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Introduced and read first time: February 7, 2002

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Criminal Penalties, Driving Restrictions, and**
3 **Tests For Alcohol, Drugs, or Controlled Dangerous Substances**

4 FOR the purpose of repealing the right of a person to not be compelled to submit to a
5 certain test for alcohol, drugs, or controlled dangerous substances under certain
6 circumstances; establishing various penalties and driving restrictions for
7 certain alcohol-related driving offenses; authorizing a court to order a certain
8 alcohol driving restriction for an individual who causes the death of, or
9 life-threatening injury to, another as a result of negligent driving while under
10 the influence, under the influence per se, or while impaired by alcohol; requiring
11 a court to order a certain alcohol driving restriction for an individual who causes
12 the death of, or life-threatening injury to, another as a result of negligent
13 driving while under the influence or under the influence per se with a certain
14 alcohol concentration; prohibiting a court from staying the entry of judgment
15 and placing a defendant on probation for a certain violation of driving or
16 attempting to drive a motor vehicle with a certain alcohol concentration, or if the
17 defendant has been convicted of or placed on probation for certain offenses
18 within a certain number of years; requiring the Motor Vehicle Administration to
19 impose a certain alcohol driving restriction under certain circumstances;
20 requiring the Motor Vehicle Administration to impose a certain alcohol driving
21 restriction under certain circumstances; authorizing a court to order a certain
22 alcohol driving restriction on an individual; making a refusal of a person to
23 submit to a certain test for alcohol, drugs, or controlled dangerous substances
24 under certain circumstances a misdemeanor; providing for certain penalties;
25 requiring the Administration to suspend a person's driver's license or driving
26 privilege for a certain period and impose a certain alcohol driving restriction for
27 a certain period of time based on a certain alcohol concentration under certain
28 circumstances; increasing the period of suspension for a driver's license or
29 driving privilege for a certain test refusal under certain circumstances;
30 requiring the suspension of, and the imposition of an alcohol driving restriction
31 on, a driver's license or driving privilege based on a certain alcohol
32 concentration and the number of certain offenses committed; prohibiting the

1 Administration from modifying certain suspensions or issuing restrictive
2 licenses for certain persons who are convicted of, enter a plea of nolo contendere,
3 or receive probation before judgment for certain offenses; requiring the Motor
4 Vehicle Administration to assess a certain number of points against the driver's
5 license of a person who is convicted of refusing to submit to a certain test for
6 alcohol, drugs, or controlled dangerous substances; authorizing a court to order
7 a certain alcohol driving restriction for an individual found to have violated
8 certain alcohol-related driving offenses; requiring a court to order a certain
9 alcohol driving restriction for an individual found to have violated certain
10 alcohol-related driving offenses with a certain alcohol concentration; requiring
11 the prior entry of a nolo contendere plea for certain offenses to be considered to
12 be a conviction under certain circumstances; requiring a person who enters a
13 certain plea for a certain violation after a prior conviction of or plea of nolo
14 contendere for a certain prior offense to be subject to certain mandatory
15 minimum criminal penalties; establishing certain penalties for a conviction of or
16 entry of a plea of nolo contendere for certain alcohol-related driving offenses
17 based on a certain alcohol concentration; establishing certain penalties for
18 certain persons who enter a plea of nolo contendere for certain alcohol-related
19 driving offenses involving transportation of a minor; and generally relating to
20 criminal penalties, driving restrictions, and tests for certain alcohol- or
21 drug-related driving offenses.

22 BY repealing and reenacting, with amendments,
23 Article - Courts and Judicial Proceedings
24 Section 10-309(a)(1)(i)
25 Annotated Code of Maryland
26 (1998 Replacement Volume and 2001 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article - Criminal Law
29 Section 2-503, 2-504, and 3-211(c) and (d)
30 Annotated Code of Maryland
31 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
32 2002)

33 BY repealing and reenacting, without amendments,
34 Article - Criminal Law
35 Section 2-505(a) and (c) and 2-506(a) and (c)
36 Annotated Code of Maryland
37 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
38 2002)

39 BY repealing and reenacting, with amendments,
40 Article - Criminal Procedure
41 Section 6-220(d)
42 Annotated Code of Maryland

1 (2001 Volume)

2 BY repealing and reenacting, with amendments,

3 Article - Transportation

4 Section 16-113(a), (g), (h), (i), and (j), 16-205.1(a)(2), (b)(1)(i) and (ii) and (2), (c),

5 (f)(4)(i) and (8)(v), and (n), 21-902, and 27-101(f), (j), (k), and (q)

6 Annotated Code of Maryland

7 (1999 Replacement Volume and 2001 Supplement)

8 BY repealing and reenacting, without amendments,

9 Article - Transportation

10 Section 16-205.1(d), (f)(8)(i), and (g)

11 Annotated Code of Maryland

12 (1999 Replacement Volume and 2001 Supplement)

13 BY adding to

14 Article - Transportation

15 Section 16-205.1(o), 16-402(a)(38), and 27-101(v)

16 Annotated Code of Maryland

17 (1999 Replacement Volume and 2001 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Courts and Judicial Proceedings**

21 10-309.

22 (a) (1) (i) [Except as provided in § 16-205.1(c) of the Transportation

23 Article, a] A person may [not] be compelled to submit to a test or tests provided for

24 in this subtitle.

25 **Article - Criminal Law**

26 2-503.

27 (a) A person may not cause the death of another as a result of the person's

28 negligently driving, operating, or controlling a motor vehicle or vessel while:

29 (1) under the influence of alcohol; or

30 (2) under the influence of alcohol per se.

31 (b) A violation of this section is:

32 (1) homicide by motor vehicle or vessel while under the influence of

33 alcohol; or

1 (2) homicide by motor vehicle or vessel while under the influence of
2 alcohol per se.

3 (c) A person who violates this section is guilty of a felony and on conviction is
4 subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

5 (D) (1) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO:

6 (I) IS CONVICTED OF A VIOLATION OF THIS SECTION;

7 (II) ENTERS A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF
8 THIS SECTION;

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

11 (IV) IS FOUND TO HAVE COMMITTED A DELINQUENT ACT IN
12 VIOLATION OF THIS SECTION.

13 (2) IN ADDITION TO ANY OTHER PENALTY OR SANCTION AUTHORIZED
14 BY LAW FOR A VIOLATION OF THIS SECTION, A COURT:

15 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, MAY
16 ORDER THE INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE
17 WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD; OR

18 (II) IF AN INDIVIDUAL VIOLATES THIS SECTION BY DRIVING OR
19 ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF
20 MORE THAN 0.15 AS DETERMINED BY AN ANALYSIS OF THE PERSON'S BLOOD OR
21 BREATH AT THE TIME OF TESTING UNDER §§ 10-302 THROUGH 10-309 OF THE COURTS
22 ARTICLE, SHALL ORDER THE INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO DRIVE A
23 MOTOR VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD.

24 2-504.

25 (a) A person may not cause the death of another as a result of the person's
26 negligently driving, operating, or controlling a motor vehicle or vessel while impaired
27 by alcohol.

28 (b) A violation of this section is homicide by motor vehicle or vessel while
29 impaired by alcohol.

30 (c) A person who violates this section is guilty of a felony and on conviction is
31 subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

32 (D) (1) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO:

33 (I) IS CONVICTED OF A VIOLATION OF THIS SECTION;

34 (II) ENTERS A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF
35 THIS SECTION;

1 (III) RECEIVES PROBATION BEFORE JUDGMENT FOR A VIOLATION
2 OF THIS SECTION; OR

3 (IV) IS FOUND TO HAVE COMMITTED A DELINQUENT ACT IN
4 VIOLATION OF THIS SECTION.

5 (2) IN ADDITION TO ANY OTHER PENALTY OR SANCTION AUTHORIZED
6 BY LAW FOR A VIOLATION OF THIS SECTION, A COURT:

7 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, MAY
8 ORDER THE INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO DRIVE A MOTOR VEHICLE
9 WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD; OR

10 (II) IF AN INDIVIDUAL VIOLATES THIS SECTION BY DRIVING OR
11 ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF
12 MORE THAN 0.15 AS DETERMINED BY AN ANALYSIS OF THE PERSON'S BLOOD OR
13 BREATH AT THE TIME OF TESTING UNDER §§ 10-302 THROUGH 10-309 OF THE COURTS
14 ARTICLE, SHALL ORDER THE INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO DRIVE A
15 MOTOR VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD.

16 2-505.

17 (a) A person may not cause the death of another person as a result of the
18 person's negligently driving, operating, or controlling a motor vehicle or vessel while
19 the person is so far impaired by a drug, a combination of drugs, or a combination of
20 one or more drugs and alcohol that the person cannot drive, operate, or control a
21 motor vehicle or vessel safely.

22 (c) A person who violates this section is guilty of a felony and on conviction is
23 subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.
24 2-506.

25 (a) A person may not cause the death of another as a result of the person's
26 negligently driving, operating, or controlling a motor vehicle or vessel while the
27 person is impaired by a controlled dangerous substance, as defined in § 5-101 of this
28 article.

29 (c) A person who violates this section is guilty of a felony and on conviction is
30 subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.
31 3-211.

32 (c) (1) A person may not cause a life-threatening injury to another as a
33 result of the person's negligently driving, operating, or controlling of a motor vehicle
34 or vessel while the person is:

35 (i) under the influence of alcohol; or

36 (ii) under the influence of alcohol per se.

1 (2) A violation of this subsection is life-threatening injury by motor
2 vehicle or vessel while:

3 (i) under the influence of alcohol; or

4 (ii) under the influence of alcohol per se.

5 (3) A person who violates this subsection is guilty of a misdemeanor and
6 on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding
7 \$5,000 or both.

8 (4) (I) THIS PARAGRAPH APPLIES TO AN INDIVIDUAL WHO:

9 1. IS CONVICTED OF A VIOLATION OF THIS SUBSECTION;

10 2. ENTERS A PLEA OF NOLO CONTENDERE FOR A VIOLATION
11 OF THIS SUBSECTION;

12 3. RECEIVES PROBATION BEFORE JUDGMENT FOR A
13 VIOLATION OF THIS SUBSECTION; OR

14 4. IS FOUND TO HAVE COMMITTED A DELINQUENT ACT IN
15 VIOLATION OF THIS SUBSECTION.

16 (II) IN ADDITION TO ANY OTHER PENALTY OR SANCTION
17 AUTHORIZED BY LAW FOR A VIOLATION OF THIS SUBSECTION, A COURT:

18 1. EXCEPT AS PROVIDED IN ITEM 2 OF THIS SUBPARAGRAPH,
19 MAY ORDER THE INDIVIDUAL NOT TO DRIVE OR ATTEMPT TO DRIVE A MOTOR
20 VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD; OR

21 2. IF AN INDIVIDUAL VIOLATES THIS SUBSECTION BY
22 DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL
23 CONCENTRATION OF MORE THAN 0.15 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 OF THE COURTS ARTICLE, SHALL ORDER THE INDIVIDUAL NOT TO DRIVE OR
26 ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD.

27 (d) (1) A person may not cause a life-threatening injury to another as a
28 result of the person's negligently driving, operating, or controlling a motor vehicle or
29 vessel while the person is impaired by alcohol.

30 (2) A violation of this subsection is life-threatening injury by motor
31 vehicle or vessel while impaired by alcohol.

32 (3) A person who violates this subsection is guilty of a misdemeanor and
33 on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding
34 \$3,000 or both.

35 (4) (I) THIS PARAGRAPH APPLIES TO AN INDIVIDUAL WHO:

Article - Transportation

16-113.

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

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

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

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

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

(3) (I) IF THE ADMINISTRATION IS REQUIRED TO IMPOSE AN ALCOHOL RESTRICTION UNDER § 16-205.1 OF THIS TITLE, THE ADMINISTRATION SHALL IMPOSE ON A LICENSEE AN ALCOHOL RESTRICTION THAT PROHIBITS THE LICENSEE FROM DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WHILE HAVING ALCOHOL IN THE LICENSEE'S BLOOD FOR 3 YEARS; OR

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

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

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

(g) [(1)] The Administration shall impose an alcohol restriction under subsection (a)(1)(ii) of this section that prohibits an individual for a period of 3 years from driving or attempting to drive with alcohol in the individual's blood on any licensee OR OTHER INDIVIDUAL who is convicted within 5 years of any combination of

1 two or more violations under § 21-902(a), (b), or (c) of this article OR § 2-503, § 2-504,
2 OR § 3-211(C) OR (D) OF THE CRIMINAL LAW ARTICLE.

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

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

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

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

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

19 16-205.1.

20 (a) (2) Any person who drives or attempts to drive a motor vehicle on a
21 highway or on any private property that is used by the public in general in this State
22 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
23 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
24 should be detained on [suspicion] REASONABLE GROUNDS of driving or attempting to
25 drive while under the influence of alcohol, while impaired by alcohol, while so far
26 impaired by 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 impaired by
28 a controlled dangerous substance, in violation of an alcohol restriction, or in violation
29 of § 16-813 of this title.

30 (b) (1) [Except as provided in subsection (c) of this section, a person may not
31 be compelled to take a test. However, the] THE detaining officer shall advise the
32 person that, on receipt of a sworn statement from the officer that the person was so
33 charged and refused to take a test, or was tested and the result indicated an alcohol
34 concentration of 0.08 or more, the Administration shall:

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

36 1. For a test result indicating an alcohol concentration of AT
37 LEAST 0.08 [or more] BUT NOT MORE THAN 0.15 at the time of testing:

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

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

3 2. FOR A TEST RESULT INDICATING AN ALCOHOL
4 CONCENTRATION OF MORE THAN 0.15 AT THE TIME OF TESTING:

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

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

11 3. For a test refusal[:

12 A. For a first offense, suspend the driver's license for 120
13 days; or

14 B. For a second or subsequent offense], suspend the driver's
15 license for 1 year;

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

17 1. For a test result indicating an alcohol concentration of AT
18 LEAST 0.08 [or more] BUT NOT MORE THAN 0.15 at the time of testing:

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

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

23 2. FOR A TEST RESULT INDICATING AN ALCOHOL
24 CONCENTRATION OF MORE THAN 0.15 AT THE TIME OF TESTING:

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

28 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
29 PERSON'S DRIVING PRIVILEGE FOR 120 DAYS AND IMPOSE AN ALCOHOL
30 RESTRICTION ON THE PERSON'S DRIVING PRIVILEGE AS PROVIDED IN § 16-113 OF
31 THIS TITLE; OR

32 3. For a test refusal[:

33 A. For a first offense, suspend the person's driving privilege
34 for 120 days; or

1 (ii) If necessary, arrange for removal of the person to a nearby
2 medical facility; and

3 (iii) If a test would not jeopardize the health or well-being of the
4 person, direct a qualified medical person to withdraw blood for a test.

5 (2) If a person regains consciousness or otherwise becomes capable of
6 refusing before the taking of a test, the police officer shall follow the procedure set
7 forth in subsection (b) or (c) of this section.

8 (f) (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 AT
12 LEAST 0.08 [or more] BUT NOT MORE THAN 0.15 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 0.15 AT THE TIME OF TESTING:

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

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

23 3. For a test refusal[:

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

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

26 and

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

30 1. The police officer who stopped or detained the person had
31 reasonable grounds to believe the person was driving or attempting to drive while
32 under the influence of alcohol, while impaired by alcohol, while so far impaired by any
33 drug, any combination of drugs, or a combination of one or more drugs and alcohol
34 that the person could not drive a vehicle safely, while impaired by a controlled
35 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813
36 of this title;

- 1 (i) Is unequivocal;
- 2 (ii) Does not substantially interfere with the timely and efficacious
3 administration of the test; and
- 4 (iii) Is given by the person:
- 5 1. Before the delay in testing would materially affect the
6 outcome of the test; and
- 7 2. A. For the purpose of a test for determining alcohol
8 concentration, within 2 hours of the person's apprehension; or
- 9 B. For the purpose of a test for determining the drug or
10 controlled dangerous substance content of the person's blood, within 4 hours of the
11 person's apprehension.
- 12 (3) In determining whether a person has withdrawn an initial refusal for
13 the purposes of paragraph (1) of this subsection, among the factors that the
14 Administration shall consider are the following:
- 15 (i) Whether the test would have been administered properly:
- 16 1. For the purpose of a test for determining alcohol
17 concentration, within 2 hours of the person's apprehension; or
- 18 2. For the purpose of a test for determining the drug or
19 controlled dangerous substance content of the person's blood, within 4 hours of the
20 person's apprehension;
- 21 (ii) Whether a qualified person, as defined in § 10-304 of the
22 Courts Article, to administer the test and testing equipment were readily available;
- 23 (iii) Whether the delay in testing would have interfered with the
24 administration of a test to another person;
- 25 (iv) Whether the delay in testing would have interfered with the
26 attention to other duties of the arresting officer or a qualified person, as defined in §
27 10-304 of the Courts Article;
- 28 (v) Whether the person's subsequent consent to take the test was
29 made in good faith; and
- 30 (vi) Whether the consent after the initial refusal was while the
31 person was still in police custody.
- 32 (4) In determining whether a person has withdrawn an initial refusal for
33 the purposes of paragraph (1) of this subsection, the burden of proof rests with the
34 person to establish by a preponderance of the evidence the requirements of paragraph
35 (2) of this subsection.

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

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

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

7 (iii) The licensee has not DURING THE PAST 5 YEARS:

8 1. [been] BEEN convicted under § 2-503, § 2-504, § 2-505, §
9 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 of this article [during the
10 past 5 years; and], OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER
11 STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS SUBPARAGRAPH;

12 2. ENTERED A PLEA OF NOLO CONTENDERE FOR A
13 VIOLATION OF § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW
14 ARTICLE, § 21-902 OF THIS ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE
15 LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
16 SUBPARAGRAPH; OR

17 3. RECEIVED PROBATION BEFORE JUDGMENT FOR A
18 VIOLATION OF § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW
19 ARTICLE, § 21-902 OF THIS ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE
20 LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
21 SUBPARAGRAPH; AND

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

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

26 3. It finds that the licensee has no alternative means of
27 transportation available to or from the licensee's place of employment and, without
28 the license, the licensee's ability to earn a living would be severely impaired.

29 (2) [In] EXCEPT AS OTHERWISE REQUIRED UNDER A COURT ORDER,
30 AND IN addition to the authority to modify a suspension or issue a restrictive license
31 under paragraph (1) or (4) of this subsection, the Administration may modify a
32 suspension under this section or issue a restrictive license, including a restriction
33 that prohibits the licensee from driving or attempting to drive a motor vehicle unless
34 the licensee is a participant in the Ignition Interlock System Program established
35 under § 16-404.1 of this title, if:

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

37 (ii) The licensee has not:

1 1. [been] BEEN PREVIOUSLY convicted under § 2-503, §
2 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 of this
3 article; and], OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER
4 STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS SUBPARAGRAPH;

5 2. ENTERED A PLEA OF NOLO CONTENDERE FOR A PRIOR
6 VIOLATION OF § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW
7 ARTICLE, § 21-902 OF THIS ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE
8 LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
9 SUBPARAGRAPH; OR

10 3. RECEIVED PROBATION BEFORE JUDGMENT FOR A PRIOR
11 VIOLATION OF § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW
12 ARTICLE, § 21-902 OF THIS ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE
13 LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
14 SUBPARAGRAPH; AND

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

16 1. A noncollegiate educational institution as defined in §
17 2-206(a) of the Education Article; or

18 2. A regular program at an institution of postsecondary
19 education.

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

23 (4) In addition to the authority to modify a suspension or issue a
24 restrictive license under paragraph (1) or (2) of this subsection, the Administration
25 may modify a suspension under this section or issue a restrictive license to a licensee
26 who participates in the Ignition Interlock System Program established under §
27 16-404.1 of this title for at least 1 year.

28 (O) IF A POLICE OFFICER DIRECTS A TEST OF A PERSON TO BE TAKEN UNDER
29 SUBSECTION (B) OF THIS SECTION OR UNDER SUBSECTION (C) OF THIS SECTION, THE
30 PERSON MAY NOT REFUSE TO TAKE A TEST.

31 16-402.

32 (a) After the conviction of an individual for a violation of Article 27, § 388, §
33 388A, or § 388B of the Code, or of the vehicle laws or regulations of this State or of any
34 local authority, points shall be assessed against the individual as of the date of
35 violation and as follows:

36 (38) REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS
37 ARTICLE12 POINTS

1 21-902.

2 (a) (1) A person may not drive or attempt to drive any vehicle while under
3 the influence of alcohol.

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

6 (b) A person may not drive or attempt to drive any vehicle while impaired by
7 alcohol.

8 (c) (1) A person may not drive or attempt to drive any vehicle while he is so
9 far impaired by any drug, any combination of drugs, or a combination of one or more
10 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 the person incapable
15 of safely driving a vehicle.

16 (d) A person may not drive or attempt to drive any vehicle while the person is
17 impaired by any controlled dangerous substance, as that term is defined in Article 27,
18 § 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) THIS SUBSECTION APPLIES TO AN INDIVIDUAL WHO:

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

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

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

27 (IV) IS FOUND TO HAVE COMMITTED A DELINQUENT ACT IN
28 VIOLATION OF THIS SUBSECTION (A) OR SUBSECTION (B) OF THIS SECTION.

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

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

1 (II) IF AN INDIVIDUAL VIOLATES SUBSECTION (A) OF THIS SECTION
 2 BY DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN ALCOHOL
 3 CONCENTRATION OF MORE THAN 0.15 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 OF THE COURTS ARTICLE, SHALL ORDER THE INDIVIDUAL NOT TO DRIVE OR
 6 ATTEMPT TO DRIVE A MOTOR VEHICLE WITH ALCOHOL IN THE INDIVIDUAL'S BLOOD.
 7 27-101.

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

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

12 (ii) A second or subsequent violation of:

13 1. § 16-101 of this article ("Drivers must be licensed"); or

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

15 A. § 21-902(b) of this article ("Driving while impaired by
 16 alcohol");

17 B. § 21-902(c) of this article ("Driving while impaired by
 18 drugs or drugs and alcohol"); or

19 C. § 21-902(d) of this article ("Driving while impaired by a
 20 controlled dangerous substance").

21 (2) Except as provided in subsection (q) of this section, for the purpose of
 22 second or subsequent offender penalties for a violation of § 21-902(b) of this article
 23 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
 24 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §
 25 21-902(c), or § 21-902(d) of this article, § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF
 26 THE CRIMINAL LAW ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF
 27 ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
 28 PARAGRAPH shall be considered a conviction of § 21-902(b) of this article.

29 (3) Except as provided in subsection (q) of this section, for the purpose of
 30 second or subsequent offender penalties for a violation of § 21-902(c) of this article
 31 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
 32 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §
 33 21-902(b), or § 21-902(d) of this article, § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF
 34 THE CRIMINAL LAW ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF
 35 ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
 36 PARAGRAPH shall be considered a conviction of § 21-902(c) of this article.

37 (4) Except as provided in subsection (q) of this section, for the purpose of
 38 second or subsequent offender penalties for a violation of § 21-902(d) of this article

1 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
2 OF A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of § 21-902(a), §
3 21-902(b), or § 21-902(c) of this article, § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF
4 THE CRIMINAL LAW ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF
5 ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
6 PARAGRAPH shall be considered a conviction of § 21-902(d) of this article.

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

9 (2) A person who is convicted of OR ENTERS A PLEA OF NOLO
10 CONTENDERE FOR a violation of § 21-902(a) of this article within 3 years after a prior
11 conviction [under that subsection] OR PRIOR ENTRY OF A PLEA OF NOLO
12 CONTENDERE FOR A PRIOR VIOLATION OF § 21-902(A) OF THIS ARTICLE, § 2-503, §
13 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR AN OFFENSE
14 UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN
15 OFFENSE DESCRIBED IN THIS PARAGRAPH, is subject to a mandatory minimum
16 penalty of:

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

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

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

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

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

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

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

32 [(2)] (II) For the purpose of second or subsequent offender penalties for
33 violation of § 21-902(a) of this article provided under PARAGRAPH (1) OF this
34 subsection, a prior conviction OR PRIOR ENTRY OF A PLEA OF NOLO CONTENDERE
35 FOR A PRIOR VIOLATION of § 21-902(b), (c), or (d) of this article, § 2-503, § 2-504, §
36 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR AN OFFENSE UNDER
37 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN
38 OFFENSE DESCRIBED IN THIS PARAGRAPH, within 5 years of the conviction OR ENTRY
39 OF A PLEA OF NOLO CONTENDERE for a violation of § 21-902(a) of this article, shall
40 be considered a conviction of § 21-902(a) of this article.

1 (2) (I) EXCEPT AS PROVIDED IN SUBSECTION (Q) OF THIS SECTION,
2 ANY PERSON WHO IS CONVICTED OF OR ENTERS A PLEA OF NOLO CONTENDERE FOR
3 A VIOLATION OF § 21-902 (A) OF THIS SECTION ON A DETERMINATION THAT THE
4 PERSON WAS DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN
5 ALCOHOL CONCENTRATION OF MORE THAN 0.15 AS DETERMINED BY AN ANALYSIS
6 OF THE PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302
7 THROUGH 10-309 OF THE COURTS ARTICLE:

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

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

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

17 (II) FOR THE PURPOSE OF THE SECOND OR SUBSEQUENT
18 OFFENDER PENALTIES FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE PROVIDED
19 UNDER THIS SUBSECTION, A PRIOR CONVICTION OR PRIOR ENTRY OF A PLEA OF
20 NOLO CONTENDERE FOR A PRIOR VIOLATION OF § 21-902 (B), (C), OR (D) OF THIS
21 ARTICLE, § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE,
22 OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
23 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, WITHIN 5 YEARS OF
24 THE CONVICTION OR ENTRY OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF
25 § 21-902(A) OF THIS ARTICLE, SHALL BE CONSIDERED A CONVICTION OF § 21-902(A) OF
26 THIS ARTICLE.

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

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

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

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

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

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

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

3 (3) For the purpose of determining second or subsequent offender
4 penalties provided under this subsection, a prior conviction OR PRIOR ENTRY OF A
5 PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION of any provision of § 21-902 of
6 this article, § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW
7 ARTICLE, OR AN OFFENSE UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE
8 THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, that
9 subjected a person to the penalties under this subsection shall be considered a prior
10 conviction.

11 (V) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF § 16-205.1 (O) OF
12 THIS ARTICLE IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT
13 FOR NOT MORE THAN 1 YEAR OR BOTH.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 September 30, 2002.