
By: **Chairman, Judiciary Committee (By Request - Departmental - Crime
Control and Prevention, Office of and State Police)**

Introduced and read first time: February 25, 2005

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Drugged Driving - Chemical Testing**

3 FOR the purpose of providing for the obtaining and testing of specimens of urine for
4 the presence of drugs or controlled dangerous substances in individuals
5 suspected of operating a motor vehicle while under the influence or impaired by
6 drugs or controlled dangerous substances under certain circumstances; making
7 a person who fails to submit to a urine test under certain circumstances subject
8 to certain driver's license restrictions imposed by the Motor Vehicle
9 Administration; authorizing a police officer, a police employee, or a qualified
10 medical person to take a specimen of urine under certain circumstances;
11 requiring a test of urine to be administered by a qualified person with
12 equipment approved by the State Toxicologist; providing that a signed
13 statement of the State Toxicologist certifying that approved equipment was used
14 in a certain test of urine is prima facie evidence of a certain fact and is
15 admissible as evidence; providing for the admissibility of the results of certain
16 urine tests in certain criminal trials; altering a certain definition; authorizing
17 the Department of State Police to adopt regulations for the examination and
18 certification of individuals trained to administer urine tests; and generally
19 relating to urine tests for the presence of drugs or controlled dangerous
20 substances.

21 BY repealing and reenacting, with amendments,
22 Article - Courts and Judicial Proceedings
23 Section 10-302 through 10-306
24 Annotated Code of Maryland
25 (2002 Replacement Volume and 2004 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article - Transportation
28 Section 16-205.1
29 Annotated Code of Maryland
30 (2002 Replacement Volume and 2004 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 10-302.

5 In a prosecution for a violation of a law concerning a person who is driving or
6 attempting to drive a vehicle in violation of § 16-113, § 16-813, or § 21-902 of the
7 Transportation Article, or in violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of the
8 Criminal Law Article, a test of the person's breath or blood may be administered for
9 the purpose of determining alcohol concentration and a test or tests of URINE OR 1
10 specimen of the person's blood may be administered for the purpose of determining
11 the drug or controlled dangerous substance content of the person's URINE OR blood.

12 10-303.

13 (a) (1) A specimen of breath or 1 specimen of blood may be taken for the
14 purpose of a test for determining alcohol concentration.

15 (2) For the purpose of a test for determining alcohol concentration, the
16 specimen of breath or blood shall be taken within 2 hours after the person accused is
17 apprehended.

18 (b) (1) [Only] A SPECIMEN OF URINE OR 1 specimen of blood may be taken
19 for the purpose of a test or tests for determining the drug or controlled dangerous
20 substance content of the person's URINE OR blood.

21 (2) For the purpose of a test or tests for determining drug or controlled
22 dangerous substance content of the person's URINE OR blood, the specimen of URINE
23 OR blood shall be taken within 4 hours after the person accused is apprehended.

24 10-304.

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

26 (2) "Qualified medical person" means any person permitted by law to
27 withdraw blood from humans.

28 (3) "Qualified person" means a person who has received training in the
29 use of the equipment in a training program approved by the toxicologist under the
30 Postmortem Examiners Commission and who is either a police officer, a police
31 employee, an employee of the office of the Chief Medical Examiner, or a person
32 authorized by the toxicologist under the Postmortem Examiners Commission.

33 (b) (1) The test of breath shall be administered by a qualified person with
34 equipment approved by the toxicologist under the Postmortem Examiners
35 Commission at the direction of a police officer.

1 (2) The officer arresting the individual may not administer the test of
2 breath.

3 (3) A POLICE OFFICER OR A POLICE EMPLOYEE MAY OBTAIN A
4 SPECIMEN OF URINE FROM A PERSON ARRESTED FOR DRIVING WHILE IMPAIRED OR
5 UNDER THE INFLUENCE OF DRUGS OR CONTROLLED DANGEROUS SUBSTANCES.

6 (4) A QUALIFIED MEDICAL PERSON MAY OBTAIN A SPECIMEN OF URINE
7 PURSUANT TO § 16-205.1(D)(1)(III) OF THE TRANSPORTATION ARTICLE.

8 (c) (1) (i) The blood shall be obtained by a qualified medical person using
9 equipment approved by the toxicologist under the Postmortem Examiners
10 Commission acting at the request of a police officer.

11 (ii) A certified statement by the qualified medical person who
12 obtained the blood shall be prima facie evidence of that person's qualifications and
13 that the blood was obtained in compliance with this section.

14 (iii) 1. A certified statement that complies with the requirements
15 of this paragraph is admissible as substantive evidence without the presence or
16 testimony of the qualified medical person who obtained the blood.

17 2. If the State decides to offer the certified statement without
18 the testimony of the qualified medical person, the State shall, at least 30 days before
19 trial, notify the defendant or the defendant's attorney in writing of the State's
20 intention and deliver to the defendant or the defendant's attorney a copy of the
21 certified statement to be offered.

22 3. If the District Court is deprived of jurisdiction under
23 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
24 from the District Court to a circuit court, the State is not required to file a second
25 notice.

26 (iv) 1. If the defendant desires the qualified medical person to be
27 present and testify at trial, the defendant shall notify the court and the State in
28 writing no later than 20 days before trial.

29 2. If the District Court is deprived of jurisdiction under
30 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
31 from the District Court to a circuit court, the defendant shall notify the circuit court
32 and the State in writing no later than 20 days before trial.

33 3. If the timely and proper notice required under this
34 subparagraph is provided by the defendant, the certified statement is inadmissible
35 without the testimony of the qualified medical person.

36 4. Failure to give the timely and proper notice constitutes a
37 waiver of the defendant's right to the presence and testimony of the qualified medical
38 person.

1 (2) The test of blood OR URINE shall be conducted by a qualified person
2 using equipment approved by the toxicologist under the Postmortem Examiners
3 Commission in a laboratory approved by the toxicologist.

4 (d) (1) For the purpose of establishing that the test of breath, URINE, or
5 blood was administered with equipment approved by the toxicologist under the
6 Postmortem Examiners Commission, a statement signed by the toxicologist certifying
7 that the equipment used in the test has been approved by him shall be prima facie
8 evidence of the approval, and the statement is admissible in evidence without the
9 necessity of the toxicologist personally appearing in court.

10 (2) (i) If a defendant desires the toxicologist to be present and testify
11 at trial as a witness, the defendant shall file a request for a subpoena for the
12 toxicologist at least 20 days before the trial in the appropriate court.

13 (ii) If the District Court is deprived of jurisdiction under
14 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
15 from the District Court to the circuit court, another subpoena must be filed at least 20
16 days before the trial in the circuit court.

17 (iii) If a trial date is postponed for any reason beyond 30 days from
18 the trial date for which the subpoena was issued, the defendant shall file a new
19 subpoena for the toxicologist.

20 (iv) In addition to the requirements of Maryland Rules 4-265 and
21 4-266, the subpoena shall contain the name, address, and telephone number of the
22 defendant or the defendant's attorney.

23 (3) A subpoena for the toxicologist may be quashed if a defendant fails to
24 comply with the requirements of this subsection.

25 (4) A motion to quash a defendant's subpoena may be filed by any party
26 or by the Attorney General.

27 (e) The person tested is permitted to have a physician of the person's own
28 choosing administer tests in addition to the one administered at the direction of the
29 police officer, and in the event no test is offered or requested by the police officer, the
30 person may request, and the officer shall have administered, one or more of the tests
31 provided for in this section.

32 (f) Nothing in this section precludes the right to introduce any other
33 competent evidence bearing upon the date of the certificate or change in the
34 equipment since the date of the certificate.

35 10-305.

36 (a) The type of test administered to the defendant to determine alcohol
37 concentration shall be the test of breath except that the type of test administered
38 shall be:

1 (1) A test of blood if:

2 (i) The defendant is unconscious or otherwise incapable of refusing
3 to take a test to determine alcohol concentration;

4 (ii) Injuries to the defendant require removal of the defendant to a
5 medical facility;

6 (iii) The equipment for administering the test of breath is not
7 available; or

8 (iv) The defendant is required to submit to a test of URINE OR one
9 specimen of blood under § 16-205.1(c)(1)(ii) of the Transportation Article; or

10 (2) Both a test of the person's breath and a test of URINE OR one
11 specimen of the person's blood if the defendant is required to submit to both a test of
12 the person's breath and a test of URINE OR one specimen of the person's blood under
13 § 16-205.1(c)(1)(iii) of the Transportation Article.

14 (b) The type of specimen obtained from the defendant for the purpose of a test
15 or tests to determine drug or controlled dangerous substance content shall be a URINE
16 OR blood specimen.

17 (c) Any person who is dead, unconscious, or otherwise in a condition rendering
18 him incapable of test refusal shall be deemed not to have withdrawn consent.

19 10-306.

20 (a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in
21 any criminal trial in which a violation of § 16-113, § 16-813, or § 21-902 of the
22 Transportation Article, or a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of the
23 Criminal Law Article is charged or is an issue, a copy of a report of the results of a test
24 of breath or blood to determine alcohol concentration signed by the technician or
25 analyst who performed the test, is admissible as substantive evidence without the
26 presence or testimony of the technician or analyst who performed the test.

27 (ii) Subject to the provisions of § 10-308(b) of this subtitle and
28 paragraph (2) of this subsection, in any criminal trial in which a violation of § 21-902
29 of the Transportation Article or a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of
30 the Criminal Law Article is charged, a copy of a report of the results of a test or tests
31 of URINE OR blood to determine drug or controlled dangerous substance content
32 signed by the technician or analyst who performed the test, is admissible as
33 substantive evidence without the presence or testimony of the technician or analyst
34 who performed the test.

35 (2) To be admissible under paragraph (1) of this subsection, the report
36 shall:

37 (i) Identify the technician or analyst as a "qualified person", as
38 defined in § 10-304 of this subtitle;

1 (ii) State that the test was performed with equipment approved by
2 the toxicologist under the Postmortem Examiners Commission at the direction of a
3 police officer; and

4 (iii) State that the result of the test is as stated in the report.

5 (b) (1) (i) Test results which comply with the requirements of subsection
6 (a) of this section are admissible as substantive evidence without the presence or
7 testimony of the technician or analyst who administered the test.

8 (ii) However, if the State decides to offer the test results without
9 the testimony of the technician or analyst, it shall, at least 30 days before trial, notify
10 the defendant or his attorney in writing of its intention and deliver to the defendant
11 or his attorney a copy of the test results to be offered.

12 (iii) If the District Court is deprived of jurisdiction under
13 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
14 from the District Court to the circuit court, the State is not required to file a second
15 notice.

16 (2) (i) If the defendant desires the technician or analyst to be present
17 and testify at trial, the defendant shall notify the court and the State in writing no
18 later than 20 days before trial.

19 (ii) If the District Court is deprived of jurisdiction under
20 circumstances in which a defendant is entitled to and demands a jury trial, or appeals
21 from the District Court to a circuit court, the defendant shall notify the circuit court
22 and the State in writing no later than 20 days before trial.

23 (iii) If the timely and proper notice required under this paragraph is
24 provided by the defendant, the test results are inadmissible without the testimony of
25 the technician or analyst.

26 (3) Failure to give timely and proper notice constitutes a waiver of the
27 defendant's right to the presence and testimony of the technician or analyst.

28 **Article - Transportation**

29 16-205.1.

30 (a) (1) (i) In this section, the following words have the meanings
31 indicated.

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

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

- 1 (iv) "Test" means, unless the context requires otherwise:
- 2 1. A test of a person's breath or of 1 specimen of a person's
3 blood to determine alcohol concentration;
- 4 2. A test or tests of URINE OR 1 specimen of a person's blood
5 to determine the drug or controlled dangerous substance content of the person's
6 URINE OR blood; or
- 7 3. Both:
- 8 A. A test of a person's breath or a test of 1 specimen of a
9 person's blood, to determine alcohol concentration; and
- 10 B. A test or tests of URINE OR 1 specimen of a person's blood
11 to determine the drug or controlled dangerous substance content of the person's
12 URINE OR blood.
- 13 (2) Any person who drives or attempts to drive a motor vehicle on a
14 highway or on any private property that is used by the public in general in this State
15 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
16 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
17 should be detained on suspicion of driving or attempting to drive while under the
18 influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any
19 combination of drugs, or a combination of one or more drugs and alcohol that the
20 person could not drive a vehicle safely, while impaired by a controlled dangerous
21 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title.
- 22 (b) (1) Except as provided in subsection (c) of this section, a person may not
23 be compelled to take a test. However, the detaining officer shall advise the person
24 that, on receipt of a sworn statement from the officer that the person was so charged
25 and refused to take a test, or was tested and the result indicated an alcohol
26 concentration of 0.08 or more, the Administration shall:
- 27 (i) In the case of a person licensed under this title:
- 28 1. For a test result indicating an alcohol concentration of
29 0.08 or more at the time of testing:
- 30 A. For a first offense, suspend the driver's license for 45 days;
31 or
- 32 B. For a second or subsequent offense, suspend the driver's
33 license for 90 days; or
- 34 2. For a test refusal:
- 35 A. For a first offense, suspend the driver's license for 120
36 days; or

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

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

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

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

11 (iii) Issue a temporary license to drive;

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

14 (v) Inform the person that:

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

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

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

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

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

1 (iii) If a test would not jeopardize the health or well-being of the
2 person, direct a qualified medical person to withdraw blood OR OBTAIN A SPECIMEN
3 OF URINE for a test.

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

7 (e) (1) The tests to determine alcohol concentration may be administered by
8 an individual who has been examined and is certified by the Department of State
9 Police as sufficiently equipped and trained to administer the tests.

10 (2) The Department of State Police may adopt regulations for the
11 examination and certification of individuals trained to administer tests to determine
12 alcohol concentration.

13 (3) THE DEPARTMENT OF STATE POLICE MAY ADOPT REGULATIONS FOR
14 THE EXAMINATION AND CERTIFICATION OF INDIVIDUALS TRAINED TO ADMINISTER
15 URINE TESTS TO DETERMINE THE PRESENCE OF DRUGS OR CONTROLLED
16 DANGEROUS SUBSTANCES.

17 (4) THE DEPARTMENT OF STATE POLICE MAY ADOPT REGULATIONS FOR
18 TRAINING POLICE OFFICERS OR POLICE EMPLOYEES ON PROCEDURES TO OBTAIN
19 AND PRESERVE A SPECIMEN OF URINE.

20 (f) (1) Subject to the provisions of this subsection, at the time of, or within
21 30 days from the date of, the issuance of an order of suspension, a person may submit
22 a written request for a hearing before an officer of the Administration if:

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

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

31 2. The person refused to take a test.

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

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

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

- 1 (i) Make the suspension order effective suspending the license:
- 2 1. For a test result indicating an alcohol concentration of
3 0.08 or more 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 refusal:
- 7 A. For a first offense, for 120 days; or
- 8 B. For a second offense or subsequent offense, for 1 year; and
- 9 (ii) 1. In the case of a person operating a commercial motor
10 vehicle who refuses to take a test, disqualify the person's commercial driver's license
11 for a period of 1 year for a first offense, 3 years for a first offense which occurs while
12 transporting hazardous materials required to be placarded, and for life for a second or
13 subsequent offense which occurs while operating any commercial vehicle; or
- 14 2. In the case of a person operating a commercial motor
15 vehicle who refuses to take a test, and who is licensed as a commercial driver by
16 another state, disqualify the person's privilege to operate a commercial motor vehicle
17 in this State and report the refusal and disqualification to the person's resident state
18 which may result in further penalties imposed by the person's resident state.
- 19 (5) (i) If the person requests a hearing at the time of or within 10 days
20 after the issuance of the order of suspension and surrenders the driver's license or, if
21 applicable, the person's commercial driver's license, the Administration shall set a
22 hearing for a date within 30 days of the receipt of the request.
- 23 (ii) Subject to the provisions of this paragraph, a postponement of a
24 hearing under this paragraph does not extend the period for which the person is
25 authorized to drive and the suspension and, if applicable, the disqualification shall
26 become effective on the expiration of the 45-day period after the issuance of the order
27 of suspension.
- 28 (iii) A postponement of a hearing described under this paragraph
29 shall extend the period for which the person is authorized to drive if:
- 30 1. Both the person and the Administration agree to the
31 postponement;
- 32 2. The Administration cannot provide a hearing within the
33 period required under this paragraph; or
- 34 3. Under circumstances in which the person made a request,
35 within 10 days of the date that the order of suspension was served under this section,

1 for the issuance of a subpoena under § 12-108 of this article except as time limits are
2 changed by this paragraph:

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

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

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

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

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

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

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

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

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

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

36 (ii) A request for hearing scheduled under this paragraph does not
37 extend the period for which the person is authorized to drive, and the suspension and,
38 if applicable, the disqualification shall become effective on the expiration of the
39 45-day period that begins on the date of the issuance of the order of suspension.

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

3 1. Both the person and the Administration agree to the
4 postponement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 5. The person refused to take the test.

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

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

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

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

31 4. The driver refused to take a test.

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

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

1 B. For the purpose of a test for determining the drug or
2 controlled dangerous substance content of the person's blood, within 4 hours of the
3 person's apprehension.

4 (3) In determining whether a person has withdrawn an initial refusal for
5 the purposes of paragraph (1) of this subsection, among the factors that the
6 Administration shall consider are the following:

7 (i) Whether the test would have been administered properly:

8 1. For the purpose of a test for determining alcohol
9 concentration, within 2 hours of the person's apprehension; or

10 2. For the purpose of a test for determining the drug or
11 controlled dangerous substance content of the person's blood, within 4 hours of the
12 person's apprehension;

13 (ii) Whether a qualified person, as defined in § 10-304 of the
14 Courts Article, to administer the test and testing equipment were readily available;

15 (iii) Whether the delay in testing would have interfered with the
16 administration of a test to another person;

17 (iv) Whether the delay in testing would have interfered with the
18 attention to other duties of the arresting officer or a qualified person, as defined in §
19 10-304 of the Courts Article;

20 (v) Whether the person's subsequent consent to take the test was
21 made in good faith; and

22 (vi) Whether the consent after the initial refusal was while the
23 person was still in police custody.

24 (4) In determining whether a person has withdrawn an initial refusal for
25 the purposes of paragraph (1) of this subsection, the burden of proof rests with the
26 person to establish by a preponderance of the evidence the requirements of paragraph
27 (2) of this subsection.

28 (h) Notwithstanding any other provision of this section, if a driver's license is
29 suspended based on multiple administrative offenses of refusal to take a test, or a test
30 to determine alcohol concentration taken that indicated an alcohol concentration of
31 0.08 or more at the time of testing, or any combination of these administrative
32 offenses committed at the same time, or arising out of circumstances simultaneous in
33 time and place, or arising out of the same incident, the Administration:

34 (1) Shall suspend the driver's license for the administrative offense that
35 results in the lengthiest period of suspension; and

36 (2) May not impose any additional periods of suspension for the
37 remainder of the administrative offenses.

1 (i) Notwithstanding any other provision of this section, a test for drug or
2 controlled dangerous substance content under this section:

3 (1) May not be requested as described under subsection (b) of this
4 section, required as described under subsection (c) of this section, or directed as
5 described under subsection (d) of this section, by a police officer unless the law
6 enforcement agency of which the officer is a member has the capacity to have such
7 tests conducted;

8 (2) May only be requested as described under subsection (b) of this
9 section, required as described under subsection (c) of this section, or directed as
10 described under subsection (d) of this section, by a police officer who is a trainee, has
11 been trained, or is participating directly or indirectly in a program of training that is:

12 (i) Designed to train and certify police officers as drug recognition
13 experts; and

14 (ii) Conducted by a law enforcement agency of the State, or any
15 county, municipal, or other law enforcement agency in the State described in items
16 (3)(i)1 through 12 of this subsection:

17 1. In conjunction with the National Highway Traffic Safety
18 Administration; or

19 2. As a program of training of police officers as drug
20 recognition experts that contains requirements for successful completion of the
21 training program that are the substantial equivalent of the requirements of the Drug
22 Recognition Training Program developed by the National Highway Traffic Safety
23 Administration; and

24 (3) May only be requested as described under subsection (b) of this
25 section, required as described under subsection (c) of this section, or directed as
26 described under subsection (d) of this section:

27 (i) In the case of a police officer who is a trainee, or who is
28 participating directly or indirectly in a program of training described in paragraph (2)
29 of this subsection, if the police officer is a member of, and is designated as a trainee or
30 a participant by the head of:

31 1. The Department of State Police;

32 2. The Baltimore City Police Department;

33 3. A police department, bureau, or force of a county;

34 4. A police department, bureau, or force of an incorporated
35 city or town;

36 5. The Maryland Transit Administration Police Force;

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

3 (iii) The licensee has not been convicted under § 21-902 of this
4 article during the past 5 years; and

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

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

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

12 (2) In addition to the authority to modify a suspension or issue a
13 restrictive license under paragraph (1) or (4) of this subsection, the Administration
14 may modify a suspension under this section or issue a restrictive license, including a
15 restriction that prohibits the licensee from driving or attempting to drive a motor
16 vehicle unless the licensee is a participant in the Ignition Interlock System Program
17 established under § 16-404.1 of this title, if:

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

19 (ii) The licensee has not been convicted under § 21-902 of this
20 article; and

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

22 1. A noncollegiate educational institution as defined in §
23 2-206(a) of the Education Article; or

24 2. A regular program at an institution of postsecondary
25 education.

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

29 (4) In addition to the authority to modify a suspension or issue a
30 restrictive license under paragraph (1) or (2) of this subsection, the Administration
31 may modify a suspension under this section or issue a restrictive license to a licensee
32 who participates in the Ignition Interlock System Program established under §
33 16-404.1 of this title for at least 1 year.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
35 effect October 1, 2005.