

STATE:

General References:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

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Maryland Transportation Code

Most references are to (1) the Transportation Article (Tran.), (2) the Courts and Judicial Proceedings Article (CandJP) or (3) Art. 2B.

I. While under the influence of alcohol Tran.

§21-902(a)(1)

II. While impaired by alcohol Tran. §21-902(b)

≥ **.08**^{557and558} Tran. §§11-127.1 and 21-902(a)(2)

None

While impaired by (1) Any Drug, (2) Any Combination of Drugs, (3) a Combination of One or More Drugs and Alcohol and (4) Any Controlled Dangerous Substance Tran. §21-902(c)(1) and (d) An alcohol concentration ≥ **.07 but < .08** is *prima facie* evidence of driving while impaired by alcohol. CandJP §10-307(d)

An alcohol concentration ≥ **.08** shall be considered under the influence of alcohol per se. C and JP §10-307(e) Anyone arrested for DWI may not drive for 12 hours after the arrest. §21.902.1

For **Persons Under 21 Years Old**, see Footnote No. ⁵⁵⁹.

Yes Tran. §16-205.2. Results of any such test may be entered into evidence by the defendant, but may not be used by the State. §16-205.2(c)

Yes The law uses the term “detained” instead of “arrest”. Tran. §16-205. 1(2)

Yes Tran. §16-205.1 See also CandJP §10-302 et seq.; however, such tests may only be requested by officers trained as drug recognition experts. §16.205.1(i)

Yes (Criminal Cases) CandJP §10-309(a)(2) Evidence of a refusal can only be admitted if it is “material and relevant” to collateral issues related to such offense. *Krauss v. State*, 587 A.2d 1102 (Md. 1991)

⁵⁵⁷ The offense is defined as operating motor vehicle while “under the influence of alcohol per se.” Tran. §21-902(a)(2) “Under the influence of alcohol per se” is defined as having a BAC/BrAC ≥ .08 at the time of testing. Tran. §11-127.1

⁵⁵⁸ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. CandJP §10-307(a)(2)(i) and (ii), Tran. §§11-103.2 and 11-127.1 and Crim. Law §2-502(a), §3-211(b)

⁵⁵⁹ **Persons Under 21 Years Old.** A person < 21 years old must have a restriction placed on the license that prohibits them from operating a motor vehicle with alcohol in the blood. A BAC/BrAC ≥ .02 is *prima facie* evidence of a violation of driving with alcohol in the blood. CandJP §10-307(e) and (f) and Tran. §16-113(b)(1)

Other Information:

Death or injury involvement: If a driver is involved in either a driving while under the influence of alcohol or driving while impaired (alcohol or drugs) which is related to an accident that resulted either in the death of or life threatening injury to another person, the driver shall be required to submit to a chemical test of blood or breath. Tran. §16-205.1(c)(1) Except as noted above, a person cannot be compelled to submit to a chemical test. CandJP §10-309(a)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Yes⁵⁶⁰ Tran. §16-205.1 See also CandJP §10-302 et seq.

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI) (Yes/No):

No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

None

Administrative Licensing Action (Susp/Rev):

None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):

Fine of not more than **\$500** or imprisonment for not more than **2 months** or both if the person knowingly refused to take a test and state's attorney serves notice of the alleged test refusal on the defendant before the acceptance of a plea of guilty or *nolo contendere* or at least 15 days before trial in a circuit court or 5 days before trial in the district court, whichever is earlier.

Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension for 120 days**; second and subsequent refusals – **Suspension for 1 year**. A suspension may be modified or a restricted license

⁵⁶⁰ Under C and JP §10-305(a), a test for alcoholic content of the blood cannot be administered unless (1) the driver is unconscious and incapable of refusing a test, (2) the driver, because of injuries, has been taken to a medical facility or (3) breath test equipment is not available. The Court of Appeals of Maryland has held that, under this statute, if a driver agrees to submit to a breath test and the equipment is available but not a qualified operator, the driver may refuse to submit to blood test without incurring licensing action. Under these circumstances, a refusal to submit to a blood test is not considered to be a refusal to submit to a chemical test under the implied consent law. *Hyle v. MVA*, 702 A.2d 760 (Md. 1997)

may be issued if an offender who refused the test (or

took the test a BAC of 0.15 or greater) within 72 hours of the order of the suspension, elects in writing to participate in the “ignition interlock” program for at least 1 year. Tran. §16-05.1(a)(2)(b)(1) and (n)

Sanctions Following a Conviction for a DWI Offense

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

See Footnote No. ⁵⁶¹.

1) Driving while impaired⁵⁶² (misdemeanor): first offense – Not more than **2 months**; if a court suspends a sentence or stays a judgment of conviction, it must impose probation, require participation in treatment programs, and prohibit the defendant from operating a motor vehicle unless the vehicle has an alcohol ignition interlock system.

Subsequent offense⁵⁶³ – Not more than **1 year** ;

2) Driving while under the influence of alcohol/≥ .08 (misdemeanor): first offense – Not more than **1 year**; second offense⁵⁶⁴ – Not more than **2 years**; third and subsequent offense – not more than **3 years** Trans. §§21-902 and 27-101(c), (f) and (k)

3) A person < 21 years old operating vehicle in violation of the .02 BAC/BrAC license restriction (misdemeanor) – None Tran. §§27-101(b) and 27-102

First offense – **None**; second offense within 5 years – Imprisonment for not less than **5 days** or community service for not less than **30 days**; third or subsequent offense – Imprisonment for not less than **10 days** or community service for not less than **60 days**. 27-101 {Convictions for a crime committed in another State or federal jurisdiction that, if committed in this State, would constitute a Maryland DWI violation, are counted for purposes of the application of subsequent offender penalties. 21-902(e)}⁵⁶⁵

Mandatory Minimum Term:

Fine:

⁵⁶¹ Probation before judgment cannot be granted by a court for a sub. alcohol driving offense within 5 years. A prior offense includes offenses for which a person has received probation before judgment. Crim. Proc. §6-220(d)(1) and *State v. Shilling*, 577 A.2d 83 (Md. 1990) The record of a person who has been placed on probation before judgment for an alcohol driving offense cannot be expunged. Crim. Proc. §10-105(a)(3)

⁵⁶² Includes driving while impaired by drugs/alcohol and drugs/controlled substances. Tran. §§21-902(c) and (d) and 27-101(c) and (f)(1)

⁵⁶³ A previous offense includes **ANY** prior alcohol driving offense. Tran. §27-101(f)(2), (3) and (4)

⁵⁶⁴ The law does not place a time for determining a second or subsequent under the influence of alcohol/.08 offense where the first offense was also an under the influence of alcohol/.08 offense. However, for sentence enhancement purposes, a previous offense does include **ANY** prior driving while impaired offense committed within 5 years of an under-the-influence-of- alcohol/.08 offense. Tran. §27-101(k)(2)

⁵⁶⁵ Imprisonment includes confinement in an inpatient rehabilitation or treatment center. Tran. §27-101(j)

Amount (\$ Range):	<p>1) Driving while impaired: <u>first offense</u> – Not more than \$500; <u>subsequent offense</u> – Not more than \$500</p> <p>2) Driving while under the influence of alcohol \geq .08, <u>first offense</u> – Not more than \$1,000, <u>second offense</u> – Not more than \$2,000; <u>third and subsequent offense</u> – not more than \$3,000</p> <p>3) A person < 21 years old operating a vehicle in violation of the .02 BAC/BrAC license restriction (misdemeanor) – Not more than \$500 Tran. §§27-101(b) and 27-102</p>
Mandatory Min. Fine (\$):	None
Other Penalties:	
Community Service:	For a subsequent under the influence of alcohol \geq .08 offense conviction within 3 years - in lieu of the mandatory jail sentence, 80 hours of community service. Tran. §27-101(j)
Restitution (e.g., Victim’s Fund)	(1) The court may order a defendant to pay restitution. Crim Proc §11-603 (2) Also, a victim may receive payments (\leq \$45,000) under the Criminal Injuries Compensation Act. Crim. Proc §11-801 et seq.
Other:	Ignition Interlock. As a condition of probation, the court may order a defendant for 1-3 years (one year minimum) to operate only vehicles equipped with “ignition interlock” devices. If defendant registers a BAC of 0.15 or more, the court must order ignition interlock for at least one year. Crim. Proc. §6-221 and Tran. §§27-107 and 27-108
Administrative Licensing Actions Pre-DWI Conviction Licensing Action: Administrative Per Se Law:	Yes \geq .08 (BAC/BrAC) <u>First violation</u> – suspension 45 days ; <u>second or subsequent violation</u> – suspension 90 days . These suspensions are not mandatory under the following conditions. I. A restricted hardship license can be issued ⁵⁶⁶ if the licensee has (1) not had a previous admin. per se violation (within 5 years), (2) not had a prior alcohol offense ⁵⁶⁷ conviction (within 5 years) or (3) not refused to submit to a test under the implied consent law. II. A suspension may be modified or a restricted license may be issued if an offender participates in the “ignition interlock” program for at least 1 year. CandJP §10-307(a)(2) and Tran. §16-205.1

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC \geq .04 (2) has violated Tran. §21-902 or a similar Federal

⁵⁶⁶ The licensee may be required to participate in the “ignition interlock” program as a condition of restricted driving privileges. Tran. §16-205.1(n)(2) A person in this program may have the license suspension modified and be issued a restricted license. § Tran. 16-205(e)

⁵⁶⁷ A conviction within 5 years for either Driving While Under the Influence of alcohol \geq .08 or Driving While Impaired.

law or (3) refuses to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “disqualification” is for life. The lifetime disqualification is mandatory unless a reduced period is provided by Federal regulations. A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular driving privileges. In addition, a CMV operator, who has any “detectable” amount of alcohol in the system, must be placed “out-of-service” for 24 hours, CandJP §10-307(a) and Tran. §§11-103.1, 11-103.2, 11-109, 11-109.1, 11-111.1, 16-205.1(b)(1)(iii), 16-208.1, 16-812 and 16-813

Double Jeopardy: Based upon the same factual situation, a person subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Jones*, 666 A.2d 128 (Md. 1995)(cert. den., 516 U.S. 1173, 116 S.Ct. 1265, 134 L.Ed.2d 213 (1996)), and *Johnson v. State*, 622 A.2d 199 (Md. App. 1993)

Post DWI conviction Licensing Action:

Type of Licensing Action (Susp/Rev):

- I. Driving while impaired (of alcohol or alcohol and drugs), first offense – **Suspension**; second offense (within 3 years)⁵⁶⁸ – **suspension**; third and subsequent offense (within 3 years) – **Revocation**
- II. Driving while under the influence of alcohol/≥ .08 (or impaired by a controlled dangerous substance) – **Revocation**
- III. A person < 21 years old operating a vehicle in violation of the .02 BAC/BrAC license restriction – **suspension or revocation** Tran. §§16-205, 16-208 and 16-113(f)
- IV. Persons < 18 Years Old: (1) Driving while under the influence of alcohol/≥ .08 or while impaired by a “controlled dangerous substance” – **Revocation** (2) Driving while impaired by alcohol or any other drug– **Suspension**; Tran. §16-205

Term of License Withdrawal (Days, Months, Years, etc.):

- I. For Driving while impaired, first offense – Not more than **60 days**; second offense (within 3 years) – Not more than **120 days**
- II. For Driving while impaired - third and subsequent offense (within 3 years) **and** for all Driving while under the influence of alcohol/≥ .08 offenses (or impaired by a controlled dangerous substance), the period of revocation is based on the **number of previous revocations** a person has regardless of the basis⁵⁶⁹; the periods are as follows: first revocation- **6 months**; second revocation – **1 year**; third revocation-**18 months**⁵⁷⁰; fourth and subsequent revocation **2 years**.
- III. A person < 21 years old operating a vehicle in violation of the .02 BAC/BrAC license restriction **Suspension** – Not more than **1 year** or **Revocation**- Based on the number of previous revocations; see II

⁵⁶⁸ A previous offense includes a Driving While Under the Influence of Alcohol/≥ .08. Tran. §16-205(a)(2) and (d)

⁵⁶⁹ I.e., the previous revocations do not have to be alcohol-driving-offense related

⁵⁷⁰ License reinstatement only after the licensing agency is satisfied that it is safe to take such action. Tran. §16-208(b)

above. IV. Persons < 18 Years Old: (1) Driving while under the influence of alcohol \geq .08 or under while impaired by a “controlled dangerous substance” – **Revocation** in the same manner as an adult (2) Driving while impaired by alcohol or any other drug – first offense – **6 months**; second or subsequent offense – **1 year**

License Restrictions. I. If a person has been convicted of any combination of two or more drunk-driving offenses (within 5 years), the licensing agency must place a restriction on the person’s license that prohibits them from operating a motor vehicle with any amount of alcohol in the blood for 3 years. Tran. §16-113(g)(1) II. The licensing agency shall, when directed to do so by a court, place a restriction on a person’s license that prohibits them from operating a motor vehicle with any amount of alcohol in the blood. This restriction could apply to persons who have been convicted of any type of drunk-driving offense for the first time. Tran. §16-113(g)(2) III. In addition, the licensing agency may, when issuing a license, place a restriction on a person’s license that prohibits them from operating a motor vehicle with any amount of alcohol in the blood or prohibits them from driving a motor vehicle. This restriction may contain a requirement that the person participate in the “ignition interlock” program. Tran. §16-113(a)(1)(II) and (2) A BAC/BrAC \geq .02 is *prima facie* evidence that the person was operating a motor vehicle with alcohol in their body. C and JP §10-307(f) The sanctions for violating a restriction on a driver’s license are as follows: Jail – (1) violation of a licensing-agency-ordered restriction – **None** (2) – violation of a court-ordered restriction – not more than **2 years**; fine – Not more than **\$500**; licensing action– **suspension or revocation** – If suspension, not more than **1 year**; if revocation, the period is based on the **number of previous revocations** a person has regardless of the basis; the periods are as follows: **6 months** for a first revocation; **1 year** for a second revocation; **18 months** for third revocations; and **2 years** for fourth and subsequent revocations. Tran. §§16-113(f), 16-208, 27-101(b) and 27-102 **Point System.** A person who has been convicted of an alcohol driving offense can have the license either suspended or revoked either under Tran. §16-205 or under Tran. §16-401 et. seq. (the point system). Under the point system, a driver is assessed the following points for alcohol driving offense convictions: Driving While Impaired (by alcohol,

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drugs or a combination of alcohol and drugs) – **8 points** and Driving While Under the Influence of Alcohol/ \geq .08 (or while impaired by a controlled dangerous substance) – **12 points**. (1) Points assessed for any traffic law violation remain on a driver's record for two years. A person who accumulates 8 points is subject to a license suspension and an accumulation of 12 points results in license revocation. The higher point accumulations, 16 for suspension and 19 for revocation, allowed for persons who drive in the course of employment do not apply to drunk-driving offense violations. Tran. §16-405(b) and (c) The following suspensions apply for point accumulations related to Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs): first offense – **suspension** not more than **6 months**; second offense (at least 5 years after first) – **suspension** for not more than **9 months**; second offense (within 5 years) or third offense – **suspension** for not more than **12 months**; and fourth or subsequent offense – **suspension** for not more than **24 months**. Tran. §16-404(c)(2) A person who has accumulated the requisite number of points is subject to the following revocation periods. These periods are based on the **number of previous revocations** a person has been subjected to regardless of their basis: **6 months** for a first revocation; **1 year** for a second revocation; **18 months** for a third revocation; and **2 years** for a fourth or subsequent revocation. Tran. §16-208(b) **Special Note:** A person who has been convicted of two Driving While Impaired (by alcohol or drugs and alcohol) offenses within 2 years would accumulate 16 points on the driving record and be subject to license revocation instead of suspension. Persons < 18 years old – **Suspension** for **6 months** if accumulating 6 points; **suspension** for **1 year** if accumulating 2 additional points. Tran. §16-206(b) These suspensions may be modified (i.e., they are not mandatory). Tran. §16-206(c)(5) **Ignition Interlock.** Under Tran. §16-404.1, the licensing agency may establish an ignition interlock program for persons who have been convicted of alcohol related driving offenses. This program does not apply to persons who have been convicted of driving while under the influence of a controlled substance. A person who is subject to license suspension via the point system for a conviction of Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs) may be issued a restricted license by participating in the Ignition Interlock Program. Tran. §§16-404(c)(3) and 16-404.1(4)(i) A person who is subject to license revocation following a conviction for either Driving

While Impaired (by alcohol, drugs or a combination of alcohol and drugs) or for Driving While Under the Influence of Alcohol/Alcohol Per Se \geq .08) may have the license suspended in lieu of revocation by participating in the ignition interlock program. The suspension periods (or restricted license) imposed are the same as for Driving While Impaired. Tran. §16-404. 1(b)(4)(iii) A fourth or subsequent offender is considered an “habitual offender” and he/she cannot have his/her driving privileges restored until he/she has participated in this program for at least 24 mos. Tran. §16-404. 1(d) A court order requiring the use of an ignition interlock device is not affected by these provisions. Tran. §16-404. 1(f) Persons Under 21 Years Old. A person under 21 years old who is applying for a license following a conviction for any alcohol driving offense may be required to participate in the “ignition interlock” program for not more than 3 years. Tran. §16-113(a)(4) Persons Who Have Violated the Admin. Per Se or Implied Consent Laws. These persons may obtain restricted driving privileges if they participate in the “ignition interlock” program for 1 year. Tran. §16-205.1(n)(2), (3) and (4) Under separate provisions of law, a person who participates in the “ignition interlock” program may have the suspension modified and be issued a restricted license. Tran. §16-205(e)

Mandatory Minimum
Term of Withdrawal:

None Tran. §§16-205, 16-206(5), 16-208, 16-404.1 and 16-405

Other:
Rehabilitation:

Alcohol Education:

Yes Alcohol education/treatment required as a condition of probation. Any offender may be required to attend a driver improvement or an alcohol education program as a condition of reinstatement of their driving privilege. Crim Proc §6-219(c) and Tran. §16-212

Yes

Alcohol Treatment:

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory

No

Authority:
Terms Upon Which Vehicle
Will Be Released:

Miscellaneous Sanctions
Not Included Elsewhere:

Child Endangerment. I. Driving while under the influence of alcohol/alcohol per se⁵⁷¹ while

⁵⁷¹ “Under the influence of alcohol per se” is defined as a BAC/BrAC \geq .08 at the time of testing. Crim. Law §3-211(a)(2) and Tran. §11-127.1 The offense involves operating motor vehicle while under the influence per se.

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transporting a “minor”⁵⁷²: first offense – Jail not more than **2 years**/fine – not more than **\$2,000**; second offense⁵⁷³-Jail not more than **3 years**/fine – not more than **\$3,000**; third and subsequent offense – Jail not more than **4 years**/fine – not more than **\$4,000**. II. Driving while impaired by alcohol, drugs or a controlled dangerous substance while transporting a “minor”: first offense – Jail not more than **6 months**/fine – not more than **\$1,000**; second and subsequent offense – Jail not more than **1 year**/fine – not more than **\$2,000**. Tran, §27-101(q) **Negligent-Related Drunk Driving Which Causes a Life-Threatening Injury**.⁵⁷⁴ While under the influence of alcohol/alcohol per se-Misdemeanor-Jail not more than **3 years**/fine – not more than **\$5,000** II. While impaired by alcohol-Misdemeanor-Jail not more than **2 years**/fine – not more than **\$3,000** III. While impaired by drugs-Misdemeanor-Jail not more than **2 years**/fine – not more than **\$3,000**. IV. While impaired by a controlled dangerous substance-Misdemeanor-Jail not more than **2 years**/fine – not more than **\$3,000** Crim Law §3-211

Provisional Licensee. A provisional licensee is subject to the following **additional** sanctions, first alcohol driving offense – “driver improvement program” (mand); second alcohol driving offense – **Suspension – not more than 30 days**; third or subsequent alcohol driving offense –

Suspension/Revocation – not more than 180 days This action is not mandatory. Tran. §16-213

Alcohol-Restricted License. A person’s driving privileges may be restricted to operating motor vehicles without any alcohol in the blood. Tran. §16-113(a)(1)(ii)

Custodial Confinement. As a condition of probation, the court may order a person to a term of “custodial confinement” which can include (1) home detention or (2) inpatient treatment (e.g., alcohol or drug inpatient treatment). Crim. Proc. Art. §§6-219, 6-220 and 6-225

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes I. Death caused by driving a vehicle in a grossly negligent manner (felony) Crim. Law §2-209
II. Death caused by driving in a vehicle in a negligent manner either while under the influence of

⁵⁷² A “minor” is a person < 18 years old. Art. 1, §24(b)(2)

⁵⁷³ A prior offense includes any type prior drunk driving offense whether or not related to child endangerment.

⁵⁷⁴ For these offenses, 12 points are assessed and this results either in a **6-month** revocation, if this is a first revocation, **1 year** revocation if this is a second revocation or **18 months** if this is a third revocation. These revocations are not mandatory. Tran. §§16-208(b), 16-402(a)(29), 16-404(a)(3)(ii) and 16-405(a) and (b)

alcohol or under the influence of alcohol per se⁵⁷⁵
 (felony) Crim. Law §2-503
 III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony) Crim. Law §2-504
 IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony) Crim. Law §2-505
 V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony) Crim. Law §2-506

Sanctions:
 Criminal Sanction:
 Imprisonment (Term):

I. Death caused by driving a vehicle in a grossly negligent manner – Not more than **10 years.**
 II. Death caused by driving in a vehicle in a negligent manner either while under the influence of alcohol or under the influence of alcohol per se¹⁹ (felony) – Not more than **5 years.**
 III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony) – Not more than **3 years.**
 IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony) – Not more than **3 years.**
 V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony) – Not more than **3 years.**

Mandatory Minimum Term:
 Fine (\$ Range):

None
 I. Death caused by driving a vehicle in a grossly negligent manner – Not more than **\$5,000**
 II. Death caused by driving in a vehicle in a negligent manner either while under the influence of alcohol or under the influence of alcohol per se¹⁹ (felony) – Not more than **\$5,000**
 III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony) – Not more than **\$5,000**
 IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony) – Not more than **\$5,000**
 V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony) – Not more than **\$5,000**

Mandatory Minimum Fine:
 Administrative Licensing Action:
 Licensing Authorized and

None

⁵⁷⁵ “Under the influence of alcohol per se” is defined as a BAC/BrAC ≥ .08 at the time of testing. Crim. Law §2-501 and Tran. §11-127.1 The offense involves operating motor vehicle while under the influence per se.

Type of Action:	I. Drunk Driving Related Offenses – Revocation Tran. §16-205(b) II. Other Offenses – Revocation via the point system. Twelve points are assessed for these offenses. ⁵⁷⁶ Tran. §§16-402(a)(29), 16-404(a)(3)(ii) and 16-405(b)
Length of Term of Licensing Withdrawal:	6 months revocation, if this is a <u>first revocation</u> ; 1 year revocation, if this is a <u>second revocation</u> ; 18 months revocation, if this is a <u>third revocation</u> ; 2 years revocation, if this is a <u>fourth or subsequent revocation</u> . Tran. §16-208(b)
Mandatory Action— Minimum Length of License Withdrawal:	None. A revocation may be denied, canceled or modified if a defendant needs to operate a motor vehicle for employment purposes. Tran. §16-405(a)
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DW1 Offense:</u>	There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. Tran §16-303 But see Footnote No. ⁵⁷⁷ .
Sanction: Criminal: Imprisonment (Term):	Misdemeanor – <u>first offense</u> – Not more than 1 year ; <u>second and subsequent offenses</u> – Not more than 2 years Tran. §§16-303(c) and (d) and 27-101(h)
Mandatory Minimum Term of Imprisonment: Fine (\$ Range):	None <u>First offense</u> – Not more than \$1,000 ; <u>second and subsequent offenses</u> – Not more than \$1,000 Tran. §27-101(h)
Mandatory Minimum Fine: Administrative Licensing Actions:	None See Footnote No. ⁵⁷⁸ .

⁵⁷⁶ Under the point system, an accumulation of 12 points results in license revocation. However, if a person needs to use a vehicle for employment reasons, he/she is allowed to accumulate 19 points before his/her license is revoked.

⁵⁷⁷ I. If a person drives a motor vehicle with a suspended or revoked license (for an alcohol offense), the registration of the motor vehicle may be suspended for not more than 120 days. Tran. §§13-705.1, 16-303 and 27-101

II. In addition, if a person drives a motor vehicle with a suspended or revoked license (for an alcohol offense), the vehicle used in the offense may be either **impounded or immobilized** for not more than **180 days**. Hardship exceptions exist. Tran. §27-111(c)

III. A person convicted of a moving violation while the license is still revoked is subject to having the revocation extended for 1 year for a first violation, 18 months for a second violation and 2 years for a third or subsequent violation. This action is discretionary. Tran. §16-402(c)

⁵⁷⁸ If a person with a revoked license is convicted of any moving violation, the revocation may be extended as follows: first violation – 1 year; second violation -18 months; and, third or subsequent violation – 2 years. Tran. §16-402(c)

CMV Operation: I. It is a misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are as follows: first offense – imprisonment for not more than 6 months and/or fine for not more than \$1,000; second offense – imprisonment for not more than 1 year and/or a fine of not more than \$2,000; and, third or subsequent offense – imprisonment for not more than 2 years and/or a fine of not more than \$3,000. Tran. §§16-808(9) and 27-101(a) and

Type of Licensing Action
(Susp/Rev):

Revocation via the point system (12 points are assessed) Tran. §16-402(a)(30)

Length of Term of License
Withdrawal Action:

6 months if a first revocation; **1 year** if a second revocation; **18 months** if this is a third revocation; and **2 years** revocation, if this is a fourth or subsequent revocation. Tran. §16-208(b)

Mandatory Term of License
Withdrawal Action:

A revocation may be canceled or modified if employment or opportunity for employment would be adversely affected. Tran. §16-405(a)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:
Term of License Rev While
Under Habitual Offender Status:
Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

No

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests
on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to
the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

No

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

(s) II. The following sanctions apply to persons who violate a CDL out-of-service order. Under Tran. §16-812, a violator is subject to a CMV disqualification for the periods specified under Federal Regulations (49 CFR 383.51(d)). These periods are as follows: first violation – not less than 90 days; second violation within 10 years – not less than 1 year; and, third or subsequent violation within 10 years – not less than 3 nor more than 5 years. If the transportation of either hazardous materials or passengers was involved in the violation, the disqualification is as follows: first violation – not less than 180 days; subsequent violation within 10 years – not less than 3 nor more than 5 years. In addition, under Tran. §27-101.1, a violator is subject to a civil penalty of not less than \$1,000 nor more than \$2,500 as specified under Federal Regulations (49 CFR 383.53(b)(1)).

Minimum Age (Years) Sale/Purchase:	21 ⁵⁷⁹ Art. 2B, §12-108(a) and Crim. Law §10-117
Minimum Age (Years) Possession:	21 Art. 2B, §12-108(d) ⁵⁸⁰ and Crim. Law §10-114 There is an employment exception. However, a person under 18 years old “may not be engaged in the sale of alcoholic beverages.” Art. 2B, §12-302(a)(1)
Minimum Age (Years) Consumption:	None ⁵⁸¹
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	No
“Dram Shop Law” Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	No For cases denying liability in this area, see <i>Felder v. Butler</i> , 438 A.2d 494 (1981), <i>Fisher v. O’Connor’s, Inc.</i> , 452 A.2d 1313 (Md.App. 1982) (cert. den. by the Maryland Court of Appeals, 452 A.2d 1313), <i>Moran v. Foodmaker</i> , 594 A.2d 587 (Md.App. 1991), and <i>Wright v. Sue and Charles</i> , 749 A.2d 241 (Md.App. 2000).
Dram Shop Actions-Social Hosts:	No <i>Kuykendall v. Top Notch Laminates, Inc.</i> 520 A.2d 1115 (Md.App. 1987) (cert. den. by the Maryland Court of Appeals, 526 A.2d 954), <i>Hebb v. Walker</i> , 536 A.2d 113 (Md.App. 1988) (cert. den. 541 A.2d 964 (1988)) and <i>Wright v. Sue and Charles</i> , 749 A.2d 241 (Md.App.)(cert. denied 755 A.2d 1140 (2000))
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	Misdemeanor Art. 2B, §§10-401, 10-402, 12-108 and 16-503 See Footnote No. ⁵⁸²
Term of Imprisonment:	Not more than 2 years ⁵⁸³
Fine (\$ Range):	Not more than \$1,000
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Suspension or revocation Art. 2B, §10-401 For licenses issued by the Comptroller a monetary

⁵⁷⁹ It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to “misrepresent” or make a “false statement” about his/her age in order to obtain alcoholic beverages. Crim. Law §10-113

⁵⁸⁰ Article 2B, §12-108(d) provides that no licensee shall allow a person under 21 years old to either possess or consume alcoholic beverages on the licensed premises.

⁵⁸¹ Under Crim. Law §10-117, no one may furnish alcoholic beverages to a person under 21 years old except in cases where either such beverages are served by members of the immediate family in a private residence or as part of a religious ceremony.

⁵⁸² In addition to these sanctions, Maryland law also provides for additional sanctions (jail terms, fines or administrative actions) in certain local jurisdictions. See Art. 2B, §16-507 for details.

⁵⁸³ See Custodial Confinement.

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Length of Term of License Withdrawal:

compromise of not more than \$2,000 may be paid in lieu of a suspension. Art. 2B, §10-402.
The law does not specify a term of suspension for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 months**. The periods of license suspension/revocation may be longer for certain counties. Art. 2B, §10-404

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misdemeanor Art. 2B §§10-401, 10-402, 12-108 and 16-503

Term of Imprisonment:

Not more than **2 years**

Fine (\$ Range):

Not more than **\$1,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Suspension or revocation Art. 2B, §10-401
For licenses issued by the Comptroller, a monetary compromise of not more than \$2,000 may be paid in lieu of a suspension. Art. 2B, §10-402

Length of Term License Withdrawal:

The law does not specify at term of suspension for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 months**. The periods of license suspension/revocation may be longer for certain counties. Art. 2B, §10-404

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcohol Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes⁵⁸⁴ Drivers and passengers Crim. Law §10-125(a)

Anti-Consumption Law (Yes/No):

Yes Drivers only. Tran. §21-903, Crim. Law §10-125

⁵⁸⁴ The Maryland Legislature has granted municipal corporations the authority to adopt either ordinances or resolutions “to regulate the possession or consumption of alcoholic beverages in public places located within the boundaries of the municipal corporation.” Art. 2B, §19-104