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By: **Senator Jimeno**

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

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

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

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

8 BY repealing and reenacting, with amendments,  
9 Article - Courts and Judicial Proceedings  
10 Section 10-309(a)  
11 Annotated Code of Maryland  
12 (2002 Replacement Volume and 2004 Supplement)

13 BY repealing and reenacting, without amendments,  
14 Article - Criminal Law  
15 Section 2-503, 2-504, and 3-211  
16 Annotated Code of Maryland  
17 (2002 Volume and 2004 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article - Criminal Procedure  
20 Section 6-220(d)  
21 Annotated Code of Maryland  
22 (2001 Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article - Transportation  
25 Section 16-205.1(a), (b), (c), (f), and (n) and 27-101(f), (j), (k), and (q)  
26 Annotated Code of Maryland  
27 (2002 Replacement Volume and 2004 Supplement)

28 BY adding to  
29 Article - Transportation  
30 Section 16-205.1(o), 16-402(a)(38), and 27-101(x)  
31 Annotated Code of Maryland  
32 (2002 Replacement Volume and 2004 Supplement)

33 BY repealing and reenacting, without amendments,  
34 Article - Transportation  
35 Section 21-902  
36 Annotated Code of Maryland  
37 (2002 Replacement Volume and 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 10-309.

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

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

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

14 **Article - Criminal Law**

15 2-503.

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

18 (1) under the influence of alcohol; or

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

20 (b) A violation of this section is:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (i) under the influence of alcohol; or

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

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

25 (i) under the influence of alcohol; or

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

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

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

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

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

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

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

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

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

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

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

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

25 **Article - Criminal Procedure**

26 6-220.

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

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

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

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

3 **Article - Transportation**

4 16-205.1.

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

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

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

12 (iv) "Test" means, unless the context requires otherwise:

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

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

17 3. Both:

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

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

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

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

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

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

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

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

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

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

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

26 (i) Detain the person;

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

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

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

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

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



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

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

6 (i) The person's breath to determine alcohol concentration;

7 (ii) One specimen of the person's blood, to determine alcohol  
8 concentration or to determine the drug or controlled dangerous substance content of  
9 the person's blood; or

10 (iii) Both the person's breath under item (i) of this paragraph and  
11 one specimen of the person's blood under item (ii) of this paragraph.

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

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

17 (f) (1) Subject to the provisions of this subsection, at the time of, or within  
18 30 days from the date of, the issuance of an order of suspension, a person may submit  
19 a written request for a hearing before an officer of the Administration if:

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

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

28 2. The person refused to take a test.

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

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

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

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

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

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

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

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

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

8 B. FOR A SECOND OR SUBSEQUENT OFFENSE, FOR 120 DAYS;  
9 OR

10 [2.] 3. For a test refusal:

11 A. For a first offense, for [120] 180 days; or

12 B. For a second offense or subsequent offense, for 1 year; and

13 (ii) 1. In the case of a person operating a commercial motor  
14 vehicle who refuses to take a test, disqualify the person's commercial driver's license  
15 for a period of 1 year for a first offense, 3 years for a first offense which occurs while  
16 transporting hazardous materials required to be placarded, and for life for a second or  
17 subsequent offense which occurs while operating any commercial vehicle; or

18 2. In the case of a person operating a commercial motor  
19 vehicle who refuses to take a test, and who is licensed as a commercial driver by  
20 another state, disqualify the person's privilege to operate a commercial motor vehicle  
21 in this State and report the refusal and disqualification to the person's resident state  
22 which may result in further penalties imposed by the person's resident state.

23 (5) (i) If the person requests a hearing at the time of or within 10 days  
24 after the issuance of the order of suspension and surrenders the driver's license or, if  
25 applicable, the person's commercial driver's license, the Administration shall set a  
26 hearing for a date within 30 days of the receipt of the request.

27 (ii) Subject to the provisions of this paragraph, a postponement of a  
28 hearing under this paragraph does not extend the period for which the person is  
29 authorized to drive and the suspension and, if applicable, the disqualification shall  
30 become effective on the expiration of the 45-day period after the issuance of the order  
31 of suspension.

32 (iii) A postponement of a hearing described under this paragraph  
33 shall extend the period for which the person is authorized to drive if:

34 1. Both the person and the Administration agree to the  
35 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"); or

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

32 (2) Except as provided in subsection (q) of this section, for the purpose of  
33 second or subsequent offender penalties for a violation of § 21-902(b) of this article  
34 provided under paragraph (1) of this subsection, a prior conviction OR PRIOR ENTRY  
35 OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION of [§ 21-902(a), (c), or (d)] §  
36 21-902(A), (C), OR (D) of this article, § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW  
37 ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER STATE THAT IS

1 COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, shall be considered a  
2 conviction of § 21-902(b) of this article.

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

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

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

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

15 1. Certified by the Department of Health and Mental  
16 Hygiene;

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

19 3. Approved by the court.

20 (2) (i) A person who is convicted of OR WHO ENTERS A PLEA OF NOLO  
21 CONTENDERE FOR a violation of § 21-902(a) of this article within 5 years after a prior  
22 conviction [under that subsection] OR PRIOR ENTRY OF A PLEA OF NOLO  
23 CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE, § 2-503, § 2-504, OR §  
24 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW OF ANOTHER  
25 STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS PARAGRAPH, is  
26 subject to a mandatory minimum penalty of imprisonment for not less than 5 days.

27 (ii) A person who is convicted of a third or subsequent offense under  
28 § 21-902(a) of this article within 5 years is subject to a mandatory minimum penalty  
29 of imprisonment for not less than 10 days.

30 (3) (i) A person who is convicted of a violation of § 21-902(d) of this  
31 article within 5 years after a prior conviction under that subsection is subject to a  
32 mandatory minimum penalty of imprisonment for not less than 5 days.

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

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

- 1 (i) Undergo a comprehensive alcohol abuse assessment; and  
2 (ii) If recommended at the conclusion of the assessment, participate  
3 in an alcohol program as ordered by the court that is:

- 4 1. Certified by the Department of Health and Mental  
5 Hygiene;  
6 2. Certified by an agency in an adjacent state that has  
7 powers and duties similar to the Department of Health and Mental Hygiene; or  
8 3. Approved by the court.

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

- 12 (i) Undergo a comprehensive drug abuse assessment; and  
13 (ii) If recommended at the conclusion of the assessment, participate  
14 in a drug program as ordered by the court that is:  
15 1. Certified by the Department of Health and Mental  
16 Hygiene;  
17 2. Certified by an agency in an adjacent state that has  
18 powers and duties similar to the Department of Health and Mental Hygiene; or  
19 3. Approved by the court.

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

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

- 28 [(i)] 1. For a first offense, shall be subject to a fine of not more  
29 than \$1,000, or imprisonment for not more than 1 year, or both;  
30 [(ii)] 2. For a second offense, shall be subject to a fine of not more  
31 than \$2,000, or imprisonment for not more than 2 years, or both; and  
32 [(iii)] 3. For a third or subsequent offense, shall be subject to a fine  
33 of not more than \$3,000, or imprisonment for not more than 3 years, or both.

34 [(2)] (II) For the purpose of second or subsequent offender penalties for A  
35 violation of § 21-902(a) of this article provided under SUBPARAGRAPH (I) OF this

1 [subsection] PARAGRAPH, a prior conviction OR PRIOR ENTRY OF A PLEA OF NOLO  
2 CONTENDERE FOR A VIOLATION of § 21-902(b), (c), or (d) of this article, § 2-503, §  
3 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL LAW OR THE LAW  
4 OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE DESCRIBED IN THIS  
5 SUBPARAGRAPH, within 5 years of the conviction OR ENTRY OF A PLEA OF NOLO  
6 CONTENDERE for a violation of § 21-902(a) of this article, shall be considered a  
7 conviction of § 21-902(a) of this article.

8 [(3)] (III) For the purpose of second or subsequent offender penalties for  
9 violation of § 21-902(d) of this article provided under this subsection, a prior  
10 conviction of § 21-902(a), (b), or (c) of this article, within 5 years of the conviction for  
11 a violation of § 21-902(d) of this article, shall be considered a conviction of § 21-902(d)  
12 of this article.

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

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

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

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

29 (II) FOR THE PURPOSE OF SECOND OR SUBSEQUENT OFFENDER  
30 PENALTIES FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE PROVIDED UNDER  
31 SUBPARAGRAPH (I) OF THIS PARAGRAPH, A PRIOR CONVICTION OR PRIOR ENTRY OF A  
32 PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(B), (C), OR (D) OF THIS  
33 ARTICLE, § 2-503, § 2-504, OR § 3-211 OF THE CRIMINAL LAW ARTICLE, OR A FEDERAL  
34 LAW OR THE LAW OF ANOTHER STATE THAT IS COMPARABLE TO AN OFFENSE  
35 DESCRIBED IN THIS SUBPARAGRAPH, WITHIN 5 YEARS OF THE CONVICTION OR  
36 ENTRY OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF § 21-902(A) OF THIS  
37 ARTICLE, SHALL BE CONSIDERED A CONVICTION OF § 21-902(A) OF THIS ARTICLE.

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

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

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

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

5 (2) Any person who is convicted of OR WHO ENTERS A PLEA OF NOLO  
6 CONTENDERE FOR a violation of [§ 21-902(b) or (c)] § 21-902(B) OR (C) of this article  
7 and who, at the time of the offense, was transporting a minor is subject to:

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

10 (ii) For a second or subsequent offense, a fine of not more than  
11 \$2,000 or imprisonment for not more than 1 year or both.

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

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

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