
By: **Delegates Giannetti and Shriver**
Introduced and read first time: February 1, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Evidence - Tests for Alcohol, Drugs, or**
3 **Controlled Dangerous Substances**

4 FOR the purpose of repealing the right of a person to not be compelled to submit to a
5 certain test for alcohol, drugs, or controlled dangerous substances under certain
6 circumstances; making a refusal of a person to submit to a certain test for
7 alcohol, drugs, or controlled dangerous substances under certain circumstances
8 a misdemeanor; providing for certain penalties; requiring the Motor Vehicle
9 Administration to assess a certain number of points against the driver's license
10 of a person who is convicted of refusing to submit to a certain test for alcohol,
11 drugs, or controlled dangerous substances; prohibiting a court from staying the
12 entry of judgment and placing a defendant on probation if the defendant has
13 been convicted of or placed on probation for certain offenses within a certain
14 number of years; and generally relating to a person's refusal to submit to a
15 certain test for alcohol, drugs, or controlled dangerous substances for certain
16 alcohol- or drug-related driving offenses under certain circumstances.

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 10-309(a)(1)(i)
20 Annotated Code of Maryland
21 (1998 Replacement Volume and 2001 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Transportation
24 Section 16-205.1(a)(2), (b), and (c)
25 Annotated Code of Maryland
26 (1999 Replacement Volume and 2001 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article - Transportation
29 Section 16-205.1(d) and (g)
30 Annotated Code of Maryland

1 (1999 Replacement Volume and 2001 Supplement)

2 BY adding to

3 Article - Transportation

4 Section 16-205.1(o), 16-402(a)(38), and 27-101(v)

5 Annotated Code of Maryland

6 (1999 Replacement Volume and 2001 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Criminal Procedure

9 Section 6-220(d)(1)

10 Annotated Code of Maryland

11 (2001 Volume)

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

14 **Article - Courts and Judicial Proceedings**

15 10-309.

16 (a) (1) (i) [Except as provided in § 16-205.1(c) of the Transportation
17 Article, a] A person may [not] be compelled to submit to a test or tests provided for in
18 this subtitle.

19 **Article - Transportation**

20 16-205.1.

21 (a) (2) Any person who drives or attempts to drive a motor vehicle on a
22 highway or on any private property that is used by the public in general in this State
23 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
24 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
25 should be detained on [suspicion] REASONABLE GROUNDS of driving or attempting to
26 drive while under the influence of alcohol, while impaired by alcohol, while so far
27 impaired by any drug, any combination of drugs, or a combination of one or more
28 drugs and alcohol that the person could not drive a vehicle safely, while impaired by
29 a controlled dangerous substance, in violation of an alcohol restriction, or in violation
30 of § 16-813 of this title.

31 (b) (1) [Except as provided in subsection (c) of this section, a person may not
32 be compelled to take a test. However, the] THE detaining officer shall advise the
33 person that, on receipt of a sworn statement from the officer that the person was so
34 charged and refused to take a test, or was tested and the result indicated an alcohol
35 concentration of 0.08 or more, the Administration shall:

36 (i) In the case of a person licensed under this title:

1 (2) Except as provided in subsection [(c)] (D) of this section, if a police
2 officer stops or detains any person who the police officer has reasonable grounds to
3 believe is or has been driving or attempting to drive a motor vehicle while under the
4 influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any
5 combination of drugs, or a combination of one or more drugs and alcohol that the
6 person could not drive a vehicle safely, while impaired by a controlled dangerous
7 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title,
8 and who is not unconscious or otherwise incapable of refusing to take a test, the police
9 officer shall:

10 (i) Detain the person;

11 (ii) [Request that] DIRECT the person [permit a test to be taken]
12 TO TAKE A TEST; and

13 (iii) Advise the person of the administrative sanctions that shall be
14 imposed for refusal to take the test, including ineligibility for modification of a
15 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
16 section, and for test results indicating an alcohol concentration of 0.08 or more at the
17 time of testing.

18 (3) If the person refuses to take the test or takes a test which results in
19 an alcohol concentration of 0.08 or more at the time of testing, the police officer shall:

20 (i) Confiscate the person's driver's license issued by this State;

21 (ii) Acting on behalf of the Administration, personally serve an
22 order of suspension on the person;

23 (iii) Issue a temporary license to drive;

24 (iv) Inform the person that the temporary license allows the person
25 to continue driving for 45 days if the person is licensed under this title;

26 (v) Inform the person that:

27 1. The person has a right to request, at that time or within
28 10 days, a hearing to show cause why the driver's license should not be suspended
29 concerning the refusal to take the test or for test results indicating an alcohol
30 concentration of 0.08 or more at the time of testing, and the hearing will be scheduled
31 within 45 days; and

32 2. If a hearing request is not made at that time or within 10
33 days, but within 30 days the person requests a hearing, a hearing to show cause why
34 the driver's license should not be suspended concerning the refusal to take the test or
35 for test results indicating an alcohol concentration of 0.08 or more at the time of
36 testing will be scheduled, but a request made after 10 days does not extend a
37 temporary license issued by the police officer that allows the person to continue
38 driving for 45 days;

1 (vi) Advise the person of the administrative sanctions that shall be
2 imposed in the event of failure to request a hearing, failure to attend a requested
3 hearing, or upon an adverse finding by the hearing officer; and

4 (vii) Within 72 hours after the issuance of the order of suspension,
5 send any confiscated driver's license, copy of the suspension order, and a sworn
6 statement to the Administration, that states:

7 1. The officer had reasonable grounds to believe that the
8 person had been driving or attempting to drive a motor vehicle on a highway or on
9 any private property that is used by the public in general in this State while under
10 the influence of alcohol, while impaired by alcohol, while so far impaired by any drug,
11 any combination of drugs, or a combination of one or more drugs and alcohol that the
12 person could not drive a vehicle safely, while impaired by a controlled dangerous
13 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

14 2. The person refused to take a test when [requested]
15 DIRECTED TO TAKE A TEST by the police officer or the person submitted to the test
16 which indicated an alcohol concentration of 0.08 or more at the time of testing; and

17 3. The person was fully advised of the administrative
18 sanctions that shall be imposed, including the fact that a person who refuses to take
19 the test is ineligible for modification of a suspension or issuance of a restrictive
20 license under subsection (n)(1) or (2) of this section.

21 (c) (1) If a person is [involved in a motor vehicle accident that results in the
22 death of, or a life threatening injury to, another person and the person] is detained by
23 a police officer who has reasonable grounds to believe that the person has been
24 driving or attempting to drive while under the influence of alcohol, while impaired by
25 alcohol, while so far impaired by any drug, any combination of drugs, or a
26 combination of one or more drugs and alcohol that the person could not drive a vehicle
27 safely, while impaired by a controlled dangerous substance, or in violation of § 16-813
28 of this title, the person shall be required to submit to a test, as directed by the officer.

29 (2) If a police officer directs that a person be tested, then the provisions
30 of § 10-304 of the Courts and Judicial Proceedings Article shall apply.

31 (3) Any medical personnel who perform any test required by this section
32 are not liable for any civil damages as the result of any act or omission related to such
33 test, not amounting to gross negligence.

34 (d) (1) If a police officer has reasonable grounds to believe that a person has
35 been driving or attempting to drive a motor vehicle while under the influence of
36 alcohol, while impaired by alcohol, while so far impaired by any drug, any
37 combination of drugs, or a combination of one or more drugs and alcohol that the
38 person could not drive a vehicle safely, while impaired by a controlled dangerous
39 substance, or in violation of § 16-813 of this title, and if the police officer determines
40 that the person is unconscious or otherwise incapable of refusing to take a test, the
41 police officer shall:

- 1 (i) Obtain prompt medical attention for the person;
- 2 (ii) If necessary, arrange for removal of the person to a nearby
3 medical facility; and
- 4 (iii) If a test would not jeopardize the health or well-being of the
5 person, direct a qualified medical person to withdraw blood for a test.
- 6 (2) If a person regains consciousness or otherwise becomes capable of
7 refusing before the taking of a test, the police officer shall follow the procedure set
8 forth in subsection (b) or (c) of this section.
- 9 (g) (1) An initial refusal to take a test that is withdrawn as provided in this
10 subsection is not a refusal to take a test for the purposes of this section.
- 11 (2) A person who initially refuses to take a test may withdraw the initial
12 refusal and subsequently consent to take the test if the subsequent consent:
- 13 (i) Is unequivocal;
- 14 (ii) Does not substantially interfere with the timely and efficacious
15 administration of the test; and
- 16 (iii) Is given by the person:
- 17 1. Before the delay in testing would materially affect the
18 outcome of the test; and
- 19 2. A. For the purpose of a test for determining alcohol
20 concentration, within 2 hours of the person's apprehension; or
- 21 B. For the purpose of a test for determining the drug or
22 controlled dangerous substance content of the person's blood, within 4 hours of the
23 person's apprehension.
- 24 (3) In determining whether a person has withdrawn an initial refusal for
25 the purposes of paragraph (1) of this subsection, among the factors that the
26 Administration shall consider are the following:
- 27 (i) Whether the test would have been administered properly:
- 28 1. For the purpose of a test for determining alcohol
29 concentration, within 2 hours of the person's apprehension; or
- 30 2. For the purpose of a test for determining the drug or
31 controlled dangerous substance content of the person's blood, within 4 hours of the
32 person's apprehension;
- 33 (ii) Whether a qualified person, as defined in § 10-304 of the
34 Courts Article, to administer the test and testing equipment were readily available;

1 (iii) Whether the delay in testing would have interfered with the
2 administration of a test to another person;

3 (iv) Whether the delay in testing would have interfered with the
4 attention to other duties of the arresting officer or a qualified person, as defined in §
5 10-304 of the Courts Article;

6 (v) Whether the person's subsequent consent to take the test was
7 made in good faith; and

8 (vi) Whether the consent after the initial refusal was while the
9 person was still in police custody.

10 (4) In determining whether a person has withdrawn an initial refusal for
11 the purposes of paragraph (1) of this subsection, the burden of proof rests with the
12 person to establish by a preponderance of the evidence the requirements of paragraph
13 (2) of this subsection.

14 (O) IF A POLICE OFFICER DIRECTS A TEST OF A PERSON TO BE TAKEN UNDER
15 SUBSECTION (B) OF THIS SECTION OR UNDER SUBSECTION (C) OF THIS SECTION, THE
16 PERSON MAY NOT REFUSE TO TAKE A TEST.

17 16-402.

18 (a) After the conviction of an individual for a violation of Article 27, § 388, §
19 388A, or § 388B of the Code, or of the vehicle laws or regulations of this State or of any
20 local authority, points shall be assessed against the individual as of the date of
21 violation and as follows:

22 (38) REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS
23 ARTICLE 12 POINTS

24 27-101.

25 (V) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF § 16-205.1(O) OF THIS
26 ARTICLE IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR
27 NOT MORE THAN 1 YEAR OR BOTH.

28 **Article - Criminal Procedure**

29 6-220.

30 (d) Notwithstanding subsections (b) and (c) of this section, a court may not
31 stay the entering of judgment and place a defendant on probation for:

32 (1) a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article,
33 if within the preceding 5 years the defendant has been convicted under or has been
34 placed on probation under [that section] EITHER OF THOSE SECTIONS after being
35 charged with a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article;

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2002.