
By: **Senator Exum**

Introduced and read first time: February 3, 2006

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 basis
6 of a reasonable suspicion of unlawful use; requiring school officials to provide
7 notice to certain persons of an alcohol and drug testing policy; requiring school
8 officials to maintain certain test results as confidential medical records and to
9 grant access to the records only to certain persons; requiring school officials to
10 refer certain pupils for certain treatment services; defining terms; providing for
11 the construction of the Act; and generally relating to alcohol and drug testing of
12 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 2005 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 (2004 Replacement Volume and 2005 Supplement)

23 BY adding to
24 Article - Education
25 Section 7-411.1
26 Annotated Code of Maryland
27 (2004 Replacement Volume and 2005 Supplement)

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

1 **Article - Criminal Law**

2 5-101.

3 (f) (1) "Controlled dangerous substance" means:

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

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

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

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

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

14 (2) "Controlled dangerous substance" does not include distilled spirits,
15 wine, malt beverages, or tobacco.

16 **Article - Education**

17 7-308.

18 (a) A principal, assistant principal, or school security guard of a public school
19 may make a reasonable search of a student on the school premises or on a
20 school-sponsored trip if the searcher has a reasonable belief that the student has in
21 the student's possession an item, the possession of which is a criminal offense under
22 the laws of this State or a violation of any other State law or a rule or regulation of the
23 county board.

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

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

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

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

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

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

8 7-411.

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

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

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

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

18 7-411.1.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

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

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

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

- 29 1. RACE;
- 30 2. NATIONAL ORIGIN;
- 31 3. GENDER;
- 32 4. SOCIOECONOMIC STATUS;
- 33 5. SEXUAL ORIENTATION;

1 6. SUSPICION OR EVIDENCE OF DRUG USE AMONG THE
2 PUPIL'S FAMILY MEMBERS OR PEER GROUP; OR

3 7. RELIGION.

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

6 (C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A COUNTY BOARD OR THE
7 GOVERNING BOARD OF A PRIVATE OR PAROCHIAL SCHOOL SHALL REQUIRE A PUPIL
8 TO SUBMIT TO TESTING ANY SAMPLE OF THE PUPIL'S URINE, HAIR, OR OTHER
9 BODILY TISSUE OR BODILY FLUID TO DETERMINE THE USE OF:

10 (1) ALCOHOL, INCLUDING DISTILLED SPIRITS, WINE, OR MALT
11 BEVERAGES; OR

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

13 (D) ALCOHOL AND DRUG TESTING IS PERMITTED ONLY ON A REASONABLE
14 SUSPICION OF THE UNLAWFUL USE OF ALCOHOL OR A CONTROLLED DANGEROUS
15 SUBSTANCE.

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

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

21 (I) SHALL TREAT AS CONFIDENTIAL MEDICAL RECORDS THE TEST
22 RESULTS OF ANY STUDENT SUBJECT TO ALCOHOL OR DRUG TESTING; AND

23 (II) MAY GRANT ACCESS TO THE TEST RESULTS ONLY TO:

24 1. THE PUPIL SUBJECT TO THE TESTING;

25 2. THE PARENT OR GUARDIAN OF THE PUPIL;

26 3. THE PRINCIPAL OR OTHER HEAD OF SCHOOL OR THE
27 INDIVIDUAL DESIGNATED BY EITHER OF THEM, WHO IS DIRECTLY RESPONSIBLE FOR
28 SCHOOL DISCIPLINE AND SAFETY; AND

29 4. APPROPRIATE SCHOOL STAFF AND CERTIFIED OR
30 LICENSED HEALTH CARE PROFESSIONALS EMPLOYED BY OR WORKING WITH THE
31 SCHOOL.

32 (G) (1) A COUNTY BOARD OR THE GOVERNING BOARD OF A SCHOOL SHALL
33 ENSURE THAT ANY PUPIL WHO TESTS POSITIVE FOR THE UNLAWFUL USE OF
34 ALCOHOL OR DRUGS IS REFERRED TO A SCHOOL COUNSELOR, A SUBSTANCE ABUSE
35 PROFESSIONAL, OR OTHER APPROPRIATE SCHOOL STAFF.

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

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

7 7-412.

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2006.