
By: **Delegates Petzold, Barkley, Barve, Bronrott, Burns, Menes, and
Montgomery**

Introduced and read first time: February 10, 2005

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 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 a certain penalty;
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 2004 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 2004 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article - Transportation
30 Section 16-205.1(a), (b), and (c)

1 Annotated Code of Maryland
2 (2002 Replacement Volume and 2004 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article - Transportation
5 Section 16-205.1(d) and (g)
6 Annotated Code of Maryland
7 (2002 Replacement Volume and 2004 Supplement)

8 BY adding to
9 Article - Transportation
10 Section 16-205.1(o), 16-402(a)(38), and 27-101(x)
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2004 Supplement)

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

15 **Article - Courts and Judicial Proceedings**

16 10-309.

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

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

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

26 **Article - Criminal Procedure**

27 6-220.

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

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

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, as directed by the officer to a test
36 of

37 (i) The person's breath to determine alcohol concentration;

38 (ii) One specimen of the person's blood, to determine alcohol
39 concentration or to determine the drug or controlled dangerous substance content of
40 the person's blood; or

1 (iii) Both the person's breath under item (i) of this paragraph and
2 one specimen of the person's blood under item (ii) of this paragraph.

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

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

8 (d) (1) If a police officer has reasonable grounds to believe that a person has
9 been driving or attempting to drive a motor vehicle while under the influence of
10 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, or in violation of § 16-813 of this title, and if the police officer determines
14 that the person is unconscious or otherwise incapable of refusing to take a test, the
15 police officer shall:

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

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

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

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

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

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

28 (i) Is unequivocal;

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

31 (iii) Is given by the person:

32 1. Before the delay in testing would materially affect the
33 outcome of the test; and

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

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

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

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

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

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

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

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

17 (iv) Whether the delay in testing would have interfered with the
18 attention to other duties of the arresting officer or a qualified person, as defined in §
19 10-304 of the Courts Article;

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

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

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

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

31 16-402.

32 (a) After the conviction of an individual for a violation of Title 2, Subtitle 5, §
33 2-209, or § 3-211 of the Criminal Law Article, or of the vehicle laws or regulations of
34 this State or of any local authority, points shall be assessed against the individual as
35 of the date of violation and as follows:

1 (38) REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS
2 TITLE 12 POINTS

3 27-101.

4 (X) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF § 16-205.1(O) OF THIS
5 ARTICLE IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2005.