

SENATE BILL 216

E2

2lr0063

(PRE-FILED)

By: **Chair, Judicial Proceedings Committee (By Request – Departmental – Health)**

Requested: October 5, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 3, 2022

CHAPTER _____

1 AN ACT concerning

2 **Evidence – Approval of Breath and Blood Tests for Alcohol, Drugs, or Controlled**
3 **Dangerous Substances**

4 FOR the purpose of transferring certain duties relating to the approval of breath and blood
5 tests as evidence for alcohol, drugs, or controlled dangerous substances from the
6 State Toxicologist to the Department of State Police; and generally relating to
7 alcohol, drug, and controlled dangerous substance testing as evidence.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 10–304(a) through (d) and 10–306(a)
11 Annotated Code of Maryland
12 (2020 Replacement Volume and 2021 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Health – General
15 Section 17–214(g)
16 Annotated Code of Maryland
17 (2019 Replacement Volume and 2021 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Transportation
20 Section 16–205.2(a)
21 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2020 Replacement Volume and 2021 Supplement)

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

Article – Courts and Judicial Proceedings

10–304.

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

(2) “Qualified medical person” means a person permitted to withdraw blood from a human.

(3) “Qualified person” means a person who has received training in the use of the equipment in a training program approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** and who is either a police officer, a police employee, [an employee of the office of the Chief Medical Examiner,] or a person authorized by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION**.

(b) (1) The test of breath shall be administered by a qualified person with equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** at the direction of a police officer.

(2) The officer arresting the individual may not administer the test of breath.

(c) (1) (i) The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** acting at the request of a police officer.

(ii) If a law enforcement officer testifies that the officer witnessed the taking of a blood specimen by a person who the officer reasonably believed was a qualified medical person, the officer’s testimony shall be sufficient evidence that the person was a qualified medical person and that the blood was obtained in compliance with this section, without testimony from the person who obtained the blood specimen.

(2) The test of blood shall be conducted by a qualified person using equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** in a laboratory approved by the toxicologist.

1 (d) (1) For the purpose of establishing that the test of breath or blood was
2 administered with equipment approved by the toxicologist [under the Postmortem
3 Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC**
4 **SCIENCES DIVISION**, a statement signed by the toxicologist certifying that the equipment
5 used in the test has been approved by him shall be prima facie evidence of the approval,
6 and the statement is admissible in evidence without the necessity of the toxicologist
7 personally appearing in court.

8 (2) (i) If a defendant desires the toxicologist to be present and testify at
9 trial as a witness, the defendant shall file a request for a subpoena for the toxicologist at
10 least 20 days before the trial in the appropriate court.

11 (ii) If the District Court is deprived of jurisdiction under
12 circumstances in which a defendant is entitled to and demands a jury trial, or appeals from
13 the District Court to the circuit court, another subpoena must be filed at least 20 days
14 before the trial in the circuit court.

15 (iii) If a trial date is postponed for any reason beyond 30 days from
16 the trial date for which the subpoena was issued, the defendant shall file a new subpoena
17 for the toxicologist.

18 (iv) In addition to the requirements of Maryland Rules 4–265 and
19 4–266, the subpoena shall contain the name, address, and telephone number of the
20 defendant or the defendant’s attorney.

21 (3) A subpoena for the toxicologist may be quashed if a defendant fails to
22 comply with the requirements of this subsection.

23 (4) A motion to quash a defendant’s subpoena may be filed by any party or
24 by the Attorney General.

25 10–306.

26 (a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in
27 any criminal trial in which a violation of § 16–113, § 16–813, or § 21–902 of the
28 Transportation Article, or a violation of Title 2, Subtitle 5, § 2–209, or § 3–211 of the
29 Criminal Law Article is charged or is an issue, a copy of a report of the results of a test of
30 breath or blood to determine alcohol concentration signed by the technician or analyst who
31 performed the test, is admissible as substantive evidence without the presence or testimony
32 of the technician or analyst who performed the test.

33 (ii) Subject to the provisions of § 10–308(b) of this subtitle and
34 paragraph (2) of this subsection, in any criminal trial in which a violation of § 21–902 of
35 the Transportation Article or a violation of Title 2, Subtitle 5, § 2–209, or § 3–211 of the
36 Criminal Law Article is charged, a copy of a report of the results of a test or tests of blood
37 to determine drug or controlled dangerous substance content signed by the technician or
38 analyst who performed the test, is admissible as substantive evidence without the presence

1 or testimony of the technician or analyst who performed the test.

2 (2) To be admissible under paragraph (1) of this subsection, the report
3 shall:

4 (i) Identify the technician or analyst as a “qualified person”, as
5 defined in § 10–304 of this subtitle;

6 (ii) State that the test was performed with equipment approved by
7 the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT**
8 **OF STATE POLICE FORENSIC SCIENCES DIVISION** at the direction of a police officer;
9 and

10 (iii) State that the result of the test is as stated in the report.

11 **Article – Health – General**

12 17–214.

13 (g) This section does not apply to:

14 (1) Alcohol or controlled dangerous substance testing of a person under
15 arrest or held by a law enforcement or correctional agency;

16 (2) Alcohol testing procedures conducted by a law enforcement or
17 correctional agency on breath testing equipment certified by the [State Toxicologist]
18 **TOXICOLOGIST IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES**
19 **DIVISION**; or

20 (3) Controlled dangerous substance testing by a laboratory facility of a law
21 enforcement or correctional agency that maintains laboratory testing standards
22 comparable to the standards in this section.

23 **Article – Transportation**

24 16–205.2.

25 (a) A police officer who has reasonable grounds to believe that an individual is or
26 has been driving or attempting to drive a motor vehicle while under the influence of alcohol
27 or while impaired by alcohol may, without making an arrest and prior to the issuance of a
28 citation, request the individual to submit to a preliminary breath test to be administered
29 by the officer using a device approved by the [State Toxicologist] **TOXICOLOGIST IN THE**
30 **DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION**.

31 SECTION 2. AND BE IT FURTHER ENACTED, That the qualifications and
32 approvals issued by the State Toxicologist under the Postmortem Examiners Commission

1 before the effective date of this Act remain valid through this Act's transfer of those
2 functions to the Department of State Police Forensic Sciences Division.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.