

State DUI Laws: Maryland

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Maryland Code Annotated

§ 21-902. Driving while under the influence of alcohol, while under the influence of alcohol per se, while impaired by alcohol, or while impaired by a drug, a combination of drugs, a combination of one or more drugs and alcohol, or while impaired by a controlled dangerous substance

(a) Driving while under the influence of alcohol or under the influence of alcohol per se. --

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

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

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

(c) Driving while impaired by drugs or drugs and alcohol. --

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

(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.

(d) Driving while impaired by controlled dangerous substance. -- 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.

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

§ 21-902.1. Driving after arrest for violation of § 21-902

(a) Arrestee, defined. -- In this section, "arrestee" means a person who has been arrested for a violation of § 21-902 of

this subtitle or Title 2, Subtitle 5 or § 3-211 of the Criminal Law Article.

(b) Driving after arrest prohibited. -- An arrestee may not drive a motor vehicle within 12 hours after the arrestee's arrest for a violation of § 21-902 of this subtitle or Title 2, Subtitle 5 or § 3-211 of the Criminal Law Article.

§ 21-903. Consumption of alcoholic beverages while driving on highway

(a) Definitions. --

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

(2) "Alcoholic beverage" means a spirituous, vinous, malt, or fermented liquor, liquid, or compound that contains at least 0.5% alcohol by volume and is fit for beverage purposes.

(3) (i) "Passenger area" means an area that:

1. Is designed to seat the driver and any passenger of a motor vehicle while the motor vehicle is in operation; or
2. Is readily accessible to the driver or a passenger of a motor vehicle while in their seating positions.

(ii) "Passenger area" does not include:

1. A locked glove compartment;
2. The trunk of a motor vehicle; or
3. If a motor vehicle is not equipped with a trunk, the area behind the rearmost upright seat or an area that is not normally occupied by the driver or a passenger of the motor vehicle.

(b) Application of section. -- This section applies to a motor vehicle that is driven, stopped, standing, or otherwise located on a highway.

(c) Consumption of alcohol prohibited. -- A driver of a motor vehicle may not consume an alcoholic beverage in a passenger area of a motor vehicle on a highway.

(d) Scope. -- Notwithstanding Article 2b, Title 19 of the Code or any other provision of law, the prohibition contained in this section applies throughout the State.

§ 10-302. Chemical test for alcohol, drug or controlled dangerous substance content -- Purpose

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

§ 10-303. Same -- Specimens; time limitations

(a) Alcohol concentration. --

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

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

(b) Drug or controlled dangerous substance content. --

(1) Only 1 specimen of blood may be taken for the purpose of a test or tests for determining the drug or controlled dangerous substance content of the person's blood.

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

§ 10-304. Same -- Qualifications of person administering test; equipment

(a) Definitions. --

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

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

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

(b) Breath test. --

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

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

(c) Blood test evidence; notices. --

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

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

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

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

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

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

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

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

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

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

(d) Proof of approved equipment; subpoena for toxicologist. --

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

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

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

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

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

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

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

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

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

§ 10-305. Same -- Type of test administered

(a) Alcohol content. -- The type of test administered to the defendant to determine alcohol concentration shall be the test of breath except that the type of test administered shall be:

(1) A test of blood if:

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

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

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

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

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

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

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

§ 10-306. Same -- Admissibility of test results without presence or testimony of technician

(a) In general. --

(1) (i) Subject to the provisions of paragraph (2) of this subsection, in any criminal trial in which a violation of § 16-113, § 16-813, or § 21-902 of the Transportation Article, or a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law Article is charged or is an issue, a copy of a report of the results of a test of breath or blood to determine alcohol

concentration signed by the technician or analyst who performed the test, is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test.

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

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

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

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

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

(b) Notices. --

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

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

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

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

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

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

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

§ 10-307. Same -- Results of analysis and presumptions

(a) In general. --

(1) In any criminal, juvenile, or civil proceeding in which a person is alleged to have committed an act that would constitute a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law Article, or with driving or attempting to drive a vehicle in violation of § 16-113, § 16-813, or § 21-902 of the Transportation Article, the amount of alcohol in the person's breath or blood shown by analysis as provided in this subtitle is admissible in evidence and has the effect set forth in subsections (b) through (g) of this section.

(2) Alcohol concentration as used in this section shall be measured by:

(i) Grams of alcohol per 100 milliliters of blood; or

(ii) Grams of alcohol per 210 liters of breath.

(3) If the amount of alcohol in the person's blood shown by analysis as provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or milligrams of alcohol per 100 milliliters of blood, a court or an administrative law judge, as the case may be, shall convert the measurement into grams of alcohol per 100 milliliters of blood by dividing the measurement by 1000.

(b) Alcohol concentration of 0.05 or less. -- If at the time of testing a person has an alcohol concentration of 0.05 or less, as determined by an analysis of the person's blood or breath, it shall be presumed that the person was not under the influence of alcohol and that the person was not driving while impaired by alcohol.

(c) Alcohol concentration of more than 0.05 but less than 0.07. -- If at the time of testing a person has an alcohol concentration of more than 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the person was or was not under the influence of alcohol or that the person was or was not driving while impaired by alcohol, but this fact may be considered with other competent evidence in determining whether the person was or was not driving while under the influence of alcohol or driving while impaired by alcohol.

(d) Prima facie evidence of impairment. -- If at the time of testing a person has an alcohol concentration of at least 0.07 but less than 0.08, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the person was driving while impaired by alcohol.

(e) Prima facie evidence of alcohol in blood. -- If at the time of testing a person has an alcohol concentration of 0.02 or more, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the person was driving with alcohol in the person's blood.

(f) Prima facie evidence of violation of § 16-113 of the Transportation Article. -- If at the time of testing a person has an alcohol concentration of 0.02 or more, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the person was driving in violation of an alcohol restriction under § 16-113 of the Transportation Article.

(g) Under the influence of alcohol per se. -- If at the time of testing a person has an alcohol concentration of 0.08 or more, as determined by an analysis of the person's blood or breath, the person shall be considered under the influence of alcohol per se as defined in § 11-127.1 of the Transportation Article.

§ 10-308. Same -- Other evidence

(a) In general. -- The evidence of the analysis does not limit the introduction of other evidence bearing upon whether the defendant was under the influence of alcohol or whether the defendant was driving 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 cannot drive a vehicle safely, or while impaired by a controlled dangerous substance.

(b) Drug or controlled dangerous substance content. -- The results of a test or tests to determine the drug or controlled dangerous substance content of a person's blood:

(1) Are admissible as evidence in a criminal trial only in a prosecution for a violation of § 21-902 of the Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law Article and only if other admissible evidence is introduced that creates an inference that the person was:

(i) Driving or attempting to drive 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, or while impaired by a controlled dangerous substance; or

(ii) Operating or attempting to operate a vessel while the person was 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 operate a vessel safely, or while impaired by a controlled dangerous substance; and

(2) Are not admissible in a prosecution other than a prosecution for a violation of § 21-902 of the Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law Article.

§ 10-309. Same -- Refusal to submit to test

(a) Test not compulsory. --

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

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

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

(b) Consequences of refusal. -- This section does not limit the provisions of the vehicle laws regarding the consequences of refusal to submit to a test or tests.

(c) Extent of limits on admissibility of analysis. -- Nothing in this section precludes or limits the admissibility of evidence of a test or analysis to determine the alcohol concentration of a person's blood or breath in any prosecution other than for a violation of § 16-113 or § 21-902 of the Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law Article.

(d) Analysis obtained under TR § 16-205.1. -- Nothing in this section precludes or limits admissibility of evidence of a test or analysis to determine the alcohol concentration of a person's blood or breath which is obtained as provided in § 16-205.1 (c) of the Transportation Article.

§ 2-503. Homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol per se

(a) Prohibited. -- 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:

- (1) under the influence of alcohol; or
- (2) under the influence of alcohol per se.

(b) Name of crime. -- A violation of this section is:

- (1) homicide by motor vehicle or vessel while under the influence of alcohol; or
- (2) homicide by motor vehicle or vessel while under the influence of alcohol per se.

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

§ 2-504. Homicide by motor vehicle or vessel while impaired by alcohol

(a) Prohibited. -- 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.

(b) Name of crime. -- A violation of this section is homicide by motor vehicle or vessel while impaired by alcohol.

(c) Penalty. -- 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. Life-threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes

(a) Definitions. --

- (1) In this section the following words have the meanings indicated.
- (2) "Under the influence of alcohol per se" means having an alcohol concentration at the time of testing of at least 0.08 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
- (3) (i) "Vessel" means any watercraft that is used or is capable of being used as a means of transportation on water or ice.

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

(b) Conversion of alcohol concentration measurement; presumptions and evidentiary rules. --

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

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

(c) Life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol per se. --

(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 vessel while the person is:

(i) under the influence of alcohol; or

(ii) under the influence of alcohol per se.

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

(i) under the influence of alcohol; or

(ii) under the influence of alcohol per se.

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

(d) Life-threatening injury by motor vehicle or vessel while impaired by alcohol. --

(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 vessel while the person is impaired by alcohol.

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

(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 \$ 3,000 or both.

(e) Life-threatening injury by motor vehicle or vessel while impaired by drugs. --

(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 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 control a motor vehicle or vessel safely.

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

(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 \$ 3,000 or both.

(f) Life-threatening injury by motor vehicle or vessel while impaired by a controlled dangerous substance. --

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

(2) 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 vessel while the person is impaired by a controlled dangerous substance as defined in § 5-101 of this article.

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

(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 \$ 3,000 or both.

§ 16-205.1. Suspension or disqualification for refusal to submit to chemical tests for intoxication

(a) Definitions; implied consent to chemical test. --

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

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

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

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

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

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

3. Both:

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

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

content of the person's blood.

(2) Any person who drives or attempts to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309, inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person should be detained on suspicion of 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.

(b) No compulsion to take chemical test; consequences of refusal. --

(1) Except as provided in subsection (c) of this section, a person may not be compelled to take a test. However, 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:

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

1. For a test result indicating an alcohol concentration of 0.08 or more at the time of testing:

A. For a first offense, suspend the driver's license for 45 days; or

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

2. For a test refusal:

A. For a first offense, suspend the driver's license for 120 days; or

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

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

1. For a test result indicating an alcohol concentration of 0.08 or more at the time of testing:

A. For a first offense, suspend the person's driving privilege for 45 days; or

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

2. For a test refusal:

A. For a first offense, suspend the person's driving privilege for 120 days; or

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

(iii) In addition to any applicable driver's license suspensions authorized under this section, in the case of a person

operating a commercial motor vehicle who refuses to take a test:

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

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

(2) Except as provided in subsection (c) of this section, if a police officer stops or detains any person who the police officer has reasonable grounds to believe is or has been driving or attempting to drive a motor vehicle 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, and who is not unconscious or otherwise incapable of refusing to take a test, the police officer shall:

(i) Detain the person;

(ii) Request that the person permit a test to be taken; and

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

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

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

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

(iii) Issue a temporary license to drive;

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

(v) Inform the person that:

1. The person has a right to request, at that time or within 10 days, a hearing to show cause why 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, and the hearing will be scheduled within 45 days; and

2. If a hearing request is not made at that time or within 10 days, but within 30 days the person requests a hearing, a hearing to show cause why 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;

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

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

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;

2. The person refused to take a test when requested by the police officer or the person submitted to the test which indicated an alcohol concentration of 0.08 or more at the time of testing; and

3. 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) or (2) of this section.

(c) Circumstances under which chemical tests required; administration; liability. --

(1) If a person is involved in a motor vehicle accident that results in the death of, or a life threatening injury to, another person and the person is detained by a police officer who has reasonable grounds to believe that the person has been 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, or in violation of § 16-813 of this title, the person shall be required to submit, as directed by the officer, to a test of:

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

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

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

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

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

(d) Procedure where individual incapable of refusing test. --

(1) If a police officer has reasonable grounds to believe that a person has been driving or attempting to drive a motor vehicle 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, or in violation of § 16-813 of this title, and if the police officer determines that the person is unconscious or otherwise incapable of refusing to take a test, the police officer shall:

(i) Obtain prompt medical attention for the person;

(ii) If necessary, arrange for removal of the person to a nearby medical facility; and

(iii) If a test would not jeopardize the health or well-being of the person, direct a qualified medical person to withdraw blood for a test.

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

(e) Administration of tests. --

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

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

(f) Notice and hearing on refusal to take test; suspension of license or privilege to drive; disqualification from driving commercial vehicles. --

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

(i) The person is arrested for driving or attempting to drive a motor vehicle 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; and

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

2. The person refused to take a test.

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

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

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

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

1. For a test result indicating an alcohol concentration of 0.08 or more at the time of testing:

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

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

2. For a test refusal:

A. For a first offense, for 120 days; or

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

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

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

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

(ii) Subject to the provisions of this paragraph, a postponement of a hearing 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 after the issuance of the order of suspension.

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

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

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

3. Under circumstances in which the person made a request, within 10 days of the date that the order of suspension was served under this section, for the issuance of a subpoena under § 12-108 of this article except as time limits are changed by this paragraph:

A. The subpoena was not issued by the Administration;

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

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 described under this paragraph held within the 45-day period after the issuance of the order of suspension.

(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.

(v) If a hearing is postponed beyond the 45-day period after the issuance of the order of suspension under the 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 described under this paragraph.

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

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

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

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

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

(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.

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

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

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

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:

A. The subpoena was not issued by the Administration;

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

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.

(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.

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

(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:

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 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;

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;

4. Whether the person refused to take the test;

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

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:

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;

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

4. A. The person refused to take the test; or

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

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

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

2. The police officer who stopped or detained the person had reasonable grounds to believe that 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;

3. 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;

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

5. The person refused to take the test.

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

paragraph, if:

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

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

3. The police officer did not have reasonable grounds to believe the driver was driving while under the influence of alcohol, driving 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, or while impaired by a controlled dangerous substance; and

4. The driver refused to take a test.

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

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

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

(v) The suspension imposed shall be:

1. For a test result indicating an alcohol concentration of 0.08 or more at the time of testing:

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

B. For a second or subsequent offense, a suspension for 90 days; or

2. For a test refusal:

A. For a first offense, a suspension for 120 days; or

B. For a second or subsequent offense, a suspension for 1 year.

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

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

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

(g) Withdrawal of initial refusal to take test; subsequent consent. --

(1) An initial refusal to take a test that is withdrawn as provided in this subsection is not a refusal to take a test for the purposes of this section.

(2) A person who initially refuses to take a test may withdraw the initial refusal and subsequently consent to take the test if the subsequent consent:

(i) Is unequivocal;

(ii) Does not substantially interfere with the timely and efficacious administration of the test; and

(iii) Is given by the person:

1. Before the delay in testing would materially affect the outcome of the test; and

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

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

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

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

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

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

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

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

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

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

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

(4) In determining whether a person has withdrawn an initial refusal for the purposes of paragraph (1) of this

subsection, the burden of proof rests with the person to establish by a preponderance of the evidence the requirements of paragraph (2) of this subsection.

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

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

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

(i) Restrictions upon drug or controlled dangerous substance testing. -- Notwithstanding any other provision of this section, a test for drug or controlled dangerous substance content under this section:

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

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

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

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

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

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

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

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

1. The Department of State Police;

2. The Baltimore City Police Department;
 3. A police department, bureau, or force of a county;
 4. A police department, bureau, or force of an incorporated city or town;
 5. The Maryland Transit Administration Police Force;
 6. The Maryland Port Administration Police Force of the Department of Transportation;
 7. The Maryland Transportation Authority Police Force;
 8. The Police Force of the University of Maryland or Morgan State University;
 9. The police force for a State university or college under the direction and control of the University System of Maryland;
 10. A sheriff's department of any county or Baltimore City;
 11. The Natural Resources Police Force or the Forest and Park Service Police Force of the Department of Natural Resources; or
 12. The security force of the Department of General Services; or
- (ii) In the case of a police officer who has been trained as a drug recognition expert, if the police officer is a member of, and certified as a drug recognition expert by the head of one of the law enforcement agencies described in items (3) (i) 1 through 12 of this subsection.
- (j) Court review of suspension of license or privilege to drive or disqualification from driving commercial vehicles. -- If the Administration imposes a suspension or disqualification after a hearing, the person whose license or privilege to drive has been suspended or disqualified may appeal the final order of suspension as provided in Title 12, Subtitle 2 of this article.
- (k) Further administrative sanctions. -- Subject to § 16-812 (p) of this title, this section does not prohibit the imposition of further administrative sanctions if the person is convicted for any violation of the Maryland Vehicle Law arising out of the same occurrence.
- (l) Effect of criminal charges. --
- (1) The determination of any facts by the Administration is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence.
 - (2) The disposition of those criminal charges may not affect any suspension imposed under this section.
- (m) Stay of suspension. --
- (1) Except as otherwise provided in this subsection, a suspension imposed under this section may not be stayed by the

Administration pending appeal.

(2) If the person files an appeal and requests in writing a stay of a suspension imposed under this section, the Director of the Division of Administrative Adjudication of the Administration may stay a suspension imposed under this section.

(n) Modification of suspension. --

(1) The Administration may modify a suspension under this section or issue a restrictive license if:

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

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

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

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

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

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

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

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

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

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

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

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.

(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.

§ 16-205.2. Preliminary breath test

(a) Request by police officer. -- A police officer who has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while under the influence of alcohol or while impaired by alcohol may, without making an arrest and prior to the issuance of a citation, request the individual to submit to a preliminary breath test to be administered by the officer using a device approved by the State Toxicologist.

(b) Advice to person to be tested. -- The police officer requesting the preliminary breath test shall advise the person to be tested that neither a refusal to take the test nor the taking of the test shall prevent or require a subsequent chemical test pursuant to § 16-205.1 of this article.

(c) Use of results of test. -- The results of the preliminary breath test shall be used as a guide for the police officer in deciding whether an arrest should be made and may not be used as evidence by the State in any court action. The results of the preliminary breath test may be used as evidence by a defendant in a court action. The taking of or refusal to submit to a preliminary breath test is not admissible in evidence in any court action. Any evidence pertaining to a preliminary breath test may not be used in a civil action.

(d) Refusal to take test not violation of § 16-205.1; test under § 16-205.1 not affected. -- Refusal to submit to a preliminary breath test shall not constitute a violation of § 16-205.1 of this article and the taking of a preliminary breath test shall not relieve the individual of the obligation to take the test required under § 16-205.1 of this article if requested to do so by the police officer.

§ 16-206. Authority of Administration to suspend, revoke, or refuse license

(a) Grounds for suspension, revocation, or refusal. --

(1) The Administration may suspend, revoke, or refuse to issue or renew the license of any resident or the privilege to drive of any nonresident on a showing by its records or other sufficient evidence that the applicant or licensee:

(i) Has been convicted of moving violations so often as to indicate an intent to disregard the traffic laws and the safety of other persons on the highways;

(ii) Is an unfit, unsafe, or habitually reckless or negligent driver of a motor vehicle;

(iii) Has permitted an unlawful or fraudulent use of a license, identification card, or a facsimile of a license or identification card;

(iv) Has used a license, identification card, or a facsimile of a license or identification card in an unlawful or fraudulent manner, unless the applicant or licensee is subject to the provisions of subsection (c) of this section;

(v) Has committed an offense in another state that, if committed in this State, would be grounds for suspension or revocation; or

(vi) Has knowingly made a false certification of required security in any application for a certificate of title or for the registration of a vehicle.

(2) The Administration may suspend a license to drive of an individual who fails to attend:

- (i) A driver improvement program or an alcohol education program required under § 16-212 of this subtitle; or
- (ii) A private alternative program or an alternative program that is provided by a political subdivision of this State under § 16-212 of this subtitle.
- (3) The Administration may suspend or revoke a provisional license under § 16-213 of this subtitle.
- (4) (i) Pursuant to a court order under § 4-503, § 9-504, or § 9-505 of the Criminal Law Article, the Administration:
 - 1. Shall initiate an action to suspend the driver's license or driving privilege of an individual for a time specified by the court; and
 - 2. May issue a restricted license that is limited to driving a motor vehicle:
 - A. For the purpose of attending an alcohol education or alcoholic prevention or treatment program;
 - B. That is required in the course of employment;
 - C. For the purposes of driving to or from a place of employment if the individual's employment would be adversely affected because the individual has no reasonable alternative means of transportation to or from the place of employment; or
 - D. For the purposes of driving to or from school or any other place of educational instruction if the individual's education would be adversely affected because the individual has no reasonable alternative means of transportation for educational purposes.
- (ii) If an individual subject to a suspension under subparagraph (i) of this paragraph does not possess the privilege to drive on the date of the disposition, the suspension shall commence:
 - 1. If the individual is at an age that is eligible to obtain the privilege to drive on the date of the disposition, on the date of the disposition; or
 - 2. If the individual is younger than an age that is eligible to obtain the privilege to drive on the date of the disposition, on the date the individual is eligible to obtain driving privileges.
- (b) Child subject to suspension or revocation under § 3-8A-23 of the Courts Article. --
 - (1) Upon notification by the clerk of the court that a child has been adjudicated delinquent for a violation of § 21-902 of this article, or that a finding has been made that a child violated § 21-902 of this article, the Administration shall suspend or revoke the driving privilege of the child in accordance with § 3-8A-23 (a) (4) (i) of the Courts Article.
 - (2) If a child subject to a suspension or revocation under this subsection does not hold a license to operate a motor vehicle on the date of the disposition, the suspension or revocation shall commence:
 - (i) If the child is at least 16 years old on the date of the disposition, on the date of the disposition; or

(ii) If the child is younger than 16 years of age on the date of the disposition, on the date the child reaches the child's 16th birthday.

(c) Child subject to suspension under § 3-8A-19 (e) of the Courts and Judicial Proceedings Article; person subject to suspension under § 10-119 (k) of the Criminal Law Article. --

(1) Pursuant to a court order under § 3-8A-19 (e) of the Courts Article, the Administration shall initiate an action to suspend the driving privilege of a child for the time specified by the court.

(2) If a child subject to a suspension under § 3-8A-19 (e) of the Courts Article does not hold a license to operate a motor vehicle on the date of the court order, the suspension shall commence:

(i) If the child is at least 16 years of age on the date of the disposition, on the date of the disposition; or

(ii) If the child is younger than 16 years of age on the date of the disposition, on the date the child reaches the child's 16th birthday.

(3) On receipt of a notice described under § 10-119 (k) of the Criminal Law Article, the Administration shall suspend the license of an individual described under § 10-119 (k) of the Criminal Law Article:

(i) For a first offense, for 6 months; and

(ii) For a second or subsequent offense, until the individual is 21 years old or for a period of 1 year, whichever is longer.

(4) If an individual subject to a suspension under paragraph (3) of this subsection does not hold a license to operate a motor vehicle on the date that the individual is found guilty of a Code violation, the suspension shall begin on the date that the license is issued, or after the individual applies and becomes qualified to receive a license, or on the individual's twenty-first birthday, whichever occurs first.

(5) The Administration may modify a suspension under this subsection or subsection (b) of this section or issue a restricted license if:

(i) The license is required for the purpose of attending an alcohol education or alcoholic prevention or treatment program;

(ii) The child or individual is required to drive a motor vehicle in the course of employment;

(iii) It finds that the individual's or child's employment would be adversely affected because the individual or child has no reasonable alternative means of transportation to or from a place of employment; or

(iv) It finds that the individual's or child's education would be adversely affected because the individual or child has no reasonable alternative means of transportation for educational purposes.

(d) Notice and hearing. --

(1) After the Administration refuses to issue a license under this section, determines that a suspension should be imposed under subsection (a) (2) of this section, or determines that a suspension or revocation should be imposed under subsection (a) (3) of this section, the Administration immediately shall give written notice to the applicant or licensee, and the applicant or licensee may request a hearing as provided in Title 12, Subtitle 2 of this article.

(2) After the Administration suspends the driver's license or driving privilege of an individual under subsection (a) (4) of this section, the Administration shall send written notice to the individual, including notice of the individual's right to contest the accuracy of the information.

(3) Any contest under this subsection shall be limited to:

(i) Whether the Administration has mistaken the identity of the individual whose license or privilege to drive has been suspended; and

(ii) Whether the individual may be issued a restricted license that is limited to driving a motor vehicle:

1. For the purpose of attending an alcohol education or alcoholic prevention or treatment program;

2. That is required in the course of employment;

3. For the purposes of driving to or from a place of employment if the individual's employment would be adversely affected because the individual has no reasonable alternative means of transportation to or from the place of employment; or

4. For the purposes of driving to or from school or any other place of educational instruction if the individual's education would be adversely affected because the individual has no reasonable alternative means of transportation for educational purposes.

(4) Except as otherwise provided in this section, the Administration may suspend or revoke a license under this section only after a hearing under Title 12, Subtitle 2 of this article.

(5) If the Administration determines that there is a likelihood of substantial and immediate danger and harm to the licensee or others if the license is continued pending a hearing, the Administration:

(i) Immediately may suspend the license;

(ii) Within 7 days of a request for a hearing, shall grant the licensee a hearing as provided in Title 12, Subtitle 2 of this article; and

(iii) After the hearing, render an immediate decision as to whether or not it should continue the suspension or revoke the license.

(e) Failure to appear for hearing; rescheduling. --

(1) If a licensee fails to appear for a hearing after receiving the written notice under subsection (d) (1) of this section,

the Administration may suspend the license until the licensee appears for a hearing.

(2) A rescheduled hearing shall be held within 30 days of the date of the request.

§ 16-212. Driver improvement and alcohol education programs and point system conferences

(a) Programs authorized. -- The Administration may conduct:

(1) A driver improvement program;

(2) An alcohol education program; and

(3) Point system conferences.

(b) Purpose and contents. --

(1) The purpose of the programs and conferences authorized under this section is to provide driver rehabilitation.

(2) The Administration shall determine the content of the programs and conferences.

(c) When attendance required. -- If an individual is convicted of 1 or more moving violations:

(1) After a conference or a hearing as provided in Title 12, Subtitle 2 of this article, as a condition of reinstatement of a driver's license, or if an individual fails to attend a conference as required by § 16-404 (a) (2) of this title, the Administration may require an individual to attend a driver improvement program or alcohol education program; or

(2) A court may require an individual to attend a driver improvement program or alcohol education program.

(d) Assignment by probation or health department officers. -- In carrying out an order of the court, a probation officer or health department officer may assign an individual to attend a driver improvement program or alcohol education program.

(e) Fees. --

(1) An individual who attends a program or conference under this section shall pay, in advance, a fee as provided in this subsection.

(2) The Administration shall set a reasonable fee based on the costs of operating the programs and conferences authorized by this section.

(3) The funds collected by the Administration under this subsection may not be credited to the Gasoline and Motor Vehicle Revenue Account for distribution under § 8-403 or § 8-404 of this article.

(f) Alternative programs. --

(1) The Administration may waive attendance at an alcohol education program conducted by the Administration if an

individual attends a private alcohol education program or an alcohol education program provided by a political subdivision of the State that is approved by the Alcohol and Drug Abuse Administration and the Administration.

(2) The Administration may waive attendance at a driver improvement program conducted by the Administration if an individual attends a private driver improvement program or a driver improvement program provided by a political subdivision of the State that is approved by the Administration.

(3) The Administration may waive attendance at a point system conference conducted by the Administration if an individual attends a point system conference conducted by a private provider that is approved by the Administration.

(4) The Administration shall establish criteria for approving private providers of point system conferences and alcohol education or driver improvement programs and alcohol education or driver improvement programs provided by a political subdivision of the State.

(5) Upon application for approval to provide the programs and conferences allowed under this section, a private provider shall pay an application fee established by the Administration.

§ 27-107. Ignition interlock system -- Additional penalty for driving while under the influence of alcohol, under the influence of alcohol per se, while impaired by alcohol, or other condition of probation

(a) "Ignition interlock system" defined. -- In this section "ignition interlock system" means a device that:

(1) Connects a motor vehicle ignition system to a breath analyzer that measures a driver's blood alcohol level; and

(2) Prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

(b) Use required. -- In addition to any other penalties provided in this title for a violation of any of the provisions of § 21-902 (a) of this article ("Driving while under the influence of alcohol or under the influence of alcohol per se"), or § 21-902 (b) of this article ("Driving while impaired by alcohol"), or in addition to any other condition of probation, a court may prohibit a person who is convicted of, or granted probation under § 6-220 of the Criminal Procedure Article for, a violation of § 21-902 (a) or § 21-902 (b) of this article from operating for not more than 3 years a motor vehicle that is not equipped with an ignition interlock system.

(c) Court actions; court and administration records; conditions imposed. -- If the court imposes the use of an ignition interlock system as a sentence, part of a sentence, or a condition of probation, the court:

(1) Shall state on the record the requirement for, and the period of the use of the system, and so notify the Administration;

(2) Shall direct that the records of the Administration reflect:

(i) That the person may not operate a motor vehicle that is not equipped with an ignition interlock system; and

(ii) Whether the court has expressly permitted the person to operate a motor vehicle without an ignition interlock system under subsection (g) (2) of this section;

(3) Shall direct the Administration to note in an appropriate manner a restriction on the person's license imposed under paragraph (2) (i) or (ii) of this subsection;

(4) Shall require proof of the installation of the system and periodic reporting by the person for verification of the proper operation of the system;

(5) Shall require the person to have the system monitored for proper use and accuracy by an entity approved by the Administration at least semiannually, or more frequently as the circumstances may require; and

(6) (i) Shall require the person to pay the reasonable cost of leasing or buying, monitoring, and maintaining the system; and

(ii) May establish a payment schedule.

(d) Solicitation of or having another person start vehicle. -- A person prohibited under this section or Title 16 of this article from operating a motor vehicle that is not equipped with an ignition interlock system may not solicit or have another person attempt to start or start a motor vehicle equipped with an ignition interlock system.

(e) Starting vehicle for another. -- A person may not attempt to start or start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to a person who is prohibited under this section or Title 16 of this article from operating a motor vehicle that is not equipped with an ignition interlock system.

(f) Tampering or circumvention. -- A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition interlock system that has been installed in the motor vehicle of a person under this section or Title 16 of this article.

(g) Furnishing vehicle without an ignition interlock system; operation of vehicles in the course of employment. --

(1) Subject to the provisions of paragraph (2) of this subsection, a person may not knowingly furnish a motor vehicle not equipped with a functioning ignition interlock system to another person who the person knows is prohibited under subsection (b) of this section or Title 16 of this article from operating a motor vehicle not equipped with an ignition interlock system.

(2) If a person is required, in the course of the person's employment, to operate a motor vehicle owned or provided by the person's employer, the person may operate that motor vehicle in the course of the person's employment without installation of an ignition interlock system if the court or the Administration has expressly permitted the person to operate in the course of the person's employment a motor vehicle that is not equipped with an ignition interlock system.

§ 27-111. Vehicle impoundment or immobilization for driving while license suspended or revoked and alcohol or drug related offenses

(a) Definitions. -- In this section, "police department" has the same meaning indicated in § 25-201 of this article.

(b) Personnel, equipment and facilities to be used. --

(1) For the purpose of impounding or immobilizing a vehicle under this section, the police department may use its own personnel, equipment, and facilities or, subject to the provisions of paragraph (2) of this subsection, use other persons, equipment, and facilities for immobilizing vehicles or removing, preserving, and storing impounded vehicles.

(2) A police department may not authorize the use of a tow truck under paragraph (1) of this subsection unless the tow truck is registered under § 13-920 of this article.

(c) When authorized; exceptions. --

(1) As a sentence, a part of a sentence, or a condition of probation, a court may order, for not more than 180 days, the impoundment or immobilization of a solely owned vehicle used in the commission of a violation of § 16-303 (c) or (d) of this article if, at the time of the violation:

(i) The owner of the vehicle was driving the vehicle; and

(ii) The owner's license was suspended or revoked under § 16-205 of this article.

(2) Among the factors that a court may consider in determining whether to order an impoundment or immobilization of a vehicle is whether the vehicle is the primary means of transportation available for the use of the individual's immediate family.

(3) (i) Subject to the provisions of subparagraph (ii) of this paragraph, impoundment or immobilization of a vehicle may not be ordered under this section, if the registered owner of the vehicle made a bona fide sale, gift, or other transfer of the vehicle to another person before the date of the finding of a violation of § 16-303 (c) or (d) of this article.

(ii) The registered owner of the vehicle has the burden of proving that a bona fide sale, gift, or other transfer of the vehicle has occurred.

(d) Costs; bond, or security; return of vehicle. --

(1) The registered owner of a vehicle impounded or immobilized under this section is responsible for all actual costs incurred as a result of the immobilizing of the vehicle, or the towing, preserving, and storing of the impounded vehicle.

(2) The court may require the registered owner of a vehicle impounded or immobilized under this section to post a bond or other adequate security to equal the actual costs of immobilizing the vehicle, or towing, preserving, and storing the vehicle, and providing the notices required under subsection (f) of this section.

(3) Subject to the provisions of this section, a police department that impounds a vehicle by taking the vehicle into custody or immobilizes a vehicle under this section promptly shall return possession or use of the vehicle to the registered owner of the vehicle on payment of all actual costs of immobilizing the vehicle, or towing, preserving, and storing the impounded vehicle, and providing the notices required under subsection (f) of this section.

(e) Execution by police department. -- If a court orders the impoundment or immobilization of a vehicle under this section, the court shall provide for the execution of the impoundment or immobilization by a police department.

(f) Notice. --

(1) If a court orders the impoundment or immobilization of a vehicle under this section, the police department that executes the immobilization, or the impoundment by taking the vehicle into custody, shall, as soon as reasonably possible and within 7 days after the police department executes the court order, send a notice by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to:

- (i) Each registered owner of the vehicle as shown in the records of the Administration; and
- (ii) Each secured party, as shown in the records of the Administration.

(2) The notice shall:

- (i) State that the vehicle has been immobilized, or impounded by being taken into custody;
- (ii) Describe the year, make, model, and vehicle identification number of the vehicle;
- (iii) Provide the location of where the vehicle is immobilized or the location of the facility where the vehicle is impounded;
- (iv) Include the amount of the actual costs of immobilization, or towing, preservation, and storage of an impounded vehicle;
- (v) Include the amount of the actual costs of the notices required under this paragraph; and
- (vi) Provide that, if an impounded vehicle is not reclaimed as required under this subsection, within 10 days after the date specified in the court order, the impounded vehicle will be considered an abandoned vehicle and subject to the provisions of Title 25, Subtitle 2 of this article.

(3) If an impounded vehicle is not reclaimed within 10 days after the date specified in a court order under this section, the vehicle shall be considered an abandoned vehicle subject to the provisions of Title 25, Subtitle 2 of this article.

(g) Rights of lienholders. --

(1) This section may not be construed to prohibit a lienholder from exercising its rights under applicable law, including the right to sell a vehicle that has been impounded or immobilized under this section, in the event of a default in the obligation giving rise to the lien.

(2) (i) A lienholder exercising the right to sell a vehicle that has been impounded or immobilized under this section shall notify, in writing, the police department with custody of the vehicle of the lienholder's intention to sell the vehicle.

(ii) The notice shall be accompanied by copies of documents giving rise to the lien and shall include an affidavit under oath by the lienholder that the underlying obligation is in default and the reasons for the default.

(iii) On request of the lienholder and on payment of all costs required under this section, the vehicle shall be released to the lienholder.

(3) Except as provided in paragraph (4) of this subsection, the rights and duties provided by law to the lienholder for the sale of collateral securing an obligation in default shall govern the repossession and sale of the vehicle.

(4) (i) The lienholder may not be required to take possession of the vehicle before a sale of the vehicle.

(ii) The proceeds of any sale shall be applied first to the actual costs of immobilization, or towing, preservation, and storage of an impounded vehicle, and the actual costs of the notices required under subsection (f) of this section, then as provided by law for distribution of proceeds of a sale by the lienholder.

(5) (i) If the interest of the owner in the vehicle is redeemed, the lienholder shall, within 10 days after the redemption, mail a notice of the redemption to the police department who impounded or immobilized the vehicle.

(ii) If the vehicle has been repossessed or otherwise lawfully taken by the lienholder and the time specified by a court order under this section has not expired, the lienholder shall return the vehicle within 21 days after the redemption to the police department who impounded or immobilized the vehicle.

(h) Abandoned vehicles. -- This section does not affect the requirements of Title 25, Subtitle 2 of this article regarding abandoned vehicles.