

GUIDE TO DRUNK AND DRUGGED DRIVING LAWS



DEPARTMENT OF LEGISLATIVE SERVICES
REVISED DECEMBER 2016

Guide to Drunk and Drugged Driving Laws

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

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Contributing Staff

Writers

Karen D. Morgan
Shirleen M. Pilgrim
Effie C. Rife

Reviewer

Douglas R. Nestor

Other Staff Who Contributed to This Report

Nichol A. Conley

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 • Washington Area: 301-970-5400

Other Areas: 1-800-492-7122, Extension 5400

TTY: 410-946-5401 • 301-970-5401

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Dexcheneaux
Executive Director

December 30, 2016

The Honorable Thomas V. Mike Miller, Jr., Co-Chairman
The Honorable Michael E. Busch, Co-Chairman
Members of the Maryland General Assembly

Ladies and Gentlemen:

This report, *Guide to Drunk and Drugged Driving Laws*, describes the criminal and administrative offenses concerning drunk and drugged driving and the associated penalties. Since original publication in 2012, several significant changes have occurred in the law. In response to continuing legislative interest in this area, it has been revised to include changes in the law through the 2016 legislative session.

The report was revised by Karen D. Morgan. The original report was written by Karen D. Morgan, Shirleen M. Pilgrim, and Effie C. Rife. Douglas R. Nestor reviewed the original and revised reports.

I trust that this information will be of assistance to you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Warren G. Deschenaux".

Warren G. Deschenaux
Director

WGD/DRN/nac

Legislative Services Building · 90 State Circle · Annapolis, Maryland 21401-1991
410-946-5350 · FAX 410-946-5395 · TDD 410-946-5401
301-970-5350 · FAX 301-970-5395 · TDD 301-970-5401
Other areas in Maryland 1-800-492-7122

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Chapter 1

Drunk and Drugged Driving Crimes

Evidentiary rules relating to tests to determine a driver's blood alcohol concentration (BAC) or to determine the presence of a drug or controlled dangerous substance (CDS) in a driver's blood are found in the Courts and Judicial Proceedings Article. The drunk or drugged driving crimes involving a homicide or life-threatening injury are located in the Criminal Law Article. The other general drunk or drugged driving crimes are contained in the Transportation Article.

Evidentiary Rules Concerning Alcohol and Drug Tests

Although observations of a driver by a police officer or another witness are admissible to prove impairment, an alcohol or drug test result is regarded as the best evidence to prove a drunk or drugged driving crime. In a case in which a test result is available, statutory provisions govern the evidentiary use of the test result. A review of these statutes is crucial to understanding the drunk and drugged driving crimes discussed in this chapter.

Alcohol Test Results

An alcohol test is admissible at trial to show a driver's specific BAC. Alcohol concentration is measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. If an alcohol test is admitted as evidence, statutory provisions establish the applicable evidentiary presumption based on the specific test results. (CJ, § 10-307) An alcohol test is usually a breath test, but sometimes it is a blood test.

If a person has an alcohol concentration at the time of testing of 0.08 or more, the person will be considered under the influence of alcohol *per se*. A test result of 0.08 or more also subjects a driver to an administrative *per se* license suspension. (See Chapter 3 for a discussion of administrative *per se* offenses and license suspensions.)

An alcohol concentration at the time of testing of at least 0.07 but less than 0.08 constitutes *prima facie* evidence that the person was driving while impaired by alcohol.

An alcohol concentration at the time of testing of more than 0.05 but less than 0.07 may not give rise to any presumption that the person was or was not under the influence of alcohol or that the person was or was not driving while impaired by alcohol.

An alcohol concentration at the time of testing of 0.05 or less creates the presumption that the person was not under the influence of alcohol and was not driving while impaired by alcohol.

An alcohol concentration at the time of testing of 0.02 or more is *prima facie* evidence that the person was driving with alcohol in the person's blood. This rule is used mainly to prove a violation of an alcohol restriction on a driver's license.

Drug Test Results

A test for drugs or CDS is admissible as evidence. (CJ, § 10-308) However, there are no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

A test for drugs or CDS is more difficult to obtain because the test must be conducted using a specimen of blood and only a police officer who is a drug recognition expert may request that a driver submit to the test. These factors contribute significantly to less frequent testing for drugs or CDS than testing for alcohol.

Test Refusal

The fact of a driver's refusal to take a test for alcohol or drugs or CDS is admissible in evidence at trial. (CJ, § 10-309)

A test refusal also subjects a driver to an administrative *per se* license suspension. (See Chapter 3 for a discussion of administrative *per se* offenses and license suspensions.)

Categories of Crimes

There are three major categories of crimes involving drunk or drugged driving: (1) negligently causing a homicide by drunk or drugged driving; (2) negligently causing a life-threatening injury by drunk or drugged driving; and (3) general drunk or drugged driving crimes.

Within each of these three categories, there are five discrete crimes which basically parallel one another. The first two alcohol offenses are the serious driving under the influence of alcohol offense and driving under the influence of alcohol *per se* offense. The essential difference between these two offenses is that an alcohol test result of 0.08 or more is necessary for a conviction for a driving under the influence of alcohol *per se* offense. The penalties within a particular category of crimes for these two offenses are identical.

The third offense is the less serious driving while impaired offense.

The fourth offense is driving while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol. For this offense, the fact that a person may have lawfully taken a drug, a combination of drugs, or a combination of one or more drugs and alcohol

is not a defense unless the person did not know that the drug, the combination of drugs, or the combination of one or more drugs and alcohol would make the person unable to drive safely.

The fifth offense involves driving while impaired by a CDS that the person is not legally entitled to use. This is the more serious drug offense and tends to carry a more severe penalty. Often, but not always, the penalty for driving while impaired by a CDS is in line with the penalty for driving under the influence of alcohol or under the influence of alcohol *per se* within a particular category of crimes.

Negligently Causing Homicide

The five offenses for negligently causing a homicide by drunk or drugged driving are all felonies. These offenses apply to a motor vehicle (or vessel). In contrast to the offense of manslaughter by vehicle (or vessel), which requires a finding of gross negligence, all of these drunk or drugged offenses require only a finding of simple negligence.

The first offense prohibits a person from causing the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle while under the influence of alcohol. (CR, § 2-503(a)(1))

The second offense prohibits a person from causing the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle while under the influence of alcohol *per se*. (CR, § 2-503(a)(2))

The third offense prohibits a person from causing the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle while impaired by alcohol. (CR, § 2-504)

The fourth offense prohibits a person from causing the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle while the person is so far impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol that the person cannot operate the motor vehicle safely. This section specifically states that it is not a defense that a person was lawfully using the drug, the combination of drugs, or the combination of one or more drugs and alcohol unless the person was unaware that doing so would make the person incapable of driving safely. (CR, § 2-505)

The fifth offense prohibits a person from causing the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle while the person is impaired by a CDS. This prohibition does not apply, however, to a person who is entitled to use CDS. (CR, § 2-506)

Negligently Causing Life-threatening Injury

The five offenses concerning negligently causing a life-threatening injury by motor vehicle (or vessel) while under the influence of or impaired by alcohol or drugs are all misdemeanors. As with the homicide offenses, these provisions require a finding of simple negligence.

The first offense prohibits a person from causing a life-threatening injury to another as a result of the person's negligently driving, operating, or controlling a motor vehicle while the person is under the influence of alcohol. (CR, § 3-211(c)(1)(i))

The second offense prohibits a person from causing a life-threatening injury to another as a result of the person's negligently driving, operating, or controlling a motor vehicle while the person is under the influence of alcohol *per se*. (CR, § 3-211(c) (1)(ii))

The third offense prohibits a person from causing a life-threatening injury to another as a result of the person's negligently driving, operating, or controlling a motor vehicle while impaired by alcohol. (CR, § 3-211(d))

The fourth offense prohibits a person from causing a life-threatening injury to another as a result of the person's negligently driving, operating, or controlling a motor vehicle while the person is so far impaired by a drug, a combination of drugs, or a combination of drugs and alcohol that the person cannot operate the motor vehicle safely. (CR, § 3-211(e))

The fifth offense prohibits a person from causing a life-threatening injury to another as a result of the person's negligently driving, operating, or controlling a motor vehicle while the person is impaired by a CDS. This provision does not apply, however, to a person who is entitled to use the CDS. (CR, § 3-211(f))

General Drunk or Drugged Driving

The general drunk or drugged driving offenses are misdemeanors.

The first offense prohibits a person from driving or attempting to drive a vehicle while under the influence of alcohol. (TR, § 21-902(a)(1))

The second offense prohibits a person from driving or attempting to drive a vehicle while under the influence of alcohol or under the influence of alcohol *per se*. (TR, § 21-902(a)(2))

The third offense prohibits a person from driving or attempting to drive a vehicle while impaired by alcohol. (TR, § 21-902(b))

The fourth offense prohibits a person from driving or attempting to drive a vehicle while the person is so far impaired by a drug, a combination of drugs, or a combination of one or more

drugs and alcohol that the person cannot drive the vehicle safely. It is not a defense that the person was legally entitled to use the drug, the combination of drugs, or the combination of one or more drugs and alcohol. (TR, § 21-902(c))

The fifth offense prohibits a person from driving or attempting to drive a vehicle while the person is impaired by a CDS if the person is not legally entitled to use the CDS. (TR, § 21-902(d))

There are additional offenses for transporting a minor while violating any of the general drunk or drugged driving offenses described above. (TR, § 21-902(a)(3), (b)(2), (c)(3), and (d)(2))

Driving within 12 Hours after Drunk or Drugged Driving Arrest

Within 12 hours of an arrest for a drunk or drugged driving offense, a person is prohibited from driving a motor vehicle. (TR, § 21-902.1)

Penalties

Negligently Causing Homicide

A person who causes the death of another as a result of negligently driving, operating, or controlling a motor vehicle while under the influence of alcohol or under the influence of alcohol *per se* is subject to imprisonment for up to five years or a fine of up to \$5,000 or both. (CR, § 2-503)

A person who commits any of the other three offenses relating to homicide by motor vehicle while impaired by alcohol or drugs is subject to imprisonment for up to three years or a fine of up to \$3,000 or both. (CR, §§ 2-504 through 2-506)

Negligently Causing Life-threatening Injury

A person who causes a life threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle while the person is under the influence of alcohol or under the influence of alcohol *per se*, or while the person is under the influence of a CDS, is subject to imprisonment for up to three years or a fine of up to \$3,000 or both. (CR, § 3-211(c) and (f))

A person who causes life-threatening injury to another as a result of negligently driving, operating, or controlling a motor vehicle while impaired by alcohol or while so far impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol that the person cannot operate the motor vehicle safely is subject to imprisonment for up to two years or a fine of up to \$3,000 or both. (CR, § 3-211(d) and (e))

Subsequent Offender Penalties – Negligent Homicide and Negligent Life-threatening Injury Offenses

Chapter 517 of 2016 establishes more stringent penalties for those convicted of repeat offenses involving manslaughter by vehicle or vessel, homicide by motor vehicle or vessel, and causing life-threatening injury by vehicle or vessel. The penalties apply to those convicted of the classes of negligent homicide or negligent life-threatening injury offenses discussed above, after having been previously convicted of other alcohol- and/or drug-related driving offenses, as specified. **Exhibit 1.1** shows the maximum penalties that apply to a person convicted once of these crimes and the maximum penalties that apply to a repeat offender. A repeat offender, for this purpose, is one who was previously convicted of the same offense, any other offense shown in Exhibit 1.1, or the offenses of driving while (1) under the influence of alcohol; (2) under the influence of alcohol *per se*; (3) impaired by alcohol; (4) impaired by drugs or drugs and alcohol; or (5) impaired by CDS.

Exhibit 1.1
Comparison of Maximum Penalties for First Offenses to More Stringent Maximum Penalties for Repeat Offenders

<u>Offense</u>	<u>Maximum Penalties</u>		<u>Maximum Penalties if Previously Convicted of Any Specified Offense</u>			
		<u>Imprisonment</u>	<u>Fine</u>		<u>Imprisonment</u>	<u>Fine</u>
Manslaughter by vehicle or vessel – gross negligence	felony	10 years	\$5,000	felony	15 years	\$10,000
Manslaughter by vehicle or vessel – criminal negligence	misdemeanor	3 years	\$5,000	misdemeanor	5 years	\$10,000
Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i>	felony	5 years	\$5,000	felony	10 years	\$10,000
Homicide by motor vehicle or vessel while impaired by alcohol	felony	3 years	\$5,000	felony	5 years	\$10,000
Homicide by motor vehicle or vessel while impaired by drugs	felony	3 years	\$5,000	felony	5 years	\$10,000
Homicide by motor vehicle or vessel while impaired by a CDS	felony	3 years	\$5,000	felony	5 years	\$10,000
Causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol <i>per se</i> or while impaired by a CDS	misdemeanor	3 years	\$5,000	misdemeanor	5 years	\$10,000
Causing life-threatening injury by motor vehicle or vessel while impaired by alcohol or drugs	misdemeanor	2 years	\$3,000	misdemeanor	5 years	\$10,000

Notes: Under the law, the maximum penalties may be the imprisonment term noted, the fine noted, or both. Maximum penalties apply under the bill if previously convicted of the same offense; any other offense listed in this exhibit; or driving while under the influence of alcohol, while under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by CDS.

Source: Department of Legislative Services

Driving Under the Influence, Under the Influence *Per se*, or While Impaired by a Controlled Dangerous Substance

Maximum Penalties

A person who drives or attempts to drive a vehicle while under the influence of alcohol or under the influence of alcohol *per se*, or who drives or attempts to drive a vehicle while impaired by a CDS is subject to the following maximum penalties: (1) for a first offense, a fine of up to \$1,000 or imprisonment for up to one year or both; (2) for a second offense, a fine of up to \$2,000 or imprisonment for up to two years or both; and (3) for a third or subsequent offense, a fine of up to \$3,000 or imprisonment for up to three years or both.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while under the influence of alcohol or impaired by drugs or alcohol may count as a prior conviction if it occurs within five years of the subsequent violation. (TR, § 27-101(k))

Also, for purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving under the influence of alcohol, driving under the influence of alcohol *per se*, or driving while impaired by a CDS is considered a prior conviction. (TR, § 21-902(e))

Mandatory Minimum Penalties

Subsequent convictions for driving under the influence, under the influence *per se*, or while impaired by a CDS also carry mandatory minimum penalties.

A person who is convicted of driving under the influence of alcohol or under the influence of alcohol *per se* twice within five years is subject to a mandatory minimum penalty of imprisonment for not less than five days.

A person who is convicted of driving under the influence of alcohol or under the influence of alcohol *per se* three or more times within five years is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

A person who is convicted of driving while impaired by a CDS twice within five years is subject to a mandatory minimum penalty of imprisonment for not less than five days.

A person who is convicted of driving while impaired by a CDS three or more times within five years is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

These penalties are not subject to suspension or probation. The offenders are also required to undergo alcohol and drug abuse assessments and potentially participate in certain drug and alcohol abuse treatment programs. (TR, § 27-101(j))

For purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving under the influence of alcohol, driving under the influence of alcohol *per se*, or driving while impaired by a CDS is considered a prior conviction. (TR, § 21-902(e))

Driving While Impaired by Alcohol, a Drug, a Combination of Drugs, or a Combination of One or More Drugs and Alcohol

A person who drives a vehicle while impaired by alcohol or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol is subject to the following penalties:

- for a first offense, a fine of up to \$500 or imprisonment for up to two months or both;
- for a second offense, a fine of up to \$500 or imprisonment for up to one year or both; and
- for a third or subsequent offense, a fine of up to \$3,000 or imprisonment for up to three years or both.

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while under the influence of alcohol or impaired by drugs or alcohol may count as a prior conviction. (TR, § 27-101(c) (22) and (23)and (f))

Also, for purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute driving while impaired by alcohol or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol is considered a prior conviction. (TR, § 21-902(e))

Impaired Driving While Transporting a Minor

A person who transports a minor while under the influence of alcohol or under the influence of alcohol *per se*, or while impaired by a CDS, is subject to the following penalties:

- for a first offense, a fine of up to \$2,000 or imprisonment for up to two years or both;
- for a second offense, a fine of up to \$3,000 or imprisonment for up to three years or both; and

- for a third or subsequent offense, a fine of up to \$4,000 or imprisonment for up to four years or both. (TR, § 27-101(q))

A person who transports a minor while impaired by alcohol or while impaired by a drug, or a combination of drugs, or a combination of one or more drugs and alcohol is subject to the following penalties:

- for a first offense, a fine of up to \$1,000 or imprisonment for up to six months or both;
- for a second offense, a fine of up to \$2,000 or imprisonment for up to one year or both; and
- for a third or subsequent offense, a fine of up to \$4,000 or imprisonment for up to four years or both. (TR, § 27-101(q))

For purposes of determining these second or subsequent offender penalties, any prior conviction for driving while under the influence of alcohol or impaired by drugs or alcohol may count as a prior conviction. (TR, § 27-101(q))

Also, for purposes of determining these second or subsequent offender penalties, a conviction in another state or federal jurisdiction that, if committed in Maryland, would constitute transportation of a minor while drunk or drugged is considered a prior conviction. (TR, § 21-902(e))

Driving within 12 Hours after Drunk or Drugged Driving Arrest

A person who is convicted of driving within 12 hours of an arrest for a drunk or drugged driving offense is subject to a fine of up to \$500 or imprisonment for up to two months or both. (TR, § 27-101(c) (24))

Chapter 2

Post-conviction Driver's License Sanctions

A person convicted of a drunk or drugged driving crime is subject to a driver's license sanction (*i.e.*, a suspension or revocation) imposed by the Motor Vehicle Administration (MVA) based on (1) an accumulation of points or (2) the conviction for the drunk or drugged driving crime itself.

The clerk of the court in which the driver was convicted notifies MVA of the conviction and MVA sends a notice of proposed suspension and/or revocation to the driver. Unless the driver requests an administrative hearing and pays a \$150 hearing fee, the suspension or revocation is effective at the end of the 10-day period after the notice is sent.

An offender may avoid the imposition of post-conviction license sanctions if the judge in the criminal court strikes the conviction and grants the person probation before judgment. A court may not grant probation before judgment for a drunk or drugged driving offense if the person has been granted probation before judgment, or convicted, for a drunk or drugged driving offense within the prior 10 years. (CP, § 6-220)

A post-conviction license sanction is determined separately from a license suspension imposed for an administrative *per se* offense. (See Chapter 3 for a discussion of administrative *per se* offenses and license suspensions.)

Accumulation of Points – License Revocation or Suspension

MVA assesses points against a driver who is convicted of any moving violation, including a drunk or drugged driving crime. A conviction for any drunk or drugged driving homicide or life-threatening injury results in the imposition of 12 points. A conviction for driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS carries with it 12 points. (TR, § 16-402). MVA is required to revoke the license of an individual who accumulates 12 points within a two-year period. (TR, § 16-404)

A revocation continues indefinitely until the driver applies for and is approved by MVA for reinstatement. (TR, § 16-208)

A conviction for driving while impaired by alcohol, while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol, or within 12 hours after an arrest for a drunk or drugged driving offense carries with it eight points. (TR, § 16-402). MVA is required to suspend the license of an individual who accumulates eight points within a two-year period. (TR, § 16-404). A suspension for an accumulation of points is for a specific period that may not exceed one year. (TR, §§ 11-164, 16-208, and 16-404)

MVA possesses broad latitude to modify a suspension or revocation based on the assessment of points. MVA may modify a suspension and issue a restrictive license that limits the purposes for which the person may drive, *e.g.*, for work or education purposes. (TR, §§ 16-113, 16-404, and 16-405)

MVA also is specifically authorized to modify a post-conviction drunk driving license suspension or revocation for purposes of a person's participation in the Ignition Interlock System Program (IISP). Under IISP, MVA may suspend a driver's license for the following periods of time: (1) for a first conviction, not more than 6 months; (2) for a second conviction that occurs at least 5 years after the date of the first conviction, for not more than 9 months; (3) for a second conviction that occurs less than 5 years after the date of the first conviction, not more than 12 months; and (4) for a fourth or subsequent conviction, not more than 24 months. (TR, §§ 16-404 and 16-404.1) (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

Drunk or Drugged Driving Conviction – License Suspension or Revocation

MVA is required to revoke the license of any person who has been convicted of homicide by motor vehicle while under the influence of alcohol; impaired by alcohol; or impaired by a drug, any combination of drugs, a combination of one or more drugs and alcohol, or CDS. (TR, § 16 205(b))

MVA may revoke the license of an individual who is convicted of (1) driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by a CDS; or (2) driving while impaired by alcohol, or while impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol and who was previously convicted of two or more drunk or drugged driving violations within a three-year period. (TR, § 16-205(a))

MVA may impose a suspension for up to one year if a person who is convicted more than once within a five-year period of any combination of drunk or drugged driving offenses. However, a restricted license for the period of suspension may be issued to a person who participates in IISP for one year or longer. (TR, § 16-205(d)) (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

MVA is required to impose a one-year suspension on an individual who is convicted of (1) driving under the influence of alcohol or under the influence of alcohol *per se* more than once within a five-year period or (2) driving under the influence of alcohol or under the influence of alcohol *per se* and driving while impaired by a CDS within a five-year period. A restricted license may be issued for the one-year period if the individual participates in IISP. The restricted license may only allow a person to drive to and from work, school, a drug or alcohol treatment program, or an ignition interlock system service facility. (TR, § 16-205(e)) (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

Reinstatement of Revoked License

There is an important distinction between revocation and suspension of a license. After a period of suspension, assuming there has been no other suspension or revocation imposed, an individual may simply pay a fee and MVA will reissue the driver's license. However if a license is revoked, an individual must apply for reinstatement of the license.

An individual must wait a certain period of time after a revocation goes into effect before the individual may be reinstated. If it is an individual's first revocation, the individual may file a reinstatement application at any time after the day the revoked license is surrendered to and received by MVA or in the case of an individual who does not have a license issued by MVA, after the effective date of the revocation. However, MVA may not reinstate the license earlier than six months after a first revocation.

For a second, third, and fourth revocation, waiting periods of 1 year, 18 months, and 2 years, respectively, are required before application for reinstatement may be made by the driver. Special requirements are placed on individuals who have been (1) involved in any combination of three or more separate alcohol-related or drug-related incidents; (2) involved in a vehicular accident resulting in the death of another person; or (3) convicted of a violation for failing to stop after a vehicular accident resulting in bodily injury or death. ("Alcohol-related or drug-related driving incident" includes a conviction or probation before judgment for a violation of a drunk or drugged driving law, a refusal to submit to a test of BAC, or a test result indicating an alcohol concentration of .10 or more at the time of testing.) If an individual falls into one of these categories, MVA may reinstate a license or privilege to drive only if, after an investigation of an individual's habits and driving ability, MVA is satisfied it will be safe to reinstate the license or privilege. Furthermore, MVA must require an applicant for reinstatement to submit to the examinations it considers appropriate before granting the application. (TR, § 16-208)

MVA may consider a number of factors in reviewing and deciding upon an application for reinstatement, including the individual's complete driving history, court proceedings related to the individual's drug or alcohol use, and reports and recommendations regarding the individual from certain counselors, social workers, and health care providers. In addition, internal records, including findings, reports, alcohol assessments, and recommendations may be considered. (COMAR 11.17.08.02)

An important source for the internal records reviewed by MVA in determining whether to reinstate a license is MVA's Medical Advisory Board (MAB). MAB is comprised of physicians specializing in various areas of medicine and is charged with working with MVA to ensure that a driver is capable of safely operating a motor vehicle. MVA may refer an individual to MAB for a variety of health-related reasons that may have an impact on the individual's ability to drive. MAB does not perform medical evaluations. A physician evaluating a particular individual's situation primarily relies upon reports from the individual's treatment source. However, the physician may require an individual to submit to an interview.

An applicant for reinstatement of a driver's license who has been involved in two alcohol-related or other substance-related driving incidents during the previous five years, or three alcohol-related or other substance-related driving incidents in a lifetime, must submit with the reinstatement application evidence of current participation in or completion of a certified substance abuse treatment program of at least 90 days. MVA also may impose certain restrictions, limitations, or other requirements, including participation in IISP, as a condition of approval of the application for reinstatement. (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

Other possible conditions for reinstatement include attendance at self-help group meetings, enrollment in the Drinking Driver Monitor Program of the Division of Parole and Probation, and compliance with any recommendations of MAB. (COMAR 11.17.08.05)

Chapter 3

Administrative *Per Se* Offenses and License Suspensions

Swiftiness and Certainty of License Suspension

The threat posed by drunk and drugged drivers to highway safety resulted in enactment of administrative *per se* offenses that are adjudicated administratively by the Motor Vehicle Administration (MVA) using administrative law judges from the Office of Administrative Hearings. Administrative *per se* offenses pertain to a driver who is detained on suspicion of a drunk or drugged driving offense or violation of an alcohol restriction and is requested by a police officer to take a test for alcohol or a drug or a controlled dangerous substance (CDS). The offenses are (1) taking a test of blood or breath with a result of at least .08 blood alcohol concentration (BAC) but less than 0.15 BAC; (2) taking a test of blood or breath with a result of at least 0.15 BAC; or (3) refusing to take a test of blood or breath. The statutory provisions concerning these offenses are contained in Section 16-205.1 of the Transportation Article.

The adjudication of administrative *per se* offenses occurs independently of the criminal prosecution of the driver for drunk or drugged driving. The hallmark of the adjudication of administrative *per se* offenses is the swiftiness and certainty of imposition of a driver's license suspension. The swiftiness results from the fact that the suspension occurs much earlier than a license sanction after a criminal conviction. The certainty results mainly from the fact that a license suspension imposed for an administrative *per se* offense is mandatory unlike a post-conviction license sanction which is generally discretionary even if the driver is convicted of a drunk or drugged driving crime. (See Chapter 2 for a discussion of post-conviction license sanctions.)

Implied or Express Consent of Driver to Take Test

Any driver who drives or attempts to drive on a highway or on any private property that is used by the public in general in Maryland is deemed by statute to have consented to take a test of blood or breath, if requested to do so by a police officer who has reasonable grounds to believe that the driver is driving or attempting to drive a vehicle while under the influence of alcohol or impaired by alcohol; impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; or impaired by CDS. This law is commonly referred to as the "implied consent" statute. In addition, as part of the application process for a Maryland driver's license, MVA obtains in writing an applicant's express consent to take a test.

However, the U.S. Supreme Court has modified the reach of Maryland's "implied consent" statute with regard to administration of tests of blood through its ruling in *Birchfield v North Dakota*, 579 U.S. __ (2016).

In that case, the U.S. Supreme Court ruled that a blood test could not be administered without the consent of a person suspected of a drunk and/or drugged driving offense, unless a search warrant is obtained, absent exigent circumstances. The court noted the invasive nature of blood testing as a rationale for the search warrant requirement. The ruling exempted breath tests from the generalized warrant requirement, however, as the court also noted that a breath test is not invasive. As a result, a warrant does not need to be presented before administering a breath test to a person who does not consent to the test.

A “test” is defined as (1) a test of a person’s breath or one specimen of the person’s blood to determine alcohol concentration; (2) a test or tests of one specimen of a person’s blood to determine drug or CDS content; or (3) both a test of the person’s breath or a test of one specimen of blood to determine alcohol concentration and a test or tests of one specimen of a person’s blood to determine drug or CDS content. A “specimen” means one sample of blood taken in a single procedure in two or more portions in two or more separate vials.

State law requires that a test of blood or breath for alcohol must be taken within two hours from the time the driver was detained. A test of blood for a drug or CDS must occur within four hours from the time the driver was detained. Even if the test occurs after these time limits, however, the driver is not able to exclude the test from consideration during an administrative hearing or court trial, since the effect of the delayed test result would benefit the driver.

Noncompulsory Testing

Although each driver has impliedly and/or expressly consented to take a test if detained by a police officer for a drunk or drugged driving offense, a driver will not be compelled physically to take a test under most circumstances. If the person does not consent to a requested blood test and the requisite exigency is not present, the officer must obtain a search warrant before a blood test can be administered to a person who refuses the test.

If there was not an accident resulting in a fatality or a life-threatening injury to another person and the driver is conscious and capable of taking a test, a police officer who has reasonable grounds to suspect that a driver was operating or attempting to drive a vehicle while drunk or drugged is required to:

- detain the driver,
- request a test of blood or breath;
- advise the driver of the administrative penalties that will be imposed if the test result is at least 0.08 BAC, but less than 0.15 BAC, or the more stringent sanctions if the test result is 0.15 BAC or greater; and

- advise the driver of the administrative penalties for refusing the requested test (and the criminal penalties that may be imposed for a knowing and willful refusal of a requested test after a conviction for driving under the influence of alcohol, under the influence of alcohol *per se*, or driving while impaired by alcohol or alcohol and/or drugs and/or a CDS).

Under the circumstances described above, a police officer may not compel the driver to submit to a test by directing a medical person to withdraw blood.

Compulsory Testing

If there was a traffic accident that resulted in a life-threatening injury or fatality, and a police officer had reasonable grounds to suspect that a driver operated or attempted to drive while drunk or drugged, the police officer may compel the driver to take a test by directing a medical person to withdraw blood. In circumstances where life-threatening injuries or fatalities have occurred, and the detained person refuses a blood test, whether a search warrant must be obtained to direct administration of the blood test depends on whether exigent circumstances exist, based on the totality of the circumstances.

Also, if a police officer has reasonable grounds to request or direct that a test be taken and the driver is unconscious or otherwise incapable of refusing a test, the police officer must obtain medical attention for the driver if necessary, arrange transfer to a medical facility, obtain a search warrant, unless exigent circumstances exist, and, if a test would not jeopardize the health of the driver, direct a medical person to withdraw blood for a test.

Test Result of at Least 0.08 BAC or Test Refusal

If a test result is 0.08 to 0.14 BAC or the test is refused, a police officer must:

- confiscate the driver's license;
- serve on the driver a license suspension order;
- issue a temporary driver's license;
- inform the driver that the temporary license is valid for a period of 45 days;
- inform the driver that he or she has the right to request a hearing; and
- inform the driver of the administrative license sanctions that will be imposed if the hearing is not requested, the hearing is requested but not attended by the driver, or the hearing results in a finding against the driver.

In addition to the procedures noted above, if a driver takes a test that results in a BAC of at least 0.08 or the test is refused, the police officer must inform the driver that, *in lieu of requesting* an administrative hearing, the driver may receive a restricted license to participate in the Ignition Interlock System Program (IISP) if the following conditions apply:

- the driver's license has not otherwise been suspended, canceled, refused, or revoked;
- the driver surrenders the driver's license immediately or certifies that he or she does not possess it; and
- the driver elects, in writing, to participate in IISP for one year. (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

Submission of Documentation to MVA

Within 72 hours of the issuance of the license suspension order, the arresting police officer must send the confiscated driver's license, a copy of the license suspension order, and a sworn statement to MVA. The sworn statement must say that:

- the officer had reasonable grounds to detain the driver;
- the driver consented to a requested test and the results were at least 0.08 but less than 0.15 BAC or at least 0.15 BAC, or the driver refused a requested test; and
- the driver was fully advised of all pertinent administrative sanctions.

The sworn statement of the arresting police officer and the sworn statement of the analyst who determined the test results are *prima facie* evidence of the test results or a test refusal.

Drug Test

If a police officer determines that a driver's impairment is more substantial than is indicated by a low BAC test and/or there is other evidence of impairment by a drug or CDS, the driver may be detained on suspicion of driving while impaired by a drug or CDS. However, only a drug recognition expert (DRE) may administer the 12-step evaluation used to investigate whether a driver is impaired by a drug or CDS. After the evaluation, the DRE may request the driver to take a blood test to determine impairment by a drug or CDS. If the driver refuses, the officer must obtain a search warrant for administration of the blood test, unless exigent circumstances exist.

However, under current law, a driver's refusal to take part in a DRE evaluation is not an administrative *per se* offense subject to a license suspension. According to the Maryland State

Police and the Maryland State's Attorneys Association, if the evaluation is not completed, the DRE cannot request that the driver take a blood test for a drug or CDS.

Administrative *Per Se* Hearing

The issues at an MVA hearing on an administrative *per se* offense are limited to:

- did the police officer have reasonable grounds to detain the driver on suspicion of drunk or drugged driving or a violation of an alcohol restriction;
- was there evidence that alcohol and/or drugs had been used;
- was the driver involved in a motor vehicle accident that resulted in death to another person;
- did the police request the test after advising the driver of the administrative sanctions and the driver's right to a hearing as required by law;
- did the driver refuse the test; and
- did the driver drive or attempt to drive with BAC of at least 0.08 but less than 0.15 or BAC of 0.15 or more at the time of testing?

After the hearing, MVA must suspend the driver's license for the period noted in **Exhibit 3.1** if the Administrative Law Judge finds that:

- the police officer had reasonable grounds to detain the driver;
- there was evidence of use of alcohol and/or drugs; and
- the police officer requested the test after advising the driver of his or her rights and the administrative penalties as required and there was a:
 - test refusal; or
 - test result of at least 0.08 BAC at the time of testing; and
 - if applicable, the person was involved in a motor vehicle accident that resulted in death to another.

Length of License Suspension

A driver is subject to a license suspension for an administrative *per se* offense. The applicable periods of suspension, based on the type of offense and whether it is a first or subsequent offense, are contained in Exhibit 3.1.

Exhibit 3.1 Administrative *Per Se* Offenses and Periods of License Suspension

<u>Administrative <i>Per Se</i> Offense</u>	<u>1st Offense</u>	<u>Subsequent Offense</u>	<u>1st Fatality</u>	<u>Subsequent Fatality</u>
Test Result: 0.08 to 0.14 BAC	180 days	180 days	6 months	1 year
Test Result: 0.15 BAC or Greater	180 days	270 days	1 year	Revocation
Test Refusal	270 days	2 years	270 days	2 years

Source: Department of Legislative Services

Modification of Suspension and Issuance of Restricted License

MVA has authority, as shown in **Exhibit 3.2**, to modify a suspension for an administrative *per se* offense and issue a restricted license to a driver who has limited prior interaction with MVA or promises to participate in IISP.

Exhibit 3.2
Modification of Administrative *Per Se* License Suspension

<u>Suspended Driver</u>	<u>Modification Type</u>
<p>Test result of 0.08 BAC but less than 0.15 BAC and did not elect participation in IISP: license not suspended for administrative <i>per se</i> offense during past five years; and no conviction for alcohol- and/or drug-related driving offense during past five years.</p>	<p>MVA may modify the suspension or issue a restricted license to allow driver to:</p> <ul style="list-style-type: none"> drive vehicle in course of employment; attend alcohol program; drive vehicle to or from employment due to no alternative means; and obtain health treatment; or attend school (non-collegiate/collegiate).
<p>Test result of 0.08 but less than 0.15 BAC and driver is subsequent offender with: license suspension for administrative <i>per se</i> offense during past five years; or conviction for an alcohol- and/or drug-related driving offense during past five years.</p>	<p>Suspension may only be modified if driver:</p> <ul style="list-style-type: none"> agrees to participate in Ignition Interlock System Program for one year or longer; and successfully completes program.
<p>High BAC test result of at least 0.15</p>	<p>Suspension may be modified and restricted license issued only if driver:</p> <ul style="list-style-type: none"> agrees to participate in Ignition Interlock System Program for one year or longer; and successfully completes program.
<p>Test refused</p>	<p>Suspension may be modified and restricted license issued only if driver:</p> <ul style="list-style-type: none"> agrees to participate in Ignition Interlock System Program for one year or longer; and successfully completes program.

Source: Department of Legislative Services

Chapter 4

Ignition Interlock System Program

What Is an Ignition Interlock?

An ignition interlock device connects a motor vehicle's ignition system to a breath analyzer that measures a driver's blood alcohol concentration (BAC) and prevents the car from starting if BAC exceeds a certain level. The device also periodically requires retesting of a driver after the motor vehicle is started.

According to the National Conference of State Legislatures, all 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device. Traffic safety advocates have urged greater usage of the devices, especially as the number of drunk driving fatalities nationwide has remained relatively constant, even while the total number of traffic fatalities has declined nationally over the last 10 years. A review of 15 studies by the Centers for Disease Control and Prevention found that re-arrest rates for drunk drivers who used ignition interlock devices declined by a median of 67%, compared to drunk drivers who had their licenses suspended. On the other hand, many studies have also noted a gradual rise in recidivism rates to previous levels once the devices are removed.

Use of Ignition Interlock Devices Expanded

Chapter 512 of 2016, entitled the "Drunk Driving Reduction Act of 2016," expands the circumstances under which participation in the Ignition Interlock System Program (IISP) is required. The law requires offenders convicted of the following crimes to participate in IISP:

- a person convicted the first time of driving or attempting to drive under the influence of alcohol or under the influence of alcohol *per se* (including a person whose license is suspended or revoked for accumulation of points for those violations);
- a person required to participate by court order due to a conviction for driving while impaired by alcohol or while impaired by a drug, any combination of drugs, or a combination of one or more drugs and alcohol and the trier of fact finds beyond a reasonable doubt that the person refused a requested test;
- a person whose license has been revoked for a conviction of homicide by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; impaired by a drug, a combination of drugs, or a combination of one or more drugs and alcohol; and

- a person whose license has been revoked for a conviction of life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; impaired by alcohol; or impaired by a drug, a combination of drugs or a combination of one or more drugs, and alcohol.

Overview of the Motor Vehicle Administration (MVA) Program

MVA established IISP under regulations issued in 1989. Legislation codifying IISP was enacted in 1996. IISP has undergone a significant increase in enrollment during the first decade of the twenty-first century as eligibility for participation has been mandated or authorized. Statutory provisions governing IISP are contained in Section 16-404.1 of the Transportation Article.

MVA determines the qualifications for vendors who provide devices to IISP participants, calibration standards, and data collection requirements and also conducts inspection of vendor locations. There is no limit to the number of vendors that MVA may approve, but historically, there are about five vendors at any one time. Regulations specify the following:

- all ignition interlock devices must:
 - be alcohol specific; and
 - comply with all State and federal requirements for accuracy and functionality;
- vendors must provide independent laboratory testing of each device; and
- test results must be independently reviewed to verify compliance.

A participant in IISP must abide by the following rules:

- have an interlock device installed;
- drive under a restricted license that allows operation of a motor vehicle with an interlock device only, unless specifically exempted by MVA or the Office of Administrative Hearings (OAH);
- report to the vendor every 30 days for device calibration and electronic downloading of monitoring data to MVA;
- pay a fee for a restricted license upon enrollment;
- be responsible for all vendor installation, monitoring, and removal fees; and
- adhere to any other participation rules established by MVA and State law.

Under Chapter 557 of 2011, MVA must charge participants a monthly fee. For fiscal 2017, the fee is \$47, but in future years, the fee may vary depending on the number of participants and the expenditures that, by statute, must be covered. Indigent participants are exempt from paying the MVA fee.

Violations of IISP include any attempt to tamper with, bypass, or damage the device or an attempt to start the vehicle with a BAC greater than 0.025, a threshold recommended by the federal National Highway Transportation Safety Administration. If a driver fails the interlock test, the driver must submit to a retest within five minutes. Not submitting to a retest within the allowed five minutes or a retest that results in greater than 0.025 BAC are considered to be violations. A low number of starts of the car that has the device is considered a violation because it raises the suspicion that the driver is using another car that does not have the device. Other violations include failing to appear for the required monitoring visit and operation of a motor vehicle without an ignition interlock device.

Drivers are referred to IISP through numerous avenues:

- **Criminal Courts:** A court may require installation of an ignition interlock device and the driver to apply for participation in IISP as a condition of probation or as a sentence or part of a criminal sentence.
- **Administrative Law Judge (ALJ):** An ALJ may order a driver to participate in IISP as a condition of modification of a license suspension or revocation for an alcohol-related driving conviction or accumulation of points. An ALJ also may require participation by a driver found to have committed an administrative *per se* offense. (See Chapter 3 for a discussion of administrative *per se* offenses and license suspensions.) Also, in an administrative proceeding to determine if a driver is unfit or unsafe, an ALJ may require a driver to become a participant. An ALJ may seek advice from the Medical Advisory Board (MAB) before making a determination whether a driver should be a participant.
- **MVA:** A driver who has a history of multiple alcohol incidents and whose license is revoked is nearly always required by MVA to participate in IISP before the license is reinstated. MVA may seek advice from MAB before making its determination. Also, MVA must require a driver who is younger than the age of 21 years to participate in IISP if MVA receives satisfactory evidence that the driver violated an alcohol restriction or committed a drunk driving offense.

Factors Affecting Participation

A number of factors affect who participates and who does not participate in IISP. First, not all drinking drivers are eligible to participate. A driver may be eligible only if the driver currently has a valid Maryland license. A driver who is unlicensed, whose license is already in a

suspended or revoked status in Maryland, or who is licensed in another state or the District of Columbia may not be a participant.

If eligible, some drivers regard participation as a reprieve from the hardship of being unable to legally drive due to a license suspension or revocation. However, there are those drivers who, faced with a choice, decide to undergo the suspension or revocation. Some may find alternate transportation during the period of the suspension or revocation, but others simply drive while suspended or revoked hoping that they will not be caught. The Maryland State Police have cited the unknown, but presumed large, number of people driving without a valid license as a significant and growing problem.

In addition, participation is expensive. A participant must pay the vendor for the device and monthly fees for calibration, monitoring, and data collection which is approximately \$500 for six months. The vendor's fees are in addition to MVA's fee and other fees, fines, and costs that result from the criminal prosecution of the driver.

Also, if the driver has other people in his or her household and there is only one car, the driver's participation can negatively impact those household members as they, too, would have to start the vehicle by using the device and be subject to retesting just as the errant driver is.

Mandatory Participation in IISP

A driver's failure to participate in IISP results in a greater license sanction than if the driver participates. If participation is ordered by a court, a driver's failure to comply may result in a more severe criminal sentence. Similarly, often license sanctions are more severe if a driver does not participate in IISP. Because participation is required to avoid greater punishment or to be eligible for modification of a license suspension or revocation, some would argue that participation in IISP is mandatory.

However, because many offenders elect to submit to a suspension or revocation and drive illegally without participating in IISP, some would argue that participation is not truly mandatory. As a result, sanctions for nonparticipation have been increased in an effort to increase participation. The increased sanctions are applied to drivers subject to a criminal court order, drivers who refuse a test, "super drunks" (*i.e.*, drivers with a BAC of 0.15 or more), subsequent offenders, and drivers younger than the age of 21 years.

For example, under the administrative *per se* statute, a driver who refuses a test or has a test result of 0.15 or more is eligible for a modification of a license suspension only if the driver participates in IISP for one year.

As a result of Chapter 512 of 2016, any of the following drivers face an indefinite mandatory license suspension until the driver successfully completes IISP:

- a driver convicted of driving while under the influence of alcohol or under the influence of alcohol *per se*;
- a driver convicted of driving while impaired by alcohol and transporting a minor younger than age 16;
- a driver whose license is suspended or revoked for a conviction of driving while under the influence of alcohol or under the influence of alcohol *per se* or for accumulating 12 points on the driver's license subject to a conviction for this offense;
- a driver whose license is revoked for homicide by motor vehicle under the influence of a alcohol or under the influence of alcohol *per se*; while impaired by alcohol; or while impaired by a combination of one or more drugs or drugs and alcohol;
- a driver whose license is revoked for life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol *per se*; while impaired by alcohol; or while impaired by one or more drugs or one or more drugs and alcohol; or
- a driver who is ordered to participate by a court due to a conviction for driving while impaired by alcohol or driving while impaired by a drug, a combination of drugs or a combination of drugs and alcohol and the trier of fact finds beyond a reasonable doubt that the driver refused a test.

As a result of other recent enactments, any of the following drivers face a one-year mandatory license suspension if they fail to successfully complete participation in IISP:

- a driver ordered by a criminal court to participate;
- a subsequent offender who is convicted of driving under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol and within the preceding five years was convicted a drunk or drugged driving offense; or
- a driver younger than the age of 21 years who violates the alcohol restriction on the driver's license or committed an alcohol-related driving offense.

The length of required participation ranges from six months to three years based on the number of times the driver was required to participate.

Any driver who is not in one of the above categories also may be a participant, but generally the sanction for nonparticipation is less and the length of participation is less. For example, a driver whose license is suspended or revoked for a violation of driving while impaired by alcohol or impaired by drugs and alcohol, or for an accumulation of points for these offenses, must participate for the following periods:

- up to 6 months for a first conviction;
- up to 9 months for a second conviction at least five years after the first conviction;
- up to 12 months for a second conviction less than five years after first conviction or a third conviction; or
- at least 24 months for a fourth or subsequent conviction.

Exhibit 4.1 shows the categories of drivers who may avoid mandatory license sanctions by participating in IISP and the length of the required participation period. The period begins when the driver provides evidence that the device has been installed by an approved service provider.

Exhibit 4.1
Mandatory Participation in the Ignition Interlock System Program

<u>Category of Participant</u>	<u>Participation Period</u>
Driver who commits administrative <i>per se</i> offense of refusing to take a test or takes a test with a BAC result of 0.15 or more BAC.	One year.
Driver convicted of driving while under the influence of alcohol or under the influence of alcohol <i>per se</i> with a BAC test result of 0.08 or more.	Six months for the first time the driver is required to participate.
Driver convicted of either (1) homicide by motor vehicle or (2) life-threatening injury by motor vehicle while under the influence of alcohol or under the influence of alcohol <i>per se</i> ; impaired by alcohol; or impaired by a drug, a combination of drugs, or a combination of drugs and alcohol.	One year for the second time the driver is required to participate. Three years for the third or subsequent time the driver is required to participate.
Subsequent offender convicted of driving while under the influence of alcohol or under the influence <i>per se</i> or impaired by alcohol and, within preceding five years, convicted of any drunk or drugged driving offense in the Transportation Article.	Six months for the first time the driver is required to participate.
Driver who is convicted of transporting a minor younger than age 16 while impaired by alcohol.	One year for the second time the driver is required to participate. Three years for the third or subsequent time the driver is required to participate.
Driver younger than 21 years who violated the license alcohol restriction or committed any alcohol-related driving offense.	Six months for the first time the driver is required to participate. One year for the second time the driver is required to participate. Three years for the third or subsequent time the driver is required to participate.

Source: Department of Legislative Services

Successful Participation Defined

Chapter 512 of 2016 sets forth the required elements for successful participation in IISP. A certification from the service provider must state that in the three consecutive months preceding the participant's date of release there was not:

- an attempt to start a vehicle with a BAC of 0.04 or higher, unless a subsequent test performed within 10 minutes registers a BAC lower than 0.04;
- a failure to take or pass a random test with a BAC of 0.025 or lower, unless a subsequent test performed within 10 minutes registered a BAC lower than 0.025; or
- a failure of the participant to appear at the approved service provider for required maintenance, repair, calibration, monitoring, inspection or device replacement.

Exemption for Employer-owned or -provided Motor Vehicle

An IISP participant who is not a repeat offender, as specified, may drive an employer-owned or -provided motor vehicle without an ignition interlock device during the course of employment, with the express permission of the court or MVA. MVA may exempt the participant for that limited purpose if the driver provides acceptable information to MVA regarding the driver's current employment and the need to operate a motor vehicle provided by the employer as part of his or her job duties. MVA may grant this exemption without the necessity of an administrative hearing.

Under Chapter 17 of 2014, the authority of MVA to grant an exemption to repeat offenders to drive an employer-owned or -provided vehicle without an ignition interlock device was repealed. Accordingly, a repeat offender may not drive a vehicle for employment purposes unless it is equipped with an ignition interlock device.

Reentry into IISP after Removal

A driver who enrolls in IISP must successfully complete IISP. A driver's failure to successfully complete IISP results in the reimposition of the revocation or suspension originally proposed. However, the reimposed revocation or suspension is concurrent with any other suspension or revocation arising out of the same incident.

If MVA removes a driver for violating IISP requirements, MVA may allow the driver to reenter IISP after 30 days from the date of removal. On reentry, the period of participation required starts all over again, without credit for participation that occurred before the driver's removal.

Reconsideration of Refusal to Participate

If a driver refuses to immediately begin participation, the driver may apply to MVA at a later date to participate. MVA may, but is not required to, reconsider a license suspension or revocation that arose out of the circumstances and allow the driver to participate.

Criminal Offenses Relating to IISP

A driver who participates in IISP may not solicit or have another person start or attempt to start a car with an ignition interlock device. Also a person may not attempt to start or start a car with an ignition interlock device to give an operable motor vehicle to the driver participating in IISP. It is a crime to tamper with, or in any way, try to circumvent an installed ignition interlock system. A person may not knowingly furnish a motor vehicle that is not equipped with a working ignition interlock device to a driver who the person knows may not drive a motor vehicle that does not have the device. A person who violates any of these provisions is subject to maximum penalties of a \$500 fine and/or two months imprisonment. (TR, § 27-107)

A person who participates in IISP, but drives a vehicle without an ignition interlock device, is subject to a maximum fine of \$1,000 and/or up to one year imprisonment. Subsequent offenders are subject to maximum penalties of \$1,000 and/or two years imprisonment. (TR, §§ 16-113, 27-101, 27-107)

Chapter 5

Drivers Younger Than 21 Years of Age

Laws regarding drunk or drugged driving apply to any person who operates a vehicle within the State. Unless charged as a juvenile, a person younger than the age of 21 years is subject to the same criminal penalties for drunk or drugged driving as a driver who is 21 years or older. A person younger than the age of 21 years is also subject to license sanctions imposed by the Motor Vehicle Administration (MVA). However, in addition to those laws, several special laws apply when the driver is younger than 21 years of age.

Alcohol Restriction – “Zero Tolerance”

Alcohol consumption by a person younger than 21 years of age is unlawful in almost all circumstances, thus an underage driver does not have to be drunk to face penalties. An alcohol restriction exists on every licensee younger than 21 years of age that prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee’s blood. If a driver younger than the age of 21 years has been drinking and the driver’s blood alcohol concentration (BAC) is 0.02 or more or if a police officer smells alcohol on the driver’s breath, the driver is in violation of the restriction and may face both criminal penalties and administrative sanctions. The alcohol restriction expires when the licensee reaches the age of 21 years. (TR, § 16-113 and CJ, § 10-307)

MVA may suspend or revoke the license of a driver younger than the age of 21 who violates the alcohol restriction. A conviction for the violation is not required for imposition of a license suspension or revocation. MVA may act based on satisfactory evidence of a violation. The driver is entitled to notice of the proposed action and may request an administrative hearing.

If MVA finds that the driver violated the alcohol restriction, MVA must require participation in the Ignition Interlock System Program (IISP) for a period of six months in order for the driver to obtain a modification of the suspension or revocation for a first violation of the alcohol restriction and longer periods for subsequent violations. If the person fails to participate in IISP, MVA must suspend the driver’s license for at least one year. (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

In addition, a person who is convicted of an alcohol restriction violation is subject to imprisonment for up to two months and/or a fine of up to \$500. (TR, § 27-101)

Drunk Driving

A person younger than the age of 21 years who is convicted of a drunk driving offense may be required by MVA to participate in IISP for a period up to three years in order to retain the driver's license. MVA is also required to suspend the driver's license for one year unless the driver successfully participates in IISP for a period of six months for a first violation and longer periods for subsequent violations. (See Chapter 4 for a discussion of the Ignition Interlock System Program.)

Juvenile Justice Process

Generally, the juvenile court has jurisdiction over any child (*i.e.*, a person younger than the age of 18 years) alleged to be delinquent. The crimes of drunk or drugged driving carry terms of incarceration. Therefore, a juvenile arrested for such offenses is issued a juvenile citation in place of a traffic citation, and the case is heard in a juvenile court rather than a criminal court. Unlike the adult criminal system, the juvenile system is designed to protect public safety while restoring order to the lives of young offenders without a determination of guilt or the imposition of fixed sentences. The statutes applicable to the juvenile court are contained in Title 3, Subtitle 8 of the Courts and Judicial Proceedings Article.

The first point of contact that a child has with the State's juvenile justice system is at intake. For charges involving a drunk or drugged driving offense, intake occurs when a complaint is filed by a police officer having knowledge of facts that may cause a child to be subject to the jurisdiction of the juvenile court.

As soon as possible, but not more than 25 days after receipt of a complaint, an intake officer assigned to the court by the Department of Juvenile Services (DJS) is required to make an inquiry as to whether the juvenile court has jurisdiction and whether judicial action is in the best interest of the public or the child. In making this determination, the intake officer considers the nature of the alleged offense; the child's home, school, and community environment; and input from the victim, if applicable, and the police.

The intake officer may make any of the following decisions: (1) deny authorization to file a petition in the juvenile court; (2) propose informal supervision; or (3) authorize the filing of a petition in the juvenile court. A "petition" is the pleading filed with the juvenile court alleging that a child is a delinquent child.

Resolution of Case at Intake

If the intake officer determines that the juvenile court does have jurisdiction over the matter, but that further action by DJS or the court is not necessary to protect the public or to benefit the child, the case may be resolved at intake. The child may receive immediate counseling, a

warning, a referral to another agency for services, or a combination of these or other short-term interventions. The arresting police officer may appeal a denial of authorization to file a petition to the State's Attorney.

Informal Supervision

The intake officer may propose informal supervision if the juvenile court has jurisdiction and the child or the child's family needs assistance in preventing further legal violations, but the child does not require, and may not benefit from, judicial intervention or long-term formal supervision. To conduct informal supervision, consent must be received from the child and the child's parents or guardian. Informal supervision may not exceed 90 days, unless extended by the court or as necessary to complete a substance abuse treatment program, and may include (1) referrals to other agencies; (2) completion of community service; (3) regular counseling; (4) supervision by DJS; (5) family counseling; (6) substance abuse treatment; and (7) other types of nonjudicial intervention. If the intake officer proposes informal supervision, the arresting police officer may appeal that decision to the State's Attorney in the county in which the delinquent act occurred.

If, at any time before the completion of the agreed-upon informal supervision, the intake officer believes that the informal supervision cannot be completed successfully, the intake officer may authorize the filing of a petition alleging delinquency or a peace order request in the juvenile court.

If the intake officer denies authorization to file a petition or recommends informal supervision, the child will be sent home to the custody of a parent or guardian.

Petition

If the intake officer determines that the juvenile court has jurisdiction over the matter and that judicial action is in the best interest of the public or the child, the intake officer may authorize the filing of a petition alleging delinquency in the juvenile court.

Petitions alleging delinquency are prepared and filed by the State's Attorney. A petition alleging delinquency must be filed within 30 days of a referral from an intake officer, unless that time is extended by the court for good cause shown.

Adjudication

After a petition has been filed, and unless jurisdiction has been waived, the juvenile court must hold an adjudicatory hearing. The hearing may be conducted by a judge or by a master. If conducted by a master, the recommendations of the master do not constitute an order or final action of the court and must be reviewed by the court.

The purpose of an adjudicatory hearing is to determine whether the allegations in the petition are true. Before a child may be adjudicated delinquent, the allegations in the petition that the child has committed a delinquent act must be proven beyond a reasonable doubt. An adjudication of a child is not a criminal conviction for any purpose and does not carry any of the civil disabilities ordinarily imposed by a criminal conviction.

An adjudication of a child as delinquent (or a finding without an adjudication of the child as delinquent) for driving while impaired by alcohol or drugs or under the influence of alcohol is required to be reported by the clerk of the court to MVA. When the court makes a finding, without an adjudication, that a child has committed a violation of drunk or drugged driving, MVA must retain the report in the same manner as records of adult licensees who receive a disposition of probation before judgment. However, no expungement process exists for records relating to a finding without adjudication.

Disposition Hearing

After an adjudicatory hearing, unless the petition is dismissed or the hearing is waived in writing by all of the parties, the court is required to hold a separate disposition hearing, which may be held on the same day as the adjudicatory hearing.

A disposition hearing is a hearing to determine whether a child needs or requires the court's guidance, treatment, or rehabilitation, and if so, the nature of the guidance, treatment, or rehabilitation.

In making a disposition on a petition, the court may:

- place the child on probation or under supervision in the child's own home or in the custody or under the guardianship of a relative or other fit person, on terms the court deems appropriate, including community detention;
- commit the child to the custody or guardianship of DJS or other agency on terms that the court considers appropriate, including designation of the type of facility where the child is to be accommodated; or
- order the child or the child's parents, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and the family.

Administrative Sanctions

For a drunk or drugged driving offense by a child, MVA is required to suspend the child's license to drive. For a first offense, the license suspension must be for one year. For a subsequent offense, the license suspension period must be two years. The period of suspension is mandatory. The suspension must run concurrently with any other suspension or revocation that arises out of the same circumstances. If a child who is subject to suspension does not hold a driver's license, the suspension must commence on the date of disposition, if the child is at least 16 years old. If the child is younger than 16, the suspension must commence on the date the child reaches age 16. (TR, § 16-206)