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By: **Senator Jimeno**  
Introduced and read first time: February 2, 2001  
Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol Related Driving Offenses - Criminal Penalties, Evidence, and**  
3 **Driving 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; repealing a  
13 restriction against an inference or presumption of guilt or innocence arising  
14 from a refusal to submit to a certain blood or breath test to determine alcohol  
15 concentration or drug or controlled dangerous substance content of blood;  
16 requiring the Motor Vehicle Administration to impose a certain alcohol  
17 restriction on a person's driver's license under certain circumstances;  
18 authorizing the Administration to impose a certain alcohol restriction for good  
19 cause on certain driving privileges of certain unlicensed or nonresident  
20 individuals; requiring the Administration to impose a certain alcohol restriction  
21 on certain driving privileges of certain unlicensed or nonresident individuals  
22 under certain circumstances; authorizing a court to order an individual not to  
23 drive or attempt to drive a motor vehicle with alcohol in the individual's blood;  
24 requiring the Administration to suspend a person's driver's license or driving  
25 privilege for a certain period of time and impose a certain alcohol restriction for  
26 a certain period of time based on a certain amount of tested alcohol  
27 concentration under certain circumstances; increasing the period of suspension  
28 for a driver's license or driving privilege for a certain alcohol concentration test  
29 refusal under certain circumstances; making effective certain suspension orders  
30 and certain alcohol restrictions on certain driver's licenses under certain  
31 circumstances; requiring the suspension of, and alcohol restriction on, a driver's  
32 license or driving privilege based on certain alcohol concentrations and the  
33 number of offenses committed; prohibiting the Administration from modifying  
34 certain suspensions or issuing restrictive licenses for certain persons who are  
35 convicted, enter a plea of nolo contendere, or receive probation before judgment

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

21 BY repealing and reenacting, with amendments,  
22 Article 27 - Crimes and Punishments  
23 Section 388A and 388B  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume and 2000 Supplement)

26 BY repealing and reenacting, with amendments,  
27 Article - Courts and Judicial Proceedings  
28 Section 10-309  
29 Annotated Code of Maryland  
30 (1998 Replacement Volume and 2000 Supplement)

31 BY repealing and reenacting, with amendments,  
32 Article - Transportation  
33 Section 16-113, 16-205.1(b), (f), and (n), 21-902, and 27-101(f), (j), (k), and (q)  
34 Annotated Code of Maryland  
35 (1999 Replacement Volume and 2000 Supplement)

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

38 **Article 27 - Crimes and Punishments**

39 388A.

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

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

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

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

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

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

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

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

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

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

40       (e)        A person who causes the death of another as the result of the person's  
41 negligent driving, operation, or control of a motor vehicle or vessel while under the

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

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

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

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

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

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

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

22 (g) The clerk of the court shall notify the Motor Vehicle Administration of each  
23 person convicted under this section of an offense involving a motor vehicle.

24 (H) (1) IN THIS SUBSECTION, "PERSON" MEANS AN INDIVIDUAL WHO:

25 (I) IS CONVICTED OF A VIOLATION OF SUBSECTION (B) OR (C) OF  
26 THIS SECTION;

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

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

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

34 (2) IN ADDITION TO ANY OTHER PENALTY OR SANCTION AUTHORIZED  
35 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 388B.

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

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

17                   (ii)       If the alcohol concentration is measured by milligrams of  
18 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a  
19 court shall convert the measurement into grams of alcohol per 100 milliliters of blood  
20 by dividing the measurement by 1000.

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

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

28                   (5)       "Under the influence of a controlled dangerous substance" means  
29 under the influence of a controlled dangerous substance, as that term is defined in §  
30 279 of this article, if the person is not entitled to use the controlled dangerous  
31 substance under the laws of this State.

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

38       (c)       A person who causes a life threatening injury to another as a result of the  
39 person's negligent driving, operation, or control of a motor vehicle or vessel while  
40 under the influence of alcohol is guilty of a misdemeanor to be known as "life

1 threatening injury by motor vehicle or vessel while under the influence of alcohol",  
 2 and on conviction the person shall be punished by imprisonment for not more than 2  
 3 years or a fine of not more than \$3,000 or both.

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

10 (e) A person who causes a life threatening injury to another as a result of the  
 11 person's negligent driving, operation, or control of a motor vehicle or vessel while  
 12 under the influence of a controlled dangerous substance is guilty of a misdemeanor to  
 13 be known as "life threatening injury by motor vehicle or vessel while under the  
 14 influence of a controlled dangerous substance", and on conviction the person shall be  
 15 punished by imprisonment for not more than 2 years or a fine of not more than \$3,000  
 16 or both.

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

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

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

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

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

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

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

38 (I) IS CONVICTED OF A VIOLATION OF SUBSECTION (B) OR (C) OF  
 39 THIS SECTION;

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

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

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

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

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

14 (II) IF A PERSON VIOLATES SUBSECTION (B) OF THIS SECTION BY  
15 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL  
16 CONCENTRATION OF MORE THAN 0.16 AS DETERMINED BY AN ANALYSIS OF THE  
17 PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302 THROUGH  
18 10-309, INCLUSIVE, OF THE COURTS ARTICLE, SHALL ORDER THE PERSON NOT TO  
19 DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE PERSON'S  
20 BLOOD.

21 **Article - Courts and Judicial Proceedings**

22 10-309.

23 (a) (1) (i) Except as provided in § 16-205.1(c) of the Transportation  
24 Article, a person may not be compelled to submit to a test or tests provided for in this  
25 subtitle.

26 (ii) Evidence of a test or analysis provided for in this subtitle is not  
27 admissible in a prosecution for a violation of § 16-113 or § 21-902 of the  
28 Transportation Article, § 8-738 of the Natural Resources Article, or Article 27, § 388,  
29 § 388A, or § 388B of the Code if obtained contrary to the provisions of this subtitle.

30 (2) [(i) No inference or presumption concerning either guilt or  
31 innocence arises because of refusal to submit.

32 (ii)] The fact of refusal to submit is admissible in evidence at the  
33 trial.

34 (b) This section does not limit the provisions of the vehicle laws regarding the  
35 consequences of refusal to submit to a test or tests.

36 (c) Nothing in this section precludes or limits the admissibility of evidence of  
37 a test or analysis to determine the alcohol concentration of a person's blood or breath

1 in any prosecution other than for a violation of § 16-113 or § 21-902 of the  
2 Transportation Article, § 8-738 of the Natural Resources Article, or Article 27, § 388,  
3 § 388A, or § 388B of the Code.

4 (d) Nothing in this section precludes or limits admissibility of evidence of a  
5 test or analysis to determine the alcohol concentration of a person's blood or breath  
6 which is obtained as provided in § 16-205.1(c) of the Transportation Article.

7 **Article - Transportation**

8 16-113.

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

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

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

17 (iii) Any other restrictions applicable to the licensee that the  
18 Administration determines appropriate to assure the safe driving of a motor vehicle  
19 by the licensee.

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

26 (3) (I) IF THE ADMINISTRATION IS REQUIRED TO IMPOSE AN ALCOHOL  
27 RESTRICTION UNDER § 16-205.1 OF THIS ARTICLE, THE ADMINISTRATION SHALL  
28 IMPOSE ON THE LICENSEE AN ALCOHOL RESTRICTION WHICH PROHIBITS THE  
29 LICENSEE FROM DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE  
30 HAVING ALCOHOL IN THE LICENSEE'S BLOOD.

31 (II) IF THE ADMINISTRATION ISSUES ANY DRIVING PRIVILEGE  
32 OTHER THAN A DRIVER'S LICENSE TO AN UNLICENSED OR NONRESIDENT  
33 INDIVIDUAL IN THE STATE, THE ADMINISTRATION:

34 1. MAY FOR GOOD CAUSE IMPOSE ON THE DRIVING  
35 PRIVILEGE AN ALCOHOL RESTRICTION THAT PROHIBITS THE INDIVIDUAL FROM  
36 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE HAVING ALCOHOL IN  
37 THE INDIVIDUAL'S BLOOD; OR



- 1 (i) Accompanied and supervised by a licensed driver who is at least  
2 21 years old;
- 3 (ii) Driving to or from or in the course of the licensee's employment;
- 4 (iii) Driving to or from a school class or official school activity;
- 5 (iv) Driving to or from an organized volunteer program; or
- 6 (v) Driving to or from an opportunity to participate in an athletic  
7 event or related training session.

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

11 (e) (1) In addition to the other restrictions provided under this subtitle, the  
12 Administration may issue:

13 (i) A driver's license that is valid only in the State of Maryland to  
14 an applicant who has been suspended in another jurisdiction as a result of failing to  
15 comply with the financial responsibility requirements of that jurisdiction; or

16 (ii) A temporary driver's license that is valid only in the State of  
17 Maryland to an applicant for reinstatement of a suspended or revoked driver's  
18 license, renewal of a driver's license, or a duplicate or corrected driver's license if, at  
19 the time of application:

20 1. The applicant's privilege to drive in another jurisdiction is  
21 revoked or suspended as a result of failing to comply with the licensing requirements  
22 of that jurisdiction for which a comparable violation in this State would not have  
23 resulted in revocation or suspension;

24 2. The initial violation that led to the revocation or  
25 suspension did not occur within the preceding 5 years;

26 3. The applicant is otherwise qualified to be licensed in this  
27 State; and

28 4. The Administration determines that the applicant will be  
29 able to take any actions required by the other jurisdiction for reinstatement of the  
30 privilege to drive in that jurisdiction.

31 (2) A temporary license issued under paragraph (1) of this subsection  
32 shall be valid for 90 days.

33 (3) The Administration shall adopt regulations for the issuance of  
34 temporary licenses under paragraph (1) of this subsection.

35 (f) After receiving satisfactory evidence of any violation of a restricted or  
36 provisional driver's license, the Administration may suspend or revoke the license.

1 However, the licensee may request a hearing as provided for a suspension or  
2 revocation under Subtitle 2 of this title.

3 (g) [(1)] The Administration shall impose an alcohol restriction under  
4 subsection (a)(1)(ii) of this section that prohibits an individual for a period of 3 years  
5 from driving or attempting to drive with alcohol in the individual's blood on any  
6 licensee who is convicted within 5 years of any combination of two or more violations  
7 under § 21-902(a), (b), or (c) of this article.

8 (H) (1) A COURT MAY ORDER AN INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO  
9 DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD.

10 (2) If a circuit court or the District Court orders a licensee not to drive or  
11 attempt to drive a motor vehicle with alcohol in the licensee's blood or orders, under §  
12 27-107 of this article, the licensee to participate in the Ignition Interlock System  
13 Program established under § 16-404.1 of this title, the Administration shall have the  
14 licensee's driving record and driver's license reflect that the court ordered restriction  
15 was imposed, and shall keep records of the order.

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

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

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

23 16-205.1.

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

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

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

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

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

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

1                           A.       FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE  
2 FOR AT LEAST 45 DAYS BUT NOT MORE THAN 60 DAYS AND IMPOSE AN ALCOHOL  
3 RESTRICTION ON THE DRIVER'S LICENSE AS PROVIDED IN § 16-113 OF THIS ARTICLE;  
4 OR

5                           B.       FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE  
6 DRIVER'S LICENSE FOR AT LEAST 90 DAYS BUT NOT MORE THAN 120 DAYS AND  
7 IMPOSE AN ALCOHOL RESTRICTION ON THE DRIVER'S LICENSE AS PROVIDED IN §  
8 16-113 OF THIS ARTICLE; OR

9                           3.       For a test refusal:

10                          A.       For a first offense, suspend the driver's license for AT  
11 LEAST 120 days BUT NOT MORE THAN 180 DAYS; or

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

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

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 person's driving privilege  
18 for 45 days; or

19                           B.       For a second or subsequent offense, suspend the person's  
20 driving privilege 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 PERSON'S DRIVING  
24 PRIVILEGE FOR AT LEAST 45 DAYS BUT NOT MORE THAN 60 DAYS AND IMPOSE AN  
25 ALCOHOL RESTRICTION ON THE PERSON'S DRIVING PRIVILEGE AS PROVIDED IN §  
26 16-113 OF THIS ARTICLE; OR

27                           B.       FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE  
28 PERSON'S DRIVING PRIVILEGE FOR AT LEAST 90 DAYS BUT NOT MORE THAN 120 DAYS  
29 AND IMPOSE AN ALCOHOL RESTRICTION ON THE PERSON'S DRIVING PRIVILEGE AS  
30 PROVIDED IN § 16-113 OF THIS ARTICLE; OR

31                           3.       For a test refusal:

32                           A.       For a first offense, suspend the person's driving privilege  
33 for AT LEAST 120 days BUT NOT MORE THAN 180 DAYS; or

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

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

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

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

13 (2) Except as provided in subsection (c) of this section, if a police officer  
14 stops or detains any person who the police officer has reasonable grounds to believe is  
15 or has been driving or attempting to drive a motor vehicle while intoxicated, while  
16 under the influence of alcohol, while so far under the influence of any drug, any  
17 combination of drugs, or a combination of one or more drugs and alcohol that the  
18 person could not drive a vehicle safely, while under the influence of a controlled  
19 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813  
20 of this title, and who is not unconscious or otherwise incapable of refusing to take a  
21 test, the police officer shall:

22 (i) Detain the person;

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

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

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

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

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

34 (iii) Issue a temporary license to drive;

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

37 (v) Inform the person that:

1                                   1.       The person has a right to request, at that time or within  
2 10 days, a hearing to show cause why the driver's license should not be suspended  
3 concerning the refusal to take the test or for test results indicating an alcohol  
4 concentration of 0.10 or more at the time of testing, and the hearing will be scheduled  
5 within 45 days; and

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

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

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

19                                   1.       The officer had reasonable grounds to believe that the  
20 person had been driving or attempting to drive a motor vehicle on a highway or on  
21 any private property that is used by the public in general in this State while  
22 intoxicated, while under the influence of alcohol, while so far under the influence of  
23 any drug, any combination of drugs, or a combination of one or more drugs and  
24 alcohol that the person could not drive a vehicle safely, while under the influence of a  
25 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
26 § 16-813 of this title;

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

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

34       (f)     (1)     Subject to the provisions of this subsection, at the time of, or within  
35 30 days from the date of, the issuance of an order of suspension, a person may submit  
36 a written request for a hearing before an officer of the Administration if:

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

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

3 2. The person refused to take a test.

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

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

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

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

11 1. For a test result indicating an alcohol concentration of  
12 0.10 or more at the time of testing:

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

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

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

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

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

23 3. For a test refusal:

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

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

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

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

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

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

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

12 1. Both the person and the Administration agree to the  
13 postponement;

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

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

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

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

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

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

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

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

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

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

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

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

15                                  (ii)    A request for hearing scheduled under this paragraph does not  
16 extend the period for which the person is authorized to drive, and the suspension and,  
17 if applicable, the disqualification shall become effective on the expiration of the  
18 45-day period that begins on the date of the issuance of the order of suspension.

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

21                                       1.     Both the person and the Administration agree to the  
22 postponement;

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

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

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

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

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

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

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

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

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

13 1. Whether the police officer who stops or detains a person  
14 had reasonable grounds to believe the person was driving or attempting to drive while  
15 intoxicated, while under the influence of alcohol, while so far under the influence of  
16 any drug, any combination of drugs, or a combination of one or more drugs and  
17 alcohol that the person could not drive a vehicle safely, while under the influence of a  
18 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
19 § 16-813 of this title;

20 2. Whether there was evidence of the use by the person of  
21 alcohol, any drug, any combination of drugs, a combination of one or more drugs and  
22 alcohol, or a controlled dangerous substance;

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

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

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

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

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

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

1                                   1.       The police officer who stopped or detained the person had  
2 reasonable grounds to believe the person was driving or attempting to drive while  
3 intoxicated, while under the influence of alcohol, while so far under the influence of  
4 any drug, any combination of drugs, or a combination of one or more drugs and  
5 alcohol that the person could not drive a vehicle safely, while under the influence of a  
6 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
7 § 16-813 of this title;

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

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

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

16                                  B.       A test to determine alcohol concentration was taken and  
17 the test result indicated an alcohol concentration of 0.10 or more at the time of  
18 testing.

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

21                                  1.       The person was detained while operating a commercial  
22 motor vehicle;

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

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

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

35                                  5.       The person refused to take the test.

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

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

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

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

10 4. The driver refused to take a test.

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

15 1. Suspend the driver's license or privilege to drive; and

16 2. If the driver is detained in a commercial motor vehicle,  
17 disqualify the person from operating a commercial motor vehicle.

18 (v) The suspension imposed shall be:

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

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

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

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

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

30 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE  
31 DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR 120 DAYS AND IMPOSE AN ALCOHOL  
32 RESTRICTION ON THE DRIVER'S LICENSE OR DRIVING PRIVILEGE AS PROVIDED IN §  
33 16-113 OF THIS ARTICLE; OR

34 3. For a test refusal:

35 A. For a first offense, a suspension for AT LEAST 120 days  
36 BUT NOT MORE THAN 180 DAYS; or

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

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

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

11 (viii) A disqualification for life may be reduced if permitted by §  
12 16-812(d) of this title.

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

16 (i) The licensee did not refuse to take a test;

17 (ii) The licensee has not had a license suspended under this section  
18 during the past 5 years;

19 (iii) The licensee has not DURING THE PAST FIVE YEARS:

20 1. been convicted under ARTICLE 27, § 388A OR § 388B OF THE  
21 CODE, § 21-902 of this article [during the past 5 years; and], OR AN OFFENSE UNDER  
22 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN  
23 OFFENSE DESCRIBED IN THIS SUBPARAGRAPH;

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

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

32 (iv) 1. The licensee is required to drive a motor vehicle in the  
33 course of employment;

34 2. The license is required for the purpose of attending an  
35 alcoholic prevention or treatment program; or



1 21-902.

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

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

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

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

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

16 (d) A person may not drive or attempt to drive any vehicle while he is under  
17 the influence of any controlled dangerous substance, as that term is defined in Article  
18 27, § 279 of the Code, if the person is not entitled to use the controlled dangerous  
19 substance under the laws of this State.

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

21 (I) IS CONVICTED OF A VIOLATION OF SUBSECTION (A) OR (B) OF  
22 THIS SECTION;

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

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

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

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

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

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

8 27-101.

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

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

13 (ii) A second or subsequent violation of:

14 1. § 16-101 of this article ("Drivers must be licensed"); or

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

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

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

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

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

30 (3) Except as provided in subsection (q) of this section, for the purpose of  
 31 second or subsequent offender penalties for a violation of § 21-902(c) of this article  
 32 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY  
 33 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §  
 34 21-902(b), or § 21-902(d) of this article, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR  
 35 AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS  
 36 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be considered a  
 37 conviction of § 21-902(c) of this article.

1           (4)       Except as provided in subsection (q) of this section, for the purpose of  
 2 second or subsequent offender penalties for a violation of § 21-902(d) of this article  
 3 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY  
 4 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §  
 5 21-902(b), or § 21-902(c) of this article, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR  
 6 AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS  
 7 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be considered a  
 8 conviction of § 21-902(d) of this article.

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

11           (2)       A person who is convicted of OR WHO ENTERS A PLEA OF NOLO  
 12 CONTENDERE FOR a violation of § 21-902(a) of this article within 3 years after a prior  
 13 conviction [under that subsection] OR PRIOR ENTRY OF A PLEA OF NOLO  
 14 CONTENDERE FOR A PRIOR VIOLATION OF § 21-902(A) OF THIS ARTICLE, ARTICLE 27, §  
 15 388A OR § 388B OF THE CODE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF  
 16 ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS  
 17 PARAGRAPH, is subject to a mandatory minimum penalty of:

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

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

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

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

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

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

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

33           [(2)]    (II)       For the purpose of second or subsequent offender penalties for  
 34 violation of § 21-902(a) of this article provided under PARAGRAPH (1) OF this  
 35 subsection, a prior conviction OR PRIOR ENTRY OF A PLEA OF NOLO CONTENDERE  
 36 FOR A PRIOR VIOLATION of § 21-902(b), (c), or (d) of this article, ARTICLE 27, § 388A OR  
 37 § 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, within 5 years of the conviction OR ENTRY OF A PLEA OF NOLO

1 CONTENDERE for a violation of § 21-902(a) of this article, shall be considered a  
2 conviction of § 21-902(a) of this article.

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

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

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

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

19 (II) FOR THE PURPOSE OF SECOND OR SUBSEQUENT OFFENDER  
20 PENALTIES FOR VIOLATION OF § 21-902(A) OF THIS ARTICLE PROVIDED UNDER  
21 PARAGRAPH (2) OF THIS SUBSECTION, A PRIOR CONVICTION OR PRIOR ENTRY OF A  
22 PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION OF § 21-902(B), (C), OR (D) OF  
23 THIS ARTICLE, ARTICLE 27, § 388A OR § 388B OF THE CODE, OR AN OFFENSE UNDER  
24 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN  
25 OFFENSE DESCRIBED IN THIS PARAGRAPH, WITHIN 5 YEARS OF THE CONVICTION OR  
26 ENTRY OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS  
27 ARTICLE, SHALL BE CONSIDERED A CONVICTION OF § 21-902(A) OF THIS ARTICLE.

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

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

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

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

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

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

3 (ii) For a second or subsequent offense, a fine of not more than  
4 \$2,000 or imprisonment for not more than 1 year or both.

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2001.