

HOUSE BILL 1138

Unofficial Copy
R3

2000 Regular Session
0lr2113
CF 0lr0363

By: **Delegates Franchot, Doory, Cryor, Bronrott, Giannetti, Shriver, Hixson,
Barve, Rawlings, Montague, Hutchins, and Barkley**

Introduced and read first time: February 11, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol Related Driving Offenses - Criminal Penalties and Driving**
3 **Restrictions**

4 FOR the purpose of establishing various penalties and driving restrictions for certain
5 alcohol related offenses; authorizing a court to order a person who causes the
6 death of, or life threatening injury to, another as a result of negligent driving
7 while intoxicated, intoxicated per se, or while under the influence of alcohol not
8 to drive or attempt to drive a motor vehicle with alcohol in the person's blood;
9 requiring a court to order a person who causes the death of, or life threatening
10 injury to, another as a result of negligent driving while intoxicated or
11 intoxicated per se with a certain minimum alcohol concentration not to drive or
12 attempt to drive a motor vehicle with alcohol in the person's blood; requiring the
13 Motor Vehicle Administration to impose a certain alcohol restriction on a
14 person's driver's license under certain circumstances; authorizing the
15 Administration to impose a certain alcohol restriction for good cause on certain
16 driving privileges of certain unlicensed or nonresident individuals; requiring the
17 Administration to impose a certain alcohol restriction on certain driving
18 privileges of certain unlicensed or nonresident individuals under certain
19 circumstances; authorizing a court to order an individual not to drive or attempt
20 to drive a motor vehicle with alcohol in the individual's blood; requiring the
21 Administration to suspend a person's driver's license or driving privilege for a
22 certain period of time and impose a certain alcohol restriction for a certain
23 period of time based on a certain amount of tested alcohol concentration under
24 certain circumstances; increasing the period of suspension for a driver's license
25 or driving privilege for a certain alcohol concentration test refusal under certain
26 circumstances; making effective certain suspension orders and certain alcohol
27 restrictions on certain driver's licenses under certain circumstances; requiring
28 the suspension of, and alcohol restriction on, a driver's license or driving
29 privilege based on certain alcohol concentrations and the number of offenses
30 committed; prohibiting the Administration from modifying certain suspensions
31 or issuing restrictive licenses for certain persons who are convicted, enter a plea
32 of nolo contendere, or receive probation before judgment for certain offenses;
33 authorizing a court to order a person who drives a vehicle while intoxicated,
34 intoxicated per se, or while under the influence of alcohol not to drive or attempt

1 to drive a motor vehicle with alcohol in the person's blood; requiring a court to
2 order a person who drives while intoxicated or intoxicated per se with a certain
3 minimum alcohol concentration not to drive or attempt to drive a motor vehicle
4 with alcohol in the person's blood; requiring the prior entry of a certain plea for
5 certain offenses to be considered a conviction of certain offenses under certain
6 circumstances; requiring that a person who enters a certain plea for a certain
7 violation within a certain time period after a prior conviction or plea for a
8 certain prior offense is subject to certain mandatory minimum criminal
9 penalties; requiring the prior entry of a certain plea for certain offenses within a
10 certain time period after a conviction or entry of a certain plea to be considered
11 a conviction of a certain offense under certain circumstances; establishing
12 certain penalties for a conviction or entry of a certain plea for driving while
13 intoxicated or intoxicated per se based on a certain alcohol concentration;
14 establishing certain penalties for certain persons who enter certain pleas for
15 certain alcohol related offenses while transporting a minor; defining certain
16 terms; establishing certain penalties; and generally relating to penalties and
17 alcohol restrictions for various alcohol related offenses under certain
18 circumstances.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 388A and 388B
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1999 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Transportation
26 Section 16-113, 16-205.1(b), (f), and (n), 21-902, and 27-101(f), (j), (k), and (q)
27 Annotated Code of Maryland
28 (1999 Replacement Volume and 1999 Supplement)

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

31 **Article 27 - Crimes and Punishments**

32 388A.

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

34 (2) (i) "Intoxicated per se" means an alcohol concentration at the time
35 of testing of 0.10 or more as measured by grams of alcohol per 100 milliliters of blood
36 or grams of alcohol per 210 liters of breath.

37 (ii) If the alcohol concentration is measured by milligrams of
38 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a
39 court shall convert the measurement into grams of alcohol per 100 milliliters of blood
40 by dividing the measurement by 1000.

1 (3) "Under the influence of alcohol" has the meaning indicated in and is
2 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts
3 Article regarding driving while under the influence of alcohol under § 21-902(b) of the
4 Transportation Article.

5 (4) "Under the influence of drugs" means so far under the influence of a
6 drug, a combination of drugs, or a combination of one or more drugs and alcohol that
7 a person cannot drive, operate, or control a motor vehicle or vessel safely.

8 (5) "Under the influence of a controlled dangerous substance" means
9 under the influence of a controlled dangerous substance, as that term is defined in §
10 279 of this article, if the person is not entitled to use the controlled dangerous
11 substance under the laws of this State.

12 (b) Any person causing the death of another as the result of the person's
13 negligent driving, operation, or control of a motor vehicle or vessel while intoxicated
14 or intoxicated per se is guilty of a felony to be known as "homicide by motor vehicle or
15 vessel while intoxicated", and the person so convicted shall be punished by
16 imprisonment for not more than 5 years, or by fine of not more than \$5,000 or both
17 fine and imprisonment.

18 (c) A person who causes the death of another as the result of the person's
19 negligent driving, operation, or control of a motor vehicle or vessel while under the
20 influence of alcohol is guilty of a felony to be known as "homicide by motor vehicle or
21 vessel while under the influence", and on conviction shall be punished by
22 imprisonment for not more than 3 years or a fine of not more than \$5,000 or both.

23 (d) (1) A person who causes the death of another as the result of the person's
24 negligent driving, operation, or control of a motor vehicle or vessel while under the
25 influence of drugs is guilty of a felony to be known as "homicide by motor vehicle or
26 vessel while under the influence of drugs", and on conviction shall be punished by
27 imprisonment for not more than 3 years or a fine of not more than \$5,000 or both.

28 (2) It is not a defense to any charge of violating this subsection that the
29 person charged is or was entitled under the laws of this State to use the drug,
30 combination of drugs, or combination of one or more drugs and alcohol, unless the
31 person was unaware that the drug or combination would make the person incapable
32 of safely driving, operating, or controlling a motor vehicle or vessel.

33 (e) A person who causes the death of another as the result of the person's
34 negligent driving, operation, or control of a motor vehicle or vessel while under the
35 influence of a controlled dangerous substance is guilty of a felony to be known as
36 "homicide by motor vehicle or vessel while under the influence of a controlled
37 dangerous substance", and on conviction shall be punished by imprisonment for not
38 more than 3 years or a fine of not more than \$5,000 or both.

39 (f) (1) In any indictment, information, or other charging document under
40 this section, it is not necessary to set forth the manner and means of death.

1 (2) It shall be sufficient to use a formula substantially to the following
2 effect:

3 (i) "That A-B on the day of, nineteen hundred and
4 at the County (City) aforesaid, unlawfully, while intoxicated did kill C-D,
5 against the peace, government, and dignity of the State.";

6 (ii) "That A-B on the day of, nineteen hundred and
7 at the County (City) aforesaid, unlawfully, while under the influence of
8 alcohol, did kill C-D, against the peace, government, and dignity of the State.";

9 (iii) "That A-B on the day of, nineteen hundred and
10 at the County (City) aforesaid, unlawfully, while under the influence of drugs,
11 did kill C-D, against the peace, government, and dignity of the State."; or

12 (iv) "That A-B on the day of, nineteen hundred and
13 at the County (City) aforesaid, unlawfully, while under the influence of a
14 controlled dangerous substance, did kill C-D, against the peace, government, and
15 dignity of the State.".

16 (G) (1) IN THIS SUBSECTION, "PERSON" MEANS AN INDIVIDUAL WHO:

17 (I) IS CONVICTED OF A VIOLATION OF SUBSECTION (B) OR (C) OF
18 THIS SECTION;

19 (II) ENTERS A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF
20 SUBSECTION (B) OR (C) OF THIS SECTION;

21 (III) RECEIVES PROBATION BEFORE JUDGMENT FOR A VIOLATION
22 OF SUBSECTION (B) OR (C) OF THIS SECTION; OR

23 (IV) IS UNDER THE AGE OF 18 YEARS AND IS FOUND TO HAVE
24 COMMITTED A DELINQUENT ACT IN VIOLATION OF SUBSECTION (B) OR (C) OF THIS
25 SECTION.

26 (2) IN ADDITION TO ANY OTHER PENALTY OR SANCTION AUTHORIZED
27 BY LAW FOR A VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, A COURT:

28 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, MAY
29 ORDER A PERSON WHO VIOLATES SUBSECTION (B) OR (C) OF THIS SECTION NOT TO
30 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S
31 BLOOD; OR

32 (II) IF A PERSON VIOLATES SUBSECTION (B) OF THIS SECTION BY
33 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL
34 CONCENTRATION OF MORE THAN 0.16 AS DETERMINED BY AN ANALYSIS OF THE
35 PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302 THROUGH
36 10-309, INCLUSIVE, OF THE COURTS ARTICLE, SHALL ORDER THE PERSON NOT TO
37 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S
38 BLOOD.

1 388B.

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

3 (2) (i) "Intoxicated per se" means an alcohol concentration at the time
4 of testing of 0.10 or more as measured by grams of alcohol per 100 milliliters of blood
5 or grams of alcohol per 210 liters of breath.

6 (ii) If the alcohol concentration is measured by milligrams of
7 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a
8 court shall convert the measurement into grams of alcohol per 100 milliliters of blood
9 by dividing the measurement by 1000.

10 (3) "Under the influence of alcohol" has the meaning indicated in and is
11 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts
12 Article regarding driving while under the influence of alcohol under § 21-902(b) of the
13 Transportation Article.

14 (4) "Under the influence of drugs" means so far under the influence of a
15 drug, a combination of drugs, or a combination of one or more drugs and alcohol that
16 a person cannot drive, operate, or control a motor vehicle or vessel safely.

17 (5) "Under the influence of a controlled dangerous substance" means
18 under the influence of a controlled dangerous substance, as that term is defined in §
19 279 of this article, if the person is not entitled to use the controlled dangerous
20 substance under the laws of this State.

21 (b) A person who causes a life threatening injury to another as a result of the
22 person's negligent driving, operation, or control of a motor vehicle or vessel while
23 intoxicated or intoxicated per se is guilty of a misdemeanor to be known as "life
24 threatening injury by motor vehicle or vessel while intoxicated or intoxicated per se",
25 and on conviction the person shall be punished by imprisonment for not more than 3
26 years or a fine of not more than \$5,000 or both.

27 (c) A person who causes a life threatening injury to another as a result of the
28 person's negligent driving, operation, or control of a motor vehicle or vessel while
29 under the influence of alcohol is guilty of a misdemeanor to be known as "life
30 threatening injury by motor vehicle or vessel while under the influence of alcohol",
31 and on conviction the person shall be punished by imprisonment for not more than 2
32 years or a fine of not more than \$3,000 or both.

33 (d) A person who causes a life threatening injury to another as a result of the
34 person's negligent driving, operation, or control of a motor vehicle or vessel while
35 under the influence of drugs is guilty of a misdemeanor to be known as "life
36 threatening injury by motor vehicle or vessel while under the influence of drugs", and
37 on conviction the person shall be punished by imprisonment for not more than 2 years
38 or a fine of not more than \$3,000 or both.

39 (e) A person who causes a life threatening injury to another as a result of the
40 person's negligent driving, operation, or control of a motor vehicle or vessel while

1 under the influence of a controlled dangerous substance is guilty of a misdemeanor to
2 be known as "life threatening injury by motor vehicle or vessel while under the
3 influence of a controlled dangerous substance", and on conviction the person shall be
4 punished by imprisonment for not more than 2 years or a fine of not more than \$3,000
5 or both.

6 (f) (1) In any indictment, information, or other charging document under
7 this section, it is not necessary to set forth the manner and means of the life
8 threatening injury.

9 (2) It shall be sufficient to use a formula substantially to the following
10 effect:

11 (i) "That A-B on the day of, nineteen hundred and
12 at the County (City) aforesaid, unlawfully, while intoxicated, did cause a life
13 threatening injury to C-D, against the peace, government, and dignity of the State.";

14 (ii) "That A-B on the day of, nineteen hundred and
15 at the County (City) aforesaid, unlawfully, while under the influence of
16 alcohol, did cause a life threatening injury to C-D, against the peace, government,
17 and dignity of the State.";

18 (iii) "That A-B on the day of, nineteen hundred and
19 at the County (City) aforesaid, unlawfully, while under the influence of
20 drugs, did cause a life threatening injury to C-D, against the peace, government, and
21 dignity of the State."; or

22 (iv) "That A-B on the day of, nineteen hundred and
23 at the County (City) aforesaid, unlawfully, while under the influence of a
24 controlled dangerous substance, did cause a life threatening injury to C-D, against
25 the peace, government, and dignity of the State.".

26 (G) (1) IN THIS SUBSECTION, "PERSON" MEANS AN INDIVIDUAL WHO:

27 (I) IS CONVICTED OF A VIOLATION OF SUBSECTION (B) OR (C) OF
28 THIS SECTION;

29 (II) ENTERS A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF
30 SUBSECTION (B) OR (C) OF THIS SECTION;

31 (III) RECEIVES PROBATION BEFORE JUDGMENT FOR A VIOLATION
32 OF SUBSECTION (B) OR (C) OF THIS SECTION; OR

33 (IV) IS UNDER THE AGE OF 18 YEARS AND IS FOUND TO HAVE
34 COMMITTED A DELINQUENT ACT IN VIOLATION OF SUBSECTION (B) OR (C) OF THIS
35 SECTION.

36 (2) IN ADDITION TO ANY OTHER PENALTY OR SANCTION AUTHORIZED
37 BY LAW FOR A VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, A COURT:

1 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, MAY
2 ORDER A PERSON WHO VIOLATES SUBSECTION (B) OR (C) OF THIS SECTION NOT TO
3 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S
4 BLOOD; OR

5 (II) IF A PERSON VIOLATES SUBSECTION (B) OF THIS SECTION BY
6 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL
7 CONCENTRATION OF MORE THAN 0.16 AS DETERMINED BY AN ANALYSIS OF THE
8 PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302 THROUGH
9 10-309, INCLUSIVE, OF THE COURTS ARTICLE, SHALL ORDER THE PERSON NOT TO
10 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S
11 BLOOD.

12 **Article - Transportation**

13 16-113.

14 (a) (1) In addition to the vision and other restrictions provided for in this
15 subtitle, when it issues a driver's license, the Administration for good cause may
16 impose on the licensee:

17 (i) Any restrictions suitable to the licensee's driving ability with
18 respect to the type of special mechanical control devices required on motor vehicles
19 that the licensee may drive;

20 (ii) An alcohol restriction which prohibits the licensee from driving
21 or attempting to drive a motor vehicle while having alcohol in the licensee's blood; and

22 (iii) Any other restrictions applicable to the licensee that the
23 Administration determines appropriate to assure the safe driving of a motor vehicle
24 by the licensee.

25 (2) An alcohol restriction that prohibits the licensee from driving or
26 attempting to drive a motor vehicle while having alcohol in the licensee's blood may,
27 as described in subsections (b) and (g) of this section, include a restriction that
28 prohibits the licensee from driving or attempting to drive a motor vehicle unless the
29 licensee is a participant in the Ignition Interlock System Program established under
30 § 16-404.1 of this title.

31 (3) (I) IF THE ADMINISTRATION IS REQUIRED TO IMPOSE AN ALCOHOL
32 RESTRICTION UNDER § 16-205.1 OF THIS ARTICLE, THE ADMINISTRATION SHALL
33 IMPOSE ON THE LICENSEE AN ALCOHOL RESTRICTION WHICH PROHIBITS THE
34 LICENSEE FROM DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE
35 HAVING ALCOHOL IN THE LICENSEE'S BLOOD FOR A PERIOD OF 3 YEARS.

36 (II) ON ANY DRIVING PRIVILEGE OTHER THAN A DRIVER'S LICENSE
37 TO AN UNLICENSED OR NONRESIDENT INDIVIDUAL IN THE STATE, THE
38 ADMINISTRATION:

1 1. MAY FOR GOOD CAUSE IMPOSE ON THE DRIVING
2 PRIVILEGE AN ALCOHOL RESTRICTION THAT PROHIBITS THE INDIVIDUAL FROM
3 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE HAVING ALCOHOL IN
4 THE INDIVIDUAL'S BLOOD FOR A PERIOD OF 3 YEARS; OR

5 2. IF REQUIRED UNDER § 16-205.1 OF THIS ARTICLE, SHALL
6 IMPOSE ON THE DRIVING PRIVILEGE AN ALCOHOL RESTRICTION THAT PROHIBITS
7 THE INDIVIDUAL FROM DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE
8 WHILE HAVING ALCOHOL IN THE INDIVIDUAL'S BLOOD FOR A PERIOD OF 3 YEARS.

9 (b) (1) Notwithstanding the licensee's driving record, the Administration
10 shall impose on each licensee under the age of 21 years an alcohol restriction that
11 prohibits the licensee from driving or attempting to drive a motor vehicle with an
12 alcohol concentration of 0.02 or more as determined by an analysis of the licensee's
13 blood or breath.

14 (2) An alcohol restriction imposed under this subsection expires when
15 the licensee reaches the age of 21 years.

16 (3) This subsection may not be construed or applied to limit:

17 (i) The authority of the Administration to impose on a licensee an
18 alcohol restriction described in subsection (a)(2) of this section; or

19 (ii) The application of any other provision of law that prohibits
20 consumption of an alcoholic beverage by an individual under the age of 21 years.

21 (4) An individual under the age of 21 years who is convicted of a violation
22 of § 21-902(a), (b), or (c) of this article may be required, for a period of not more than
23 3 years, to participate in the Ignition Interlock System Program in order to retain the
24 individual's driver's license.

25 (c) (1) Subject to the provisions of paragraph (2) of this subsection, the
26 Administration may:

27 (i) Issue a special restricted license; or

28 (ii) Set forth the restrictions on the usual license form.

29 (2) The Administration shall indicate on the license of a licensee under
30 the age of 21 years that an alcohol restriction has been imposed on the licensee under
31 subsection (b) of this section.

32 (d) (1) Notwithstanding the licensee's driving record, the Administration
33 shall impose an hour restriction on a provisional driver's license issued to an
34 applicant under the age of 18.

35 (2) The restriction under this subsection shall limit the holder of a
36 provisional license to driving unsupervised only between the hours of 5 a.m. and 12
37 midnight.

1 (3) This subsection does not preclude the holder of a provisional license
2 from driving between the hours of 12 midnight and 5 a.m. the following day if the
3 licensee is:

4 (i) Accompanied and supervised by a licensed driver who is at least
5 21 years old;

6 (ii) Driving to or from or in the course of the licensee's employment;

7 (iii) Driving to or from a school class or official school activity;

8 (iv) Driving to or from an organized volunteer program; or

9 (v) Driving to or from an opportunity to participate in an athletic
10 event or related training session.

11 (4) The hour restriction and the supervision requirement under this
12 subsection expire on the date the holder of the provisional license turns 18 years of
13 age.

14 (e) In addition to the other restrictions provided under this subtitle, the
15 Administration may issue a driver's license that is valid only in the State of Maryland
16 to an applicant who has been suspended in another jurisdiction as a result of failing
17 to comply with the financial responsibility requirements of that jurisdiction.

18 (f) After receiving satisfactory evidence of any violation of a restricted or
19 provisional driver's license, the Administration may suspend or revoke the license.
20 However, the licensee may request a hearing as provided for a suspension or
21 revocation under Subtitle 2 of this title.

22 (g) [(1)] The Administration shall impose an alcohol restriction under
23 subsection (a)(1)(ii) of this section that prohibits an individual for a period of 3 years
24 from driving or attempting to drive with alcohol in the individual's blood on any
25 licensee OR OTHER INDIVIDUAL who is convicted within 5 years of any combination of
26 two or more violations under § 21-902(a), (b), or (c) of this article AND ARTICLE 27, §
27 388A OR § 388B OF THE CODE.

28 (H) (1) A COURT MAY ORDER AN INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO
29 DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD FOR A
30 PERIOD OF 3 YEARS.

31 (2) If a circuit court or the District Court orders a licensee OR OTHER
32 INDIVIDUAL not to drive or attempt to drive a motor vehicle with alcohol in the
33 licensee's blood or orders, under § 27-107 of this article, the licensee to participate in
34 the Ignition Interlock System Program established under § 16-404.1 of this title, the
35 Administration shall have the licensee's driving record and driver's license OR THE
36 INDIVIDUAL'S DRIVING PRIVILEGE reflect that the court ordered restriction was
37 imposed, and shall keep records of the order.

1 [(h)] (I) An individual may not drive a vehicle in any manner that violates
2 any restriction imposed by the Administration in a restricted license issued to the
3 individual.

4 [(i)] (J) An individual may not drive a vehicle in any manner that violates
5 any restriction imposed in a provisional license issued to the individual.

6 [(j)] (K) An individual may not drive or attempt to drive a motor vehicle with
7 alcohol in the individual's blood in violation of a restriction imposed by a court.

8 16-205.1.

9 (b) (1) Except as provided in subsection (c) of this section, a person may not
10 be compelled to take a test. However, the detaining officer shall advise the person
11 that, on receipt of a sworn statement from the officer that the person was so charged
12 and refused to take a test, or was tested and the result indicated an alcohol
13 concentration of 0.10 or more, the Administration shall:

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

15 1. For a test result indicating an alcohol concentration of AT
16 LEAST 0.10 [or more] BUT NOT MORE THAN 0.16 at the time of testing:

17 A. For a first offense, suspend the driver's license for 45 days;
18 or

19 B. For a second or subsequent offense, suspend the driver's
20 license for 90 days; [or]

21 2. FOR A TEST RESULT INDICATING AN ALCOHOL
22 CONCENTRATION OF MORE THAN 0.16 AT THE TIME OF TESTING:

23 A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE
24 FOR 60 DAYS AND IMPOSE AN ALCOHOL RESTRICTION ON THE DRIVER'S LICENSE AS
25 PROVIDED IN § 16-113 OF THIS ARTICLE; OR

26 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
27 DRIVER'S LICENSE FOR 120 DAYS AND IMPOSE AN ALCOHOL RESTRICTION ON THE
28 DRIVER'S LICENSE AS PROVIDED IN § 16-113 OF THIS ARTICLE; OR

29 3. For a test refusal:

30 A. For a first offense, suspend the driver's license for [120]
31 180 days; or

32 B. For a second or subsequent offense, suspend the driver's
33 license for 1 year;

34 (ii) In the case of a nonresident or unlicensed person:

1 1. For a test result indicating an alcohol concentration of AT
2 LEAST 0.10 [or more] BUT NOT MORE THAN 0.16 at the time of testing:

3 A. For a first offense, suspend the person's driving privilege
4 for 45 days; or

5 B. For a second or subsequent offense, suspend the person's
6 driving privilege for 90 days; [or]

7 2. FOR A TEST RESULT INDICATING AN ALCOHOL
8 CONCENTRATION OF MORE THAN 0.16 AT THE TIME OF TESTING:

9 A. FOR A FIRST OFFENSE, SUSPEND THE PERSON'S DRIVING
10 PRIVILEGE FOR 60 DAYS AND IMPOSE AN ALCOHOL RESTRICTION ON THE PERSON'S
11 DRIVING PRIVILEGE AS PROVIDED IN § 16-113 OF THIS ARTICLE; OR

12 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
13 PERSON'S DRIVING PRIVILEGE FOR 120 DAYS AND IMPOSE AN ALCOHOL
14 RESTRICTION ON THE PERSON'S DRIVING PRIVILEGE AS PROVIDED IN § 16-113 OF
15 THIS ARTICLE; OR

16 3. For a test refusal:

17 A. For a first offense, suspend the person's driving privilege
18 for [120] 180 days; or

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

21 (iii) In addition to any applicable driver's license suspensions
22 authorized under this section, in the case of a person operating a commercial motor
23 vehicle who refuses to take a test:

24 1. Disqualify the person's commercial driver's license for a
25 period of 1 year for a first offense, 3 years for a first offense which occurs while
26 transporting hazardous materials required to be placarded, and disqualify for life for
27 a second or subsequent offense which occurs while operating any commercial motor
28 vehicle; or

29 2. If the person is licensed as a commercial driver by another
30 state, disqualify the person's privilege to operate a commercial motor vehicle and
31 report the refusal and disqualification to the person's resident state which may result
32 in further penalties imposed by the person's resident state.

33 (2) Except as provided in subsection (c) of this section, if a police officer
34 stops or detains any person who the police officer has reasonable grounds to believe is
35 or has been driving or attempting to drive a motor vehicle while intoxicated, while
36 under the influence of alcohol, while so far under the influence of any drug, any
37 combination of drugs, or a combination of one or more drugs and alcohol that the
38 person could not drive a vehicle safely, while under the influence of a controlled

1 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813
2 of this title, and who is not unconscious or otherwise incapable of refusing to take a
3 test, the police officer shall:

4 (i) Detain the person;

5 (ii) Request that the person permit a test to be taken; and

6 (iii) Advise the person of the administrative sanctions that shall be
7 imposed for refusal to take the test, including ineligibility for modification of a
8 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
9 section, and for test results indicating an alcohol concentration of 0.10 or more at the
10 time of testing.

11 (3) If the person refuses to take the test or takes a test which results in
12 an alcohol concentration of 0.10 or more at the time of testing, the police officer shall:

13 (i) Confiscate the person's driver's license issued by this State;

14 (ii) Acting on behalf of the Administration, personally serve an
15 order of suspension on the person;

16 (iii) Issue a temporary license to drive;

17 (iv) Inform the person that the temporary license allows the person
18 to continue driving for 45 days if the person is licensed under this title;

19 (v) Inform the person that:

20 1. The person has a right to request, at that time or within
21 10 days, a hearing to show cause why the driver's license should not be suspended
22 concerning the refusal to take the test or for test results indicating an alcohol
23 concentration of 0.10 or more at the time of testing, and the hearing will be scheduled
24 within 45 days; and

25 2. If a hearing request is not made at that time or within 10
26 days, but within 30 days the person requests a hearing, a hearing to show cause why
27 the driver's license should not be suspended concerning the refusal to take the test or
28 for test results indicating an alcohol concentration of 0.10 or more at the time of
29 testing will be scheduled, but a request made after 10 days does not extend a
30 temporary license issued by the police officer that allows the person to continue
31 driving for 45 days;

32 (vi) Advise the person of the administrative sanctions that shall be
33 imposed in the event of failure to request a hearing, failure to attend a requested
34 hearing, or upon an adverse finding by the hearing officer; and

35 (vii) Within 72 hours after the issuance of the order of suspension,
36 send any confiscated driver's license, copy of the suspension order, and a sworn
37 statement to the Administration, that states:

1 1. The officer had reasonable grounds to believe that the
2 person had been driving or attempting to drive a motor vehicle on a highway or on
3 any private property that is used by the public in general in this State while
4 intoxicated, while under the influence of alcohol, while so far under the influence of
5 any drug, any combination of drugs, or a combination of one or more drugs and
6 alcohol that the person could not drive a vehicle safely, while under the influence of a
7 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
8 § 16-813 of this title;

9 2. The person refused to take a test when requested by the
10 police officer or the person submitted to the test which indicated an alcohol
11 concentration of 0.10 or more at the time of testing; and

12 3. The person was fully advised of the administrative
13 sanctions that shall be imposed, including the fact that a person who refuses to take
14 the test is ineligible for modification of a suspension or issuance of a restrictive
15 license under subsection (n)(1) or (2) of this section.

16 (f) (1) Subject to the provisions of this subsection, at the time of, or within
17 30 days from the date of, the issuance of an order of suspension, a person may submit
18 a written request for a hearing before an officer of the Administration if:

19 (i) The person is arrested for driving or attempting to drive a motor
20 vehicle while intoxicated, while under the influence of alcohol, while so far under the
21 influence of any drug, any combination of drugs, or a combination of one or more
22 drugs and alcohol that the person could not drive a vehicle safely, while under the
23 influence of a controlled dangerous substance, in violation of an alcohol restriction, or
24 in violation of § 16-813 of this title; and

25 (ii) 1. There is an alcohol concentration of 0.10 or more at the
26 time of testing; or

27 2. The person refused to take a test.

28 (2) A request for a hearing made by mail shall be deemed to have been
29 made on the date of the United States Postal Service postmark on the mail.

30 (3) If the driver's license has not been previously surrendered, the
31 license must be surrendered at the time the request for a hearing is made.

32 (4) If a hearing request is not made at the time of or within 10 days after
33 the issuance of the order of suspension, the Administration shall:

34 (i) Make the suspension order effective suspending the license:

35 1. For a test result indicating an alcohol concentration of
36 0.10 or more at the time of testing:

37 A. For a first offense, for 45 days; or

1 B. For a second or subsequent offense, for 90 days; [or]

2 2. FOR A TEST RESULT INDICATING AN ALCOHOL
3 CONCENTRATION OF MORE THAN 0.16 AT THE TIME OF TESTING:

4 A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE
5 FOR 60 DAYS AND IMPOSE AN ALCOHOL RESTRICTION ON THE DRIVER'S LICENSE AS
6 PROVIDED IN § 16-113 OF THIS ARTICLE; OR

7 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
8 DRIVER'S LICENSE FOR 120 DAYS AND IMPOSE AN ALCOHOL RESTRICTION ON THE
9 DRIVER'S LICENSE AS PROVIDED IN § 16-113 OF THIS ARTICLE; OR

10 3. For a test refusal:

11 A. For a first offense, for [120] 180 days; or

12 B. For a second offense or subsequent offense, for 1 year; and

13 (ii) 1. In the case of a person operating a commercial motor
14 vehicle who refuses to take a test, disqualify the person's commercial driver's license
15 for a period of 1 year for a first offense, 3 years for a first offense which occurs while
16 transporting hazardous materials required to be placarded, and for life for a second or
17 subsequent offense which occurs while operating any commercial vehicle; or

18 2. In the case of a person operating a commercial motor
19 vehicle who refuses to take a test, and who is licensed as a commercial driver by
20 another state, disqualify the person's privilege to operate a commercial motor vehicle
21 in this State and report the refusal and disqualification to the person's resident state
22 which may result in further penalties imposed by the person's resident state.

23 (5) (i) If the person requests a hearing at the time of or within 10 days
24 after the issuance of the order of suspension and surrenders the driver's license or, if
25 applicable, the person's commercial driver's license, the Administration shall set a
26 hearing for a date within 30 days of the receipt of the request.

27 (ii) Subject to the provisions of this paragraph, a postponement of a
28 hearing under this paragraph does not extend the period for which the person is
29 authorized to drive and the suspension and, if applicable, the disqualification shall
30 become effective on the expiration of the 45-day period after the issuance of the order
31 of suspension.

32 (iii) A postponement of a hearing described under this paragraph
33 shall extend the period for which the person is authorized to drive if:

34 1. Both the person and the Administration agree to the
35 postponement;

36 2. The Administration cannot provide a hearing within the
37 period required under this paragraph; or

1 3. Under circumstances in which the person made a request,
2 within 10 days of the date that the order of suspension was served under this section,
3 for the issuance of a subpoena under § 12-108 of this article except as time limits are
4 changed by this paragraph:

5 A. The subpoena was not issued by the Administration;

6 B. An adverse witness for whom the subpoena was requested,
7 and on whom the subpoena was served not less than 5 days before the hearing
8 described under this paragraph, fails to comply with the subpoena at an initial or
9 subsequent hearing described under this paragraph held within the 45-day period; or

10 C. A witness for whom the subpoena was requested fails to
11 comply with the subpoena, for good cause shown, at an initial or subsequent hearing
12 described under this paragraph held within the 45-day period after the issuance of
13 the order of suspension.

14 (iv) If a witness is served with a subpoena for a hearing under this
15 paragraph, the witness shall comply with the subpoena within 20 days from the date
16 that the subpoena is served.

17 (v) If a hearing is postponed beyond the 45-day period after the
18 issuance of the order of suspension under the circumstances described in
19 subparagraph (iii) of this paragraph, the Administration shall stay the suspension
20 and issue a temporary license that authorizes the person to drive only until the date
21 of the rescheduled hearing described under this paragraph.

22 (vi) To the extent possible, the Administration shall expeditiously
23 reschedule a hearing that is postponed under this paragraph.

24 (6) (i) If a hearing request is not made at the time of, or within 10 days
25 from the date of the issuance of an order of suspension, but within 30 days of the date
26 of the issuance of an order of suspension, the person requests a hearing and
27 surrenders the driver's license or, if applicable, the person's commercial driver's
28 license, the Administration shall:

29 1. A. Make a suspension order effective suspending the
30 license for the applicable period of time described under paragraph (4)(i) of this
31 subsection; and

32 B. In the case of a person operating a commercial motor
33 vehicle who refuses to take a test, disqualify the person's commercial driver's license,
34 or privilege to operate a commercial motor vehicle in this State, for the applicable
35 period of time described under paragraph (4)(ii) of this subsection; and

36 2. Set a hearing for a date within 45 days of the receipt of a
37 request for a hearing under this paragraph.

38 (ii) A request for hearing scheduled under this paragraph does not
39 extend the period for which the person is authorized to drive, and the suspension and,

1 if applicable, the disqualification shall become effective on the expiration of the
2 45-day period that begins on the date of the issuance of the order of suspension.

3 (iii) A postponement of a hearing described under this paragraph
4 shall stay the suspension only if:

5 1. Both the person and the Administration agree to the
6 postponement;

7 2. The Administration cannot provide a hearing under this
8 paragraph within the period required under this paragraph; or

9 3. Under circumstances in which the person made a request,
10 within 10 days of the date that the person requested a hearing under this paragraph,
11 for the issuance of a subpoena under § 12-108 of this article except as time limits are
12 changed by this paragraph:

13 A. The subpoena was not issued by the Administration;

14 B. An adverse witness for whom the subpoena was requested,
15 and on whom the subpoena was served not less than 5 days before the hearing, fails
16 to comply with the subpoena at an initial or subsequent hearing under this paragraph
17 held within the 45-day period that begins on the date of the request for a hearing
18 under this paragraph; or

19 C. A witness for whom the subpoena was requested fails to
20 comply with the subpoena, for good cause shown, at an initial or subsequent hearing
21 under this paragraph held within the 45-day period that begins on the date of the
22 request for a hearing under this paragraph.

23 (iv) If a witness is served with a subpoena for a hearing under this
24 paragraph, the witness shall comply with the subpoena within 20 days from the date
25 that the subpoena is served.

26 (v) If a hearing is postponed beyond the 45-day period that begins
27 on the date of the request for a hearing under this paragraph under circumstances
28 described in subparagraph (iii) of this paragraph, the Administration shall stay the
29 suspension and issue a temporary license that authorizes the person to drive only
30 until the date of the rescheduled hearing.

31 (vi) To the extent possible, the Administration shall expeditiously
32 reschedule a hearing that is postponed under this paragraph.

33 (7) (i) At a hearing under this section, the person has the rights
34 described in § 12-206 of this article, but at the hearing the only issues shall be:

35 1. Whether the police officer who stops or detains a person
36 had reasonable grounds to believe the person was driving or attempting to drive while
37 intoxicated, while under the influence of alcohol, while so far under the influence of
38 any drug, any combination of drugs, or a combination of one or more drugs and

1 alcohol that the person could not drive a vehicle safely, while under the influence of a
2 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
3 § 16-813 of this title;

4
5 2. Whether there was evidence of the use by the person of
6 alcohol, any drug, any combination of drugs, a combination of one or more drugs and
7 alcohol, or a controlled dangerous substance;

8 3. Whether the police officer requested a test after the
9 person was fully advised of the administrative sanctions that shall be imposed,
10 including the fact that a person who refuses to take the test is ineligible for
11 modification of a suspension or issuance of a restrictive license under subsection
12 (n)(1) and (2) of this section;

13 4. Whether the person refused to take the test;

14 5. Whether the person drove or attempted to drive a motor
15 vehicle while having an alcohol concentration of 0.10 or more at the time of testing; or

16 6. If the hearing involves disqualification of a commercial
17 driver's license, whether the person was operating a commercial motor vehicle.

18 (ii) The sworn statement of the police officer and of the test
19 technician or analyst shall be prima facie evidence of a test refusal or a test resulting
20 in an alcohol concentration of 0.10 or more at the time of testing.

21 (8) (i) After a hearing, the Administration shall suspend the driver's
22 license or privilege to drive of the person charged under subsection (b) or (c) of this
23 section if:

24 1. The police officer who stopped or detained the person had
25 reasonable grounds to believe the person was driving or attempting to drive while
26 intoxicated, while under the influence of alcohol, while so far under the influence of
27 any drug, any combination of drugs, or a combination of one or more drugs and
28 alcohol that the person could not drive a vehicle safely, while under the influence of a
29 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
30 § 16-813 of this title;

31 2. There was evidence of the use by the person of alcohol, any
32 drug, any combination of drugs, a combination of one or more drugs and alcohol, or a
33 controlled dangerous substance;

34 3. The police officer requested a test after the person was
35 fully advised of the administrative sanctions that shall be imposed, including the fact
36 that a person who refuses to take the test is ineligible for modification of a suspension
37 or issuance of a restrictive license under subsection (n)(1) and (2) of this section; and

38 4. A. The person refused to take the test; or

1 B. A test to determine alcohol concentration was taken and
2 the test result indicated an alcohol concentration of 0.10 or more at the time of
3 testing.

4 (ii) After a hearing, the Administration shall disqualify the person
5 from driving a commercial motor vehicle if:

6 1. The person was detained while operating a commercial
7 motor vehicle;

8 2. The police officer who stopped or detained the person had
9 reasonable grounds to believe that the person was driving or attempting to drive
10 while intoxicated, while under the influence of alcohol, while so far under the
11 influence of any drug, any combination of drugs, or a combination of one or more
12 drugs and alcohol that the person could not drive a vehicle safely, while under the
13 influence of a controlled dangerous substance, in violation of an alcohol restriction, or
14 in violation of § 16-813 of this title;

15 3. There was evidence of the use by the person of alcohol, any
16 drug, any combination of drugs, a combination of one or more drugs and alcohol, or a
17 controlled dangerous substance;

18 4. The police officer requested a test after the person was
19 fully advised of the administrative sanctions that shall be imposed; and

20 5. The person refused to take the test.

21 (iii) If the person is licensed to drive a commercial motor vehicle, the
22 Administration shall disqualify the person in accordance with subparagraph (ii) of
23 this paragraph, but may not impose a suspension under subparagraph (i) of this
24 paragraph, if:

25 1. The person was detained while operating a commercial
26 motor vehicle;

27 2. The police officer had reasonable grounds to believe the
28 person was in violation of an alcohol restriction or in violation of § 16-813 of this title;

29 3. The police officer did not have reasonable grounds to
30 believe the driver was driving while intoxicated, driving while under the influence of
31 alcohol, while so far under the influence of any drug, any combination of drugs, or a
32 combination of one or more drugs and alcohol that the person could not drive a vehicle
33 safely, or while under the influence of a controlled dangerous substance; and

34 4. The driver refused to take a test.

35 (iv) In the absence of a compelling reason for failure to attend a
36 hearing, failure of a person to attend a hearing is prima facie evidence of the person's
37 inability to answer the sworn statement of the police officer or the test technician or
38 analyst, and the Administration summarily shall:

- 1 1. Suspend the driver's license or privilege to drive; and
2 2. If the driver is detained in a commercial motor vehicle,
3 disqualify the person from operating a commercial motor vehicle.

4 (v) The suspension imposed shall be:

5 1. For a test result indicating an alcohol concentration of AT
6 LEAST 0.10 [or more] BUT NOT MORE THAN 0.16 at the time of testing:

7 A. For a first offense, a suspension for 45 days; or

8 B. For a second or subsequent offense, a suspension for 90
9 days; [or]

10 2. FOR A TEST RESULT INDICATING AN ALCOHOL
11 CONCENTRATION OF MORE THAN 0.16 AT THE TIME OF TESTING:

12 A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE
13 OR DRIVING PRIVILEGE FOR 60 DAYS AND IMPOSE AN ALCOHOL RESTRICTION ON
14 THE DRIVER'S LICENSE OR DRIVING PRIVILEGE AS PROVIDED IN § 16-113 OF THIS
15 ARTICLE; OR

16 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
17 DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR 120 DAYS AND IMPOSE AN ALCOHOL
18 RESTRICTION ON THE DRIVER'S LICENSE OR DRIVING PRIVILEGE AS PROVIDED IN §
19 16-113 OF THIS ARTICLE; OR

20 3. For a test refusal:

21 A. For a first offense, a suspension for [120] 180 days; or

22 B. For a second or subsequent offense, a suspension for 1
23 year.

24 (vi) A disqualification imposed under subparagraph (ii) or (iii) of
25 this paragraph shall be for a period of 1 year for a first offense, 3 years for a first
26 offense which occurs while transporting hazardous material required to be placarded,
27 and life for a second or subsequent offense which occurs while operating or
28 attempting to operate any commercial motor vehicle.

29 (vii) A disqualification of a commercial driver's license is not subject
30 to any modifications, nor may a restricted commercial driver's license be issued in
31 lieu of a disqualification.

32 (viii) A disqualification for life may be reduced if permitted by §
33 16-812(d) of this title.

34 (n) (1) [The] EXCEPT AS OTHERWISE REQUIRED UNDER A COURT ORDER,
35 THE Administration may modify a suspension under this section or issue a restrictive
36 license if:

- 1 (i) The licensee did not refuse to take a test;
- 2 (ii) The licensee has not had a license suspended under this section
3 during the past 5 years;
- 4 (iii) The licensee has not DURING THE PAST FIVE YEARS:
- 5 1. been convicted under ARTICLE 27, § 388A OR § 388B OF THE
6 CODE, § 21-902 of this article [during the past 5 years; and], OR AN OFFENSE UNDER
7 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN
8 OFFENSE DESCRIBED IN THIS SUBPARAGRAPH;
- 9 2. ENTERED A PLEA OF NOLO CONTENDERE FOR A
10 VIOLATION OF ARTICLE 27, § 388A OR § 388B OF THE CODE, § 21-902 OF THIS ARTICLE,
11 OR FOR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
12 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS SUBPARAGRAPH; OR
- 13 3. RECEIVED A PROBATION BEFORE JUDGMENT FOR A
14 VIOLATION OF ARTICLE 27, § 388A OR § 388B OF THE CODE, § 21-902 OF THIS ARTICLE,
15 OR FOR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
16 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS SUBPARAGRAPH; AND
- 17 (iv) 1. The licensee is required to drive a motor vehicle in the
18 course of employment;
- 19 2. The license is required for the purpose of attending an
20 alcoholic prevention or treatment program; or
- 21 3. It finds that the licensee has no alternative means of
22 transportation available to or from the licensee's place of employment and, without
23 the license, the licensee's ability to earn a living would be severely impaired.
- 24 (2) [In] EXCEPT AS OTHERWISE REQUIRED UNDER A COURT ORDER,
25 AND IN addition to the authority to modify a suspension or issue a restrictive license
26 under paragraph (1) or (4) of this subsection, the Administration may modify a
27 suspension under this section or issue a restrictive license, including a restriction
28 that prohibits the licensee from driving or attempting to drive a motor vehicle unless
29 the licensee is a participant in the Ignition Interlock System Program established
30 under § 16-404.1 of this title, if:
- 31 (i) The licensee did not refuse to take a test;
- 32 (ii) The licensee has not:
- 33 1. been PREVIOUSLY convicted under ARTICLE 27, § 388A OR §
34 388B OF THE CODE, § 21-902 of this article[; and], OR AN OFFENSE UNDER FEDERAL
35 LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE
36 DESCRIBED IN THIS SUBPARAGRAPH;

1 2. ENTERED A PLEA OF NOLO CONTENDERE FOR A PRIOR
2 VIOLATION OF ARTICLE 27, § 388A OR § 388B OF THE CODE, § 21-902 OF THIS ARTICLE,
3 OR FOR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
4 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS SUBPARAGRAPH; OR

5 3. RECEIVED A PROBATION BEFORE JUDGMENT FOR A PRIOR
6 VIOLATION OF ARTICLE 27, § 388A OR § 388B OF THE CODE, § 21-902 OF THIS ARTICLE,
7 OR FOR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
8 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS SUBPARAGRAPH; AND

9 (iii) The license is required for the purpose of attending:

10 1. A noncollegiate educational institution as defined in §
11 2-206(a) of the Education Article; or

12 2. A regular program at an institution of postsecondary
13 education.

14 (3) If the licensee refused to take a test, the Administration may not
15 modify a suspension under this section or issue a restrictive license except as
16 provided under paragraph (4) of this subsection.

17 (4) In addition to the authority to modify a suspension or issue a
18 restrictive license under paragraph (1) or (2) of this subsection, the Administration
19 may modify a suspension under this section or issue a restrictive license to a licensee
20 who participates in the Ignition Interlock System Program established under §
21 16-404.1 of this title for at least 1 year.

22 21-902.

23 (a) (1) A person may not drive or attempt to drive any vehicle while
24 intoxicated.

25 (2) A person may not drive or attempt to drive any vehicle while the
26 person is intoxicated per se.

27 (b) A person may not drive or attempt to drive any vehicle while under the
28 influence of alcohol.

29 (c) (1) A person may not drive or attempt to drive any vehicle while he is so
30 far under the influence of any drug, any combination of drugs, or a combination of one
31 or more drugs and alcohol that he cannot drive a vehicle safely.

32 (2) It is not a defense to any charge of violating this subsection that the
33 person charged is or was entitled under the laws of this State to use the drug,
34 combination of drugs, or combination of one or more drugs and alcohol, unless the
35 person was unaware that the drug or combination would make him incapable of
36 safely driving a vehicle.

1 (d) A person may not drive or attempt to drive any vehicle while he is under
2 the influence of any controlled dangerous substance, as that term is defined in Article
3 27, § 279 of the Code, if the person is not entitled to use the controlled dangerous
4 substance under the laws of this State.

5 (E) (1) IN THIS SUBSECTION, "PERSON" MEANS AN INDIVIDUAL WHO:

6 (I) IS CONVICTED OF A VIOLATION OF SUBSECTION (A) OR (B) OF
7 THIS SECTION;

8 (II) ENTERS A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF
9 SUBSECTION (A) OR (B) OF THIS SECTION;

10 (III) RECEIVES PROBATION BEFORE JUDGMENT FOR A VIOLATION
11 OF SUBSECTION (A) OR (B) OF THIS SECTION; OR

12 (IV) IS UNDER THE AGE OF 18 YEARS AND IS FOUND TO HAVE
13 COMMITTED A DELINQUENT ACT IN VIOLATION OF SUBSECTION (A) OR (B) OF THIS
14 SECTION.

15 (2) IN ADDITION TO ANY OTHER PENALTY OR SANCTION AUTHORIZED
16 BY LAW FOR A VIOLATION OF SUBSECTION (A) OR (B) OF THIS SECTION, A COURT:

17 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, MAY
18 ORDER A PERSON WHO VIOLATES SUBSECTION (A) OR (B) OF THIS SECTION NOT TO
19 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S
20 BLOOD; OR

21 (II) IF A PERSON VIOLATES SUBSECTION (A) OF THIS SECTION BY
22 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL
23 CONCENTRATION OF MORE THAN 0.16 AS DETERMINED BY AN ANALYSIS OF THE
24 PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302 THROUGH
25 10-309, INCLUSIVE, OF THE COURTS ARTICLE, SHALL ORDER THE PERSON NOT TO
26 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S
27 BLOOD.

28 27-101.

29 (f) (1) A person is subject to a fine not exceeding \$500 or imprisonment not
30 exceeding 1 year or both, if the person is convicted of:

31 (i) A violation of § 14-103 of this article ("Possession of motor
32 vehicle master key"); or

33 (ii) A second or subsequent violation of:

34 1. § 16-101 of this article ("Drivers must be licensed"); or

35 2. Except as provided in subsection (q) of this section:

1 A. § 21-902(b) of this article ("Driving while under the
2 influence of alcohol");

3 B. § 21-902(c) of this article ("Driving while under the
4 influence of drugs or drugs and alcohol"); or

5 C. § 21-902(d) of this article ("Driving while under the
6 influence of controlled dangerous substance").

7 (2) Except as provided in subsection (q) of this section, for the purpose of
8 second or subsequent offender penalties for a violation of § 21-902(b) of this article
9 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
10 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §
11 21-902(c), or § 21-902(d) of this article, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR
12 AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
13 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be considered a
14 conviction of § 21-902(b) of this article.

15 (3) Except as provided in subsection (q) of this section, for the purpose of
16 second or subsequent offender penalties for a violation of § 21-902(c) of this article
17 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
18 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §
19 21-902(b), or § 21-902(d) of this article, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR
20 AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
21 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be considered a
22 conviction of § 21-902(c) of this article.

23 (4) Except as provided in subsection (q) of this section, for the purpose of
24 second or subsequent offender penalties for a violation of § 21-902(d) of this article
25 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
26 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §
27 21-902(b), or § 21-902(c) of this article, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR
28 AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
29 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be considered a
30 conviction of § 21-902(d) of this article.

31 (j) (1) In this subsection, "imprisonment" includes confinement in an
32 inpatient rehabilitation or treatment center.

33 (2) A person who is convicted of OR WHO ENTERS A PLEA OF NOLO
34 CONTENDERE FOR a violation of § 21-902(a) of this article within 3 years after a prior
35 conviction [under that subsection] OR PRIOR ENTRY OF A PLEA OF NOLO
36 CONTENDERE FOR A PRIOR VIOLATION OF § 21-902(A) OF THIS ARTICLE, ARTICLE 27, §
37 388A OR § 388B OF THE CODE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF
38 ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
39 PARAGRAPH, is subject to a mandatory minimum penalty of:

40 (i) Imprisonment for not less than 48 consecutive hours; or

41 (ii) Community service for not less than 80 hours.

1 (3) The penalties provided by this subsection are mandatory and are not
2 subject to suspension or probation.

3 (k) (1) (I) Except as provided in PARAGRAPH (2) OF THIS SUBSECTION
4 AND EXCEPT AS PROVIDED IN subsection (q) of this section, any person who is
5 convicted of OR WHO ENTERS A PLEA OF NOLO CONTENDERE FOR a violation of any of
6 the provisions of § 21-902(a) of this article ("Driving while intoxicated or intoxicated
7 per se"):

8 [(i)] 1. For a first offense, shall be subject to a fine of not more
9 than \$1,000, or imprisonment for not more than 1 year, or both;

10 [(ii)] 2. For a second offense, shall be subject to a fine of not more
11 than \$2,000, or imprisonment for not more than 2 years, or both; and

12 [(iii)] 3. For a third or subsequent offense, shall be subject to a fine
13 of not more than \$3,000, or imprisonment for not more than 3 years, or both.

14 [(2)] (II) For the purpose of second or subsequent offender penalties for
15 violation of § 21-902(a) of this article provided under PARAGRAPH (1) OF this
16 subsection, a prior conviction OR PRIOR ENTRY OF A PLEA OF NOLO CONTENDERE
17 FOR A PRIOR VIOLATION of § 21-902(b), (c), or (d) of this article, ARTICLE 27, § 388A OR
18 § 388B OF THE CODE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF
19 ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
20 PARAGRAPH, within 5 years of the conviction OR ENTRY OF A PLEA OF NOLO
21 CONTENDERE for a violation of § 21-902(a) of this article, shall be considered a
22 conviction of § 21-902(a) of this article.

23 (2) (I) EXCEPT AS PROVIDED IN SUBSECTION (Q) OF THIS SECTION,
24 ANY PERSON WHO IS CONVICTED OF OR ENTERS A PLEA OF NOLO CONTENDERE FOR
25 A VIOLATION OF § 21-902(A) OF THIS SECTION UPON A DETERMINATION THAT THE
26 PERSON WAS DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN
27 ALCOHOL CONCENTRATION OF MORE THAN 0.16 AS DETERMINED BY AN ANALYSIS
28 OF THE PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302
29 THROUGH 10-309, INCLUSIVE, OF THE COURTS ARTICLE:

30 1. FOR A FIRST OFFENSE, SHALL BE SUBJECT TO A FINE OF
31 NOT MORE THAN \$1,500, OR IMPRISONMENT FOR NOT MORE THAN 18 MONTHS, OR
32 BOTH;

33 2. FOR A SECOND OFFENSE, SHALL BE SUBJECT TO A FINE
34 OF NOT MORE THAN \$3,000, OR IMPRISONMENT FOR NOT MORE THAN 3 YEARS, OR
35 BOTH; AND

36 3. FOR A THIRD OR SUBSEQUENT OFFENSE, SHALL BE
37 SUBJECT TO A FINE OF NOT MORE THAN \$4,000, OR IMPRISONMENT FOR NOT MORE
38 THAN 4 YEARS, OR BOTH.

39 (II) FOR THE PURPOSE OF SECOND OR SUBSEQUENT OFFENDER
40 PENALTIES FOR VIOLATION OF § 21-902(A) OF THIS ARTICLE PROVIDED UNDER

1 PARAGRAPH (2) OF THIS SUBSECTION, A PRIOR CONVICTION OR PRIOR ENTRY OF A
2 PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION OF § 21-902(B), (C), OR (D) OF
3 THIS ARTICLE, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR AN OFFENSE UNDER
4 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN
5 OFFENSE DESCRIBED IN THIS PARAGRAPH, WITHIN 5 YEARS OF THE CONVICTION OR
6 ENTRY OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS
7 ARTICLE, SHALL BE CONSIDERED A CONVICTION OF § 21-902(A) OF THIS ARTICLE.

8 (q) (1) Any person who is convicted of OR WHO ENTERS A PLEA OF NOLO
9 CONTENDERE FOR a violation of § 21-902(a) of this article and who, at the time of the
10 offense, was transporting a minor is subject to:

11 (i) For a first offense, a fine of not more than \$2,000 or
12 imprisonment for not more than 2 years or both;

13 (ii) For a second offense, a fine of not more than \$3,000 or
14 imprisonment for not more than 3 years or both; and

15 (iii) For a third or subsequent offense, a fine of not more than \$4,000
16 or imprisonment for not more than 4 years or both.

17 (2) Any person who is convicted of OR WHO ENTERS A PLEA OF NOLO
18 CONTENDERE FOR a violation of § 21-902(b), § 21-902(c), or § 21-902(d) of this article
19 and who, at the time of the offense, was transporting a minor is subject to:

20 (i) For a first offense, a fine of not more than \$1,000 or
21 imprisonment for not more than 6 months or both; and

22 (ii) For a second or subsequent offense, a fine of not more than
23 \$2,000 or imprisonment for not more than 1 year or both.

24 (3) For the purpose of determining second or subsequent offender
25 penalties provided under this subsection, a prior conviction OR PRIOR ENTRY OF A
26 PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of any provision of § 21-902 of
27 this article, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR AN OFFENSE UNDER
28 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN
29 OFFENSE DESCRIBED IN THIS PARAGRAPH, that subjected a person to the penalties
30 under this subsection shall be considered a prior conviction.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2000.