

HOUSE BILL 1385

R3

2lr2027

By: **Delegate Shoemaker**

Introduced and read first time: February 11, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving – Testing – Warrants and Authorized Police**
3 **Officers**

4 FOR the purpose of establishing an exception to the prohibition on compelling a person to
5 undergo a certain test of the person's breath or blood for the purpose of enforcing
6 prohibitions against drunk and drugged driving for a test that is required by a valid
7 warrant; authorizing a police officer who has successfully completed a certain
8 program of training in advanced roadside impaired driving enforcement to request,
9 require, or direct that a person take a certain test for drug or controlled dangerous
10 substance content under certain circumstances; repealing a provision of law
11 authorizing a police officer who is a trainee, or is participating directly or indirectly
12 in a certain program of training, for certification as a drug recognition expert to
13 request, require, or direct that a person take a certain test for drug or controlled
14 dangerous substance content under certain circumstances; and generally relating to
15 drunk and drugged driving.

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 10–309(a)(1)(i)
19 Annotated Code of Maryland
20 (2020 Replacement Volume and 2021 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Transportation
23 Section 16–205.1(a)
24 Annotated Code of Maryland
25 (2020 Replacement Volume and 2021 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Transportation
28 Section 16–205.1(b)(1) and (j)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2020 Replacement Volume and 2021 Supplement)

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

5 **Article – Courts and Judicial Proceedings**

6 10–309.

7 (a) (1) (i) Except as provided in § 16–205.1(c) of the Transportation Article
8 [or], § 8–738.1 of the Natural Resources Article, **OR AS REQUIRED BY A VALID WARRANT**,
9 a person may not be compelled to submit to a test or tests provided for in this subtitle.

10 **Article – Transportation**

11 16–205.1.

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

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

15 (iii) “Test” means, unless the context requires otherwise:

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

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

20 3. Both:

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

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

25 (iv) “Under the influence of alcohol” includes under the influence of
26 alcohol per se as defined by § 11–174.1 of this article.

27 (2) Any person who drives or attempts to drive a motor vehicle on a
28 highway or on any private property that is used by the public in general in this State is
29 deemed to have consented, subject to the provisions of §§ 10–302 through 10–309, inclusive,
30 of the Courts and Judicial Proceedings Article, to take a test if the person should be
31 detained on suspicion of driving or attempting to drive while under the influence of alcohol,

1 while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or
2 a combination of one or more drugs and alcohol that the person could not drive a vehicle
3 safely, while impaired by a controlled dangerous substance, in violation of an alcohol
4 restriction, or in violation of § 16–813 of this title.

5 (b) (1) Except as provided in subsection (c) of this section **OR AS REQUIRED**
6 **BY A VALID WARRANT**, a person may not be compelled to take a test. However, the
7 detaining officer shall advise the person that, on receipt of a sworn statement from the
8 officer that the person was so charged and refused to take a test, or was tested and the
9 result indicated an alcohol concentration of 0.08 or more, the Administration shall:

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

11 1. Except as provided in items 2, 3, and 4 of this item, for a
12 test result indicating an alcohol concentration of 0.08 or more at the time of testing:

13 A. For a first offense, suspend the driver's license for 180
14 days; or

15 B. For a second or subsequent offense, suspend the driver's
16 license for 180 days;

17 2. Except as provided in item 4 of this item, for a test result
18 indicating an alcohol concentration of 0.15 or more at the time of testing:

19 A. For a first offense, suspend the person's driving privilege
20 for 180 days; or

21 B. For a second or subsequent offense, suspend the person's
22 driving privilege for 270 days;

23 3. Except as provided in item 4 of this item, for a test result
24 indicating an alcohol concentration of 0.08 or more at the time of testing, if the person was
25 involved in a motor vehicle accident that resulted in the death of another person:

26 A. For a first offense, suspend the person's driving privilege
27 for 6 months; or

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

30 4. For a test result indicating an alcohol concentration of 0.15
31 or more at the time of testing, if the person was involved in a motor vehicle accident that
32 resulted in the death of another person:

33 A. For a first offense, suspend the person's driving privilege
34 for 1 year; or

- 1 B. For a second or subsequent offense, revoke the person's
2 driving privilege; or
- 3 5. For a test refusal:
- 4 A. For a first offense, suspend the driver's license for 270
5 days; or
- 6 B. For a second or subsequent offense, suspend the driver's
7 license for 2 years;
- 8 (ii) In the case of a nonresident or unlicensed person:
- 9 1. Except as provided in items 2, 3, and 4 of this item, for a
10 test result indicating an alcohol concentration of 0.08 or more at the time of testing:
- 11 A. For a first offense, suspend the person's driving privilege
12 for 180 days; or
- 13 B. For a second or subsequent offense, suspend the person's
14 driving privilege for 180 days;
- 15 2. Except as provided in item 4 of this item, for a test result
16 indicating an alcohol concentration of 0.15 or more at the time of testing:
- 17 A. For a first offense, suspend the person's driving privilege
18 for 180 days; or
- 19 B. For a second or subsequent offense, suspend the person's
20 driving privilege for 270 days;
- 21 3. Except as provided in item 4 of this item, for a test result
22 indicating an alcohol concentration of 0.08 or more at the time of testing, if the person was
23 involved in a motor vehicle accident that resulted in the death of another person:
- 24 A. For a first offense, suspend the person's driving privilege
25 for 6 months; or
- 26 B. For a second or subsequent offense, suspend the person's
27 driving privilege for 1 year;
- 28 4. For a test result indicating an alcohol concentration of 0.15
29 or more at the time of testing, if the person was involved in a motor vehicle accident that
30 resulted in the death of another person:
- 31 A. For a first offense, suspend the person's driving privilege

1 for 1 year; or

2 B. For a second or subsequent offense, revoke the person's
3 driving privilege; or

4 5. For a test refusal:

5 A. For a first offense, suspend the person's driving privilege
6 for 270 days; or

7 B. For a second or subsequent offense, suspend the person's
8 driving privilege for 2 years; and

9 (iii) In addition to any applicable driver's license suspensions
10 authorized under this section, in the case of a person operating a commercial motor vehicle
11 or who holds a commercial instructional permit or a commercial driver's license who refuses
12 to take a test:

13 1. Disqualify the person's commercial instructional permit or
14 commercial driver's license for a period of 1 year for a first offense, 3 years for a first offense
15 which occurs while transporting hazardous materials required to be placarded, and
16 disqualify for life if the person's commercial instructional permit or commercial driver's
17 license has been previously disqualified for at least 1 year under:

18 A. § 16-812(a) or (b) of this title;

19 B. A federal law; or

20 C. Any other state's law; or

21 2. If the person holds a commercial instructional permit or a
22 commercial driver's license issued by another state, disqualify the person's privilege to
23 operate a commercial motor vehicle and report the refusal and disqualification to the
24 person's resident state which may result in further penalties imposed by the person's
25 resident state.

26 (j) Notwithstanding any other provision of this section, a test for drug or
27 controlled dangerous substance content under this section:

28 (1) May not be requested as described under subsection (b) of this section,
29 required as described under subsection (c) of this section, or directed as described under
30 subsection (d) of this section, by a police officer unless the law enforcement agency of which
31 the officer is a member has the capacity to have such tests conducted; **AND**

32 (2) May only be requested as described under subsection (b) of this section,
33 required as described under subsection (c) of this section, or directed as described under
34 subsection (d) of this section, by a police officer who [is a trainee, has been trained, or is

1 participating directly or indirectly in a program of training that is]:

2 [(i) Designed to train and certify police officers as drug recognition
3 experts; and]

4 (I) 1. IS A MEMBER OF, AND HAS BEEN CERTIFIED AS A
5 DRUG RECOGNITION EXPERT BY THE HEAD OF:

6 A. THE DEPARTMENT OF STATE POLICE;

7 B. THE BALTIMORE CITY POLICE DEPARTMENT;

8 C. A POLICE DEPARTMENT, BUREAU, OR FORCE OF A
9 COUNTY;

10 D. A POLICE DEPARTMENT, BUREAU, OR FORCE OF AN
11 INCORPORATED CITY OR TOWN;

12 E. THE MARYLAND TRANSIT ADMINISTRATION POLICE
13 FORCE;

14 F. THE MARYLAND TRANSPORTATION AUTHORITY
15 POLICE FORCE;

16 G. THE POLICE FORCE OF MORGAN STATE UNIVERSITY;

17 H. THE POLICE FORCE OF AN INSTITUTION WITHIN THE
18 UNIVERSITY SYSTEM OF MARYLAND;

19 I. A SHERIFF'S DEPARTMENT OF ANY COUNTY OR
20 BALTIMORE CITY;

21 J. THE NATURAL RESOURCES POLICE FORCE OR THE
22 FOREST AND PARK SERVICE POLICE FORCE OF THE DEPARTMENT OF NATURAL
23 RESOURCES; OR

24 K. THE MARYLAND CAPITOL POLICE OF THE
25 DEPARTMENT OF GENERAL SERVICES; AND

26 2. HAS BEEN TRAINED AS A DRUG RECOGNITION EXPERT
27 BY A LAW ENFORCEMENT AGENCY OF THE STATE OR ANY COUNTY, MUNICIPAL, OR
28 OTHER LAW ENFORCEMENT AGENCY IN THE STATE DESCRIBED IN ITEM 1 OF THIS
29 ITEM IN A PROGRAM OF TRAINING:

1 (ii) Conducted by a law enforcement agency of the State, or any
2 county, municipal, or other law enforcement agency in the State described in item (3)(i)1
3 through 12 of this subsection:]

4 [1.] A. [In] ADMINISTERED IN conjunction with the
5 National Highway Traffic Safety Administration; or

6 [2.] B. [As a program of training of police officers as drug
7 recognition experts that] THAT contains requirements for successful completion of the
8 training program that are the substantial equivalent of the requirements of the Drug
9 Recognition Training Program developed by the National Highway Traffic Safety
10 Administration; [and] OR

11 (II) IS A MEMBER OF, AND HAS BEEN CERTIFIED AS HAVING
12 SUCCESSFULLY COMPLETED ADVANCED ROADSIDE IMPAIRED DRIVING
13 ENFORCEMENT TRAINING BY THE HEAD OF, A LAW ENFORCEMENT AGENCY
14 DESCRIBED IN ITEM (I)1 OF THIS ITEM IN A PROGRAM OF TRAINING:

15 1. ADMINISTERED IN CONJUNCTION WITH THE
16 NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; OR

17 2. THAT CONTAINS REQUIREMENTS FOR SUCCESSFUL
18 COMPLETION OF THE TRAINING PROGRAM THAT ARE THE SUBSTANTIAL
19 EQUIVALENT OF THE REQUIREMENTS OF THE ADVANCED ROADSIDE IMPAIRED
20 DRIVING ENFORCEMENT TRAINING DEVELOPED BY THE NATIONAL HIGHWAY
21 TRAFFIC SAFETY ADMINISTRATION.

22 [(3) May only be requested as described under subsection (b) of this section,
23 required as described under subsection (c) of this section, or directed as described under
24 subsection (d) of this section:

25 (i) In the case of a police officer who is a trainee, or who is
26 participating directly or indirectly in a program of training described in item (2) of this
27 subsection, if the police officer is a member of, and is designated as a trainee or a participant
28 by the head of:

29 1. The Department of State Police;

30 2. The Baltimore City Police Department;

31 3. A police department, bureau, or force of a county;

32 4. A police department, bureau, or force of an incorporated
33 city or town;

1 5. The Maryland Transit Administration Police Force;

2 6. The Maryland Port Administration Police Force of the
3 Department of Transportation;

4 7. The Maryland Transportation Authority Police Force;

5 8. The Police Force of a University of Maryland campus or
6 another institution in the University System of Maryland or Morgan State University;

7 9. The police force for a State university or college under the
8 direction and control of the University System of Maryland;

9 10. A sheriff's department of any county or Baltimore City;

10 11. The Natural Resources Police Force or the Forest and Park
11 Service Police Force of the Department of Natural Resources; or

12 12. The Maryland Capitol Police of the Department of General
13 Services; or

14 (ii) In the case of a police officer who has been trained as a drug
15 recognition expert, if the police officer is a member of, and certified as a drug recognition
16 expert by the head of one of the law enforcement agencies described in item (i)1 through 12
17 of this item.]

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2022.