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By: **Delegate Menes (Chairman, Special Committee on Drug and Alcohol Abuse) and Delegates Petzold, Anderson, Boschert, Bronrott, Burns, Eckardt, and Kelley**

Introduced and read first time: January 28, 2004

Assigned to: Judiciary

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

18 BY repealing and reenacting, with amendments,  
19 Article - Courts and Judicial Proceedings  
20 Section 10-309(a)  
21 Annotated Code of Maryland  
22 (2002 Replacement Volume and 2003 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article - Criminal Procedure  
25 Section 6-220(d)  
26 Annotated Code of Maryland  
27 (2001 Volume and 2003 Supplement)

28 BY repealing and reenacting, with amendments,  
29 Article - Transportation

1 Section 16-205.1(a), (b), and (c)  
2 Annotated Code of Maryland  
3 (2002 Replacement Volume and 2003 Supplement)

4 BY repealing and reenacting, without amendments,  
5 Article - Transportation  
6 Section 16-205.1(d) and (g)  
7 Annotated Code of Maryland  
8 (2002 Replacement Volume and 2003 Supplement)

9 BY adding to  
10 Article - Transportation  
11 Section 16-205.1(o), 16-402(a)(38), and 27-101(w)  
12 Annotated Code of Maryland  
13 (2002 Replacement Volume and 2003 Supplement)

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

16 **Article - Courts and Judicial Proceedings**

17 10-309.

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

21 (ii) Evidence of a test or analysis provided for in this subtitle is not  
22 admissible in a prosecution for a violation of § 16-113 or § 21-902 of the  
23 Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5,  
24 § 2-209, or § 3-211 of the Criminal Law Article if obtained contrary to the provisions  
25 of this subtitle.

26 (2) The fact of refusal to submit is admissible in evidence at the trial.

27 **Article - Criminal Procedure**

28 6-220.

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

31 (1) a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article  
32 or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within  
33 the preceding 5 years the defendant has been convicted under § 16-205.1(O) OR §  
34 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211  
35 of the Criminal Law Article, or has been placed on probation in accordance with this  
36 section, after being charged with a violation of § 16-205.1(O) OR § 21-902 of the

1 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the  
2 Criminal Law Article;

3 (2) a second or subsequent controlled dangerous substance crime under  
4 Title 5 of the Criminal Law Article; or

5 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the  
6 Criminal Law Article for a crime involving a person under the age of 16 years.

7 **Article - Transportation**

8 16-205.1.

9 (a) (1) (i) In this section, the following words have the meanings  
10 indicated.

11 (ii) "Under the influence of alcohol" includes under the influence of  
12 alcohol per se as defined by § 11-127.1 of this article.

13 (iii) "Specimen of blood" and "1 specimen of blood" means 1 sample  
14 of blood that is taken, in a single procedure, in 2 or more portions in 2 or more  
15 separate vials.

16 (iv) "Test" means:

17 1. A test of a person's breath or of 1 specimen of a person's  
18 blood to determine alcohol concentration;

19 2. A test or tests of 1 specimen of a person's blood to  
20 determine the drug or controlled dangerous substance content of the person's blood; or

21 3. Both:

22 A. A test of a person's breath or a test of 1 specimen of a  
23 person's blood, to determine alcohol concentration; and

24 B. A test or tests of 1 specimen of a person's blood to  
25 determine the drug or controlled dangerous substance content of the person's blood.

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

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

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

7 1. For a test result indicating an alcohol concentration of  
8 0.08 or more at the time of testing:

9 A. For a first offense, suspend the driver's license for 45 days;  
10 or

11 B. For a second or subsequent offense, suspend the driver's  
12 license for 90 days; or

13 2. For a test refusal:

14 A. For a first offense, suspend the driver's license for 120  
15 days; or

16 B. For a second or subsequent offense, suspend the driver's  
17 license for 1 year;

18 (ii) In the case of a nonresident or unlicensed person:

19 1. For a test result indicating an alcohol concentration of  
20 0.08 or more at the time of testing:

21 A. For a first offense, suspend the person's driving privilege  
22 for 45 days; or

23 B. For a second or subsequent offense, suspend the person's  
24 driving privilege for 90 days; or

25 2. For a test refusal:

26 A. For a first offense, suspend the person's driving privilege  
27 for 120 days; or

28 B. For a second or subsequent offense, suspend the person's  
29 driving privilege for 1 year; and

30 (iii) In addition to any applicable driver's license suspensions  
31 authorized under this section, in the case of a person operating a commercial motor  
32 vehicle who refuses to take a test:

33 1. Disqualify the person's commercial driver's license for a  
34 period of 1 year for a first offense, 3 years for a first offense which occurs while  
35 transporting hazardous materials required to be placarded, and disqualify for life for

1 a second or subsequent offense which occurs while operating any commercial motor  
2 vehicle; or

3   2.           If the person is licensed as a commercial driver by another  
4 state, disqualify the person's privilege to operate a commercial motor vehicle and  
5 report the refusal and disqualification to the person's resident state which may result  
6 in further penalties imposed by the person's resident state.

7   (2)       Except as provided in subsection [(c)] (D) of this section, if a police  
8 officer stops or detains any person who the police officer has reasonable grounds to  
9 believe is or has been driving or attempting to drive a motor vehicle while under the  
10 influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any  
11 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 and who is not unconscious or otherwise incapable of refusing to take a test, the police  
15 officer shall:

16   (i)       Detain the person;

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

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

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

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

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

29   (iii)     Issue a temporary license to drive;

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

32   (v)      Inform the person that:

33   1.       The person has a right to request, at that time or within  
34 10 days, a hearing to show cause why the driver's license should not be suspended  
35 concerning the refusal to take the test or for test results indicating an alcohol  
36 concentration of 0.08 or more at the time of testing, and the hearing will be scheduled  
37 within 45 days; and

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

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

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

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

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

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

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

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

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

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

9 (i) Obtain prompt medical attention for the person;

10 (ii) If necessary, arrange for removal of the person to a nearby  
11 medical facility; and

12 (iii) If a test would not jeopardize the health or well-being of the  
13 person, direct a qualified medical person to withdraw blood for a test.

14 (2) If a person regains consciousness or otherwise becomes capable of  
15 refusing before the taking of a test, the police officer shall follow the procedure set  
16 forth in subsection (b) or (c) of this section.

17 (g) (1) An initial refusal to take a test that is withdrawn as provided in this  
18 subsection is not a refusal to take a test for the purposes of this section.

19 (2) A person who initially refuses to take a test may withdraw the initial  
20 refusal and subsequently consent to take the test if the subsequent consent:

21 (i) Is unequivocal;

22 (ii) Does not substantially interfere with the timely and efficacious  
23 administration of the test; and

24 (iii) Is given by the person:

25 1. Before the delay in testing would materially affect the  
26 outcome of the test; and

27 2. A. For the purpose of a test for determining alcohol  
28 concentration, within 2 hours of the person's apprehension; or

29 B. For the purpose of a test for determining the drug or  
30 controlled dangerous substance content of the person's blood, within 4 hours of the  
31 person's apprehension.

32 (3) In determining whether a person has withdrawn an initial refusal for  
33 the purposes of paragraph (1) of this subsection, among the factors that the  
34 Administration shall consider are the following:

35 (i) Whether the test would have been administered properly:

1                                   1.       For the purpose of a test for determining alcohol  
2 concentration, within 2 hours of the person's apprehension; or

3                                   2.       For the purpose of a test for determining the drug or  
4 controlled dangerous substance content of the person's blood, within 4 hours of the  
5 person's apprehension;

6                                   (ii)     Whether a qualified person, as defined in § 10-304 of the  
7 Courts Article, to administer the test and testing equipment were readily available;

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

10                                  (iv)     Whether the delay in testing would have interfered with the  
11 attention to other duties of the arresting officer or a qualified person, as defined in §  
12 10-304 of the Courts Article;

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

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

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

21       (O)     IF A POLICE OFFICER DIRECTS A PERSON TO TAKE A TEST UNDER  
22 SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON MAY NOT REFUSE TO TAKE  
23 THE TEST.

24 16-402.

25       (a)     After the conviction of an individual for a violation of Title 2, Subtitle 5, §  
26 2-209, or § 3-211 of the Criminal Law Article, or of the vehicle laws or regulations of  
27 this State or of any local authority, points shall be assessed against the individual as  
28 of the date of violation and as follows:

29                                  (38)    REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS  
30 ARTICLE   .....    12 POINTS

31 27-101.

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

35       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
36 October 1, 2004.



