
By: **Delegate Dumais**
Introduced and read first time: February 6, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving Offenses - Criminal Penalties, Testing, and**
3 **Evidence**

4 FOR the purpose of establishing various penalties for certain alcohol-related driving
5 offenses; repealing the right of a person under certain circumstances to not be
6 compelled to submit to a certain test for alcohol, drugs, or controlled dangerous
7 substances under certain circumstances; making a refusal of a person to submit
8 to a certain test for alcohol, drugs, or controlled dangerous substances under
9 certain circumstances a misdemeanor; requiring the Motor Vehicle
10 Administration to assess a certain number of points against the driver's license
11 of a person who is convicted of refusing to submit to a certain test for alcohol,
12 drugs, or controlled dangerous substances; prohibiting a court from staying the
13 entry of judgment and placing a defendant on probation if the defendant has
14 been convicted of or placed on probation for certain offenses within a certain
15 number of years; requiring the Administration to suspend a person's driver's
16 license or driving privilege for a certain period of time based on a certain
17 amount of tested alcohol concentration under certain circumstances; increasing
18 the period of suspension for a driver's license or driving privilege for a certain
19 alcohol concentration test refusal under certain circumstances; making effective
20 certain suspension orders on certain drivers' licenses under certain
21 circumstances; requiring the suspension of a driver's license or driving privilege
22 based on certain alcohol concentrations and the number of offenses committed;
23 prohibiting the Administration from modifying certain suspensions or issuing
24 restrictive licenses for certain persons who are convicted, enter a plea of nolo
25 contendere, or receive probation before judgment for certain offenses; requiring
26 the prior entry of a certain plea for certain offenses to be considered a conviction
27 of certain offenses under certain circumstances; requiring that a person who
28 enters a certain plea for a certain violation within a certain time period after a
29 prior conviction or plea for a certain prior offense is subject to certain mandatory
30 minimum criminal penalties; requiring the prior entry of a certain plea for
31 certain offenses within a certain time period after a conviction or entry of a
32 certain plea to be considered a conviction of a certain offense under certain
33 circumstances; establishing certain penalties for a conviction or entry of a
34 certain plea for driving while under the influence of alcohol or under the
35 influence of alcohol per se based on a certain alcohol concentration; establishing

1 certain penalties for certain persons who enter certain pleas for certain
2 alcohol-related offenses while transporting a minor; defining certain terms;
3 making stylistic changes; establishing certain penalties; and generally relating
4 to a person's refusal to submit to a certain test for alcohol, drugs, or controlled
5 dangerous substances for purposes of certain alcohol- or drug-related driving
6 offenses and to penalties for various alcohol-related driving offenses under
7 certain circumstances.

8 BY repealing and reenacting, with amendments,
9 Article - Courts and Judicial Proceedings
10 Section 10-309(a)
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2003 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article - Criminal Law
15 Section 2-503, 2-504, and 3-211
16 Annotated Code of Maryland
17 (2002 Volume and 2003 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Criminal Procedure
20 Section 6-220(d)
21 Annotated Code of Maryland
22 (2001 Volume and 2003 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Transportation
25 Section 16-205.1(a), (b), (c), (f), and (n) and 27-101(f), (j), (k), and (q)
26 Annotated Code of Maryland
27 (2002 Replacement Volume and 2003 Supplement)

28 BY adding to
29 Article - Transportation
30 Section 16-205.1(o), 16-402(a)(38), and 27-101(w)
31 Annotated Code of Maryland
32 (2002 Replacement Volume and 2003 Supplement)

33 BY repealing and reenacting, without amendments,
34 Article - Transportation
35 Section 21-902
36 Annotated Code of Maryland
37 (2002 Replacement Volume and 2003 Supplement)

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

3 **Article - Courts and Judicial Proceedings**

4 10-309.

5 (a) (1) (i) [Except as provided in § 16-205.1(c) of the Transportation
6 Article, a] A person may [not] be compelled to submit to a test or tests provided for
7 in this subtitle.

8 (ii) Evidence of a test or analysis provided for in this subtitle is not
9 admissible in a prosecution for a violation of § 16-113 or § 21-902 of the
10 Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5,
11 § 2-209, or § 3-211 of the Criminal Law Article if obtained contrary to the provisions
12 of this subtitle.

13 (2) The fact of refusal to submit is admissible in evidence at the trial.

14 **Article - Criminal Law**

15 2-503.

16 (a) A person may not cause the death of another as a result of the person's
17 negligently driving, operating, or controlling a motor vehicle or vessel while:

18 (1) under the influence of alcohol; or

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

20 (b) A violation of this section is:

21 (1) homicide by motor vehicle or vessel while under the influence of
22 alcohol; or

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

25 (c) A person who violates this section is guilty of a felony and on conviction is
26 subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.
27 2-504.

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

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

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

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

5 (2) "Under the influence of alcohol per se" means having an alcohol
6 concentration at the time of testing of at least 0.08 as measured by grams of alcohol
7 per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

8 (3) (i) "Vessel" means any watercraft that is used or is capable of being
9 used as a means of transportation on water or ice.

10 (ii) "Vessel" does not include a seaplane.

11 (b) (1) For purposes of determining alcohol concentration under this section,
12 if the alcohol concentration is measured by milligrams of alcohol per deciliter of blood
13 or milligrams of alcohol per 100 milliliters of blood, a court shall convert the
14 measurement into grams of alcohol per 100 milliliters of blood by dividing the
15 measurement by 1000.

16 (2) The presumptions and evidentiary rules of §§ 10-302, 10-306,
17 10-307, and 10-308 of the Courts Article apply to a person charged under this section.

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

21 (i) under the influence of alcohol; or

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

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

25 (i) under the influence of alcohol; or

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

27 (3) A person who violates this subsection is guilty of a misdemeanor and
28 on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding
29 \$5,000 or both.

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

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

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

4 (e) (1) A person may not cause a life-threatening injury to another as a
5 result of the person's negligently driving, operating, or controlling a motor vehicle or
6 vessel while the person is so far impaired by a drug, a combination of drugs, or a
7 combination of one or more drugs and alcohol that the person cannot drive, operate, or
8 control a motor vehicle or vessel safely.

9 (2) A violation of this subsection is life-threatening injury by motor
10 vehicle or vessel while impaired by drugs.

11 (3) A person who violates this subsection is guilty of a misdemeanor and
12 on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding
13 \$3,000 or both.

14 (f) (1) This subsection does not apply to a person who is entitled to use the
15 controlled dangerous substance under the laws of the State.

16 (2) A person may not cause a life-threatening injury to another as a
17 result of the person's negligently driving, operating, or controlling a motor vehicle or
18 vessel while the person is impaired by a controlled dangerous substance as defined in
19 § 5-101 of this article.

20 (3) A violation of this subsection is life-threatening injury by motor
21 vehicle or vessel while impaired by a controlled dangerous substance.

22 (4) A person who violates this subsection is guilty of a misdemeanor and
23 on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding
24 \$3,000 or both.

25 **Article - Criminal Procedure**

26 6-220.

27 (d) Notwithstanding subsections (b) and (c) of this section, a court may not
28 stay the entering of judgment and place a defendant on probation for:

29 (1) a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article
30 or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within
31 the preceding 5 years the defendant has been convicted under § 21-902 of the
32 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
33 Criminal Law Article, or has been placed on probation in accordance with this section,
34 after being charged with a violation of § 16-205.1(O) OR § 21-902 of the Transportation
35 Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

36 (2) a second or subsequent controlled dangerous substance crime under
37 Title 5 of the Criminal Law Article; or

1 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the
2 Criminal Law Article for a crime involving a person under the age of 16 years.

3 **Article - Transportation**

4 16-205.1.

5 (a) (1) (i) In this [section,] SECTION the following words have the
6 meanings indicated.

7 (ii) "Under the influence of alcohol" includes under the influence of
8 alcohol per se as defined by § 11-127.1 of this article.

9 (iii) "Specimen of blood" and "1 specimen of blood" means 1 sample
10 of blood that is taken, in a single procedure, in 2 or more portions in 2 or more
11 separate vials.

12 (iv) "Test" means:

13 1. A test of a person's breath or of 1 specimen of a person's
14 blood to determine alcohol concentration;

15 2. A test or tests of 1 specimen of a person's blood to
16 determine the drug or controlled dangerous substance content of the person's blood; or

17 3. Both:

18 A. A test of a person's breath or a test of 1 specimen of a
19 person's blood, to determine alcohol concentration; and

20 B. A test or tests of 1 specimen of a person's blood to
21 determine the drug or controlled dangerous substance content of the person's blood.

22 (2) Any person who drives or attempts to drive a motor vehicle on a
23 highway or on any private property that is used by the public in general in this State
24 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
25 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
26 should be detained on [suspicion] REASONABLE GROUNDS of driving or attempting to
27 drive while under the influence of alcohol, while impaired by alcohol, while so far
28 impaired by any drug, any combination of drugs, or a combination of one or more
29 drugs and alcohol that the person could not drive a vehicle safely, while impaired by
30 a controlled dangerous substance, in violation of an alcohol restriction, or in violation
31 of § 16-813 of this title.

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

- 1 (i) In the case of a person licensed under this title:
- 2 1. For a test result indicating an alcohol concentration of AT
3 LEAST 0.08 [or more] BUT NOT MORE THAN 0.15 at the time of testing:
- 4 A. For a first offense, suspend the driver's license for 45 days;
5 or
- 6 B. For a second or subsequent offense, suspend the driver's
7 license for 90 days; [or]
- 8 2. FOR A TEST RESULT INDICATING AN ALCOHOL
9 CONCENTRATION OF MORE THAN 0.15 AT THE TIME OF TESTING:
- 10 A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE
11 FOR 60 DAYS; OR
- 12 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
13 DRIVER'S LICENSE FOR 120 DAYS; OR
- 14 [2.] 3. For a test refusal:
- 15 A. For a first offense, suspend the driver's license for [120]
16 180 days; or
- 17 B. For a second or subsequent offense, suspend the driver's
18 license for 1 year;
- 19 (ii) In the case of a nonresident or unlicensed person:
- 20 1. For a test result indicating an alcohol concentration of AT
21 LEAST 0.08 [or more] BUT NOT MORE THAN 0.15 at the time of testing:
- 22 A. For a first offense, suspend the person's driving privilege
23 for 45 days; or
- 24 B. For a second or subsequent offense, suspend the person's
25 driving privilege for 90 days; [or]
- 26 2. FOR A TEST RESULT INDICATING AN ALCOHOL
27 CONCENTRATION OF MORE THAN 0.15 AT THE TIME OF TESTING:
- 28 A. FOR A FIRST OFFENSE, SUSPEND THE PERSON'S DRIVING
29 PRIVILEGE FOR 60 DAYS; OR
- 30 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
31 PERSON'S DRIVING PRIVILEGE FOR 120 DAYS; OR
- 32 [2.] 3. For a test refusal:

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

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

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

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

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

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

26 (i) Detain the person;

27 (ii) [Request that] DIRECT the person [permit a test to be taken]
28 TO TAKE A TEST; and

29 (iii) Advise the person of the administrative sanctions that shall be
30 imposed for refusal to take the test, including ineligibility for modification of a
31 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
32 section, and for test results indicating an alcohol concentration of 0.08 or more at the
33 time of testing.

34 (3) If the person refuses to take the test or takes a test which results in
35 an alcohol concentration of 0.08 or more at the time of testing, the police officer shall:

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

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

- 1 (iii) Issue a temporary license to drive;
- 2 (iv) Inform the person that the temporary license allows the person
3 to continue driving for 45 days if the person is licensed under this title;
- 4 (v) Inform the person that:
- 5 1. The person has a right to request, at that time or within
6 10 days, a hearing to show cause why the driver's license should not be suspended
7 concerning the refusal to take the test or for test results indicating an alcohol
8 concentration of 0.08 or more at the time of testing, and the hearing will be scheduled
9 within 45 days; and
- 10 2. If a hearing request is not made at that time or within 10
11 days, but within 30 days the person requests a hearing, a hearing to show cause why
12 the driver's license should not be suspended concerning the refusal to take the test or
13 for test results indicating an alcohol concentration of 0.08 or more at the time of
14 testing will be scheduled, but a request made after 10 days does not extend a
15 temporary license issued by the police officer that allows the person to continue
16 driving for 45 days;
- 17 (vi) Advise the person of the administrative sanctions that shall be
18 imposed in the event of failure to request a hearing, failure to attend a requested
19 hearing, or upon an adverse finding by the hearing officer; and
- 20 (vii) Within 72 hours after the issuance of the order of suspension,
21 send any confiscated driver's license, copy of the suspension order, and a sworn
22 statement to the Administration, that states:
- 23 1. The officer had reasonable grounds to believe that the
24 person had been driving or attempting to drive a motor vehicle on a highway or on
25 any private property that is used by the public in general in this State while under
26 the influence of alcohol, while impaired by alcohol, while so far impaired by any drug,
27 any combination of drugs, or a combination of one or more drugs and alcohol that the
28 person could not drive a vehicle safely, while impaired by a controlled dangerous
29 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;
- 30 2. The person refused to take a test when [requested]
31 DIRECTED TO TAKE A TEST by the police officer or the person submitted to the test
32 which indicated an alcohol concentration of 0.08 or more at the time of testing; and
- 33 3. The person was fully advised of the administrative
34 sanctions that shall be imposed, including the fact that a person who refuses to take
35 the test is ineligible for modification of a suspension or issuance of a restrictive
36 license under subsection (n)(1) or (2) of this section.
- 37 (c) (1) If a person is [involved in a motor vehicle accident that results in the
38 death of, or a life threatening injury to, another person and the person is] detained by
39 a police officer who has reasonable grounds to believe that the person has been
40 driving or attempting to drive while under the influence of alcohol, while impaired by

1 alcohol, while so far impaired by any drug, any combination of drugs, or a
2 combination of one or more drugs and alcohol that the person could not drive a vehicle
3 safely, while impaired by a controlled dangerous substance, or in violation of § 16-813
4 of this title, the person shall be required to submit to a test, as directed by the officer.

5 (2) If a police officer directs that a person be tested, then the provisions
6 of § 10-304 of the Courts and Judicial Proceedings Article shall apply.

7 (3) Any medical personnel who perform any test required by this section
8 are not liable for any civil damages as the result of any act or omission related to such
9 test, not amounting to gross negligence.

10 (f) (1) Subject to the provisions of this subsection, at the time of, or within
11 30 days from the date of, the issuance of an order of suspension, a person may submit
12 a written request for a hearing before an officer of the Administration if:

13 (i) The person is arrested for driving or attempting to drive a motor
14 vehicle while under the influence of alcohol, while impaired by alcohol, while so far
15 impaired by any drug, any combination of drugs, or a combination of one or more
16 drugs and alcohol that the person could not drive a vehicle safely, while impaired by
17 a controlled dangerous substance, in violation of an alcohol restriction, or in violation
18 of § 16-813 of this title; and

19 (ii) 1. There is an alcohol concentration of 0.08 or more at the
20 time of testing; or

21 2. The person refused to take a test.

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

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

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

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

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

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

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

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

35 A. FOR A FIRST OFFENSE, FOR 60 DAYS; OR

- 1 B. FOR A SECOND OR SUBSEQUENT OFFENSE, FOR 120 DAYS;
2 OR
- 3 [2.] 3. For a test refusal:
- 4 A. For a first offense, for [120] 180 days; or
- 5 B. For a second offense or subsequent offense, for 1 year; and
- 6 (ii) 1. In the case of a person operating a commercial motor
7 vehicle who refuses to take a test, disqualify the person's commercial driver's license
8 for a period of 1 year for a first offense, 3 years for a first offense which occurs while
9 transporting hazardous materials required to be placarded, and for life for a second or
10 subsequent offense which occurs while operating any commercial vehicle; or
- 11 2. In the case of a person operating a commercial motor
12 vehicle who refuses to take a test, and who is licensed as a commercial driver by
13 another state, disqualify the person's privilege to operate a commercial motor vehicle
14 in this State and report the refusal and disqualification to the person's resident state
15 which may result in further penalties imposed by the person's resident state.
- 16 (5) (i) If the person requests a hearing at the time of or within 10 days
17 after the issuance of the order of suspension and surrenders the driver's license or, if
18 applicable, the person's commercial driver's license, the Administration shall set a
19 hearing for a date within 30 days of the receipt of the request.
- 20 (ii) Subject to the provisions of this paragraph, a postponement of a
21 hearing under this paragraph does not extend the period for which the person is
22 authorized to drive and the suspension and, if applicable, the disqualification shall
23 become effective on the expiration of the 45-day period after the issuance of the order
24 of suspension.
- 25 (iii) A postponement of a hearing described under this paragraph
26 shall extend the period for which the person is authorized to drive if:
- 27 1. Both the person and the Administration agree to the
28 postponement;
- 29 2. The Administration cannot provide a hearing within the
30 period required under this paragraph; or
- 31 3. Under circumstances in which the person made a request,
32 within 10 days of the date that the order of suspension was served under this section,
33 for the issuance of a subpoena under § 12-108 of this article except as time limits are
34 changed by this paragraph:
- 35 A. The subpoena was not issued by the Administration;
- 36 B. An adverse witness for whom the subpoena was requested,
37 and on whom the subpoena was served not less than 5 days before the hearing

1 described under this paragraph, fails to comply with the subpoena at an initial or
2 subsequent hearing described under this paragraph held within the 45-day period; or

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

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

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

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

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

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

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

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

31 (ii) A request for hearing scheduled under this paragraph does not
32 extend the period for which the person is authorized to drive, and the suspension and,
33 if applicable, the disqualification shall become effective on the expiration of the
34 45-day period that begins on the date of the issuance of the order of suspension.

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

37 1. Both the person and the Administration agree to the
38 postponement;

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

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

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

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

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

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

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

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

28 (ii) The licensee has not:

29 1. [been] BEEN PREVIOUSLY convicted under § 2-503, § 2-504,
30 OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 of this article[; and], OR A
31 FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN
32 OFFENSE DESCRIBED IN THIS ITEM;

33 2. ENTERED A PLEA OF NOLO CONTENDERE FOR A PRIOR
34 VIOLATION OF § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF
35 THIS ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
36 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS ITEM; OR

37 3. RECEIVED PROBATION BEFORE JUDGMENT FOR A PRIOR
38 VIOLATION OF § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF

1 THIS ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
2 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS ITEM; AND

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

4 1. A noncollegiate educational institution as defined in §
5 2-206(a) of the Education Article; or

6 2. A regular program at an institution of postsecondary
7 education.

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

11 (4) In addition to the authority to modify a suspension or issue a
12 restrictive license under paragraph (1) or (2) of this subsection, the Administration
13 may modify a suspension under this section or issue a restrictive license to a licensee
14 who participates in the Ignition Interlock System Program established under §
15 16-404.1 of this title for at least 1 year.

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

19 16-402.

20 (a) After the conviction of an individual for a violation of Title 2, Subtitle 5, §
21 2-209, or § 3-211 of the Criminal Law Article, or of the vehicle laws or regulations of
22 this State or of any local authority, points shall be assessed against the individual as
23 of the date of violation and as follows:

24 (38) REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS
25 ARTICLE 12 POINTS

26 21-902.

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

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

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

33 (c) (1) A person may not drive or attempt to drive any vehicle while he is so
34 far impaired by any drug, any combination of drugs, or a combination of one or more
35 drugs and alcohol that he cannot drive a vehicle safely.

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

6 (d) A person may not drive or attempt to drive any vehicle while the person is
7 impaired by any controlled dangerous substance, as that term is defined in § 5-101 of
8 the Criminal Law Article, if the person is not entitled to use the controlled dangerous
9 substance under the laws of this State.

10 (e) For purposes of the application of subsequent offender penalties under §
11 27-101 of this article, a conviction for a crime committed in another state or federal
12 jurisdiction that, if committed in this State, would constitute a violation of subsection
13 (a), (b), (c), or (d) of this section shall be considered a violation of subsection (a), (b),
14 (c), or (d) of this section.

15 27-101.

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

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

20 (ii) A second or subsequent violation of:

21 1. § 16-101 of this article ("Drivers must be licensed"); or

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

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

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

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

29 (2) 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(b) 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 VIOLATION of [§ 21-902(a), § 21-902(c), or
33 § 21-902(d)] § 21-902(A), (C), OR (D) of this article, § 2-503, § 2-504, OR § 3-211 OF THE
34 CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT
35 IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be
36 considered a conviction of § 21-902(b) of this article.

1 (3) 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(c) 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 VIOLATION of [§ 21-902(a), § 21-902(b), or
5 § 21-902(d)] § 21-902(A), (B), OR (D) of this article, § 2-503, § 2-504, OR § 3-211 OF THE
6 CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT
7 IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be
8 considered a conviction of § 21-902(c) of this article.

9 (4) Except as provided in subsection (q) of this section, for the purpose of
10 second or subsequent offender penalties for a violation of § 21-902(d) of this article
11 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY
12 OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION of [§ 21-902(a), § 21-902(b), or
13 § 21-902(c)] § 21-902(A), (B), OR (C) of this article, § 2-503, § 2-504, OR § 3-211 OF THE
14 CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT
15 IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be
16 considered a conviction of § 21-902(d) of this article.

17 (j) (1) In this subsection, "imprisonment" includes confinement in:

18 (i) An inpatient rehabilitation or treatment center; or

19 (ii) Home detention that includes electronic monitoring for the
20 purpose of participating in an alcohol treatment program that is:

21 1. Certified by the Department of Health and Mental
22 Hygiene;

23 2. Certified by an agency in an adjacent state that has
24 powers and duties similar to the Department of Health and Mental Hygiene; or

25 3. Approved by the court.

26 (2) A person who is convicted of OR WHO ENTERS A PLEA OF NOLO
27 CONTENDERE FOR a violation of § 21-902(a) of this article within 5 years after a prior
28 conviction [under that subsection] OR PRIOR ENTRY OF A PLEA OF NOLO
29 CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE, § 2-503, § 2-504, OR §
30 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER
31 STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, is
32 subject to a mandatory minimum penalty of imprisonment for not less than 5 days.

33 (3) A person who is convicted of a third or subsequent offense under §
34 21-902(a) of this article within 5 years is subject to a mandatory minimum penalty of
35 imprisonment for not less than 10 days.

36 (4) A person who is convicted of an offense under § 21-902(a) of this
37 article within 5 years of a prior conviction of any offense under that subsection shall
38 be required by the court to:

39 (i) Undergo a comprehensive alcohol abuse assessment; and

1 (ii) If recommended at the conclusion of the assessment, participate
2 in an alcohol program as ordered by the court that is:

3 1. Certified by the Department of Health and Mental
4 Hygiene;

5 2. Certified by an agency in an adjacent state that has
6 powers and duties similar to the Department of Health and Mental Hygiene; or

7 3. Approved by the court.

8 (5) The penalties provided by this subsection are mandatory and are not
9 subject to suspension or probation.

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

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

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

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

21 [(2)] (II) For the purpose of second or subsequent offender penalties for A
22 violation of § 21-902(a) of this article provided under SUBPARAGRAPH (I) OF this
23 [subsection] PARAGRAPH, a prior conviction OR PRIOR ENTRY OF A PLEA OF NOLO
24 CONTENDERE FOR A VIOLATION of § 21-902(b), (c), or (d) of this article, § 2-503, §
25 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW
26 OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS
27 SUBPARAGRAPH, within 5 years of the conviction OR ENTRY OF A PLEA OF NOLO
28 CONTENDERE for a violation of § 21-902(a) of this article, shall be considered a
29 conviction of § 21-902(a) of this article.

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

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

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2004.