

SENATE BILL 617

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2004 Regular Session
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By: **Senators Jimeno, Astle, Forehand, Giannetti, Grosfeld, Lawlah, and Ruben**

Introduced and read first time: February 6, 2004
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 11, 2004

CHAPTER _____

1 AN ACT concerning

2 **Drunk and Drugged Driving Offenses - ~~Criminal Penalties, Testing, and~~**
3 **Evidence Driver's License and Driving Privilege Suspension**

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 Motor Vehicle Administration to suspend a~~
16 ~~person's driver's license or driving privilege for a certain period of time based on~~
17 ~~a certain amount of tested alcohol concentration under certain circumstances;~~
18 ~~increasing the period of suspension for a driver's license or driving privilege for~~
19 ~~a certain alcohol concentration test refusal under certain circumstances; making~~
20 ~~effective 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~~

1 enters a certain plea for a certain violation within a certain time period after a
 2 prior conviction or plea for a certain prior offense is subject to certain mandatory
 3 minimum criminal penalties; requiring the prior entry of a certain plea for
 4 certain offenses within a certain time period after a conviction or entry of a
 5 certain plea to be considered a conviction of a certain offense under certain
 6 circumstances; establishing certain penalties for a conviction or entry of a
 7 certain plea for driving while under the influence of alcohol or under the
 8 influence of alcohol per se based on a certain alcohol concentration; establishing
 9 certain penalties for certain persons who enter certain pleas for certain
 10 alcohol-related offenses while transporting a minor; defining certain terms;
 11 making stylistic changes; establishing certain penalties; and generally relating
 12 to a person's refusal to submit to a certain test for alcohol, drugs, or controlled
 13 dangerous substances for purposes of certain alcohol or drug related driving
 14 offenses and to penalties and generally relating to driver's license or driving
 15 privilege suspensions for various alcohol-related driving offenses under certain
 16 circumstances.

17 ~~BY repealing and reenacting, with amendments,~~
 18 ~~Article - Courts and Judicial Proceedings~~
 19 ~~Section 10-309(a)~~
 20 ~~Annotated Code of Maryland~~
 21 ~~(2002 Replacement Volume and 2003 Supplement)~~

22 ~~BY repealing and reenacting, without amendments,~~
 23 ~~Article - Criminal Law~~
 24 ~~Section 2-503, 2-504, and 3-211~~
 25 ~~Annotated Code of Maryland~~
 26 ~~(2002 Volume and 2003 Supplement)~~

27 ~~BY repealing and reenacting, with amendments,~~
 28 ~~Article - Criminal Procedure~~
 29 ~~Section 6-220(d)~~
 30 ~~Annotated Code of Maryland~~
 31 ~~(2001 Volume and 2003 Supplement)~~

32 BY repealing and reenacting, with amendments,
 33 Article - Transportation
 34 Section 16-205.1(a), (b), (e), (f), and (n) and 27-101(f), (j), (k), and (q) and (f)
 35 Annotated Code of Maryland
 36 (2002 Replacement Volume and 2003 Supplement)

37 ~~BY adding to~~
 38 ~~Article - Transportation~~
 39 ~~Section 16-205.1(o), 16-402(a)(38), and 27-101(w)~~
 40 ~~Annotated Code of Maryland~~

1 ~~(2002 Replacement Volume and 2003 Supplement)~~

2 BY repealing and reenacting, without amendments,

3 Article - Transportation

4 Section ~~21-902~~ 16-205.1(c)

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2003 Supplement)

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

9 **~~Article - Courts and Judicial Proceedings~~**

10 ~~10-309.~~

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

14 (ii) ~~Evidence of a test or analysis provided for in this subtitle is not~~
15 ~~admissible in a prosecution for a violation of § 16-113 or § 21-902 of the~~
16 ~~Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5,~~
17 ~~§ 2-209, or § 3-211 of the Criminal Law Article if obtained contrary to the provisions~~
18 ~~of this subtitle.~~

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

20 **~~Article - Criminal Law~~**

21 ~~2-503.~~

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

24 (1) ~~under the influence of alcohol; or~~

25 (2) ~~under the influence of alcohol per se.~~

26 (b) ~~A violation of this section is:~~

27 (1) ~~homicide by motor vehicle or vessel while under the influence of~~
28 ~~alcohol; or~~

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

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

1 ~~2-504.~~

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

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

7 (c) A person who violates this section is guilty of a felony and on conviction is
8 subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.
9 ~~3-211.~~

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

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

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

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

17 (b) (1) For purposes of determining alcohol concentration under this section,
18 if the alcohol concentration is measured by milligrams of alcohol per deciliter of blood
19 or milligrams of alcohol per 100 milliliters of blood, a court shall convert the
20 measurement into grams of alcohol per 100 milliliters of blood by dividing the
21 measurement by 1000.

22 (2) The presumptions and evidentiary rules of §§ 10-302, 10-306,
23 10-307, and 10-308 of the Courts Article apply to a person charged under this section.

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

27 (i) under the influence of alcohol; or

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

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

31 (i) under the influence of alcohol; or

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

1 impaired by any drug, any combination of drugs, or a combination of one or more
 2 drugs and alcohol that the person could not drive a vehicle safely, while impaired by
 3 a controlled dangerous substance, in violation of an alcohol restriction, or in violation
 4 of § 16-813 of this title.

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

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

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, suspend the driver's license for 45 days;
 14 or

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

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

19 A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE
 20 FOR 60 DAYS; OR

21 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
 22 DRIVER'S LICENSE FOR 120 DAYS; OR

23 [2.] 3. For a test refusal:

24 A. For a first offense, suspend the driver's license for [120]
 25 180 days; or

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

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

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, suspend the person's driving privilege
 32 for 45 days; or

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

1 section, and for test results indicating an alcohol concentration of 0.08 or more at the
2 time of testing.

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

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

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

8 (iii) Issue a temporary license to drive;

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

11 (v) Inform the person that:

12 1. The person has a right to request, at that time or within
13 10 days, a hearing to show cause why the driver's license should not be suspended
14 concerning the refusal to take the test or for test results indicating an alcohol
15 concentration of 0.08 or more at the time of testing, and the hearing will be scheduled
16 within 45 days; and

17 2. If a hearing request is not made at that time or within 10
18 days, but within 30 days the person requests a hearing, a hearing to show cause why
19 the driver's license should not be suspended concerning the refusal to take the test or
20 for test results indicating an alcohol concentration of 0.08 or more at the time of
21 testing will be scheduled, but a request made after 10 days does not extend a
22 temporary license issued by the police officer that allows the person to continue
23 driving for 45 days;

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

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

30 1. The officer had reasonable grounds to believe that the
31 person had been driving or attempting to drive a motor vehicle on a highway or on
32 any private property that is used by the public in general in this State while under
33 the influence of alcohol, while impaired by alcohol, while so far impaired by any drug,
34 any combination of drugs, or a combination of one or more drugs and alcohol that the
35 person could not drive a vehicle safely, while impaired by a controlled dangerous
36 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

- 1 (i) Make the suspension order effective suspending the license:
- 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, for 45 days; or
- 5 B. For a second or subsequent offense, for 90 days; [or]
- 6 2. FOR A TEST RESULT INDICATING AN ALCOHOL
7 CONCENTRATION OF MORE THAN 0.15 AT THE TIME OF TESTING:
- 8 A. FOR A FIRST OFFENSE, FOR 60 DAYS; OR
- 9 B. FOR A SECOND OR SUBSEQUENT OFFENSE, FOR 120 DAYS;
10 OR
- 11 [2.] 3. For a test refusal:
- 12 A. For a first offense, for [120] 180 days; or
- 13 B. For a second offense or subsequent offense, for 1 year; and
- 14 (ii) 1. In the case of a person operating a commercial motor
15 vehicle who refuses to take a test, disqualify the person's commercial driver's license
16 for a period of 1 year for a first offense, 3 years for a first offense which occurs while
17 transporting hazardous materials required to be placarded, and for life for a second or
18 subsequent offense which occurs while operating any commercial vehicle; or
- 19 2. In the case of a person operating a commercial motor
20 vehicle who refuses to take a test, and who is licensed as a commercial driver by
21 another state, disqualify the person's privilege to operate a commercial motor vehicle
22 in this State and report the refusal and disqualification to the person's resident state
23 which may result in further penalties imposed by the person's resident state.
- 24 (5) (i) If the person requests a hearing at the time of or within 10 days
25 after the issuance of the order of suspension and surrenders the driver's license or, if
26 applicable, the person's commercial driver's license, the Administration shall set a
27 hearing for a date within 30 days of the receipt of the request.
- 28 (ii) Subject to the provisions of this paragraph, a postponement of a
29 hearing under this paragraph does not extend the period for which the person is
30 authorized to drive and the suspension and, if applicable, the disqualification shall
31 become effective on the expiration of the 45-day period after the issuance of the order
32 of suspension.
- 33 (iii) A postponement of a hearing described under this paragraph
34 shall extend the period for which the person is authorized to drive if:
- 35 1. Both the person and the Administration agree to the
36 postponement;

1 (ii) A request for hearing scheduled under this paragraph does not
2 extend the period for which the person is authorized to drive, and the suspension and,
3 if applicable, the disqualification shall become effective on the expiration of the
4 45-day period that begins on the date of the issuance of the order of suspension.

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

7 1. Both the person and the Administration agree to the
8 postponement;

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

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

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

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

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

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

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

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

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

37 1. Whether the police officer who stops or detains a person
38 had reasonable grounds to believe the person was driving or attempting to drive while

1 B. A test to determine alcohol concentration was taken and
2 the test result indicated an alcohol concentration of 0.08 or more at the time of
3 testing.

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

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

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

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

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

20 5. The person refused to take the test.

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

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

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

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

34 4. The driver refused to take a test.

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

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

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

4 (v) [The suspension imposed shall be] FOR THE PURPOSES OF THIS
5 PARAGRAPH, THE ADMINISTRATION SHALL:

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

8 A. For a first offense, [a suspension] SUSPEND THE
9 DRIVER'S LICENSE OR DRIVING PRIVILEGE for 45 days; or

10 B. For a second or subsequent offense, [a suspension]
11 SUSPEND THE DRIVER'S LICENSE OR DRIVING PRIVILEGE for 90 days; [or]

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

14 A. FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE
15 OR DRIVING PRIVILEGE FOR 60 DAYS; OR

16 B. FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE
17 DRIVER'S LICENSE OR DRIVING PRIVILEGE FOR 120 DAYS; OR

18 [2.] 3. For a test refusal:

19 A. For a first offense, [a suspension] SUSPEND THE
20 DRIVER'S LICENSE OR DRIVING PRIVILEGE for [120] 180 days; or

21 B. For a second or subsequent offense, [a suspension]
22 SUSPEND THE DRIVER'S LICENSE OR DRIVING PRIVILEGE for 1 year.

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

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

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

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

- 1 (i) The licensee did not refuse to take a test;
- 2 (ii) The licensee has not had a license suspended under this section
3 during the past 5 years;
- 4 (iii) The licensee has not DURING THE PAST 5 YEARS:
- 5 1. ~~[been] BEEN convicted under § 2-503, § 2-504, OR § 3-211~~
6 ~~OF THE CRIMINAL LAW ARTICLE, § 21-902 of this article [during the past 5 years;~~
7 ~~and], OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO~~
8 ~~AN OFFENSE DESCRIBED IN THIS ITEM;~~
- 9 2. ENTERED A PLEA OF NOLO CONTENDERE 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; OR
- 13 3. RECEIVED PROBATION BEFORE JUDGMENT FOR A
14 VIOLATION OF § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF
15 THIS ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS
16 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS ITEM; AND
- 17 (iv) 1. The licensee is required to drive a motor vehicle in the
18 course of employment;
- 19 2. The license is required for the purpose of attending an
20 alcoholic prevention or treatment program; or
- 21 3. It finds that the licensee has no alternative means of
22 transportation available to or from the licensee's place of employment and, without
23 the license, the licensee's ability to earn a living would be severely impaired.
- 24 (2) ~~[In] EXCEPT AS OTHERWISE REQUIRED UNDER A COURT ORDER,~~
25 ~~AND IN addition to the authority to modify a suspension or issue a restrictive license~~
26 ~~under paragraph (1) or (4) of this subsection, the Administration may modify a~~
27 ~~suspension under this section or issue a restrictive license, including a restriction~~
28 ~~that prohibits the licensee from driving or attempting to drive a motor vehicle unless~~
29 ~~the licensee is a participant in the Ignition Interlock System Program established~~
30 ~~under § 16-404.1 of this title, if:~~
- 31 (i) The licensee did not refuse to take a test;
- 32 (ii) The licensee has not:
- 33 1. ~~[been] BEEN PREVIOUSLY convicted under § 2-503, § 2-504,~~
34 ~~OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 of this article[; and], OR A~~
35 ~~FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN~~
36 ~~OFFENSE DESCRIBED IN THIS ITEM;~~

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

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

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

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

15 (e) For purposes of the application of subsequent offender penalties under §
16 27-101 of this article, a conviction for a crime committed in another state or federal
17 jurisdiction that, if committed in this State, would constitute a violation of subsection
18 (a), (b), (c), or (d) of this section shall be considered a violation of subsection (a), (b),
19 (c), or (d) of this section.

20 27-101.

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

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

25 (ii) A second or subsequent violation of:

26 1. § 16-101 of this article ("Drivers must be licensed"); or

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

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

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

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

34 (2) Except as provided in subsection (q) of this section, for the purpose of
35 second or subsequent offender penalties for a violation of § 21-902(b) of this article
36 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY

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

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

14 (4) Except as provided in subsection (q) of this section, for the purpose of
 15 ~~second or subsequent offender penalties for a violation of § 21-902(d) of this article~~
 16 ~~provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY~~
 17 ~~OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF [§ 21-902(a), § 21-902(b), or~~
 18 ~~§ 21-902(e)] § 21-902(A), (B), OR (C) OF THIS ARTICLE, § 2-503, § 2-504, OR § 3-211 OF THE~~
 19 ~~CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT~~
 20 ~~IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be~~
 21 ~~considered a conviction of § 21-902(d) of this article.~~

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

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

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

26 1. Certified by the Department of Health and Mental
 27 Hygiene;

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

30 3. Approved by the court.

31 (2) A person who is convicted of ~~OR WHO ENTERS A PLEA OF NOLO~~
 32 ~~CONTENDERE FOR A VIOLATION OF § 21-902(a) of this article within 5 years after a prior~~
 33 ~~conviction [under that subsection] OR PRIOR ENTRY OF A PLEA OF NOLO~~
 34 ~~CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE, § 2-503, § 2-504, OR §~~
 35 ~~3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER~~
 36 ~~STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, is~~
 37 ~~subject to a mandatory minimum penalty of imprisonment for not less than 5 days.~~

38 (3) A person who is convicted of a third or subsequent offense under §
 39 21-902(a) of this article within 5 years is subject to a mandatory minimum penalty of
 40 imprisonment for not less than 10 days.

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

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

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

7 1. Certified by the Department of Health and Mental
8 Hygiene;

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

11 3. Approved by the court.

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

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

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

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

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

25 ~~[(2)] (H) For the purpose of second or subsequent offender penalties for A~~
26 ~~violation of § 21-902(a) of this article provided under SUBPARAGRAPH (1) OF this~~
27 ~~[subsection] PARAGRAPH, a prior conviction OR PRIOR ENTRY OF A PLEA OF NOLO~~
28 ~~CONTENDERE FOR A VIOLATION of § 21-902(b), (c), or (d) of this article, § 2-503, §~~
29 ~~2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW~~
30 ~~OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS~~
31 ~~SUBPARAGRAPH, within 5 years of the conviction OR ENTRY OF A PLEA OF NOLO~~
32 ~~CONTENDERE for a violation of § 21-902(a) of this article, shall be considered a~~
33 ~~conviction of § 21-902(a) of this article.~~

34 ~~(2) (f) EXCEPT AS PROVIDED IN SUBSECTION (Q) OF THIS SECTION,~~
35 ~~ANY PERSON WHO IS CONVICTED OF OR ENTERS A PLEA OF NOLO CONTENDERE FOR~~
36 ~~A VIOLATION OF § 21-902(A) OF THIS ARTICLE, UPON A DETERMINATION THAT THE~~
37 ~~PERSON WAS DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE WITH AN~~
38 ~~ALCOHOL CONCENTRATION OF MORE THAN 0.15 AS DETERMINED BY AN ANALYSIS~~

1 ~~OF THE PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10-302~~
 2 ~~THROUGH 10-309, INCLUSIVE, OF THE COURTS ARTICLE;~~

3 1. ~~FOR A FIRST OFFENSE, SHALL BE SUBJECT TO A FINE OF~~
 4 ~~NOT MORE THAN \$1,500 OR IMPRISONMENT FOR NOT MORE THAN 18 MONTHS OR~~
 5 ~~BOTH;~~

6 2. ~~FOR A SECOND OFFENSE, SHALL BE SUBJECT TO A FINE~~
 7 ~~OF NOT MORE THAN \$3,000 OR IMPRISONMENT FOR NOT MORE THAN 3 YEARS OR~~
 8 ~~BOTH; AND~~

9 3. ~~FOR A THIRD OR SUBSEQUENT OFFENSE, SHALL BE~~
 10 ~~SUBJECT TO A FINE OF NOT MORE THAN \$4,000 OR IMPRISONMENT FOR NOT MORE~~
 11 ~~THAN 4 YEARS OR BOTH.~~

12 (H) ~~FOR THE PURPOSE OF SECOND OR SUBSEQUENT OFFENDER~~
 13 ~~PENALTIES FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE PROVIDED UNDER~~
 14 ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH, A PRIOR CONVICTION OR PRIOR ENTRY OF A~~
 15 ~~PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(B), (C), OR (D) OF THIS~~
 16 ~~ARTICLE, § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL~~
 17 ~~LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE~~
 18 ~~DESCRIBED IN THIS SUBPARAGRAPH, WITHIN 5 YEARS OF THE CONVICTION OR~~
 19 ~~ENTRY OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS~~
 20 ~~ARTICLE, SHALL BE CONSIDERED A CONVICTION OF § 21-902(A) OF THIS ARTICLE.~~

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

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

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

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

30 (2) ~~Any person who is convicted of OR WHO ENTERS A PLEA OF NOLO~~
 31 ~~CONTENDERE FOR a violation of [§ 21-902(b), § 21-902(e), or § 21-902(d)] § 21-902(B),~~
 32 ~~(C), OR (D) of this article and who, at the time of the offense, was transporting a minor~~
 33 ~~is subject to:~~

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

36 (ii) ~~For a second or subsequent offense, a fine of not more than~~
 37 ~~\$2,000 or imprisonment for not more than 1 year or both.~~

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

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

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