and the State in writing no later than 20 days before trial.

12 (iii) If the timely and proper notice required under this paragraph is
13 provided by the defendant, the test results are inadmissible without the testimony of
14 the technician or analyst.

15 (3) Failure to give timely and proper notice constitutes a waiver of the
16 defendant's right to the presence and testimony of the technician or analyst.

17 10-307.

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

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

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

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

27 (3) If the amount of alcohol in the person's blood shown by analysis as
28 provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or
29 milligrams of alcohol per 100 milliliters of blood, a court or an administrative law
30 judge, as the case may be, shall convert the measurement into grams of alcohol per
31 100 milliliters of blood by dividing the measurement by 1000.

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

36 (c) If at the time of testing a person has an alcohol concentration of more than
37 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath,
38 this fact may not give rise to any presumption that the defendant was or was not

1 intoxicated or that the defendant was or was not driving while under the influence of
2 alcohol, but this fact may be considered with other competent evidence in determining
3 the guilt or innocence of the defendant.

4 (d) If at the time of testing a person has an alcohol concentration of at least
5 0.07 but less than 0.10, as determined by an analysis of the person's blood or breath,
6 it shall be prima facie evidence that the defendant was driving while under the
7 influence of alcohol.

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

11 (f) If at the time of testing a person has an alcohol concentration of 0.02 or
12 more, as determined by an analysis of the person's blood or breath, it shall be prima
13 facie evidence that a defendant was driving in violation of [§ 16-113(b)] AN ALCOHOL
14 RESTRICTION UNDER § 16-113 of the Transportation Article.

15 10-308.

16 (a) The evidence of the analysis does not limit the introduction of other
17 evidence bearing upon whether the defendant was intoxicated or whether the
18 defendant was driving while under the influence of alcohol, while so far under the
19 influence of any drug, any combination of drugs, or a combination of one or more
20 drugs and alcohol that the person cannot drive a vehicle safely, or while under the
21 influence of a controlled dangerous substance.

22 (b) The results of a test or tests to determine the drug or controlled dangerous
23 substance content of a person's blood:

24 (1) Are admissible as evidence in a criminal trial only in a prosecution
25 for a violation of § 21-902 of the Transportation Article, § 8-738 of the Natural
26 Resources Article, or Article 27, § 388, § 388A, or § 388B of the Code and only if other
27 admissible evidence is introduced that creates an inference that the person was:

28 (i) Driving or attempting to drive while so far under the influence
29 of any drug, any combination of drugs, or a combination of one or more drugs and
30 alcohol that the person could not drive a vehicle safely, or while under the influence of
31 a controlled dangerous substance; or

32 (ii) Operating or attempting to operate a vessel while the person
33 was so far under the influence of any drug, any combination of drugs, or a
34 combination of one or more drugs and alcohol that the person could not operate a
35 vessel safely, or while under the influence of a controlled dangerous substance; and

36 (2) Are not admissible in a prosecution other than a prosecution for a
37 violation of § 21-902 of the Transportation Article, § 8-738 of the Natural Resources
38 Article, or Article 27, § 388, § 388A, or § 388B of the Code.

1 10-309.

2 (a) (1) (I) Except as provided in § 16-205.1(c) of the Transportation
3 Article, a person may not be compelled to submit to a test or tests provided for in this
4 subtitle.

5 (II) Evidence of a test or analysis PROVIDED FOR IN THIS SUBTITLE
6 is not admissible in a prosecution for a violation of § 16-113 OR § 21-902 of the
7 Transportation Article, § 8-738 OF THE NATURAL RESOURCES ARTICLE, OR ARTICLE
8 27, § 388, § 388A, OR § 388B OF THE CODE if obtained contrary to [its] THE provisions
9 OF §§ 10-302 THROUGH 10-308 OF THIS SUBTITLE.

10 (2) (I) No inference or presumption concerning either guilt or
11 innocence arises because of refusal to submit.

12 (II) The fact of refusal to submit is admissible in evidence at the
13 trial.

14 (b) This section does not limit the provisions of the vehicle laws regarding the
15 consequences of refusal to submit to a test or tests.

16 (c) Nothing in this section precludes or limits the admissibility of evidence of
17 a test or analysis to determine the alcohol concentration of a person's blood or breath
18 in any prosecution other than for a violation of § 16-113 OR § 21-902 of the
19 Transportation Article, § 8-738 OF THE NATURAL RESOURCES ARTICLE, OR ARTICLE
20 27, § 388, § 388A, OR § 388B OF THE CODE.

21 (d) Nothing in this section precludes or limits admissibility of evidence of a
22 test or analysis to determine the alcohol concentration of a person's blood or breath
23 which is obtained as provided in § 16-205.1(c) of the Transportation Article.

24 **Article - Transportation**

25 16-113.

26 (a) (1) In addition to the vision and other restrictions provided for in this
27 subtitle, when it issues a driver's license, the Administration for good cause may
28 impose on the licensee:

29 (i) Any restrictions suitable to the licensee's driving ability with
30 respect to the type of special mechanical control devices required on motor vehicles
31 that the licensee may drive;

32 (ii) An alcohol restriction which prohibits the licensee from driving
33 or attempting to drive a motor vehicle while having alcohol in the licensee's blood; and

34 (iii) Any other restrictions applicable to the licensee that the
35 Administration determines appropriate to assure the safe driving of a motor vehicle
36 by the licensee.

1 (2) An alcohol restriction that prohibits the licensee from driving or
2 attempting to drive a motor vehicle while having alcohol in the licensee's blood may,
3 as described in subsections (b) and (g) of this section, include a restriction that
4 prohibits the licensee from driving or attempting to drive a motor vehicle unless the
5 licensee is a participant in the Ignition Interlock System Program established under
6 § 16-404.1 of this title.

7 (b) (1) Notwithstanding the licensee's driving record, the Administration
8 shall impose on each licensee under the age of 21 years an alcohol restriction that
9 prohibits the licensee from driving or attempting to drive a motor vehicle with an
10 alcohol concentration of 0.02 or more as determined by an analysis of the licensee's
11 blood or breath.

12 (2) An alcohol restriction imposed under this subsection expires when
13 the licensee reaches the age of 21 years.

14 (3) This subsection may not be construed or applied to limit:

15 (i) The authority of the Administration to impose on a licensee an
16 alcohol restriction described in subsection (a)(2) of this section; or

17 (ii) The application of any other provision of law that prohibits
18 consumption of an alcoholic beverage by an individual under the age of 21 years.

19 (4) An individual under the age of 21 years who is convicted of a violation
20 of § 21-902(a), (b), or (c) of this article may be required, for a period of not more than
21 3 years, to participate in the Ignition Interlock System Program in order to retain the
22 individual's driver's license.

23 (c) (1) Subject to the provisions of paragraph (2) of this subsection, the
24 Administration may:

25 (i) Issue a special restricted license; or

26 (ii) Set forth the restrictions on the usual license form.

27 (2) The Administration shall indicate on the license of a licensee under
28 the age of 21 years that an alcohol restriction has been imposed on the licensee under
29 subsection (b) of this section.

30 (d) (1) Notwithstanding the licensee's driving record, the Administration
31 shall impose an hour restriction on a provisional driver's license issued to an
32 applicant under the age of 18.

33 (2) The restriction under this subsection shall limit the holder of a
34 provisional license to driving unsupervised only between the hours of 5 a.m. and 12
35 midnight.

1 (3) This subsection does not preclude the holder of a provisional license
2 from driving between the hours of 12 midnight and 5 a.m. the following day if the
3 licensee is:

4 (i) Accompanied and supervised by a licensed driver who is at least
5 21 years old;

6 (ii) Driving to or from or in the course of the licensee's employment;

7 (iii) Driving to or from a school class or official school activity;

8 (iv) Driving to or from an organized volunteer program; or

9 (v) Driving to or from an opportunity to participate in an athletic
10 event or related training session.

11 (4) The hour restriction and the supervision requirement under this
12 subsection expire on the date the holder of the provisional license turns 18 years of
13 age.

14 (e) In addition to the other restrictions provided under this subtitle, the
15 Administration may issue a driver's license that is valid only in the State of Maryland
16 to an applicant who has been suspended in another jurisdiction as a result of failing
17 to comply with the financial responsibility requirements of that jurisdiction.

18 (f) After receiving satisfactory evidence of any violation of a restricted or
19 provisional driver's license, the Administration may suspend or revoke the license.
20 However, the licensee may request a hearing as provided for a suspension or
21 revocation under Subtitle 2 of this title.

22 (g) (1) The Administration shall impose an alcohol restriction under
23 subsection (a)(1)(ii) of this section that prohibits an individual for a period of 3 years
24 from driving or attempting to drive with alcohol in the individual's blood on any
25 licensee who is convicted within 5 years of any combination of two or more violations
26 under § 21-902(a), (b), or (c) of this article.

27 (2) If a circuit court or the District Court orders a licensee not to drive or
28 attempt to drive a motor vehicle with alcohol in the licensee's blood or orders, under §
29 27-107 of this article, the licensee to participate in the Ignition Interlock System
30 Program established under § 16-404.1 of this title, the Administration shall have the
31 licensee's driving record and driver's license reflect that the court ordered restriction
32 was imposed, and shall keep records of the order.

33 (h) An individual may not drive a vehicle in any manner that violates any
34 restriction imposed by the Administration in a restricted license issued to the
35 individual.

36 (i) An individual may not drive a vehicle in any manner that violates any
37 restriction imposed in a provisional license issued to the individual.

1 (j) An individual may not drive or attempt to drive a motor vehicle with
2 alcohol in the individual's blood in violation of a restriction imposed by a court.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2000.