

1 **BILL NO.**

2 Introduced by

3 Referred to Committee on

4 Date:

5 Subject:

6 Statement of purpose of bill as introduced: This bill proposes to clarify that a law enforcement
7 officer may obtain a blood sample when he or she has reasonable grounds to believe that the
8 person is under the combined influence of alcohol and a drug just as a law enforcement officer
9 may obtain a saliva sample when he or she has reasonable grounds to believe that the person is
10 under the combined influence of alcohol and a drug. It also includes in criminal refusal the
11 refusal to comply with a search warrant.

12 An act relating to driving under the influence

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 23 V.S.A. § 1201 is amended to read:

15 (a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle
16 on a highway:

17 (1) when the person's alcohol concentration is:

18 (A) 0.08 or more; or

19 (B) 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of
20 this title; or

21 (C) 0.04 or more if the person is operating a commercial vehicle as defined in subdivision
22 4103(4) of this title; or

23 (2) when the person is under the influence of alcohol; or

1 (3) when the person is under the influence of any other drug or under the combined influence
2 of alcohol and any other drug.

3 (b) A person who has previously been convicted of a violation of this section shall not operate,
4 attempt to operate, or be in actual physical control of any vehicle on a highway and refuse a law
5 enforcement officer's reasonable request under the circumstances for an evidentiary test where
6 the officer had reasonable grounds to believe the person was in violation of subsection (a) of this
7 section.

8 (c) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle
9 on a highway and be involved in a crash or collision resulting in serious bodily injury or death to
10 another and refuse a law enforcement officer's reasonable request under the circumstances for an
11 evidentiary test where the officer has reasonable grounds to believe the person has any amount of
12 alcohol or drugs in his or her system.

13 (d)(1) A person who is convicted of a second or subsequent violation of subsection (a), (b), or (c)
14 of this section when the person's alcohol concentration is proven to be 0.16 or more shall not, for
15 three years from the date of the conviction for which the person's alcohol concentration is 0.16 or
16 more, operate, attempt to operate, or be in actual physical control of any vehicle on a highway
17 when the person's alcohol concentration is 0.02 or more. The prohibition imposed by this
18 subsection shall be in addition to any other penalties imposed by law.

19 (2) A person shall not operate, attempt to operate, or be in actual physical control of any
20 vehicle on a highway when the person's alcohol concentration is 0.02 or more if the person
21 has previously been convicted of a second or subsequent violation of subsection (a), (b), or
22 (c) of this section within the preceding three years and the person's alcohol concentration for
23 the second or subsequent violation was proven to be 0.16 or greater. A violation of this

1 subsection shall be considered a third or subsequent violation of this section and shall be
2 subject to the penalties of subsection 1210(d) of this title.

3 (e) The fact that a person charged with a violation of this section is or has been entitled to use a
4 drug under the laws of this State shall not constitute a defense against any charge of violating
5 this section.

6 (f) A person may not be convicted of more than one violation of subsection (a) of this section
7 arising out of the same incident.

8 (g) For purposes of this section and section 1205 of this title, the defendant may assert as an
9 affirmative defense that the person was not operating, attempting to operate, or in actual physical
10 control of the vehicle because the person:

11 (1) had no intention of placing the vehicle in motion; and

12 (2) had not placed the vehicle in motion while under the influence.

13 (h) As used in subdivision (a)(3) of this section, “under the influence of a drug” means that a
14 person's ability to operate a motor vehicle safely is diminished or impaired in the slightest
15 degree. This subsection shall not be construed to affect the meaning of the term “under the
16 influence of alcohol.”

17 (i) Evidence of the results of a standardized field sobriety test conducted by a law enforcement
18 officer trained in Advanced Roadside Impaired Driving Enforcement or a certified Drug
19 Recognition Expert's systematic evaluation of observable signs and symptoms of a person
20 charged with a violation of this section shall be presumptively admissible at trial to demonstrate
21 whether or not the person was operating under the influence in violation of this section.

22 (j) A person shall not refuse to comply with a search warrant issued pursuant to section 1202 of
23 this title authorizing law enforcement to obtain a blood or saliva sample from the person. This

1 subsection shall not be construed as impairing the person's right to challenge the issuance of the
2 search warrant in any subsequent legal proceedings.

3 Sec. 2. 23 V.S.A. § 1202 is amended to read:

4 (a)(1) Implied consent. Every person who operates, attempts to operate, or is in actual
5 physical control of any vehicle on a highway in this State is deemed to have given consent to an
6 evidentiary test of that person's breath for the purpose of determining the person's alcohol
7 concentration or the presence of other drug in the blood. The test shall be administered at the
8 direction of a law enforcement officer.

9 (2) Blood test. If breath testing equipment is not reasonably available or if the officer has
10 reason to believe that the person is unable to give a sufficient sample of breath for testing or if
11 the law enforcement officer has reasonable grounds to believe that the person is under the
12 influence of a drug other than alcohol, or under the combined influence of alcohol and a drug,
13 the person is deemed to have given consent to the taking of an evidentiary sample of blood. If in
14 the officer's opinion the person is incapable of decision or unconscious or dead, it is deemed that
15 the person's consent is given and a sample of blood shall be taken. A blood test sought pursuant
16 to this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

17 (3) Saliva test. If the law enforcement officer has reasonable grounds to believe that the
18 person is under the influence of a drug other than alcohol, or under the combined influence of
19 alcohol and a drug, the person is deemed to have given consent to providing of an evidentiary
20 sample of saliva. A saliva test sought pursuant to this subdivision (3) shall be obtained pursuant
21 to subsection (f) of this section. Any saliva test administered under this section shall be used
22 only for the limited purpose of detecting the presence of a drug in the person's body and shall not
23 be used to extract DNA information.

1 (4) Evidentiary test. The evidentiary test shall be required of a person when a law
2 enforcement officer has reasonable grounds to believe that the person was operating, attempting
3 to operate, or in actual physical control of a vehicle in violation of section 1202 of this title.

4 (5) Fatal collision or incident resulting in serious bodily injury. The evidentiary test shall
5 also be required if the person is the surviving operator of a motor vehicle involved in a fatal
6 incident or collision or an incident or collision resulting in serious bodily injury and the law
7 enforcement officer has reasonable grounds to believe that the person has any amount of alcohol
8 or other drug in his or her system.

9 (b) A refusal to take a breath test may be introduced as evidence in a criminal proceeding.

10 (c) A person who is requested by a law enforcement officer to submit to an evidentiary test or
11 tests has a right as limited in this subsection to consult an attorney before deciding whether or
12 not to submit to such a test or tests. The person must decide whether or not to submit to the
13 evidentiary test or tests within a reasonable time and not later than 30 minutes after the time of
14 the initial attempt to contact the attorney. The person must make a decision about whether to
15 submit to the test or tests at the expiration of the 30 minutes, regardless of whether a consultation
16 took place.

17 (d) At the time a test is requested, the person shall be informed of the following statutory
18 information:

19 (1) Vermont law authorizes a law enforcement officer to request a test to determine
20 whether the person is under the influence of alcohol or other drug.

21 (2) If the officer's request is reasonable and testing is refused, the person's license or
22 privilege to operate will be suspended for at least six months.

1 (3) If a test is taken and the result indicate that the person is under the influence of
2 alcohol or other drug, the person will be subject to criminal charges and the person's license or
3 privilege to operate will be suspended for at least 90 days.

4 (4) A person who is requested by a law enforcement officer to submit to an evidentiary
5 test or tests has the limited right to consult an attorney before deciding whether or not to submit
6 to such a test or tests. The person must decide whether or not to submit to the evidentiary test or
7 tests within a reasonable time and ~~no~~ not later than 30 minutes from the time of the initial
8 attempt to contact the attorney, regardless of whether a consultation took place. The person also
9 has the right to have additional tests made by someone of the person's own choosing at the
10 person's own expense. The person shall also be informed of the location of one or more
11 facilities available for drawing blood.

12 (5) A person who is requested by a law enforcement officer to submit to an evidentiary
13 test administered with an infrared breath-testing instrument may elect to have a second infrared
14 test administered immediately after receiving the results of the first test.

15 (6) If the person refuses to take an evidentiary test, the refusal may be offered into
16 evidence against the person at trial, whether or not a search warrant is sought. The person may
17 be charged with the crime of criminal refusal if the person:

18 (A) has previously been convicted of a violation of section 1201 of this title; or

19 (B) is involved in an accident or collision resulting in serious bodily injury or death to
20 another, in which case the court may issue a search warrant and order the person to submit to a
21 blood test, the results of which may be offered into evidence against the person at trial.

1 (e) In any proceeding under this subchapter, a law enforcement officer's testimony that
2 he or she is certified pursuant to section 20 V.S.A. § 2358 shall be prima facie evidence of that
3 fact.

4 (f)(1) If a blood test is sought from a person pursuant to subdivision (a)(2) of this section, or
5 if a person who has been involved in an accident or collision resulting in serious bodily injury or
6 death to another refuses an evidentiary test, a law enforcement officer may apply for a search
7 warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of
8 blood for an evidentiary test. If Pursuant to subdivision (d)(6), if a blood sample is obtained by
9 search warrant, the fact of the refusal may still be introduced in evidence, in addition to the
10 results of the evidentiary test. Once a law enforcement official begins the application process for
11 a search warrant, the law enforcement official is not obligated to discontinue the process even if
12 the person later agrees to provide an evidentiary ~~breath~~ sample. The limitation created by Rule
13 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to
14 search warrants authorized by this section.

15 (2) If an evidentiary saliva test is sought from a person pursuant to subdivision (a)(3) of
16 this section, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the
17 Vermont Rules of Criminal Procedure to obtain a sample of saliva for the evidentiary test.
18 Pursuant to subdivision (d)(6) of this section, if a saliva sample is obtained by search warrant, the
19 fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary
20 test.

21 (g) The Defender General shall provide statewide 24-hour coverage seven days a week to
22 ensure that adequate legal services are available to persons entitled to consult an attorney under
23 this section.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect upon passage.