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By: Senators Jimeno, Astle, Forehand, Giannetti,	Grosfeld, Lawlah, and
Ruben	
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Assigned to: Judicial Proceedings	
Committee Report: Favorable with amendments	
Senate action: Adopted	
Read second time: March 11, 2004	
	CHAPTER

#### 1 AN ACT concerning

27

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

FOR the purpose of establishing various penalties for certain alcohol-related driving 4 offenses; repealing the right of a person under certain circumstances to not be 5 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 person's driver's license or driving privilege for a certain period of time based on 16 a certain amount of tested alcohol concentration under certain circumstances; 17 increasing the period of suspension for a driver's license or driving privilege for 18 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

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	DV and l'according with an almost
	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)
20	(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), (c), (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)
27	DV III
	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 R	eplacement Volume and 2003 Supplement)					
2 3 4 5 6	BY repealing and reenacting, without amendments, Article - Transportation Section 21 902 16-205.1(c) Annotated Code of Maryland (2002 Replacement Volume and 2003 Supplement)						
7 8		N 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF D, That the Laws of Maryland read as follows:					
9		Article - Courts and Judicial Proceedings					
10	<del>10-309.</del>						
	(a) Article, a] A in this subtit	(1) (i) [Except as provided in § 16-205.1(c) of the Transportation person may [not] be compelled to submit to a test or tests provided for le.					
16 17	Transportati	(ii) Evidence of a test or analysis provided for in this subtitle is not a prosecution for a violation of § 16–113 or § 21–902 of the on Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5, 3-211 of the Criminal Law Article if obtained contrary to the provisions le.					
19		(2) The fact of refusal to submit is admissible in evidence at the trial.					
20		Article - Criminal Law					
21	<del>2 503.</del>						
22 23	(a) negligently	A person may not cause the death of another as a result of the person's 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	<del>(b)</del>	A violation of this section is:					
27 28	alcohol; or	(1) homicide by motor vehicle or vessel while under the influence of					
29 30	alcohol per	(2) homicide by motor vehicle or vessel while under the influence of e.					
31 32	(e) subject to in	A person who violates this section is guilty of a felony and on conviction is prisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.					

1	<del>2 504.</del>						
	(a) A person may not cause the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle or vessel while impaired by alcohol.						
5 6	(b) A viola impaired by alcohol.	tion of this section is homicide by motor vehicle or vessel while					
	(c) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both. 3-211.						
10	<del>(a)</del> <del>(1)</del>	In this section the following words have the meanings indicated.					
		"Under the influence of alcohol per se" means having an alcohol time of testing of at least 0.08 as measured by grams of alcohol blood or grams of alcohol per 210 liters of breath.					
14 15	(3) used as a means of t	(i) "Vessel" means any watercraft that is used or is capable of being ransportation on water or ice.					
16		(ii) "Vessel" does not include a seaplane.					
19 20	or milligrams of alco	For purposes of determining alcohol concentration under this section, tration is measured by milligrams of alcohol per deciliter of blood shol per 100 milliliters of blood, a court shall convert the sams of alcohol per 100 milliliters of blood by dividing the 0.					
22 23	(2) 10-307, and 10-308	The presumptions and evidentiary rules of §§ 10 302, 10 306, of the Courts Article apply to a person charged under this section.					
	(c) (1) result of the person's vessel while the pers	A person may not cause a life threatening injury to another as a negligently driving, operating, or controlling a motor vehicle or on is:					
27		(i) under the influence of alcohol; or					
28		(ii) under the influence of alcohol per se.					
29 30	(2) vehicle or vessel wh	A violation of this subsection is life threatening injury by motor ile:					
31		(i) under the influence of alcohol; or					
32		(ii) under the influence of alcohol per se.					

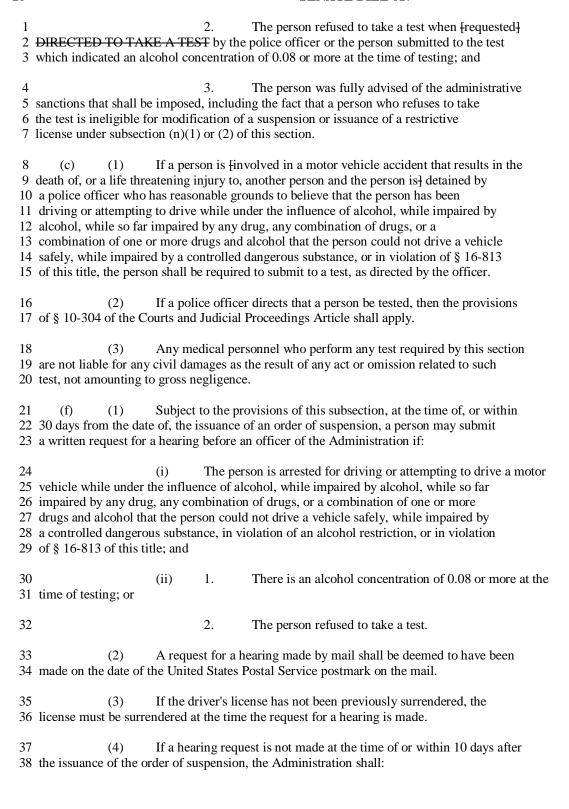
1	(3) A person who violates this subsection is guilty of a misdemeanor and							
2	on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding							
	\$5,000 or both.							
4	(d) (1) A person may not cause a life threatening injury to another as a							
	result of the person's negligently driving, operating, or controlling a motor vehicle or							
6	vessel while the person is impaired by alcohol.							
7	(2) A violation of this subsection is life threatening injury by motor							
8	vehicle or vessel while impaired by alcohol.							
9	(3) A person who violates this subsection is guilty of a misdemeanor and							
10	on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding							
11	\$3,000 or both.							
12								
	result of the person's negligently driving, operating, or controlling a motor vehicle or							
	vessel while the person is so far impaired by a drug, a combination of drugs, or a							
	combination of one or more drugs and alcohol that the person cannot drive, operate, or							
16	control a motor vehicle or vessel safely.							
17	(2) A violation of this subsection is life-threatening injury by motor							
18	vehicle or vessel while impaired by drugs.							
19	(3) A person who violates this subsection is guilty of a misdemeanor and							
	on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding							
21	\$3,000 or both.							
22	(f) (1) This subsection does not apply to a person who is entitled to use the							
23	controlled dangerous substance under the laws of the State.							
24								
25	result of the person's negligently driving, operating, or controlling a motor vehicle or							
26	vessel while the person is impaired by a controlled dangerous substance as defined in							
27	§ 5-101 of this article.							
28	(3) A violation of this subsection is life threatening injury by motor							
29	vehicle or vessel while impaired by a controlled dangerous substance.							
30	(4) A person who violates this subsection is guilty of a misdemeanor and							
	on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding							
32	\$3,000 or both.							
33	Article - Criminal Procedure							
34	<del>6-220.</del>							
35	(d) Notwithstanding subsections (b) and (c) of this section, a court may not							
36	stay the entering of judgment and place a defendant on probation for:							

3 4 5 6	or § 2-503, § 2-504, § 2-5 the preceding 5 years the Transportation Article or Criminal Law Article, or after being charged with a	605, § 2-506, of defendant has § 2-503, § 2-5 has been placed violation of §	6 205.1(O) OR § 21 902 of the Transportation Article r § 3-211 of the Criminal Law Article, if within been convicted under § 21 902 of the 04, § 2-505, § 2-506, or § 3-211 of the od on probation in accordance with this section, 16 205.1(O) OR § 21 902 of the Transportation 2-506, or § 3-211 of the Criminal Law Article;
8 9	(2) a so Title 5 of the Criminal La		equent controlled dangerous substance crime under
10 11			v of the provisions of §§ 3 303 through 3 307 of the ving a person under the age of 16 years.
12	2		Article - Transportation
13	3 16-205.1.		
14 15	4 (a) (1) (i) 5 meanings indicated.	In this [	section,] SECTION the following words have the
16 17	6 (ii) 7 alcohol per se as defined		the influence of alcohol" includes under the influence of of this article.
			nen of blood" and "1 specimen of blood" means 1 sample dure, in 2 or more portions in 2 or more
21	l (iv)	) "Test" n	neans:
22 23	2 3 blood to determine alcoh-	1. ol concentration	A test of a person's breath or of 1 specimen of a person's on;
24 25		2. ntrolled dange	A test or tests of 1 specimen of a person's blood to rous substance content of the person's blood; or
26	5	3.	Both:
27 28	7 8 person's blood, to determ	A. ine alcohol co	A test of a person's breath or a test of 1 specimen of a ncentration; and
29 30		B. ntrolled dange	A test or tests of 1 specimen of a person's blood to rous substance content of the person's blood.
33 34 35	2 highway or on any privat 3 is deemed to have conser 4 inclusive, of the Courts a 5 should be detained on [su	te property than nted, subject to and Judicial Pro aspicion] REA	drives or attempts to drive a motor vehicle on a t is used by the public in general in this State the provisions of §§ 10-302 through 10-309, occeedings Article, to take a test if the person SONABLE GROUNDS of driving or attempting to nol, while impaired by alcohol, while so far

2	impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title.					
7 8	(b) (1) [Except as provided in subsection (c) of this section, a person may not be compelled to take a test. However, the] THE detaining officer shall advise the person that, on receipt of a sworn statement from the officer that the person was so charged and refused to take a test, or was tested and the result indicated an alcohol concentration of 0.08 or more, the Administration shall:					
10	(i)	In the o	ease of a person licensed under this title:			
11 12	LEAST 0.08 [or more] BU	1. JT NOT MO	For a test result indicating an alcohol concentration of AT DRE THAN 0.15 at the time of testing:			
13 14	or	A.	For a first offense, suspend the driver's license for 45 days;			
15 16	license for 90 days; [or]	В.	For a second or subsequent offense, suspend the driver's			
17 18	CONCENTRATION OF	2. MORE THA	FOR A TEST RESULT INDICATING AN ALCOHOL AN 0.15 AT THE TIME OF TESTING:			
19 20	FOR 60 DAYS; OR	A.	FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE			
21 22	DRIVER'S LICENSE FO	B. R 120 DAY	FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE S; OR			
23		[2.]	3. For a test refusal:			
24 25	180 days; or	A.	For a first offense, suspend the driver's license for [120]			
26 27	license for 1 year;	В.	For a second or subsequent offense, suspend the driver's			
28	(ii)	In the c	ease of a nonresident or unlicensed person:			
29 30	LEAST 0.08 [or more] BU	1. JT NOT MO	For a test result indicating an alcohol concentration of AT DRE THAN 0.15 at the time of testing:			
31 32	for 45 days; or	A.	For a first offense, suspend the person's driving privilege			
33 34	driving privilege for 90 da	B. sys; [or]	For a second or subsequent offense, suspend the person's			

1 2	CONCENTRATION OF MOR	2. E THAN		TEST REST T THE TIM			AN ALC	OHOL:	
3 4	PRIVILEGE FOR 60 DAYS; (	A. OR	FOR A	FIRST OFF	ENSE, SU	JSPEND '	ΓHE PER	SON'S DI	RIVING
5 6	PERSON'S DRIVING PRIVIL	B. EGE FO		SECOND ( OAYS; OR	OR SUBSE	QUENT	OFFENS:	E, SUSPE	ND THE
7		[2.]	3.	For a test r	efusal:				
8 9	for [120] 180 days; or	A.	For a fi	rst offense, s	suspend the	e person's	driving p	orivilege	
10 11	driving privilege for 1 year; an	B. id	For a se	econd or sub	sequent of	fense, sus	pend the	person's	
	(iii) authorized under this section, whicle who refuses to take a t	in the cas		y applicable erson operati					
17 18	period of 1 year for a first offe transporting hazardous materia a second or subsequent offense vehicle; or	nse, 3 yea als requir	ars for a	placarded, a	e which oco and disqual	curs while	e e for	se for a	
22	state, disqualify the person's preport the refusal and disqualit in further penalties imposed by	rivilege to fication to	o operate the per	son's resider	ial motor	vehicle an	ıd	y another	
26 27 28 29 30 31	officer stops or detains any per believe is or has been driving of influence of alcohol, while imprombination of drugs, or a com- person could not drive a vehicle substance, in violation of an al- and who is not unconscious or officer shall:	rson who or attemp paired by nbination le safely, cohol res	the politing to dealcohol of one of while intriction,	Irive a motor , while so fa or more drug npaired by a or in violati	as reasonable vehicle we rimpaired gs and alco controlled on of § 16	ole ground while unde by any dr whol that the dangerout and the standard dangerout and the standard dangerout and the standard	Is to r the rug, any ne us is title,	e	
33	(i)	Detain th	ne perso	n;					
34 35	(ii) TO TAKE A TEST; and	{Request	that <del>] D</del>	IRECT the p	person <del>[</del> per	mit a test	to be take	en <del>]</del>	
	(iii) imposed for refusal to take the suspension or issuance of a res	test, incl	uding in		or modifica	ation of a		ll be	

	section, and for test results indicating an alcohol concentration of 0.08 or more at the time of testing.					
3 4	(3) an alcohol concentration		rson refuses to take the test or takes a test which results in 8 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 7	order of suspension or	(ii) n the pers	Acting on behalf of the Administration, personally serve an son;			
8		(iii)	Issue a temporary license to drive;			
9 10	to continue driving fo	(iv) or 45 days	Inform the person that the temporary license allows the person is licensed under this title;			
11		(v)	Inform the person that:			
14 15	concerning the refusa	l to take	1. The person has a right to request, at that time or within use why the driver's license should not be suspended the test or for test results indicating an alcohol at the time of testing, and the hearing will be scheduled			
19 20 21 22	2. If a hearing request is not made at that time or within 10 8 days, but within 30 days the person requests a hearing, a hearing to show cause why 9 the driver's license should not be suspended concerning the refusal to take the test or for test results indicating an alcohol concentration of 0.08 or more at the time of testing will be scheduled, but a request made after 10 days does not extend a temporary license issued by the police officer that allows the person to continue driving for 45 days;					
			Advise the person of the administrative sanctions that shall be to request a hearing, failure to attend a requested adding by the hearing officer; and			
	send any confiscated statement to the Adm		Within 72 hours after the issuance of the order of suspension, icense, copy of the suspension order, and a sworn n, that states:			
32 33 34 35	1. The officer had reasonable grounds to believe that the person had been driving or attempting to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;					



1	(i)	Make th	suspension ord	ler effective suspending the license:	
2 3	LEAST 0.08 [or more] BUT N	1. IOT MOI		indicating an alcohol concentration of AT the time of testing:	
4		A.	For a first offens	se, for 45 days; or	
5		B.	For a second or	subsequent offense, for 90 days; [or]	
6 7	CONCENTRATION OF MOI	2. RE THAN		RESULT INDICATING AN ALCOHOL TIME OF TESTING:	
8		A.	FOR A FIRST (	OFFENSE, FOR 60 DAYS; OR	
9 10	OR	B.	FOR A SECON	ID OR SUBSEQUENT OFFENSE, FOR 120 DAYS	<b>S</b> ;
11		[2.]	3. For a te	est refusal:	
12		A.	For a first offens	se, for [120] 180 days; or	
13		B.	For a second off	fense or subsequent offense, for 1 year; and	
16 17	vehicle who refuses to take a for a period of 1 year for a first transporting hazardous materi subsequent offense which occ	st offense als requir	dify the person's 3 years for a firs d to be placarde	st offense which occurs while ed, and for life for a second or	
21 22	vehicle who refuses to take a another state, disqualify the point his State and report the ref which may result in further pe	erson's pr usal and o	ho is licensed as vilege to operate squalification to	e a commercial motor vehicle o the person's resident state	
26	(5) (i) after the issuance of the order applicable, the person's comm hearing for a date within 30 d	of susper ercial dri	sion and surrend er's license, the	Administration shall set a	
30 31	(ii) hearing under this paragraph of authorized to drive and the su become effective on the expir of suspension.	loes not e spension	tend the period nd, if applicable	e, the disqualification shall	
33 34	(iii) shall extend the period for wh			uring described under this paragraphed to drive if:	
35 36	postponement;	1.	Both the person	and the Administration agree to the	

2 period required under this parag		dministration cannot provide a hearing within the
4 within 10 days of the date that t	he order of susp	circumstances in which the person made a request, pension was served under this section, of this article except as time limits are
7	A. The su	bpoena was not issued by the Administration;
<ul><li>9 and on whom the subpoena was</li><li>10 described under this paragraph.</li></ul>	served not less fails to comply	
13 comply with the subpoena, for	good cause sho	ness for whom the subpoena was requested fails to wn, at an initial or subsequent hearing 45-day period after the issuance of
		erved with a subpoena for a hearing under this ubpoena within 20 days from the date
20 issuance of the order of suspen 21 subparagraph (iii) of this parag	sion under the craph, the Admi hat authorizes t	nistration shall stay the suspension ne person to drive only until the date
24 (vi) 25 reschedule a hearing that is pos		ossible, the Administration shall expeditiously his paragraph.
	f an order of subspension, the por, if applicable	
31 32 license for the applicable period 33 subsection; and		Make a suspension order effective suspending the bed under paragraph (4)(i) of this
35 vehicle who refuses to take a te	est, disqualify the ercial motor vel	case of a person operating a commercial motor ne person's commercial driver's license, nicle in this State, for the applicable i) of this subsection; and
38 39 request for a hearing under this		earing for a date within 45 days of the receipt of a

3	(ii) A request for hearing scheduled under this paragraph does not extend the period for which the person is authorized to drive, and the suspension and, if applicable, the disqualification shall become effective on the expiration of the 45-day period that begins on the date of the issuance of the order of suspension.					
5 6	(iii) A postponement of a hearing described under this paragraph shall stay the suspension only if:					
7 8	1. Both the person and the Administration agree to the postponement;					
9 10	2. The Administration cannot provide a hearing under this paragraph within the period required under this paragraph; or					
13	3. Under circumstances in which the person made a request, within 10 days of the date that the person requested a hearing under this paragraph, for the issuance of a subpoena under § 12-108 of this article except as time limits are changed by this paragraph:					
15	A. The subpoena was not issued by the Administration;					
18 19	B. An adverse witness for whom the subpoena was requested and on whom the subpoena was served not less than 5 days before the hearing, fails to comply with the subpoena at an initial or subsequent hearing under this paragraph held within the 45-day period that begins on the date of the request for a hearing under this paragraph; or					
23	C. A witness for whom the subpoena was requested fails to comply with the subpoena, for good cause shown, at an initial or subsequent hearing under this paragraph held within the 45-day period that begins on the date of the request for a hearing under this paragraph.					
	(iv) If a witness is served with a subpoena for a hearing under this paragraph, the witness shall comply with the subpoena within 20 days from the date that the subpoena is served.					
30 31	(v) If a hearing is postponed beyond the 45-day period that begins on the date of the request for a hearing under this paragraph under circumstances described in subparagraph (iii) of this paragraph, the Administration shall stay the suspension and issue a temporary license that authorizes the person to drive only until the date of the rescheduled hearing.					
33 34	(vi) To the extent possible, the Administration shall expeditiously reschedule a hearing that is postponed under this paragraph.					
35 36	(7) (i) At a hearing under this section, the person has the rights described in § 12-206 of this article, but at the hearing the only issues shall be:					
37 38	1. Whether the police officer who stops or detains a person had reasonable grounds to believe the person was driving or attempting to drive while					

2 3 4	under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;
	2. Whether there was evidence of the use by the person of alcohol, any drug, any combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance;
11 12	3. Whether the police officer requested a test after the person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test is ineligible for modification of a suspension or issuance of a restrictive license under subsection (n)(1) and (2) of this section;
14	4. Whether the person refused to take the test;
15 16	5. Whether the person drove or attempted to drive a motor vehicle while having an alcohol concentration of 0.08 or more at the time of testing; or
17 18	6. If the hearing involves disqualification of a commercial driver's license, whether the person was operating a commercial motor vehicle.
	(ii) The sworn statement of the police officer and of the test technician or analyst shall be prima facie evidence of a test refusal or a test resulting in an alcohol concentration of 0.08 or more at the time of testing.
	(8) (i) After a hearing, the Administration shall suspend the driver's license or privilege to drive of the person charged under subsection (b) or (c) of this section if:
27 28 29 30	1. The police officer who stopped or detained the person had reasonable grounds to believe the person was driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;
	2. There was evidence of the use by the person of alcohol, any drug, any combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance;
37	3. The police officer requested a test after the person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test is ineligible for modification of a suspension or issuance of a restrictive license under subsection (n)(1) and (2) of this section; and
39	4. A. The person refused to take the test; or

	the test result indicated an alcol testing.	B. nol conce	A test to determine alcohol concentration was taken and entration of 0.08 or more at the time of
4 5	(ii) from driving a commercial mot		learing, the Administration shall disqualify the person e if:
6 7	motor vehicle;	1.	The person was detained while operating a commercial
10 11 12 13	while under the influence of al by any drug, any combination alcohol that the person could n	cohol, who of drugs, ot drive a	The police officer who stopped or detained the person had erson was driving or attempting to drive hile impaired by alcohol, while so far impaired or a combination of one or more drugs and a vehicle safely, while impaired by a controlled alcohol restriction, or in violation of § 16-813
		s, a comb	There was evidence of the use by the person of alcohol, any sination of one or more drugs and alcohol, or a
18 19	fully advised of the administra		The police officer requested a test after the person was tions that shall be imposed; and
20		5.	The person refused to take the test.
23	Administration shall disqualify	the pers	rson is licensed to drive a commercial motor vehicle, the on in accordance with subparagraph (ii) of aspension under subparagraph (i) of this
25 26	motor vehicle;	1.	The person was detained while operating a commercial
27 28		2. lcohol re	The police officer had reasonable grounds to believe the striction or in violation of § 16-813 of this title;
31 32	believe the driver was driving impaired by alcohol, while so a combination of one or more of	far impai drugs and	The police officer did not have reasonable grounds to der the influence of alcohol, driving while red by any drug, any combination of drugs, or d alcohol that the person could not drive a ontrolled dangerous substance; and
34		4.	The driver refused to take a test.
37	hearing, failure of a person to a	attend a h tatement	sence of a compelling reason for failure to attend a tearing is prima facie evidence of the person's of the police officer or the test technician or rily shall:

1		1.	Suspend	d the driver's license or privilege to drive; and
2 3	disqualify the person from ope	2. rating a c		river is detained in a commercial motor vehicle, ial motor vehicle.
4 5	(v) PARAGRAPH, THE ADMIN			imposed shall be] FOR THE PURPOSES OF THIS ALL:
6 7	LEAST 0.08 [or more] BUT N	1. IOT MOF		st result indicating an alcohol concentration of AT N 0.15 at the time of testing:
8 9	DRIVER'S LICENSE OR DR	A. IVING PI		rst offense, [a suspension] SUSPEND THE GE for 45 days; or
10 11	SUSPEND THE DRIVER'S I	B. LICENSE		cond or subsequent offense, [a suspension] [VING PRIVILEGE for 90 days; [or]
12 13	CONCENTRATION OF MO	2. RE THAI		TEST RESULT INDICATING AN ALCOHOL T THE TIME OF TESTING:
14 15	OR DRIVING PRIVILEGE F	A. OR 60 D		FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE R
16 17	DRIVER'S LICENSE OR DR	B. IVING P		SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE GE FOR 120 DAYS; OR
18		[2.]	3.	For a test refusal:
19 20	DRIVER'S LICENSE OR DR	A. IVING P	For a fin	rst offense, [a suspension] SUSPEND THE GE for [120] 180 days; or
21 22	SUSPEND THE DRIVER'S I	B. LICENSE		cond or subsequent offense, [a suspension] IVING PRIVILEGE for 1 year.
25 26		eriod of 1 ansporting quent offe	year for g hazardense which	
	(vii) to any modifications, nor may lieu of a disqualification.			n of a commercial driver's license is not subject nercial driver's license be issued in
31 32	(viii) 16-812(d) of this title.	A disqua	alificatio	n for life may be reduced if permitted by §
				ERWISE REQUIRED UNDER A COURT ORDER, under this section or issue a restrictive

1	<del>(i)</del>	The lic	ensee did not refuse to take a test;					
2	(ii) during the past 5 years;	The lic	ensee has not had a license suspended under this section					
5	during the past 5 years,							
4	(iii)	The lic	ensee has not DURING THE PAST 5 YEARS:					
5	OF THE COMMINAL LAW	1.	[been] BEEN convicted under § 2 503, § 2 504, OR § 3 211 5, § 21 902 of this article [during the past 5 years;					
	and], OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS ITEM;							
ð	AN OFFENSE DESCRIBE	D IN I HIS	<del>) ITEMI;</del>					
9		2.	ENTERED A PLEA OF NOLO CONTENDERE FOR A					
-	VIOLATION OF \$ 2 502							
			R § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF AW OR THE LAW OF ANOTHER STATE THAT IS					
12	COMPARABLE TO AN C	<del>IFFENSE I</del>	DESCRIBED IN THIS ITEM; OR					
13		3.	RECEIVED PROBATION BEFORE JUDGMENT FOR A					
_	VIOLATION OF \$ 2.502		R § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF					
	-	-	AW OR THE LAW OF ANOTHER STATE THAT IS					
			DESCRIBED IN THIS ITEM; AND					
10	COMPRINDED TO THE		BESCRIBED IN THIS ITEM, TIND					
17	(iv)	<del>1.</del>	The licensee is required to drive a motor vehicle in the					
	course of employment;	1.	The heelisee is required to drive a motor venicle in the					
	course of emproyment,							
19		<del>2.</del>	The license is required for the purpose of attending an					
20	alcoholic prevention or trea	tment pros						
	•	1 0						
21		<del>3.</del>	It finds that the licensee has no alternative means of					
22	transportation available to	o <del>r from the</del>	licensee's place of employment and, without					
23	the license, the licensee's al	<del>bility to car</del>	n a living would be severely impaired.					
24			S OTHERWISE REQUIRED UNDER A COURT ORDER,					
			nodify a suspension or issue a restrictive license					
			ection, the Administration may modify a					
			a restrictive license, including a restriction					
			g or attempting to drive a motor vehicle unless					
			tion Interlock System Program established					
30	under § 16-404.1 of this titl	<del>le, if:</del>						
31	<del>(i)</del>	The lic	ensee did not refuse to take a test;					
32	<del>(ii)</del>	The lie	ensee has not:					
22		1	H. I DEEN DEEN OUGLY I I 82 502 82 504					
33	OD 8 2 211 OF THE CRE	<del>1.</del>	[been] BEEN PREVIOUSLY convicted under § 2 503, § 2 504,					
			W ARTICLE, § 21-902 of this article[; and], OR A					
כנ	<del>FRIJEK/AL/L/AW/JK-IHE</del>	L/NW UF	ANOTHER STATE THAT IS COMPARABLE TO AN					

36 OFFENSE DESCRIBED IN THIS ITEM;

3	2. ENTERED A PLEA OF NOLO CONTENDERE FOR A PRIOR VIOLATION OF § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF THIS ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS ITEM; OR
7	3. RECEIVED PROBATION BEFORE JUDGMENT FOR A PRIOR VIOLATION OF § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, § 21-902 OF THIS ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS ITEM; AND
9	(iii) The license is required for the purpose of attending:
10 11	1. A noncollegiate educational institution as defined in § 2-206(a) of the Education Article; or
12 13	2. A regular program at an institution of postsecondary education.
	(3) If the licensee refused to take a test, the Administration may not modify a suspension under this section or issue a restrictive license except as provided under paragraph (4) of this subsection.
19 20	(4) In addition to the authority to modify a suspension or issue a restrictive license under paragraph (1) or (2) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license to a licensee who participates in the Ignition Interlock System Program established under § 16-404.1 of this title for at least 1 year.
	(O) IF A POLICE OFFICER DIRECTS A TEST OF A PERSON TO BE TAKEN UNDER SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON MAY NOT REFUSE TO TAKE A TEST.
25	<del>16 402.</del>
28	(a) After the conviction of an individual for a violation of Title 2, Subtitle 5, § 2 209, or § 3 211 of the Criminal Law Article, or of the vehicle laws or regulations of this State or of any local authority, points shall be assessed against the individual as of the date of violation and as follows:
30 31	(38) REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS ARTICLE 12 POINTS
32	<del>21-902.</del>
33 34	(a) (1) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.
35 36	(2) A person may not drive or attempt to drive any vehicle while the person is under the influence of alcohol per se.

1 2	( <del>b)</del> alcohol.	A person may	not drive	or attempt to drive any vehicle while impaired by				
		by any drug, ar	<del>ry combin</del>	not drive or attempt to drive any vehicle while he is so ation of drugs, or a combination of one or more a vehicle safely.				
8 9	(2) It is not a defense to any charge of violating this subsection that the person charged is or was entitled under the laws of this State to use the drug, combination of drugs, or combination of one or more drugs and alcohol, unless the person was unaware that the drug or combination would make the person incapable of safely driving a vehicle.							
13	(d) A person may not drive or attempt to drive any vehicle while the person is impaired by any controlled dangerous substance, as that term is defined in § 5 101 of the Criminal Law Article, if the person is not entitled to use the controlled dangerous substance under the laws of this State.							
17 18	27 101 of th jurisdiction (a), (b), (c),	nis article, a con that, if commit	viction for ted in this	ication of subsequent offender penalties under § r a crime committed in another state or federal State, would constitute a violation of subsection be considered a violation of subsection (a), (b),				
20	<del>27 101.</del>							
21 22	(f) exceeding 1			ject to a fine not exceeding \$500 or imprisonment not n is convicted of:				
23 24	vehicle mas	(i) ter key"); or	A viol	ation of § 14 103 of this article ("Possession of motor				
25		<del>(ii)</del>	A seco	ond or subsequent violation of:				
26			1.	§ 16-101 of this article ("Drivers must be licensed"); or				
27			<del>2.</del>	Except as provided in subsection (q) of this section:				
28 29	alcohol");		A.	§ 21-902(b) of this article ("Driving while impaired by				
30 31	<del>drugs or dru</del>	gs and alcohol'	<del>B.</del> <del>'); or</del>	§ 21 902(c) of this article ("Driving while impaired by				
32 33	<del>controlled d</del>	angerous substa	<del>C.</del> ance").	§ 21-902(d) of this article ("Driving while impaired by				
		<del>ıbsequent offen</del>	<del>der penalt</del>	ded in subsection (q) of this section, for the purpose of ies for a violation of § 21 902(b) of this article				

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 Except as provided in subsection (q) of this section, for the purpose of second or subsequent offender penalties for a violation of § 21 902(c) of this article 7 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 18 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 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(c)] § 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 <del>(j)</del> (1)In this subsection, "imprisonment" includes confinement in: 23 An inpatient rehabilitation or treatment center; or <del>(i)</del> 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. A person who is convicted of OR WHO ENTERS A PLEA OF NOLO 31 CONTENDERE FOR a violation of § 21 902(a) of this article within 5 years after a prior 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 subject to a mandatory minimum penalty of imprisonment for not less than 5 days. 38 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.

	(4) article within 5 years be required by the cou	<del>of a prio</del>		convicted of an offense under § 21 902(a) of this on of any offense under that subsection shall
4		<del>(i)</del>	Undergo	a comprehensive alcohol abuse assessment; and
5 6	in an alcohol program	<del>(ii)</del> as order		nmended at the conclusion of the assessment, participate court that is:
7 8	Hygiene;		<del>1.</del>	Certified by the Department of Health and Mental
9 10	powers and duties sir	<del>nilar to tl</del>	<del>2.</del> ne Depart	Certified by an agency in an adjacent state that has ment of Health and Mental Hygiene; or
11			<del>3.</del>	Approved by the court.
12 13	(5) subject to suspension	_	_	wided by this subsection are mandatory and are not
16 17	AND subsection (q) of PLEA OF NOLO CO	NTEND	etion, any ERE FO	ns provided in PARAGRAPH (2) OF THIS SUBSECTION y person who is convicted of OR WHO ENTERS A R a violation of any of the provisions of § 21-902(a) of affluence of alcohol or under the influence of
19 20	than \$1,000, or impri	<del>[(i)]</del> sonment		For a first offense, shall be subject to a fine of not more nore than 1 year, or both;
21 22	than \$2,000, or impri			For a second offense, shall be subject to a fine of not more nore than 2 years, or both; and
23 24	of not more than \$3,0	<del>[(iii)]</del> ) <del>00, or in</del>		For a third or subsequent offense, shall be subject to a fine ent for not more than 3 years, or both.
27 28 29 30 31 32	[subsection] PARAG CONTENDERE FOI 2-504, OR § 3-211-O OF ANOTHER STA SUBPARAGRAPH,	RAPH, E RAVION FTHE C TETHA within 5 a violation	s article prior collection  LATION  ERIMINA  T IS COllection  years of tollection  on of § 21	purpose of second or subsequent offender penalties for A provided under SUBPARAGRAPH (I) OF this enviction OR PRIOR ENTRY OF A PLEA OF NOLO of § 21-902(b), (c), or (d) of this article, § 2-503, § AL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW MPARABLE TO AN OFFENSE DESCRIBED IN THIS either conviction OR ENTRY OF A PLEA OF NOLO -902(a) of this article, shall be considered a
36 37	ANY PERSON WHO A VIOLATION OF PERSON WAS DRI	§ 21-902( VING OI	VICTEI (A) OF T RATTEN	T AS PROVIDED IN SUBSECTION (Q) OF THIS SECTION, O OF OR ENTERS A PLEA OF NOLO CONTENDERE FOR HIS ARTICLE, UPON A DETERMINATION THAT THE APTING TO DRIVE A MOTOR VEHICLE WITH AN MORE THAN 0.15 AS DETERMINED BY AN ANALYSIS

	OF THE PERSON'S BLOOD OR BREATH AT THE TIME OF TESTING UNDER §§ 10 302 THROUGH 10-309, INCLUSIVE, OF THE COURTS ARTICLE:	
	1. FOR A FIRST OFFENSE, SHALL BE SUBJECT TO A FI 1 NOT MORE THAN \$1,500 OR IMPRISONMENT FOR NOT MORE THAN 18 MONTHS OR 5 BOTH;	<del>NE OF</del>
6 7	·	FINE
9 10 11	0 SUBJECT TO A FINE OF NOT MORE THAN \$4,000 OR IMPRISONMENT FOR NOT MORE	<u> </u>
12	2 <del>(II) FOR THE PURPOSE OF SECOND OR SUBSEQUENT OFFENDE</del>	R
13	3 PENALTIES FOR A VIOLATION OF § 21 902(A) OF THIS ARTICLE PROVIDED UNDER	
14	4 SUBPARAGRAPH (I) OF THIS PARAGRAPH, A PRIOR CONVICTION OR PRIOR ENTRY OF	FA
15	5 PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(B), (C), OR (D) OF THIS	
16	6 ARTICLE, § 2 503, § 2 504, OR § 3 211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL	7
17	7 LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE	
18	8 DESCRIBED IN THIS SUBPARAGRAPH, WITHIN 5 YEARS OF THE CONVICTION OR	
19	9 ENTRY OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS	
20	0 ARTICLE, SHALL BE CONSIDERED A CONVICTION OF § 21-902(A) OF THIS ARTICLE.	
	1 (q) (1) Any person who is convicted of OR WHO ENTERS A PLEA OF NOLO 2 CONTENDERE FOR a violation of § 21-902(a) of this article and who, at the time of the 3 offense, was transporting a minor is subject to:	
23	5 offense, was transporting a filmor is subject to.	
24	4 (i) For a first offense, a fine of not more than \$2,000 or	
25	5 imprisonment for not more than 2 years or both;	
26	6 (ii) For a second offense, a fine of not more than \$3,000 or	
26	7 imprisonment for not more than 3 years or both; and	
21	T imprisorment for not more than 3 years of both; and	
28	8 (iii) For a third or subsequent offense, a fine of not more than \$4,000	
	9 or imprisonment for not more than 4 years or both.	
30	0 (2) Any person who is convicted of OR WHO ENTERS A PLEA OF NOLO	
31	1 CONTENDERE FOR a violation of [§ 21-902(b), § 21-902(c), or § 21-902(d)] § 21-902(B),	
32	2 (C), OR (D) of this article and who, at the time of the offense, was transporting a minor	
33	3 is subject to:	
34	4 (i) For a first offense, a fine of not more than \$1,000 or	
	5 imprisonment for not more than 6 months or both; and	
55	improduction for more usual or monato or cour, una	
_		
36	6 (ii) For a second or subsequent offense, a fine of not more than	

- 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.