

**COMPILATION  
OF  
MARYLAND  
ALCOHOL, CONTROLLED  
DANGEROUS SUBSTANCE, AND  
TOBACCO ABUSE LAWS  
AND  
SUMMARY OF  
1991-1994 LEGISLATION**

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**152208**



**SPECIAL COMMITTEE  
ON  
DRUG AND ALCOHOL ABUSE**

**1994**

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## HOUSE OF DELEGATES

CASPER R. TAYLOR, JR.  
SPEAKER

STATE HOUSE  
ANNAPOLIS, MARYLAND 21401-1991

Dear Readers:

Drug and alcohol abuse have been and continue to be problems that touch every segment of our society. Realizing the magnitude of these problems, the General Assembly has taken a number of steps to try to address the issues relating to drug and alcohol abuse in Maryland.

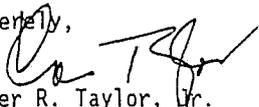
One of the steps taken was the appointment in 1987 of the Special Committee on Drug and Alcohol Abuse chaired by Delegate Pauline H Menes. That Committee was given a broad mandate to address the drug and alcohol abuse crisis.

In order to make it easier for legislators, educators, law enforcement officials, and other citizens with an interest in combatting drug and alcohol abuse to study and use the laws concerning drug and alcohol abuse, the Special Committee on Drug and Alcohol Abuse developed this compilation of State laws on the subject.

The compilation includes statutory provisions, executive orders, and regulations that relate to controlled dangerous substances and alcohol. In addition, in recognition of the many public health problems associated with tobacco and with nicotine addiction, the compilation includes a number of statutory provisions that relate to tobacco. For the most part, these statutory provisions relate to minors' access to tobacco products and smoking in public places.

I hope that this compilation will be a useful tool to any person who participates in the State's efforts to alleviate the problems that relate to drug and alcohol abuse.

Sincerely,

  
Casper R. Taylor, Jr.

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## **SUMMARY OF LEGISLATION (1991 THROUGH 1994)**

Many issues relating to drug and alcohol abuse were considered by the General Assembly during the 1991, 1992, 1993, and 1994 Sessions. The following is a brief summary of the significant legislative proposals in this area that were enacted during the past four years.

### **CONTROLLED DANGEROUS SUBSTANCES**

Chapter 157 of 1991 classified anabolic steroids as Schedule III controlled dangerous substances. These drugs are known to be abused by athletes interested in gaining weight and strength. They also have harmful side effects, including psychotic reactions. Chapter 362 of 1991 created a new crime for possession of a noncontrolled dangerous substance that a person reasonably believes to be a controlled dangerous substance. This law was intended to facilitate reverse sting operations in which law enforcement officers pose as street level drug dealers at commonly recognized drug distribution sites and "sell" or attempt to sell controlled dangerous substances in an effort to deter open-air crack markets and the purchase of other drugs.

Chapter 328 of 1992 increased the maximum penalty for the manufacture or distribution of LSD from 5 years to 20 years. Chapter 215 of 1993 added fentanyl to the list of controlled dangerous substances that it is illegal to import into Maryland. Fentanyl is a short-acting, highly potent, synthetic drug that is chemically similar to heroin. Chapter 542 of 1994 made possession of a forged or altered prescription with the intent to distribute a controlled dangerous substance a felony, rather than a misdemeanor. Chapter 119 of 1994 made it a felony for a person to bring a minor into Maryland for the purpose of using the minor to manufacture or distribute controlled dangerous substances.

### **ADVERTISING ALCOHOLIC BEVERAGES – BILLBOARDS AND BUILDINGS**

With legal effect only in Baltimore City, but of considerable interest elsewhere, Chapter 637 of 1993 was introduced to address the problem of the placement of advertisements for alcoholic beverages on the sides of buildings and other publicly visible locations in Baltimore City. The Act authorized the Mayor and City Council of Baltimore to adopt an ordinance that restricted the placement of signs, posters, placards, devices, graphic displays, or any other form of advertising on the sides of the building of the licensed premises. The Act specified that the City ordinance must be necessary for the promotion of the welfare and temperance of minors exposed to advertisements for alcoholic beverages placed in publicly visible locations, and the restrictions were required to not unduly burden legitimate business activities at licensed premises. Finally, the enactment prohibited the Mayor and City Council from restricting advertisements in a number of areas, for example, inside licensed premises and on commercial vehicles used for transporting alcoholic beverages.

### **AIDS PREVENTION – PILOT NEEDLE EXCHANGE PROGRAM – BALTIMORE CITY**

In 1993, the federal government completed the first comprehensive study of whether giving clean needles to injection drug addicts could help to prevent the spread of AIDS. The study included a review of needle exchange programs in the United States,

Canada, and Europe and concluded that needle exchange programs do in fact help prevent the spread of AIDS without resulting in any measurable increase in drug abuse in the community. As of September 1, 1993, 37 active needle exchange programs were operating in 29 cities in the United States.

There are approximately 40,000 injection drug users in Baltimore City. By some estimates, about one-quarter of those injection drug users are infected with HIV. In Baltimore City, approximately 61 percent of new HIV infections are attributed to intravenous drug use. AIDS is now the number one killer of 25 to 44 year olds in Baltimore City. The total lifetime cost of treating an adult AIDS patient is approximately \$102,000, with the cost of treating a child born with AIDS in the first year of life at approximately \$210,000.

Bolstered by the results of the federal study, the General Assembly enacted Chapter 360 of 1994 that authorized the Baltimore City Health Department to establish a 3-year AIDS Prevention Pilot Program for sterile needle and syringe exchange in Baltimore City. Like the needle exchange programs that were the subject of the federal study, the Pilot Program will provide for the one-to-one exchange by participants of used hypodermic needles and syringes for sterile ones. The Baltimore City Health Department expects to distribute sterile hypodermic needles and syringes to between 500 to 1,000 injection drug users in its first year of operation. With free, sterile hypodermic needles and syringes available, it is hoped that injection drug users will be less inclined to share used ones, and thus help prevent the spread of AIDS.

Chapter 360 provided immunity within Baltimore City from criminal liability for Program staff members and participants for possessing or distributing controlled paraphernalia or drug paraphernalia, if the possession or distribution is the direct result of authorized activities under the Program.

## **MOTOR VEHICLES**

### **Drunk and Drugged Driving**

Since enacting the administrative per se statute in 1989, the General Assembly has engaged mostly in fine tuning the laws intended to make the roads safer from those who drive while impaired from alcohol or drugs. Because this is one of the most publicized and significant issues with constituents, the General Assembly is annually confronted with many pieces of legislation in the area. Over the term, many important aspects of the State's drunk and drugged driving laws were broadened in scope, clarified, or amended to close loopholes.

### **Under-Age Drinking**

While prior law prohibited a person under 21 years of age from misrepresenting the person's age in order to obtain alcoholic beverages, Chapter 457 of 1991 established a new administration sanction aimed at reducing the number of violations of the law. The Act required the Motor Vehicle Administration (MVA) to suspend the license of a person under the age of 21 for alcoholic beverage code violations involving misrepresentation of a person's age through the use of a driver's license or other document purporting to be a driver's license.

Under the law as amended, the MVA is required to suspend the young person's license:

- (1) for 6 months, for a first offense; and
- (2) for a second or subsequent offense until the age of 21 years or for a period of 1 year, whichever period is longer.

The MVA was authorized by the Act to modify the suspension if the licensee is required to attend an alcohol treatment or prevention program or for work or educational purposes.

Chapter 561 of 1994 was enacted to allow the MVA to issue a restrictive license or to modify a driver's license suspension imposed on a licensee under the age of 21 who has failed an alcohol test under the administrative per se law if: (1) the licensee did not refuse to take the test; (2) the licensee does not have a prior conviction for drunk or drugged driving; and (3) the license is required for the purpose of attending a noncollegiate educational institution or a regular program at an institution of postsecondary education.

Chapter 561 added an additional circumstance under which the MVA may modify a suspension or issue a restrictive license. The Act was intended to assist a student under the age of 21 whose continued attendance at school is dependent upon driving.

#### **Subsequent Offender Penalties**

Under Chapter 584 of 1991, a conviction of driving while intoxicated (DWI) qualifies as a prior offense for the purpose of imposing penalties for a subsequent conviction of driving while under the influence of alcohol (DUI).

Under the law, the penalty for a person's first conviction of DUI is a fine of up to \$500 or imprisonment for up to 2 months or both. For a second or subsequent offense, the penalty is a fine of up to \$500 or imprisonment for up to 1 year or both. However, under the law prior to enactment of Chapter 584, a person was subject to the increased criminal penalties for a subsequent offense of DUI only if the person has a prior conviction of driving while under the influence, not if the prior offense was for DWI. The Act placed both offenses on equal footing for purposes of subsequent offender enhanced penalties.

Chapter 592 of 1994 required, for the purposes of the subsequent offender penalties for DWI, that a prior conviction of DUI be treated as a prior DWI conviction if it occurred within 5 years of the subsequent conviction of driving while intoxicated.

In addition to the penalties involving fines and possible incarceration, the MVA may revoke the driver's license of any person who is convicted of certain alcohol or drug related offenses connected with the operation of motor vehicles. The decision whether to revoke a person's license often hinges on the person's prior record. Chapter 521 of 1994 established that a conviction of any prior drunk or drugged driving offense will be considered to be a prior conviction for purposes of determining whether a driver's license should be revoked or suspended for a subsequent offender who is convicted of DWI or DUI.

Under prior law, the MVA did not consider a prior conviction of driving while intoxicated or driving while under the influence of a controlled dangerous substance to be a prior offense for purposes of suspending or revoking the driver's license of a subsequent offender convicted of driving under the influence of alcohol or drugs.

Chapter 521 was intended to remove inconsistencies in the law and to require the MVA to treat all alcohol and drug related driving offenses as prior offenses in determining whether the driver's license of a subsequent offender should be revoked or suspended.

### **Compulsory Test for Alcohol**

A legislative proposal in 1992 would have expanded the implied consent law to a compulsory chemical test of a person who is involved in an accident that results in the transportation of another person by emergency vehicle to a medical facility. The unsuccessful proposal would have authorized a police officer to direct a person to submit to a test for the presence of alcohol or drugs.

The issue was revisited again in 1994, with dramatically different results. Chapter 164 of 1994 required a person who is involved in a motor vehicle accident that results in a "life threatening injury to another person" to submit to a test to determine the person's alcohol concentration. The bill was championed by a group of sixth grade students from Anne Arundel County whose friend, Annie Davis, died of injuries received in a crash involving an automobile operator subsequently charged with driving while intoxicated. The students were motivated to close what they saw as a "loophole" in the law that allowed the operator to refuse to submit to an alcohol concentration test.

Prior law provided that a person may be compelled to submit to a test for blood alcohol concentration only if the person is involved in a motor vehicle accident that results in the death of 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 intoxicated or while under the influence of alcohol or controlled dangerous substances. Because 12 year old Annie Davis survived for more than a day after the accident, the driver of the other vehicle could not be compelled to take the test at the time of the accident, and a valuable piece of prosecutorial evidence was unavailable. Chapter 164 of 1994 expanded the scope of the compulsory test to make it applicable to any person who is involved in an accident that results in a life threatening injury to another person.

### **Alcohol and Drug Tests in General**

Chapter 609 of 1993 amended the administrative per se law which provides for the suspension of a driver's license, upon being detained on suspicion of driving while intoxicated or while under the influence of alcohol or drugs, for refusing to take a test to determine alcohol concentration or the drug or controlled dangerous substance content of a person's blood. The Act provided that an initial refusal to take a test may be withdrawn and subsequent consent may be given that the person's license is not suspended. The Act required the subsequent consent to be unequivocal and to be made in a timely manner and specified the factors to be considered by the Motor Vehicle Administration in determining if an initial refusal was properly withdrawn.

Upon being detained under suspicion of driving while impaired, the law requires a person to be advised of certain rights and penalties, which are designed to assist the person in making the decision whether or not to take a test for the presence of alcohol or drugs. This advice is given in the form of a document the person is asked to read and sign. Prior to enactment of Chapter 407 of 1993, the form described the administrative sanctions, including suspension of the person's driver's license, that would be imposed for refusing to take, or for failing a test to determine alcohol concentration or the drug or controlled dangerous substance content of the person's blood. Chapter 407 required the form, in advising the person of the administrative sanctions, to also advise the person that after refusal to take a test, the person is ineligible for modification of the resulting suspension or for the issuance of a restrictive license.

## **SMOKING**

Although the issues of a minor's access to tobacco products and smoking in public places were considered throughout the past 4-year term, these issues did not garner much attention until the 1993 and 1994 Sessions after the U.S. Environmental Protection Agency issued a report citing the hazards of secondhand smoke and government statistics revealed that 60 percent of all new smokers are 14 years of age or younger. In addition, these same statistics found that nearly 20 percent of the almost one billion packages of cigarettes purchased annually by teenagers under the age of 18 come from vending machines.

### **Minors' Access to Cigarettes**

In an effort to address just one aspect of these problems, Chapter 110 of 1994 increased the penalties for any person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes to a minor. Chapter 110 added new prohibitions on these persons by prohibiting them from distributing to a minor: (1) any tobacco product, unless the minor is acting solely as the agent of the minor's employer, who is in the business of distributing tobacco products; (2) cigarette rolling papers; or (3) a coupon redeemable for any tobacco product. The Act also provided that a minor may not: (1) use or, unless acting as the agent of the minor's employer within the scope of employment, possess any tobacco product or cigarette rolling papers; or (2) use any falsified identification, or use any identification other than the minor's own, for the purpose of obtaining or attempting to obtain tobacco products or cigarette rolling papers. Under the Act, if a law enforcement officer has probable cause to believe that a minor is using or possessing, or has used or possessed tobacco products or cigarette rolling papers, the officer is required to issue a citation to the minor. Chapter 110 of 1994 specifies the penalties that may be imposed on a minor found to have committed a violation, which include requiring the minor to attend a smoking cessation clinic or assigning the minor to a supervised work program for a specified number of hours.

## **DRUG AND ALCOHOL ABUSE TREATMENT**

### **Minors**

Prior to the enactment of Chapters 494 and 495 of 1992, a minor had the same capacity as an adult to consent to medical treatment if the minor was married or was the parent of a child. A minor also had the same capacity as an adult to consent to medical

treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual. Similar rights are extended to minors in areas of treatment for or advice about drug abuse, alcoholism, venereal disease, pregnancy, and contraception other than sterilization.

Chapters 494 and 495 of 1992 established that the capacity of a minor to consent to treatment for drug or alcoholism did not include the capacity to refuse inpatient treatment for drug abuse or alcohol abuse for which the minor's parent or guardian has given consent. The Acts authorized the parent or guardian of a minor to apply, on behalf of the minor, for admission of the minor into an inpatient alcohol or drug abuse program or facility. As a condition of retention in the alcohol or drug abuse program or facility, Chapters 494 and 495 required that the program or facility to which the minor was admitted give the parent or guardian of the minor who applied for admission to the program or facility the right to be actively involved in the minor's treatment. In addition, the facility to which the minor was admitted must note on the application whether or not the minor was admitted without the minor's consent. This change in the law was to terminate in June, 1995, but Chapter 175 of 1994 repealed the termination date.

### **Pregnant and Postpartum Women**

Chapter 446 of 1993 required the Alcohol and Drug Abuse Administration to develop a referral procedure that included a provision mandating alcohol abuse and drug abuse treatment programs or facilities that are owned or operated by the State or any of its political subdivisions, or that receive partial or full funding from the State, to operate an alcohol abuse and drug abuse treatment program to accept pregnant and postpartum women for treatment on a priority basis. In addition, health maintenance organizations under contract with the Secretary of Health and Mental Hygiene to provide services to eligible Medical Assistance Program recipients must: (1) develop a procedure that will enable a substance abusing pregnant woman enrolled in the health maintenance organization to disenroll and to enter an alcohol abuse and drug abuse treatment program during the same 24-hour period; or (2) provide coverage for alcohol abuse and drug abuse treatment program services through the health maintenance organization.

# MARYLAND DRUG AND ALCOHOL ABUSE LAWS

## I. CRIMES AND PROCEDURE

### A. ALCOHOL

#### **Article 2B – Alcoholic Beverages**

##### **Section 1-101. Declaration of Policy.**

(a) (1) It is the policy of the State of Maryland that it is necessary to regulate and control the manufacture, sale, distribution, transportation and storage of alcoholic beverages within this State and the transportation and distribution of alcoholic beverages into and out of this State to obtain respect and obedience to law and to foster and promote temperance.

(2) It is the legislative intent that that policy will be carried out in the best public interest by empowering the Comptroller of the Treasury, the various local boards of license commissioners and liquor control boards, all enforcement officers and the judges of the various courts of this State with sufficient authority to administer and enforce the provisions of this article.

(3) The restrictions, regulations, provisions and penalties contained in this article are for the protection, health, welfare and safety of the people of this State.

(4) It also is the policy of the State to tax alcoholic beverages as provided in the Tax – General Article, and to deny to any political subdivision in this State the power or authority, either by public general law or by public local law, to impose any tax on distilled spirits, beer, wine and all other alcoholic beverages on and after July 1, 1955.

(b) (1) It continues to be the policy of this State to authorize the exercise of the powers and authority provided by this article for the purpose of displacing or limiting economic competition by regulating or engaging in the sale or distribution of alcoholic beverages or both in order to obtain respect and obedience to law, to foster and promote temperance, to prevent deceptive, destructive, and unethical business practices, and to promote the general welfare of its citizens by controlling the sale and distribution of alcoholic beverages.

(2) The officials and agencies granted powers and authority by this article to regulate and engage in the alcoholic beverages industry may displace or limit economic competition by regulating and engaging in the sale or distribution of alcoholic beverages or both on an exclusive basis as provided in this article and may adopt and enforce regulations authorized by this article notwithstanding any anticompetitive effect.

(3) The powers granted to any official or agency pursuant to this subsection may not be construed:

(i) To grant to the official or agency powers in any substantive area not otherwise granted to the official or agency by other public general or public local law;

(ii) To restrict the official or agency from exercising any power granted to the official or agency by other public general or public local law or otherwise;

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(iii) To authorize the official or agency or officers of the agency to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

(iv) To preempt or supersede the regulatory authority of any State department or agency under any public general law.

### **Section 12-108. Sales to Minors and Intoxicated Persons Prohibited.**

(a) (1) A licensee licensed under this article, or any employee of the licensee, may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age:

(i) For the underage person's own use or for the use of any other person; or

(ii) To any person who, at the time of the sale, or delivery, is visibly under the influence of any alcoholic beverage.

(2) Any licensee or any employee of the licensee who is charged with a violation of this subsection shall receive a summons to appear in court on a certain day to answer the charges placed against that person. The person charged may not be required to post bail bond pending trial in any court of this State.

(3) (i) A licensee or employee of the licensee violating any of the provisions of this subsection is guilty of a misdemeanor and, upon conviction, suffers the penalties provided by § 16-503 of this article.

(ii) A licensee or employee of the licensee who is charged with selling or furnishing any alcoholic beverages to a person under 21 years of age may not be found guilty of a violation of this subsection, if the person establishes to the satisfaction of the jury or the court sitting as a jury that the person used due caution to establish that the person under 21 years of age was not, in fact, a person under 21 years of age if a nonresident of the State.

(iii) If the person is a resident of the State of Maryland, the licensee or employee of the licensee may accept, as proof of a person's age, the display of the person's driver's license or identification card as provided for in the Maryland Vehicle Law.

(iv) Except as provided in subsection (e) of this section, if any licensee or employee of the licensee is found not guilty, or placed on probation without a verdict, of any alleged violation of this subsection, this finding operates as a complete bar to any proceeding by any alcoholic beverage law enforcement or licensing authorities against the licensee on account of the alleged violation.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(b) (1) A licensee under the provisions of this article, or any of his employees, in Worcester County, may not sell or furnish any alcoholic beverages to a person under 21 years of age, either for his own use or for the use of any other person, or to any person who at the time of the sale, or delivery, is visibly under the influence of alcoholic beverages.

(2) Any licensee or employee of a licensee who is charged with a violation of this subsection may be proceeded against in Worcester County either upon a charging document duly issued by the District Court for Worcester County or by an indictment duly returned by the grand jury of that county. Any licensee violating any of the provisions of this subsection is guilty of a misdemeanor and, upon conviction, shall suffer the penalties provided by § 16-503 of this article. However, a licensee charged with selling or furnishing alcoholic beverages to an underage person may not be found guilty of a violation of this subsection if the person establishes to the satisfaction of the jury or court sitting as a jury that he used due caution to establish that the person was not, in fact, underage. This subsection applies solely to Worcester County and stands in place and stead of subsection (a) of this section as the subsection applies generally to the counties of this State.

(c) (1) This subsection applies only in the following counties:

- (i) Carroll County;
- (ii) Frederick County;
- (iii) Harford County;
- (iv) Somerset County;
- (v) Talbot County; and
- (vi) Wicomico County.

(2) A licensee under the provisions of this article, or any of the licensee's employees, may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age, either for that person's own use or for the use of any other person, or to any person who, at the time of such sale or delivery, is visibly under the influence of any alcoholic beverage.

(3) The Liquor Control Board of Harford County may not find a licensee guilty of violating this section if the licensee or employee of the licensee who is accused of selling or furnishing alcoholic beverages to a person under 21 years of age exercised due caution to establish that the person was not, in fact, a person under 21 years of age.

(4) In Harford County, a licensee who is charged with selling or furnishing alcoholic beverages to an underage person may not be found in violation of paragraph (2) of this subsection if the licensee establishes to the satisfaction of the judge, jury, or Liquor Control Board that the licensee used due caution to establish that the person was not, in fact, underage.

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(5) The provisions of subsection (a) of this section do not apply to the counties which are listed in paragraph (1) of this subsection and the law in these counties shall remain in the same force and effect as if not amended by this section.

(d) No licensee, proprietor, or operator of any establishment dispensing alcoholic beverages shall permit the consumption or possession of any alcoholic beverages by a person under the age of twenty-one years upon said premises no matter by whom such alcoholic beverages shall have been purchased or from whom obtained. A violation of this subsection is a misdemeanor punishable by a fine of not more than \$50 in addition to any other penalties provided under this article.

(e) Notwithstanding any other provision of this section to the contrary, in Queen Anne's County, if any licensee or employee of the licensee is placed on probation before judgment for any alleged violation of subsection (a) of this section, this finding may not operate as a bar to any proceeding brought by the Board of License Commissioners against the licensee on account of the alleged violation.

(f) In Howard County, the granting of probation before judgment to a licensee or employee of the licensee for violating subsection (a) of this section does not bar the Board of License Commissioners from proceeding administratively against the licensee for the violation.

**Section 12-109. Record of Documentary Proof of Purchaser's Age; Defense to Prosecution for Sale to Person not of Legal Age.**

(1) Every licensee under the provisions of this article may cause a book to be kept and such licensee or his employee, or both, may require any person who has shown documentary proof of age, which substantiates his age to allow the legal purchase of alcoholic beverages, to sign such book if the age of such person is in question. The book shall contain copies of the following form upon which the licensee or his employee shall record all information required by each and all sections of the form:

Date..... 19....

To Be Filled In By Seller

IDENTIFICATION (CHECK ALL SHOWN)

Driver's License .....	<input type="checkbox"/>	Army I.D. Card .....	<input type="checkbox"/>
Birth Certificate .....	<input type="checkbox"/>	Coast Guard I.D. Card .....	<input type="checkbox"/>
Service Discharge.....	<input type="checkbox"/>	Marine I.D. Card .....	<input type="checkbox"/>
Draft Card .....	<input type="checkbox"/>	Navy I.D. Card .....	<input type="checkbox"/>
Air Force I.D. Card.....	<input type="checkbox"/>		
Other (Specify) .....			

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

DESCRIPTION OF PURCHASER

Height..... Weight.....  
Color of Eyes..... Color of Hair.....  
Outstanding Features .....  
.....  
.....  
.....  
.....  
Seller's Signature .....

To Be Filled in by Prospective Purchaser

I declare I am of legal age to purchase fermented malt beverages or intoxicating liquor, and that I am subject to arrest and prosecution for misrepresenting my age.

Print full name.....  
Street address.....  
City..... State.....  
Signature.....

(2) The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age shall constitute prima facie evidence of innocence and a defense to any prosecution therefor:

(a) That the purchaser falsely represented in writing and supported with other documentary proof that he was of legal age to purchase alcoholic beverages.

(b) That the appearance of such purchaser was such that an ordinary and prudent person would believe him to be of legal age to purchase alcoholic beverages.

(c) That the sale was made in good faith and in reliance upon the written representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 12-110. Sales to Drunkards, etc.**

(a) A licensee under the provisions of this article, or any of his employees, may not knowingly sell, barter, furnish, or give any intoxicating beverages to a habitual drunkard, or to a mentally deficient person, or to any person whose parent or parents, guardian, husband, wife, son, daughter, brother, or sister shall have given notice in writing, that such person is of intemperate habits, or of unsound mind, or on account of his or her physical condition and request the licensee in writing, not to sell, barter, furnish or give any intoxicating beverages to him or her; and the word "knowingly", as to habitual drunkards shall be construed to mean such knowledge as a reasonable man would have under ordinary circumstances, from the habits, appearances or personal reputation of such individual. A licensee violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding \$50.00 for the first offense and for each succeeding offense shall be fined not exceeding \$100.00 or imprisoned in the county jail for not more than 30 days, or be fined and imprisoned in the discretion of the court.

(b) This section shall apply only to Allegany, Carroll, Charles, Harford, Kent, Montgomery, Queen Anne's and Washington Counties. Provided, that in Allegany County and Montgomery County the penalty for a violation shall be a fine not in excess of \$1,000, or confinement in the county jail, or house of correction for a period not to exceed 2 years, or fine and imprisonment in the discretion of the court.

### **Section 12-111. Loitering About Place of Business Prohibited.**

(a) A licensee under this article may not permit any person not designated under § 1-102(a)(6) of this article to loaf or loiter about the place of business for which the license is issued.

(b) Restaurants may, however, serve meals without alcoholic beverages to any person.

### **Section 12-201. Allegany County.**

(a) This section applies only in Allegany County.

(b) (1) A licensee may employ any person between the ages of 18 and 21 years for the general purposes of employment.

(2) A person may not sell or serve alcoholic beverages except beer and light wine.

(3) In order to be permitted to sell or serve alcoholic beverages other than beer and light wine, a person shall be 21 years of age or older.

(c) A licensee may not allow a person not designated under § 1-102(a)(6) of this article to loaf or loiter about the place of business for which the license is issued.

(d) A manufacturer or wholesaler may not sell any beer to any retail dealer except for cash on delivery. No suit or action ex contractu to enforce or collect any claim for credit extended in violation of this section shall be maintained in this State.

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(e) A licensee may not allow any gambling or gaming that is prohibited by law upon the premises for which the license is issued.

(f) A licensee may not allow any disorderly or disreputable persons to congregate at the place for which such license is granted.

(g) A licensee, holding a license under this article for the sale of alcoholic beverages by clubs, may not let the privilege granted under the license to any person by any manner of agreement under which the person to whom the privilege might be let could make a profit from it.

(h) All sales of alcoholic beverages by retail dealers shall be for cash only, and no suit may be maintained by any retail dealer against any person for alcoholic beverages which have been sold on credit.

(i) (1) In accordance with the provisions of paragraph (2) of this subsection, Class C and Class D licensees may permit persons under age 21 on the premises to hold or attend a dance or other function at which persons under age 21 may be present.

(2) (i) Alcoholic beverages may not be sold at the function nor may any alcoholic beverages be present within the room where the function is being held.

(ii) The sponsor of the function shall provide appropriate adult supervision at the function.

(j) (1) A person may not display or drink in any bar, restaurant, tavern or any other licensed place any alcoholic beverages other than those which may lawfully be sold by the licensee of the licensed place.

(2) Any person who drinks or displays any such beverage in violation of the provisions of this subsection is guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$50.

(3) For the purposes of this section, "premises" includes any building, parking lot, terrace or grounds which form an integral part of the licensed premises.

(4) Any premises licensed for the sale of beer only or for the sale of beer and wine only shall have posted at least four conspicuous notices on the premises with the following words: "Unlawful to drink or expose liquor upon these premises."

(k) Any licensee or other person, upon indictment and conviction of violation of any provisions of this section, shall be fined not more than \$1,000, or shall be imprisoned for up to 2 years, or both.

### **Section 12-202. Anne Arundel County.**

(a) In Anne Arundel County no holder of any class of alcoholic beverage license or the holder of a club license shall permit the playing of music of any kind (except one radio speaker or one television screen), or dancing, floor shows, or any other similar type of entertainment on the licensed premises or on adjacent property over which the licensee has ownership or control, except:

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(1) Any holder of a Class B, Class D, or Class H license shall be permitted to play recorded music of any kind, or live music with no more than two musicians if the licensee obtains a special music license. A special music license may be issued in the same manner as any other special license. The annual fee for the license shall be \$100. Dancing, floor shows, or other similar live entertainment may not be permitted.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, any holder of a Class B, Class D or Class H license shall be permitted to have music, dancing and other legal forms of entertainment, provided the licensee obtains a special dancing license which shall be issued in the same manner as any other special license. The annual fee shall be \$400 when issued to a licensee holding a beer, wine and liquor license and \$200 when issued to a licensee holding a beer and wine license.

(ii) A Class H license that is located within 1,000 feet in a straight line from entry to entry from a church or school may not obtain a special dancing license.

(3) Any holder of a Class C license shall be permitted to have music, dancing and other legal forms of entertainment, provided the licensee obtains a special dancing license which shall be issued in the same manner as any other special license at no additional charge.

(4) All special licenses set forth in paragraphs (1), (2), and (3), above shall be authorized by the Board of License Commissioners for Anne Arundel County only when the Board finds:

(i) That the use of the licensed premises for such purposes shall not be in violation of any fire, health, or building regulation of Anne Arundel County,

(ii) That the applicant can adequately control the persons using the licensed premises,

(iii) That the granting of such special license is necessary for the accommodation of the public,

(iv) That the operation of the premises under such special license will not unduly disturb the peace of the residents of the neighborhood in which the place of business is located, and

(v) That in the opinion of the Board the granting of such special license will not be detrimental to the general public welfare.

(b) (1) It is unlawful for any licensee or other person to sell spirituous, fermented or intoxicating liquor or to sell, give directly or indirectly, dispose of, barter, furnish, hand over or deliver, within the corporate limits of the City of Annapolis, or within 5 miles of the City, any alcoholic beverages other than beer and light wine in any quantity whatever to any person under the age of 21 years for use by the underage person or for the use of any other person, either with or without the written order or consent of the parent or guardian of the person.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) Any person violating the provisions of this subsection is guilty of a misdemeanor, and upon conviction shall be fined not more than \$100, or be imprisoned in jail for not more than 60 days, or be both fined and imprisoned in the discretion of the court.

(3) If any underage person willfully represents that he is of full age and obtains any spirituous liquors, and the person selling the spirituous liquor is able to prove at the trial such misrepresentation, and that due caution was used in ascertaining the age of the underage person before giving the alcohol to the underage person and that in the exercise of reasonable caution he was deceived by the use of documentary evidence and that for this reason he was unable to ascertain that the underage person was in fact an underage person, then the person selling to the underage person shall be acquitted of the charge.

(c) No manufacturer or wholesaler, wherever he be located in Maryland, shall sell any beer to any retailer except for cash on delivery. Cash deposits for returnable containers shall be required at the time of delivery or sale. In addition to currency, checks accepted for payment which are not postdated and are promptly deposited for collection shall also be deemed to be cash. No suit or action ex contractu to enforce payment of any claim for credit extended, or to enforce payment of any check given for payment in violation of this section, shall be maintained in this State.

(d) In Anne Arundel County, a person 18 years of age or older may serve alcoholic beverages while acting in the capacity of a waiter or waitress. Persons under age 21 may not act as a bartender or barmaid or in any solely bar-related capacity, notwithstanding any provisions in this article to the contrary.

### **Section 12-202.1. Anne Arundel County – Windows.**

In Anne Arundel County a holder of a beer, wine and liquor license, Class D, for the sale of alcoholic beverages on any premises, may not sell or permit to be sold or furnished upon any premises, any alcoholic beverages, except in a room having one or more plain glass windows on the street or highway. This enables persons standing on the ground or highway to observe the interior of the premises at all hours when the sales are prohibited. During those hours any curtain, blind or other obstruction may not be placed before the window or windows.

### **Section 12-203. Baltimore City – Adult Entertainment.**

(a) In this section "adult entertainment" means:

(1) With respect to attire and conduct:

(i) Employment or use of any person in the sale or service of alcoholic beverages in or upon the licensed premises while the person is unclothed or in attire, costume, or clothing so as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(ii) Employment or use of the services of any hostess or other person to mingle with the patrons while the hostess or other person is unclothed or in attire, costume, or clothing as described in subparagraph (i) of this paragraph.

(iii) Encouragement of or permitting any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person.

(iv) Permitting any employee or person to wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair, or any portion of it.

(2) With respect to entertainment provided:

(i) Permitting any person to perform acts of or acts which simulate:

1. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.

2. The touching, caressing, or fondling of the breast, buttocks, anus, or genitals.

3. The displaying of the pubic hair, anus, vulva, or genitals.

(ii) Permitting any entertainer whose breasts and/or buttocks are exposed (subject to the restrictions of subparagraph (i) of this paragraph) to perform closer than 6 feet from the nearest patron.

(iii) Permitting any person to use artificial devices or inanimate objects to depict, perform, or simulate any activity prohibited by subparagraph (i) of this paragraph.

(3) Exhibiting or showing any motion picture film, still picture, electronic reproduction, or other visual reproduction depicting:

(i) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.

(ii) Any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals.

(iii) Scenes where a person displays the vulva, or anus, or the genitals.

(iv) Scenes where artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

(b) In Baltimore City, the Board of License Commissioners may not authorize nor may the holder of any class of alcoholic beverages license permit adult entertainment on the licensed premises or on adjacent property over which the licensee has ownership or control.

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(c) Upon a finding by the Board of License Commissioners that a violation of this section has occurred, the Board shall impose a suspension or revocation of the license, fine, or both.

(d) This section does not apply to any licensee that offers adult entertainment as of May 31, 1993 or the transferee of the license for the same premises if the transferee continues to offer adult entertainment.

### **Section 12-204. Baltimore County.**

In Baltimore County a holder of a beer, wine, and liquor license, Class D, for the sale of alcoholic beverages on any premises, shall provide an entrance to the premises which shall be unlocked at all times during which sales are being made or while consumption is occurring.

### **Section 12-206. Caroline County.**

(a) In Caroline County a Class A beer, wine, or liquor licensee may not allow persons under the age of 18 to engage in pool, billiards, shuffleboard, or the playing of pinball or console machines, or in any other game of chance or skill in the licensed establishment unless those persons under 18 are accompanied by a parent or legal guardian.

(b) A licensee, on indictment and conviction of a violation of this section is guilty of a misdemeanor and shall be subject to a fine of not less than \$50 or imprisonment for not more than 30 days, or both.

### **Section 12-209. Charles County.**

In Charles County no licensee and no agent, servant or employee of said licensee shall be permitted to sell any alcoholic beverages except in a room having one or more plain glass windows or doors so as to enable persons standing on the outside to observe the interior of the premises at all hours, and no curtain, blind, screen or other obstruction shall be placed before such windows, or doors. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon trial and conviction shall be subjected to a fine of not less than \$50 nor more than \$250, or may be confined in the county jail or in the house of correction for not less than 60 days or both, in the discretion of the court.

#### **Section 12-209.1. Charles County - Go Cups.**

In Charles County, a retail alcoholic beverages licensee may not sell or give any person or otherwise provide any person with a cup commonly known as a "go cup" for off-premises use for consuming alcoholic beverages.

#### **Section 12-209.2. Age of Persons Serving Alcoholic Beverages in Charles County.**

In Charles County a person 18 years of age or older may serve alcoholic beverages in restaurants in connection with serving of a meal. Persons under 21 years of age may not act as bartender or barmaid or in any solely bar-related capacity in Charles County.

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**Section 12-210. Dorchester County.**

(a) In Dorchester County, no manufacturer or wholesaler shall sell any beer to any retail dealer except for cash on delivery. No suit or action ex contractu to enforce or collect any claim for credit extended in violation of this section shall be maintained in this State.

(b) It is unlawful for any licensee under this article to allow a person not designated in § 1-102(a)(6) of this article to loaf or loiter about the place of business for which the license is issued. Violation of this subsection is punishable by a fine not to exceed \$100.

**Section 12-211. Frederick County.**

In Frederick County no manufacturer or wholesaler shall sell any beer to any retail dealer except for cash on delivery. No suit or action ex contractu to enforce or collect any claim for credit extended in violation of this section shall be maintained in this State.

**Section 12-212. Garrett County.**

(a) In Garrett County licensees shall sell beer for cash only and no suit may be maintained by any retail dealer against any person for beer which has been sold on credit. It is unlawful for any licensee to allow any person not designated under § 1-102(a)(6) of this article to loaf or loiter about his place of business.

(b) It is unlawful for any liquor licensee under this article to employ any person under the age of 18 years.

(c) In Garrett County a manufacturer or wholesaler may not sell any beer to any retail dealer except for cash on delivery. A suit or action ex contractu to enforce or collect any claim for credit extended in violation of this section may not be maintained in this State.

**Section 12-213. Harford County.**

(a) In Harford County it shall be the duty of all holders of "on-sale" licenses to keep complete and accurate books of account of their receipts and expenditures in such form as may be prescribed by the Liquor Control Board, showing in detail the daily receipts from the sale authorized therein; and said licensees shall also procure vouchers or purchase slips for all alcoholic beverages, food or other commodities and items bought and permitted to be sold therein, which said books, accounts and records shall be open at all times to inspection by the said Board or any officer or inspector appointed by the said Liquor Control Board for that purpose.

(b) All licensees shall make such reports to the Liquor Control Board of all purchases and sales of alcoholic beverages as may be required by the regulations of said Board, and if it is shown by such reports or by investigation by said Board, said officers,

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

or by any other person, that any licensee is violating the provisions of this article, it shall be the duty of said Board to summon such licensee before it, for a hearing. If at such hearing the charges are sustained, the license of such licensee shall immediately be revoked.

(c) For the purposes of the application of the provisions of this article in Harford County the word "premises" shall be construed to include any building, parking lot, terrace or grounds which form an integral part of the licensed premises.

(d) Notwithstanding the provisions of § 12-107 or of any other contrary provisions of this article, the possession of alcoholic beverages upon the premises of a licensee under the provisions of this article is not unlawful under any of the following conditions:

(1) When the alcoholic beverages are owned by a member of a club and are consumed upon the premises of the club, which is licensed for the sale of beer and light wine or beer, wine and liquor, under the provisions of this article.

(2) When the alcoholic beverages have been brought upon the premises of an "on-sale" restaurant licensed for "on-sales" under the provisions of this article, for consumption and use in a private dining room at a private gathering, so long as the alcoholic beverages have not been furnished by the licensee of the restaurant.

(3) When the alcoholic beverages have been brought upon the premises of a racetrack licensed under the provisions of the Maryland Horse Racing Act, and the track is licensed for the sale of alcoholic beverages under this article. However, it is lawful if the alcoholic beverages have been furnished by the licensee.

(4) When a dance or social event is held on the premises of a Class C licensee and that dance or social event is advertised as being "Bring your own" (BYO).

(5) When a dance or social event is held on the premises of a Class C licensee by a member of the club, or by a guest sponsored by a club member.

(e) In Harford County a licensee under this article may not:

(1) Employ any person under 18 years of age for the purposes of selling or serving alcoholic beverages; or

(2) Permit any person under 18 years of age to sell or serve alcoholic beverages.

### **Section 12-214. Howard County.**

In Howard County it is unlawful for any "on-sale" licensee to allow persons under the age of 18 years to engage in pool, billiards, shuffleboard, or the playing of pinball or console machines or in any other game of chance or skill in their licensed establishment unless those persons under 18 years are accompanied by a parent or guardian. Any licensee violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not more than \$100 or imprisoned not more than 30 days.

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### **Section 12-216. Montgomery County.**

(a) In Montgomery County the holders of beer licenses, Classes A, B, C, and D and beer and light wine licenses, Classes B, C, and D and beer, wine and liquor licenses, Classes B and C, shall not be authorized to sell any alcoholic beverages, except those purchased from the Board of Liquor Control for Montgomery County.

(b) It shall be unlawful for any druggist or apothecary using or dispensing alcoholic beverages under the provisions of this article to use or dispense any such beverages except those purchased from the Liquor Control Board for Montgomery County. If any person, persons, house, company, association or body corporate shall violate any of the provisions of this subsection, he, she, it or they shall, upon each and every conviction, forfeit and pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2,000.00), and the cost of prosecution and be confined in the Maryland House of Correction for not less than three months nor more than two years or both fine and imprisonment in the discretion of the court.

### **Section 12-217. Prince George's County.**

In Prince George's County a holder of any license authorizing the sale of alcoholic beverages at retail may not sell any alcoholic beverages except for cash and a manufacturer or wholesaler may not sell any beer to any retail dealer except for cash on delivery. Cash deposits for returnable containers shall be required at the time of delivery or sale. For the purposes of this section, in addition to currency, checks accepted for payment which are not postdated and are promptly deposited for collection by the licensee shall also be deemed to be cash. No suit or action ex contractu to enforce or collect any claim for credit extended, or to enforce payment of any check given for payment for alcoholic beverages in violation of this section, shall be maintained in this State. Any check given in payment for alcoholic beverages to any licensee coming under the terms of this section, which shall be returned uncollected, shall be deemed prima facie evidence in any civil case of a violation of this section.

Any licensee, manufacturer, or wholesaler violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$500 or to imprisonment for not more than 6 months in the House of Correction or jail, or fined and imprisoned.

### **Section 12-219. St. Mary's County.**

In St. Mary's County a person 18 years of age or older may serve alcoholic beverages in restaurants in connection with serving of a meal. Persons under 21 years of age may not act as bartender or barmaid or in any solely bar-related capacity in St. Mary's County.

### **Section 12-222. Washington County.**

In Washington County no holder of any license authorizing the sale of alcoholic beverages at retail shall sell any alcoholic beverages except for cash unless such alcoholic beverages are delivered to the purchaser at a place designated by the purchaser other than the premises of the licensee and no manufacturer or wholesaler shall sell any beer to

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any retail dealer except for cash on delivery. Cash deposits for returnable containers shall be required at the time of delivery or sale. For the purposes of this section, in addition to currency, checks accepted for payment which are not postdated and are promptly deposited for collection by the licensee shall also be deemed to be cash. No suit or action ex contractu to enforce or collect any claim for credit extended, or to enforce payment of any check given for payment for alcoholic beverages in violation of this section, shall be maintained in this State. Any check given in payment for alcoholic beverages to any licensee coming under the terms of this section, which shall be returned uncollected, shall be deemed prima facie evidence in any civil case of a violation of this section.

This section shall not apply to any "hotel", as that term is defined by § 1-102(a)(9) of this article, which is the holder of a Class B beer, wine and liquor license; nor shall it apply to any "club" as defined by § 1-102(a)(4) of this article which is the holder of a Class C beer, wine and liquor license.

No holder of any license authorizing the sale of alcoholic beverages at retail shall pledge any business or business property, real or personal, which pertains to or is related to the business so licensed as collateral for any loan or loans exceeding one thousand dollars (\$1,000.00) in the aggregate, to which any person or persons, business or corporation dealing in, manufacturing or distributing vending machines, vending devices, pinball machines or music boxes is a party.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500.00) or to imprisonment for not more than six months in the House of Correction or jail, or both fined and imprisoned.

### **Section 12-224. Worcester County.**

(a) (1) In Worcester County it is unlawful for any licensee under this article to employ any person under the age of 18 years in the sale of alcoholic beverages, unless a permit is obtained from the Sheriff and State's Attorney of Worcester County.

(2) Except for events catered by a licensee holding a caterer's license a retail alcoholic beverages licensee in Worcester County may not deliver any alcoholic beverages outside of the licensed premises.

(b) Any person who violates the provisions of this section shall be fined not more than \$200 or sentenced to jail for up to one year, or be both fined and imprisoned.

### **Section 12-224.1. Noise Regulations in Worcester County.**

(a) The provisions of this section apply only in Worcester County.

(b) The Board of License Commissioners may regulate the time and noise level of the playing of mechanical music boxes, live music, and sound making devices that are used on licensed premises where the sound disturbs the peace, tranquility, safety, and health of the surrounding neighborhood.

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**Section 12-302. Employment of Minors by Retail Dealers; Special Provisions as to Anne Arundel, Baltimore, Carroll, Cecil, Dorchester, Frederick, Garrett, Kent, Prince George's, Queen Anne's and Washington Counties and Baltimore City.**

(a) Unless provision is made elsewhere in this section, the following provisions apply statewide to persons who are employed in licensed establishments:

(1) A person under age 18 may not be employed in the sale of alcoholic beverages.

(2) Except for Class D beer, wine and liquor licensees, a person between ages 18 and 21 may be employed in the sale of beer and light wine.

(3) A person under age 21 may not be employed by any holder of a Class D beer, wine and liquor license in the sale of alcoholic beverages.

(b) In the following jurisdictions the specified exceptions to subsection (a) of this section apply:

(1) In Anne Arundel County a Class A (off-sale) licensee may employ a person age 16 years or older to stock alcoholic beverages.

(2) In Baltimore City a licensee may employ a person 18 years of age or older to sell, serve, deliver, or otherwise deal with alcoholic beverages.

(3) In Baltimore County a member of an alcoholic beverages licensee's immediate family who is under 18 years old may not be employed to sell, deliver, or otherwise deal with alcoholic beverages by the holder of an alcoholic beverages license.

(4) In Carroll County the provisions of subsection (c) of this section apply.

(5) In Cecil County a licensee may employ a person 18 years old or older to sell, serve, deliver, or otherwise deal with alcoholic beverages.

(6) In Dorchester County the holder of a Class A (off-sale) beer license may employ a person 16 years old or older to stock beer at the licensee's place of business.

(7) Notwithstanding the other provisions of this section, in Frederick County a licensee may employ a person 18 years of age or older to sell, serve, deliver, or otherwise deal with alcoholic beverages and may employ a person 16 years of age or older to perform any other task other than to sell, serve, or deliver alcoholic beverages.

(8) In Garrett County, except to serve alcoholic beverages from a service bar to a seated customer, a licensee may not employ a person under age 21 years to sell, deliver, or otherwise handle alcoholic beverages.

(9) In Kent County the provisions of subsection (c) of this section apply.

(10) In Prince George's County a person under age 18 years may not be employed to sell, deliver, or otherwise deal with alcoholic beverages.

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(11) In Queen Anne's County the provisions of subsection (c) of this section apply

(12) In Washington County a licensee may employ a person 18 years of age or older to sell, serve, deliver, or otherwise deal with alcoholic beverages and may employ a person 16 years of age or older to perform any other task other than to sell, serve, or deliver alcoholic beverages.

(c) (1) Notwithstanding any other provision of law, and except as provided by paragraph (2) of this subsection, a person under the age of 21 may not be employed to sell, deliver, or otherwise deal with alcoholic beverages by any of the holders of the licenses listed by county in paragraph (3) of this subsection.

(2) A person at least 18 years of age may be employed:

(i) To stock alcoholic beverages in a Class A establishment; or

(ii) Except for Class A licenses, to serve alcoholic beverages while acting in the capacity of a waiter or waitress on the licensed premises.

(3) The provisions of this subsection apply:

(i) Within Kent and Queen Anne's Counties, to the holder of any:

1. Class A (off-sale) license;
2. Class B (on-sale) license; and
3. Class C (on-sale) beer, wine and liquor license; and

(ii) Within Carroll County, to the holder of any:

1. Class A license;
2. Class B license;
3. Class C license;
4. Class D license; and
5. Class H license.

**Section 12-303. Kent and Wicomico Counties.**

(a) In Kent and Wicomico Counties, it is unlawful for any person not designated under § 1-102(a)(6) of this article to loaf, loiter, or to be a nuisance on any premises for which a Class B or Class D beer license has been issued, and for any licensee, agent, servant, or employee to permit any person not designated under § 1-102(a)(6) of this article to loaf or loiter on the premises.

(b) Any person who violates this section shall be punished by a fine not to exceed two hundred dollars (\$200.00) or by imprisonment not to exceed one year, or both.

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**Section 13-101. Alcohol Awareness Programs.**

(a) In this section "alcohol awareness program" means a program:

(1) That:

- (i) Is approved and certified by the State Comptroller; and
- (ii) Has been issued an alcohol awareness program permit by the State

Comptroller;

(2) That includes instruction on how alcohol affects a person's:

- (i) Body; and
- (ii) Behavior;

(3) That provides education on the dangers of drinking and driving; and

(4) That defines effective methods for:

- (i) Serving customers to minimize the chance of intoxication;
- (ii) Ceasing service before the customer becomes intoxicated; and
- (iii) Determining if a customer is under the drinking age.

(b) (1) The provisions of this section apply to licensed premises that are operated by selling alcoholic beverages directly to a customer from a bar or service bar on the premises and to premises licensed for off-sale.

(2) This section does not apply to:

(i) Temporary alcoholic beverages licenses issued under § 7-101 of this article;

- (ii) A Class E (on-sale) steamboat alcoholic beverages license;
- (iii) A Class F (on-sale) railroad alcoholic beverages license; or
- (iv) A Class G (on-sale) aircraft alcoholic beverages license.

(c) (1) A holder of any class of retail alcoholic beverages license or an employee designated by the holder shall complete training in an approved alcohol awareness program. The training shall be valid for a period of 4 years, and the holder shall complete retraining in an approved program for each successive 4-year period.

(2) (i) This paragraph applies only in Montgomery County.

(ii) The licensee or a person who is employed in a supervisory capacity designated by the licensee shall be certified by an approved alcohol awareness program and shall be present during the hours in which alcohol may be sold.

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(d) Any licensee who violates the provisions of subsection (c) of this section is subject to:

(1) For the first offense, a \$100 fine; and

(2) For each subsequent offense, a fine not to exceed \$500 or a suspension or revocation of the license or both.

(e) (1) The State Comptroller:

(i) Shall approve and certify each alcohol awareness program that is in compliance with this section; and

(ii) May require recertification of the approved program to insure compliance with any changes in the program.

(2) Any individual who is authorized or employed to teach an alcohol awareness program must obtain an alcohol awareness instructor's permit.

(3) Each local licensing board is responsible for enforcing this section, including the penalty provision.

(4) (i) A certificate of completion shall be issued for each completion of a certified program and it shall be valid for 4 years from the date of issuance.

(ii) An up-to-date valid certificate shall be presented to the proper authority upon request.

(5) (i) Within 5 days after a licensee or an employee of a licensee is sent a certificate of completion, the program provider shall inform the appropriate local licensing board of:

1. The individual's name, address, and certification date; and

2. The name and address of the licensed establishment.

(ii) Any program provider who violates the provisions of this subsection is subject to a decertification of the program by the State Comptroller.

(f) (1) This section may not be construed to create or enlarge any civil cause of action or criminal proceeding against a licensee.

(2) Evidence of a violation of this section may not be introduced in any civil or criminal proceeding, but may only be used as evidence before the local licensing board in actions brought before the board for violations of this section.

(g) The Comptroller may issue regulations to set standards and requirements pertaining to course content, course duration, course format and any other course related activities the Comptroller may require.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 16-501. False Statements.**

If any signed statement, report, affidavit, or oath, required under any of the provisions of this article, shall contain any false statement, the offender shall be deemed guilty of perjury, and upon conviction thereof, shall be subject to the penalties provided by law for that crime.

### **Section 16-502. Fines and Forfeiture.**

(a) All fines imposed or recognizances forfeited for any violation of any provision of this article shall be payable to the county in which the offense was committed, or to Baltimore City if the offense was committed in said city.

(b) Provided, that in Allegany County, one half of each fine shall be disposed of as provided by § 5 of Article 38 of the Code of Public General Laws of Maryland. Where the offense has been committed in any incorporated city or town, one quarter shall go to said city or town as the case may be, and the remaining quarter shall be paid to Allegany County for its general purposes, and where said offense has been committed outside of any incorporated city or town, one half of said fine shall be paid to Allegany County for its general purposes.

(c) Provided further that in Carroll, Cecil, Dorchester, Garrett, Kent, Somerset, Talbot and Wicomico Counties one half of each fine shall be disposed of as provided in § 5 of Article 38 of the Annotated Code of the Public General Laws of Maryland.

(d) Provided that in Worcester County, one half of each fine shall be disposed of as provided in § 5 of Article 38 of the Annotated Code of the Public General Laws of Maryland.

### **Section 16-503. General Penalty.**

Any person violating the provisions of this article for which no penalty, other than the suspension or revocation of a license or permit, is provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than one thousand dollars (\$1,000.00) or to imprisonment for not more than two years in the House of Correction, or jail, or both fined and imprisoned.

### **Section 16-504. Corporations, Partnerships or Unincorporated Associations.**

If any fine shall be imposed by any court upon any individual who has obtained a license under the provisions of this article for or on behalf of any corporation, partnership, or unincorporated association, the corporation, partnership, or unincorporated association shall also be liable for the payment of such fine; and in case the penalty carries with it imprisonment, that penalty shall be borne by the individual.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 16-505. Illicit Manufacture.**

In addition to any other fines or penalties provided for the violation of the provisions of this article, any person convicted of the unlawful manufacture of alcoholic beverages or the unlawful possession of materials, equipment, implements, devices and other property used or intended for use directly and immediately in connection with the unlawful manufacture of alcoholic beverages within this State, shall upon conviction be subject to a fine of not less than \$500.00 nor more than \$10,000.00 or to imprisonment for not more than five years, or both fine and imprisonment, in the discretion of the court.

### **Section 16-506. Penalties for Evasion.**

Every person who shall knowingly or wilfully have in his possession, transport, sell or offer for sale, or permit to be kept upon his premises, any alcoholic beverages subject to the tax imposed by this article, upon which the tax has not been paid, and every person who shall counterfeit or forge any stamp or certificate required by this article, or who shall participate in the evasion of the tax imposed by this article, or who shall violate any provisions of any rule or regulation prescribed by the Comptroller pursuant to the authorization contained in this article, shall, upon conviction, be subject to a fine of not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for not more than five years or both fine and imprisonment in the discretion of the court.

### **Section 16-507. Local Penalties.**

(a) Reserved.

(b) (1) In Allegany County (i) any municipal corporation may impose penalties for the violation of ordinances passed for the regulation and control of licensees under this article.

(ii) Any person violating any provision of this article, for which no other penalty is provided, shall upon conviction be subject to a fine of not more than five hundred dollars (\$500.00), or to imprisonment for not exceeding one year, or to both such fine and imprisonment in the discretion of the court.

(2) (i) The Board of License Commissioners of Allegany County may either suspend or impose a fine on any licensee who violates the provisions of this article.

(ii) Money paid in lieu of suspension shall be paid into the general funds of the County.

(iii) The fine may not exceed \$2,500.

(iv) In reaching a decision as to whether to fine or suspend a licensee, the Board shall consider the following points:

1. That the public welfare and morals would not be impaired by allowing the licensee to operate during the period set for the suspension, and
2. The payment of the sum of money will achieve the desired disciplinary purposes.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(v) The Board may promulgate rules and regulations necessary to carry out the purposes of this subsection.

(c) (1) In Anne Arundel County the Board of License Commissioners may impose a fine of not more than \$1,000 in lieu of suspension of a license for any violation that is cause for suspension under the alcoholic beverage laws affecting Anne Arundel County.

(2) In the City of Annapolis, the Board of License Commissioners may impose a fine of not more than \$1,000 in lieu of suspension of a license for any violation that is cause for suspension under the alcoholic beverage laws of the City.

(d) For any violation that is cause for suspension under the alcoholic beverage laws affecting Baltimore City, the Baltimore City Board of License Commissioners may:

(1) For a first offense, impose a fine of not more than \$500 or suspend the license; or

(2) For any subsequent offense, impose a fine of not more than \$1,000 or suspend the license.

(e) In Baltimore County, the Board of License Commissioners, after a public hearing and on finding a violation, may impose a fine not exceeding \$2,000, and/or may suspend or revoke a license, for any violation that is cause for suspension or revocation under the alcoholic beverages laws and rules and regulations affecting Baltimore County.

(f) Reserved.

(g) (1) This subsection applies only in Caroline County.

(2) The Board of License Commissioners may impose a fine of not more than \$2,500 or suspend a license, or both, for any violation that is a cause for suspension under the provisions of this article affecting Caroline County.

(3) The penalties in paragraph (2) of this subsection are:

(i) In addition to and not intended to limit other specific or general penalties for the same violation under this article; and

(ii) Intended to be independent of any related court action based on the same violation.

(4) All moneys collected under this subsection shall be deposited into the general funds of Caroline County.

(h) In Carroll County, the Board of License Commissioners may impose a fine of not more than \$2,000 or suspend a license for any violation that is cause for suspension under the alcoholic beverage laws affecting Carroll County.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(i) In Cecil County, the Board of License Commissioners may either impose a fine of not more than \$1,000 or suspend an alcoholic beverages license for any violation of the alcoholic beverages laws affecting Cecil County. All moneys collected under this subsection shall be deposited into the general funds of the County.

(j) (1) Notwithstanding any provision of this Code to the contrary, in Charles County, the Board of License Commissioners may impose a fine not to exceed \$1,000 or suspend an alcoholic beverage license, for any violation of the alcoholic beverage laws affecting Charles County. All moneys collected under this subsection shall be deposited into the general funds of the County.

(2) In Charles County, if an alcoholic beverages licensee or an employee of an alcoholic beverages licensee sells alcoholic beverages to a person under 21 years of age, the Board of License Commissioners may:

(i) For the first offense, suspend the license for not more than 3 days or impose a fine not to exceed \$500 or both; and

(ii) For each subsequent offense, a penalty as determined by the Board of License Commissioners.

(3) (i) In this paragraph the term "economic impact" includes, but is not limited to, the ratio between total sales of alcoholic beverages as compared with the total sales of the establishment before and during a license suspension.

(ii) When determining the number of days for a suspension of a license for a subsequent offense as provided for in this subsection, the Board shall consider the class of license and the economic impact the suspension will have on the business.

(4) If a license is suspended for 4 days or less, the suspension may not be on a Friday, Saturday, or Sunday.

(k) Reserved.

(l) In Frederick County, the License Commissioner may impose a fine of not more than \$1,500 per offense or suspend an alcoholic beverages license for any violation that is cause for suspension under the alcoholic beverages laws affecting Frederick County. The Commissioner may both suspend an alcoholic beverages license and impose the fine on a licensee for these violations. All moneys collected under this subsection shall be deposited into the general funds of Frederick County.

(m) In Garrett County, the Board of License Commissioners may impose a fine of not more than \$1,000 or suspend a license for any violation of the alcoholic beverages laws affecting Garrett County.

(n) In Harford County, (1) the penalty for a violation of any provision of this article, if not elsewhere specified, shall be a fine of not more than one thousand dollars (\$1,000.00), or imprisonment in jail for one year, or both fine and imprisonment in the discretion of the court.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) In addition to such fine or imprisonment for the illegal sale or offer of sale, or possession, of intoxicating liquors, any such liquors seized by the Sheriff of Harford County, or any other police officer, after the conviction of the possessor thereof, shall be confiscated and delivered to the said Liquor Control Board, to be sold and the proceeds paid to the County Treasurer for the use of Harford County.

(o) In Howard County, the Board of License Commissioners may impose a fine of not more than \$1,000 per offense or suspend a license for any violation that is cause for suspension under the alcoholic beverage laws affecting Howard County. All moneys collected under this subsection shall be deposited into the general funds of the County.

(p) (1) This subsection applies only in Kent County.

(2) Except as provided otherwise, for a violation of any provision of this article the penalty is:

(i) For the first offense:

1. Suspension of the license;
2. Closure of the place of business for 15 days; and
3. A fine in the amount of \$100;

(ii) For the second offense:

1. Suspension of the license;
2. Closure of the place of business for 30 days; and
3. A fine in the amount of \$300;

(iii) For the third or subsequent offense:

1. Suspension of the license;
2. Closure of the place of business for 90 days; and
3. A fine in the amount of \$500; and

(iv) For a third offense that is the same as either of the 2 previous offenses:

1. Revocation of the license;
2. Prohibition of licensure of the violator; and
3. Prohibition of licensure of the premises for a period of 1 year from the date of the revocation of the license.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(3) The Board of License Commissioners shall hear and determine a case within 30 days from the date the violation is reported by an inspector or law enforcement officer. The Board shall make a determination of the case within 15 days after the conclusion of the hearing.

(4) An appeal from the Board's decision may not stay an order of the Board to suspend a license or close a place of business.

(q) (1) In Montgomery County, the Board of License Commissioners may, in lieu of suspending or revoking an alcoholic beverages license for any cause for which the Board is permitted but not required to suspend or revoke a license pursuant to § 10-401 of this article, impose a fine for any such violation, subject to the following conditions:

(i) The Board determines that the public welfare and morals would not be impaired by allowing the licensee to operate during the suspension period and that payment of the fine will achieve the desired disciplinary purposes.

(ii) The fine assessed by the Board under this subsection shall not exceed \$20,000 for each case.

(iii) All moneys collected under this subsection shall be deposited into the general funds of Montgomery County.

(iv) The Board shall have promulgated such rules and regulations as it deems necessary to carry out the purposes of this subsection.

(2) The Board, when it acts to impose a fine on the licensee or to suspend or revoke the license pursuant to the provisions of § 10-401 of this article, shall adopt a written resolution which shall contain a statement of the facts and findings forming the basis for the decision, the vote of each member of the Board on the decision, and information as to the procedures for appealing the decision. A copy of the resolution shall be mailed or hand delivered to the licensee.

(r) In Prince George's County the Board of License Commissioners may impose a fine of not more than \$5,000 in lieu of or in addition to suspension or revocation of a license for any violation that is cause for suspension or revocation under the alcoholic beverage laws affecting Prince George's County.

(s) (1) In Queen Anne's County, the Board of License Commissioners may impose a fine of not more than \$2,000 or suspend a license or both fine and suspend for any violation that is cause for suspension under the alcoholic beverages laws affecting Queen Anne's County.

(2) These penalties are:

(i) In addition to and not intended to limit other specific or general penalties for the same violation under this article; and

(ii) Intended to be independent of any related court action based on the same violation.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(t) In St. Mary's County, (1) for any violation of the laws as to licensing the sale of alcoholic beverages, the penalty upon conviction shall be a fine not exceeding \$500.

(2) For any violation of the laws as to hours or days for the sale of alcoholic beverages, the violator shall be deemed guilty of a misdemeanor and upon trial and conviction shall be subjected to a fine of not less than \$50 nor more than \$250 or may be confined in the county jail or the House of Correction for not less than sixty days.

(3) For any licensing violations, the Board of License Commissioners may both revoke or suspend an alcoholic beverages license and impose a fine on the licensee.

(u) In Somerset County the Board of License Commissioners may impose a fine of not more than \$2,000 or suspend a license or both for any violation that is cause for suspension under the alcoholic beverage laws affecting Somerset County.

(v) Reserved.

(w) (1) The Board of License Commissioners of Washington County may either suspend or impose a fine on any licensee who violates the provisions of this article.

(2) Money paid in lieu of suspension shall be paid to the Board.

(3) The fine may not exceed \$2,500.

(4) In reaching a decision as to whether to fine or suspend a licensee, the Board shall consider the following points:

(i) That the public welfare and morals would not be impaired by allowing the licensee to operate during the period set for the suspension, and

(ii) The payment of the sum of money will achieve the desired disciplinary purposes.

(5) The Board may promulgate rules and regulations necessary to carry out the purposes of this subsection.

(x) In Wicomico County the Board of License Commissioners may impose a fine of not more than \$2,000 or suspend a license or both fine and suspend for any violation that is cause for suspension under the alcoholic beverage laws affecting Wicomico County.

(y) In Worcester County, the Board of License Commissioners may either impose a fine of not more than \$1,000, or suspend an alcoholic beverage license, for any violation of the alcoholic beverage laws affecting Worcester County. All moneys collected under this subsection shall be deposited into the general funds of the County.

### **Section 18-103. Report of Legislative Enactments.**

A copy of any legislative enactment concerning alcoholic beverages by the local governing body under the authority of this subtitle shall be sent to the Department of Legislative Reference, 90 State Circle, Annapolis, Maryland 21401.

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

**Section 19-101. Disorderly Intoxication.**

(a) A person may not:

- (1) Be intoxicated and endanger the safety of another person or property; or
- (2) Be intoxicated or drink any alcoholic beverage in a public place and cause a public disturbance.

(b) A county, municipality, or other political subdivision of this State may not adopt ordinances or resolutions identical or supplemental to this section, and any existing ordinance, resolution, or other legislation inconsistent with this section is repealed.

**Section 19-102. Penalty.**

Any person who violates the provisions of this subheading is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding 90 days, or both.

**Section 19-103. Ordinances or Resolutions in Certain Counties and Baltimore City; Subheading Inapplicable in Kent and Queen Anne's Counties; Regulation of Possession or Consumption of Alcoholic Beverages in City of Annapolis.**

(a) The subdivisions enumerated in this subsection may adopt ordinances or resolutions supplementing this subheading. This includes the authority to regulate possession or consumption of any alcoholic beverage on any public property, property used by the public in general, or on any highway:

- (1) Anne Arundel County;
- (2) Baltimore City;
- (3) Baltimore County;
- (4) Harford County;
- (5) Prince George's County;
- (6) St. Mary's County;
- (7) Cecil County;
- (8) Garrett County; and
- (9) Frederick County.

(b) This subheading does not apply in the following subdivisions:

- (1) Kent County; and
- (2) Queen Anne's County.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(c) In the City of Annapolis and the City of Frederick, the Mayor and Aldermen may regulate within the City limits the possession or consumption of any alcoholic beverages on any public property owned by the City or on any public highway.

### **Section 19-201. Drinking in Certain Places; Definitions.**

(a) (1) In this subheading the following word has the meaning indicated.

(2) "Public property" includes any building, ground, park, street, highway, alley, sidewalk, station, terminal or other structure, road or parking area located on land owned, leased, or operated by this State, a county, a municipality, Washington Suburban Sanitary Commission, Maryland-National Capital Park and Planning Commission, Montgomery County Revenue Authority, or Washington Metropolitan Area Transit Authority.

(b) This subheading does not apply in the following subdivisions:

- (1) Charles County.
- (2) Kent County.
- (3) Queen Anne's County.

### **Section 19-202. Places Where Drinking Prohibited.**

(a) A person may not drink any alcoholic beverage, as defined in this article, while:

(1) On public property, unless authorized by a governmental entity that has jurisdiction over the property;

(2) On the mall, adjacent parking area, or other outside area of any combination of privately owned retail establishments, like a shopping center, where the general public is invited for business purposes, unless authorized by the owner of the shopping center;

(3) On an adjacent parking area or other outside area of any other retail establishment, unless authorized by the owner of the establishment; or

(4) In any parked vehicle located on any of the places enumerated in this subsection, unless authorized.

(b) Subsection (a) does not apply to the consumption of alcoholic beverages by passengers in the living quarters of a motor home equipped with a toilet and central heating or the passengers of a chartered bus in transit if the owner or operator has consented to the consumption of the beverages.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 19-203. Adoption of Standards for Authorization of Consumption.**

As to public property, any local governmental entity that owns or otherwise has jurisdiction over the property may adopt by local law or ordinance, as appropriate, standards providing for the authorization of the consumption of alcoholic beverages, otherwise prohibited by this subheading, and consistent with the intended use of the property by the general public.

### **Section 19-204. Penalty.**

Any person who violates the provisions of this subheading is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100.

### **Section 19-301. Possession of Alcoholic Beverages in Open Container in Certain Places.**

(a) (1) This definition applies only in Carroll, Harford, and Montgomery Counties.

(2) In this section "unless authorized" means the possession and presentation of a written consent by the owner of the property.

(b) A person may not possess in an open container any alcoholic beverage, as defined in this article, while:

(1) On the mall, adjacent parking area, or other outside area of any combination of privately owned retail establishments, commonly known as a shopping center, to which the general public is invited for business purposes, unless authorized by the owner of the establishment;

(2) On an adjacent parking area or other outside area of any other retail establishment, unless authorized by the owner of the establishment; or

(3) In any parked vehicle located on any of the places enumerated in this section, unless authorized.

### **Section 19-302. Penalty.**

Any person who violates the provisions of this subheading is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$100.

### **Section 19-303. Application of Subheading.**

This subheading applies only in the following counties:

- (1) Allegany County;
- (2) Baltimore County, including motorcycles located on any of the places enumerated in § 19-301 of this subheading, unless authorized;
- (3) Calvert County;

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(4) Carroll County, including motorcycles located on any of the places enumerated in § 19-301 of this subheading, unless authorized;

(5) Cecil County;

(6) Charles County;

(7) Frederick County;

(8) Garrett County;

(9) Harford County;

(10) Howard County;

(11) Montgomery County;

(12) St. Mary's County; and

(13) Somerset County.

**Section 20-103. Howard County.**

(a) This section applies only in Howard County.

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

(2) "Place of public entertainment" means a business establishment that:

(i) Does not have a license to sell alcoholic beverages but to which patrons bring alcoholic beverages the patrons have purchased elsewhere; and

(ii) Allows on its premises any activity listed in § 10-405(c) through (f) of this article.

(3) "Set-ups" includes drinking containers and ice.

(c) Any person who dispenses or serves food, beverages, or set-ups in a place of public entertainment or any person who is responsible for the supervision or management of a place of public entertainment shall:

(1) Receive alcohol awareness training as specified by § 13-101 of this article; and

(2) Refuse to facilitate in any way the continued consumption of alcoholic beverages by any patron who appears to be inebriated.

(d) The hours and days during which a place of public entertainment may be open for business are:

(1) Except as provided in item (2) of this subsection, 6 days per week Monday through Saturday; and

(2) From 11:30 a.m. each day until 1:30 a.m. the next day.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(e) (1) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 for each violation.

(2) Each day of operation in violation of this section is a separate offense.

### **Section 21-102. Sale of Containers with Detachable Metal Tab Opening Device.**

(a) (1) A person may not sell or offer for sale at retail in this State any metal beer, wine, or other alcoholic beverages container or any composite beer, wine, or other alcoholic beverages container that is designed and constructed with an all metal tab opening device that detaches from the container when the container is opened in a manner which is normally used to empty the contents of the container.

(2) The provisions of this subsection do not prohibit the sale or offer for sale of:

(i) A beverage container sealed with a laminated tape seal, even if the seal contains aluminum foil, if the seal is not rigid;

(ii) Frozen beverage concentrates in all metal containers with detachable metal pull tabs customarily and primarily purchased for dilution and use within the home, or for similar purposes; and

(iii) Metal beverage containers with pull tabs for milk-based products, soy-based products, or similar products which require sterilization and pressure in the canning process.

(b) Any person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment in jail not exceeding 90 days or both.

### **Section 21-105. Restrictions on Advertisements - Baltimore City.**

(a) This section applies only in Baltimore City.

(b) In this section "publicly visible locations" include outdoor billboards, sides of buildings, and freestanding signboards.

(c) (1) The Mayor and City Council of Baltimore may adopt an ordinance restricting the placement of signs, posters, placards, devices, graphic displays, or any other forms of advertising or on the sides of the building of the licensed premises that advertise alcoholic beverages in publicly visible locations if:

(i) The ordinance is necessary for the promotion of the welfare and temperance of minors exposed to advertisements for alcoholic beverages placed in publicly visible locations; and

(ii) The restrictions do not unduly burden legitimate business activities of persons licensed under this article to sell alcoholic beverages on a retail basis.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) The ordinance adopted by the Mayor and City Council of Baltimore City may not restrict:

(i) The placement of signs, including advertisements:

1. Inside licensed premises;

2. On commercial vehicles used for transporting alcoholic beverages; or

3. In conjunction with a 1-day alcoholic beverages license or a temporary license granted by the Board of License Commissioners;

(ii) Any sign that contains the name or slogan of the licensed premises that has been placed for the purpose of identifying the licensed premises;

(iii) Except for billboards and freestanding signboards, any sign for which zoning board approval or a minor privilege permit is required;

(iv) Any sign that contains a generic description of beer, wine, liquor, or spirits, or any other generic description of alcoholic beverages;

(v) Any neon or electrically charged sign on licensed premises that is provided as part of a promotion of a particular brand of alcoholic beverage;

(vi) Any sign on an MTA vehicle or a taxicab;

(vii) Any sign on property owned, leased, or operated by the Maryland Stadium Authority;

(viii) Any sign at Memorial Stadium;

(ix) Any sign at a facility that operates in accordance with a license issued under § 11-304 of the Business Regulation Article; or

(x) Any sign on property adjacent to an interstate highway.

(d) A person who violates the provisions of this section is guilty of a misdemeanor and may be fined no more than \$1,000.

### **Section 21-106. Beer Keg Registration.**

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

(2) "Keg" means a container of beer with a capacity of at least 4 gallons, which is designed to dispense beer directly from the container.

(3) "Keg licensee" means a person that holds an alcoholic beverages license that authorizes that person to sell beer in kegs at retail.

(b) A keg licensee may not sell or otherwise transfer, or offer to sell or otherwise transfer the contents of a keg for consumption off-premises unless:

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(1) The keg licensee provides to the purchaser a keg registration form approved and distributed by the State Comptroller that is designed to be affixed to the keg and that indicates the name and address of the licensed establishment and a registration number;

(2) The purchaser provides identification and completes and signs a registration form with the following information:

(i) The purchaser's name and address as shown on the identification produced; and

(ii) The date of purchase; and

(3) The licensee affixes the completed registration form to the keg and retains a copy of the form for 30 days on the licensed premises.

(c) (1) Upon return of a registered keg from the purchaser, the keg licensee shall remove or obliterate the keg registration form affixed to the keg and note that removal and the date of that removal on the copy of the keg registration form retained by the keg licensee at the licensed premises.

(2) (i) If a keg is made of disposable packaging that does not have to be returned to the keg licensee, the keg licensee shall indicate on the keg registration form that the keg is disposable.

(ii) Disposal of empty kegs made of disposable packaging does not constitute obliteration of the keg registration form.

(d) Each Board of License Commissioners or, if there is no Board of License Commissioners in that county, the liquor control board shall adopt regulations to implement this section.

(e) A keg licensee may charge a keg registration fee to a purchaser.

(f) (1) A keg licensee who violates any provision of this section is subject to a fine not exceeding \$100 or a suspension or revocation of the alcoholic beverages license, or both fine and suspension or revocation.

(2) The existence of a completed registration form signed by the purchaser shall create a presumption that the keg licensee has complied with the requirements of this section.

### **Article 27 – Crimes and Punishments**

#### **Section 230. Substituting Wood Alcohol for Grain Alcohol.**

Any person, firm or corporation engaged in the business of making, manufacturing, compounding or dispensing drugs, medicines, medicinal or chemical preparations for human consumption, who shall, in person or by his, their or its agents or employees, make, mix, manufacture, compound, dispense, sell, or deliver to any person, any drug, medicine, medicinal or chemical preparation, intended for internal use, wherein ethyl, or

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grain alcohol usually enters as part of, or is in anywise employed in the making, mixing or manufacture, compounding or preparation of such drug, medicine, medicinal or chemical preparation, and who shall, in the making, mixing, manufacturing or compounding of such drug, medicine or medicinal or chemical preparation, substitute or use, in part or in whole, methyl, or wood alcohol, in place and stead of ethyl, or grain alcohol, or who shall in any manner put or introduce methyl, or wood alcohol, into such drug, medicine, medicinal or chemical preparation, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by not less than three months nor more than twelve months' imprisonment, or by both, in the discretion of the court.

### **Section 233E. Sale or Issuance of Certain Age Identification Cards and Documents.**

(a) In this section, "offer for sale" includes any inducement, solicitation, attempt, or printed or media advertisement intended to encourage a person to purchase an identification card.

(b) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a person may not sell, issue, offer for sale, or offer to issue any identification card or document which contains a blank space for a person's age or date of birth, or an incorrect age or date of birth of a person.

(ii) A manufacturer of identification cards or documents may sell or issue identification cards or documents containing a blank space for a person's age or date of birth to employers, for use as employee identification cards or documents, to hospitals for use as patient identification cards, or to governmental agencies.

(2) The State's Attorney for any county or the City of Baltimore in which a violation of this section occurs, or the Attorney General, may petition to enjoin any sale or issue, or offer for sale or offer to issue, in violation of this section by application to a court of competent jurisdiction.

(3) Any person violating the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 or imprisonment not exceeding 2 years, or both, for each identification card or document sold or issued, or each offer for sale or offer to issue, in violation of the provisions of this section.

### **Section 399A. Possession and Transfer of Alcoholic Beverages in Worcester County.**

(a) In Worcester County, alcoholic beverages may not be brought onto any premises and consumed or transferred except in a manner specifically permitted or provided for in this article.

(b) Subsection (a) of this section does not apply to:

- (1) The room of a registered guest in a hotel, motel, or hospice; or
- (2) The property of a volunteer fire company.

(c) Subsection (a) of this section does not apply to any of the following entities in continuous existence in Worcester County at least since October 1, 1989:

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- (1) A catering establishment;
- (2) A community or civic association;
- (3) A swim club;
- (4) A bona fide social, civic, nonprofit, charitable, fraternal, patriotic, educational, or public service organization; or
- (5) A bona fide religious institution.

(d) The Worcester County Board of License Commissioners shall adopt uniform regulations for implementing this section.

(e) Any owner, operator, manager, or employee of premises or places subject to the prohibitions of this section who permits consumption of alcoholic beverages in violation of this section is guilty of a misdemeanor and on conviction shall be fined not more than \$1,000 for each offense.

### **Section 400. Misrepresentation of Age to Obtain Alcoholic Beverages.**

It is unlawful for a person to knowingly and willfully make a misrepresentation or false statement as to the age of that person or another to any person licensed to sell alcoholic beverages or engaged in the sale of alcoholic beverages, for the purpose of unlawfully obtaining, procuring, having unlawfully furnished to a person, or inducing to unlawfully furnish to a person an alcoholic beverage.

### **Section 400A. Possession of Alcoholic Beverages by Person under the Age of 21.**

It is unlawful for any person under the age of 21 years to have in his possession, or under his charge or control, any alcoholic beverage unless the person is a bona fide employee of the license holder, as defined in Article 2B, and has in his possession, or under his charge or control, alcoholic beverages during regular working hours and in the course of his employment.

### **Section 401. Obtaining Alcoholic Beverages for Consumption by person under the age of 21.**

It is unlawful for any person to obtain any alcoholic beverages from any person licensed to sell alcoholic beverages for consumption by any person under 21 years of age, knowing that the person is under 21 years of age.

### **Section 401A. Furnishing Alcoholic Beverages for Consumption to a person known to be under the age of 21.**

(a) Except as provided in subsection (b) of this section, a person may not furnish any alcoholic beverage to another person if:

- (1) The person furnishing the beverage knows that the person is under 21 years of age; and

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(2) The alcoholic beverage is furnished for the purpose of consumption by the person under 21 years of age.

(b) The prohibition in subsection (a) of this section does not apply if the individual furnishing the alcoholic beverage and the individual to whom the beverage is served:

(1) Are members of the same immediate family, and the beverage is furnished and consumed in a private residence; or

(2) Are participants in a religious ceremony.

### **Section 401B. Keg Registration.**

(a) Except for a person licensed as an alcoholic beverages licensee under Article 2B of the Code that possesses a keg in the course of that person's business, a person may not knowingly:

(1) Possess a keg that has not been registered under or does not have a registration form affixed to it as required by Article 2B, § 147A of the Code; or

(2) Remove, alter, or obliterate, or allow to be removed, altered, or obliterated, a registration form that is affixed to a keg.

(b) A person may not permit an individual under 21 years of age to consume any of the contents of a keg purchased by that person.

### **Section 402. Citation.**

(a) Any person under the age of 18 years who violates the provisions of this subheading shall be issued a citation by a police officer authorized to make arrests and shall be subject to the procedures and dispositions provided in Subtitle 8 of Title 3 of the Courts and Judicial Proceedings Article.

(b) Any person 18 years old or older who violates the provisions of this subheading shall be issued a citation and be subject to the provisions of § 403 of this subheading.

(c) In addition to police officers authorized to make arrests, forest and park wardens under § 5-206(a) of the Natural Resources Article may issue citations, as provided in subsections (a) and (b) of this section, in State forestry preservations, State parks, historic monuments, and recreation areas for the purpose of enforcing this subtitle.

(d) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, the alcoholic beverages inspectors in Anne Arundel County, Montgomery County, and Prince George's County who investigate license violations under Article 2B of the Code may issue citations as provided in subsections (a) and (b) of this section only for the purpose of enforcing this subheading within their respective jurisdictions.

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(2) Before issuing citations under this section, alcoholic beverages inspectors shall successfully complete an appropriate program of training in the proper use of arrest authority and pertinent police procedure as required by the board of license commissioners.

(3) Alcoholic beverages inspectors may not carry firearms in the performance of their duties.

### **Section 403. Disposition of Violation.**

(a) For purposes of this section, a violation of the provisions of this subheading is deemed a Code violation and is a civil offense.

(b) A law enforcement officer authorized to make arrests shall issue a citation to a person if the officer has probable cause to believe that a person is committing or has committed a Code violation.

(c) (1) A citation issued under this section shall be signed by the issuing officer and shall contain:

- (i) The name and address of the person charged;
- (ii) The person's signature;
- (iii) The statute allegedly violated;
- (iv) The date, location, and time that the violation occurred;
- (v) The fine that may be imposed;
- (vi) A notice stating that prepayment of the fine is not permitted; and
- (vii) A notice stating that the District Court shall promptly send the person a summons to appear for trial.

(2) The form of the citation issued under this section should be uniform throughout the State and shall be as prescribed by the District Court.

(d) The Chief Judge of the District Court may not establish a schedule for the prepayment of fines.

(e) (1) The issuing jurisdiction shall forward to the District Court having venue a copy of the citation and a request for a trial.

(2) The District Court shall promptly schedule the case for trial and summon the defendant to appear. The defendant's failure to respond to the summons shall be contempt of court.

(f) (1) If a person is found by the District Court to have committed a Code violation, that person shall be required to pay a fine in an amount not to exceed \$500.

(2) If the violation is a repeat offense, that person shall be required to pay a fine in an amount not to exceed \$1,000.

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(3) (i) In this paragraph "driver's license" means a license or permit to drive a motor vehicle that is issued under the laws of this State or any other jurisdiction.

(ii) This paragraph applies only to:

1. A person who is at least 18 but under 21 years of age; or
2. A minor if the minor is subject to the jurisdiction of the court.

(iii) If a person is found guilty of a Code violation under § 400 of this subheading that involved the use of a driver's license or a document purporting to be a driver's license, a court shall notify the Motor Vehicle Administration of the violation.

(iv) The Chief Judge of the District Court, in conjunction with the Motor Vehicle Administrator, shall establish uniform procedures for reporting Code violations described in this paragraph.

(4) The person shall be liable for the costs of the proceedings in the District Court.

(g) Adjudication of a Code violation is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(h) In any proceeding for a Code violation:

(1) The State has the burden to prove the guilt of the defendant to the same extent as is required by law in the trial of criminal causes, and in any such proceeding, the court shall apply the evidentiary standards as prescribed by law or rule for the trial of criminal causes;

(2) The court shall ensure that the defendant has received a copy of the charges against him and that he understands those charges. In such proceedings, the defendant is entitled to cross-examine all witnesses who appear against him, to produce evidence or witnesses in his own behalf, or to testify in his own behalf, if he elects to do so;

(3) The defendant is entitled to be represented by counsel of his own selection and at his own expense; and

(4) The defendant may enter a plea of guilty or not guilty, and the verdict of the court in the case shall be:

(i) Guilty of a Code violation;

(ii) Not guilty of a Code violation; or

(iii) Before rendering judgment, the court may place the defendant on probation in the same manner and to the same extent as is permitted by law in the trial of a criminal case.

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(i) The court costs in a Code violation case in which costs are imposed are \$5. A defendant is liable for payment to the Criminal Injuries Compensation Fund.

(j) When a defendant has been found guilty of a Code violation and a fine has been imposed by the court, the court may direct that the payment of the fine be suspended or deferred under such conditions as the court may establish. When any defendant has been found guilty of a Code violation and willfully fails to pay the fine imposed by the court, that willful failure may be treated as a criminal contempt of court, for which the defendant may be punished by the court as provided by law.

(k) A defendant who has been found guilty of a Code violation has the right to appeal or to file a motion for a new trial or a motion for a revision of a judgment provided by law in the trial of a criminal case. The motions shall be made in the same manner provided in the trial of criminal cases, and the court, in ruling on the motions, has the same authority provided in the trial of criminal cases.

(l) The State's Attorney of any county may prosecute a Code violation in the same manner as prosecution of a violation of the criminal laws of this State. The State's Attorney is authorized to enter a nolle prosequi in such cases or to place such cases on the stet docket, and to exercise authority in the same manner prescribed by law for violation of the criminal laws of this State.

### **Section 403A. Failure or Refusal to Furnish Proof of Identification and Age; Juvenile Court Jurisdiction.**

(a) It is unlawful for any person being issued a citation under §§ 400 through 403 of this article or § 26-103 of the Education Article to fail or refuse to furnish proof of identification and age upon request of the officer issuing the citation. Any person violating the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$50.

(b) The juvenile court has jurisdiction over those minors who are within the age of juvenile court jurisdiction. However, if there is a waiver of juvenile jurisdiction with respect to a minor who is otherwise subject to juvenile court jurisdiction, the District Court has jurisdiction over the matter, notwithstanding any provision of § 4-301 of the Courts Article of the Code to the contrary.

## **Article 33 – Election Code**

### **Section 24-24. Prohibition against Alcoholic Beverages in Registration and Election Places.**

Whoever during the hours of registration or revision of registration, or during the hours of election or canvass of votes, or of making returns thereof in any election district or precinct, shall bring, take, order or send into or shall attempt to bring or take or send into any place of registration, or revision of registration or of election, any distilled or

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spirituous liquors, wine, ale or beer, or who shall at any such time and place, drink or partake of such liquor, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).

### **B. TOBACCO**

#### **Article 25 – County Commissioners**

##### **Section 3. Frederick County – Regulation of Smoking in Buildings Owned, Controlled, or Financed by the State or County.**

(jj) The County Commissioners of Frederick County may regulate the smoking of tobacco products by designating smoking and no smoking areas in public buildings owned, controlled, or financed by the State of Maryland in Frederick County.

##### **Section 236B. Washington County – Regulation of Smoking in County Offices and Buildings.**

The County Commissioners for Washington County may enact ordinances regulating smoking in County offices and County office buildings. Any ordinance enacted shall assure and provide for employees and the public to smoke in designated smoking places.

#### **Article 27 – Crimes and Punishments**

##### **Section 40A. Sale of Clove Cigarettes.**

(a) A person may not sell or offer for sale a clove cigarette in this State.

(b) A person who violates subsection (a) of this section is guilty of a misdemeanor and on conviction is subject to a fine of \$500.

##### **Section 404. Sale of Tobacco to Individual under 16; Purchase of Tobacco for Minor.**

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

(2) “Tobacco product” means any substance containing tobacco, including cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

(3) “Distribute” means to:

(i) Give away, sell, deliver, dispense, or issue;

(ii) Offer to give away, sell, deliver, dispense, or issue; or

(iii) Cause or hire any person to give away, sell, deliver, dispense, or issue or offer to give away, sell, deliver, dispense, or issue.

(b) (1) A person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes, including persons licensed under Title 16 of the Business Regulation Article, may not:

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(i) Distribute any tobacco product to a minor, unless the minor is acting solely as the agent of the minor's employer, who is in the business of distributing tobacco products;

(ii) Distribute cigarette rolling papers to a minor; or

(iii) Distribute to any minor a coupon redeemable for any tobacco product.

(2) A person not described under paragraph (1) of this subsection may not:

(i) Purchase for or sell to a minor any tobacco product; or

(ii) Deliver or sell to a minor cigarette rolling papers.

(c) The provisions of subsection (b) of this section do not apply to the distribution of a coupon which is redeemable for any tobacco product when the coupon is contained in a newspaper, a magazine, or any other type of publication in which the coupon is incidental to the primary purpose of the publication, or sent through the mail.

(d) In a prosecution for a violation of subsection (b)(1) or (2) of this section, it shall be a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, a governmental entity, or institution of higher education that positively identified the purchaser or recipient as at least 18 years old.

### **Section 405. Penalty.**

(a) Except as provided in subsection (b) of this section, a person who violates § 404(b) of this subheading shall be subject to:

(1) For a first violation, a fine of not more than \$300;

(2) For a second violation occurring within a 2-year period of the first violation, a fine of not more than \$1,000; and

(3) For a third or subsequent violation occurring within a 2-year period of the prior violation, a fine of not more than \$3,000.

(b) If the requirements of § 16-209(b)(2)(ii) of the Business Regulation Article are satisfied, the provisions of subsection (a) of this section do not apply to the owner of a tobacco product vending machine or any other person exercising control over a tobacco product vending machine if a person under 18 has purchased a tobacco product from a vending machine.

(c) For purposes of this section, a violation means a separate and distinct incident at a different time and occasion.

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**Section 405A. Minors – Possession of Tobacco.**

(a) A minor may not:

(1) Use or, unless acting as the agent of the minor's employer within the scope of employment, possess any tobacco product or cigarette rolling papers; or

(2) Use any falsified identification, or use any identification other than his or her own, for the purpose of obtaining or attempting to obtain tobacco products or cigarette rolling papers.

(b) For purposes of this section, a violation of the provisions of this section is deemed a Code violation and is a civil offense.

(c) An individual who violates the provisions of this section shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8 of the Courts and Judicial Proceedings Article.

(d) A law enforcement officer authorized to make arrests shall issue a citation to a person if the officer has probable cause to believe that the child is committing or has committed a Code violation.

**Article 78 – Public Service Commission Law**

**Section 35A. Prohibition Against Smoking on Buses.**

(a) The owner and operator of any intrastate motor bus carrier shall prohibit the smoking of tobacco products while the bus is in public service.

(b) A person may not smoke tobacco products in any area prohibited under subsection (a).

(c) The Public Service Commission may promulgate rules and regulations in furtherance of the provisions of this section.

(d) Any person who violates the provisions of this section is subject to a civil penalty not to exceed \$25.

**Article 89 – Miscellaneous Business, Work, and Safety Provisions**

**Section 64. Smoking in Public Elevators.**

(a) The proprietor of a building containing any elevator whose use is available to the general public shall post a sign prohibiting the smoking of tobacco products in that elevator. The sign shall state "Smoking in This Elevator Is Illegal and Subject to a Penalty Not to Exceed \$25.00".

(b) A person may not smoke tobacco products in any area prohibited under subsection (a).

(c) The Commissioner of Labor and Industry may promulgate rules and regulations in furtherance of the provisions of this section.

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(d) Any person who violates any provision of this section is subject to a civil penalty not to exceed \$25.

### Article – Business Regulation

#### Section 16–308. Selling Cigarettes at Retail Without a License.

A person may not sell cigarettes at retail in a county unless the person has an appropriate county license.

### Article – Health – General

#### Section 24–205. Smoking in Hospitals and Other Health Care Facilities.

(a) In this section “smoking” means the act of smoking or carrying a burning:

- (1) cigar;
- (2) cigarette;
- (3) pipe; or
- (4) other tobacco product of any kind.

(b) Every director of a nursing home, health clinic, or physician’s office shall make and carry out a plan that adequately protects the health of nonsmoking patients by regulating the smoking of tobacco products on the premises.

(c) (1) An individual may not smoke in any area of a hospital.

(2) The hospital director shall provide for the posting and placement of conspicuous signs that clearly indicate that smoking is not permitted in the hospital.

(d) (1) This section does not apply to patients who are:

(i) In a facility for the treatment of mental disorders as defined in § 10–101(e) of this article;

(ii) In a facility where the average patient stay is more than 30 days; or

(iii) In an acute care hospital and the attending physician authorizes smoking, in writing, as part of the care for the patient.

(2) Smoking permitted under this section shall be in designated areas that are considered safe and provide nonsmoking patients, family members, and employees protection from tobacco smoke.

(3) Smoking may not be permitted where nonsmoking patients sleep.

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### **Section 24-501. Smoking in Public Areas of Retail Stores; Definitions.**

(a) In this subtitle the following words have the meanings indicated.

(b) "Public area" means a room or a portion of a room or other area to which the public has ready access.

(c) "Retail store" means any establishment employing 20 or more full-time persons whose primary purpose is to sell to consumers any goods, wares, food for consumption off the premises, or merchandise.

(d) "Smoking" means the act of smoking or carrying a burning:

- (1) Cigar;
- (2) Cigarette;
- (3) Pipe; or
- (4) Other tobacco product of any kind.

(e) "Supervisor" means the person who controls, governs, or directs the activities in a retail store.

### **Section 24-502. Smoking in Public Areas of Retail Stores; General Prohibition.**

(a) The provisions of this subtitle do not apply to:

- (1) A restaurant;
- (2) A restaurant area of a retail store;
- (3) A tobacconist;
- (4) A lavatory or restroom in a retail store; or
- (5) A work area of a retail store:

- (i) To which the public does not have access; and
- (ii) That can be physically isolated by a room with doors closed.

(b) Except as provided in this subtitle, an individual or employee may not smoke in the public area of a retail store in this State.

### **Section 24-503. Retail Stores; Supervisor's Duties.**

(a) A supervisor shall provide for the posting and placement of conspicuous signs that clearly indicate that smoking is not permitted in the public area of a retail store.

(b) A supervisor violates this subtitle if the supervisor fails to comply with the provision of subsection (a) of this section.

(c) A supervisor does not violate this section if:

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- (1) The supervisor complies with the provision of subsection (a) of this section; and
- (2) The public or employees persist in or continue their smoking in a public area.

### **Section 24-504. Retail Stores; Rules and Regulations.**

(a) The Secretary shall adopt rules and regulations to enforce the provisions of this subtitle.

(b) A person who violates § 24-503(a) of this subtitle is subject to a civil penalty of \$25.

### **Section 24-505. Retail Stores; Local Legislation.**

(a) Except as provided in subsection (b) of this section, this subtitle does not prohibit any county or municipal corporation of the State from enacting an ordinance, resolution, law, or rule that is more stringent than the provisions of this subtitle.

(b) Charles County and St. Mary's County may not enact an ordinance, resolution, law, or rule that is more stringent than the provisions of this subtitle.

## **C. CONTROLLED DANGEROUS SUBSTANCES**

### **Article 24 – Political Subdivisions – Miscellaneous Provisions**

#### **Section 9-601. Tax on Controlled Dangerous Substances.**

(a) Except as provided in subsection (b) of this section, a county may impose a sales or use tax on controlled dangerous substances as defined in Article 27, § 277 of the Code.

(b) A sales or use tax imposed under subsection (a) of this section may not be imposed on sales by any person who complies with Article 27, § 281 of the Code.

### **Article 27 – Crimes and Punishments**

#### **Section 276. Findings and Declarations; Purpose, Interpretation and Construction of Subheading.**

(a) The General Assembly finds and declares that many of the substances included with this subheading have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the people of the State of Maryland.

The General Assembly, however, finds and declares that the illegal manufacture, distribution, possession, and administration of controlled dangerous substances have a substantial and detrimental effect on the health and general welfare of the people of the State of Maryland. It is the purpose of this subheading to establish a uniform law controlling the manufacture, distribution, possession, and administration of controlled

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dangerous substances and related paraphernalia in order to insure their availability for legitimate medical and scientific purposes, but to prevent their abuse which results in a serious health problem to the individual and represents a serious danger to the welfare of the people of the State of Maryland.

(b) The provisions of this subheading shall be liberally interpreted and construed so as to effectuate its general purpose as stated herein above.

### **Section 277. Definitions.**

The following words and phrases as used in this subheading shall have the following meanings unless the context otherwise requires:

(a) "Administer" shall mean to introduce a substance into the system of a human being or animal by injection, inhalation, ingestion, application to the skin, or any combination thereof or by any other means.

(b) "Agent" shall mean an employee or other authorized person who acts on behalf of or at the direction of a manufacturer, distributor or practitioner but does not include a common or contract carrier, public warehouseman or employee thereof.

(c) (1) "Anabolic steroid" means any material, compound, or preparation (other than estrogens, progestins, and corticosteroids) that includes any of the following, or any isomer, ester, salt, or derivative of the following:

- (i) Boldenone;
- (ii) Chlorotestosterone;
- (iii) Clostebol;
- (iv) Dehydrochlormethyltestosterone;
- (v) Dihydrotestosterone;
- (vi) Drostanolone;
- (vii) Ethylestroenol;
- (viii) Fluoxymesterone;
- (ix) Formobulone;
- (x) Mesterolone;
- (xi) Methandienone;
- (xii) Methandranone;
- (xiii) Methandriol;
- (xiv) Methandrostenolone;
- (xv) Methenolone;

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- (xvi) Methytestosterone;
- (xvii) Mibolerone;
- (xviii) Nandrolone;
- (xix) Norethandrolone;
- (xx) Oxandrolone;
- (xxi) Oxymesterone;
- (xxii) Oxymetholone;
- (xxiii) Stanolone;
- (xxiv) Stanozolol;
- (xxv) Testolactone;
- (xxvi) Testosterone; and
- (xxvii) Trenbolone.

(2) "Anabolic steroid" does not include a substance described in paragraph (1) of this subsection which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved for such use by the Food and Drug Administration.

(d) "Bureau of Narcotics and Dangerous Drugs" shall mean the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice.

(e) Repealed.

(f) "Controlled dangerous substance" shall mean any drug, substance or immediate precursor in Schedules I through V of this subheading. The term shall not include distilled spirits, wine, malt beverages or tobacco as those terms are set in Article 2B of the Code.

(g) "Counterfeit substance" means a controlled dangerous substance, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed or dispensed any such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, any such other manufacturer, distributor, or dispenser.

(h) "Department" shall mean the Department of Health and Mental Hygiene of this State.

(i) "Deliver" or "delivery" shall mean the actual, constructive, or attempted transfer, exchange, or delivering of a controlled dangerous substance from one person to another with or without remuneration, whether or not there exists an agency relationship.

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(j) "Depressant or stimulant drug" shall mean —

(i) A drug which contains any quantity of (a) barbituric acid or any of the salts of barbituric acid; or (b) any derivative of barbituric acid which has been designated by the Secretary of Health and Human Services as habit forming under § 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (d)); or

(ii) A drug which contains any quantity of (a) amphetamine or its optical isomers; (b) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (c) any substance which the Attorney General of the United States, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(iii) Lysergic acid diethylamide; or

(iv) Any drug which contains any quantity of a substance which the Attorney General of the United States, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(k) "Dispense" shall mean to deliver a controlled dangerous substance to the ultimate user or the human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery. "Dispenser" is a practitioner who dispenses.

(l) "Distribute" shall mean to deliver other than by dispensing a controlled dangerous substance. "Distributor" means a person who distributes.

(m) "Drug" means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this paragraph; but does not include devices or their components, parts, or accessories.

(n) "Drug dependent person" shall mean a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

(o) "Marihuana" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the

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mature stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(p) "Manufacture" shall mean the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its containers, except that this term does not include the preparation or compounding of a controlled dangerous substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his administering or dispensing of a controlled dangerous substance in the course of his professional practice, or (2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(q) "Narcotic drug" shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and which have been found to present an extreme danger to the health and welfare of the community because of their addiction-forming and addiction-sustaining liabilities:

(i) "Opiate" shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under § 278 of this subheading the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms; and "opium poppy" which shall mean the plant of the species *Papaver somniferum* L., except the seeds thereof, and "poppy straw" which shall mean all parts, except the seeds, of the opium poppy, after mowing; and "coca leaves" which shall mean cocaine, its optical and geometric isomers, and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made;

(ii) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(iii) A substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically identical with any of the substances referred to in items (i) and (ii) of this paragraph, except that the words "narcotic drug" as used in this section include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

(r) "Person" shall mean any corporation, association, partnership or one or more individuals.

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(s) "Possession" shall mean the exercise of actual or constructive dominion or control over a thing by one or more persons.

(t) "Practitioner" shall mean one of the following:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled dangerous substance in the course of professional practice or research in this State.

(a) "Physician" shall mean any person authorized by law to practice medicine in this State.

(b) "Dentist" and "veterinarian" shall mean any person authorized by law to practice dentistry or veterinary medicine in this State.

(2) A pharmacy, laboratory, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled dangerous substance in the course of professional practice or research in the State.

(a) "Hospital" shall mean an institution for the care and treatment of the sick and injured approved by the Department, as proper to be entrusted with the custody of controlled dangerous substances under the direction of a physician, dentist, or veterinarian.

(u) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance.

(v) "Immediate precursor" means a substance which the Department has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

(w) "State" means the State of Maryland.

(x) "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

### **Section 278. Control of Substances.**

(a) The Department shall control all substances enumerated in § 279 of this subheading and may, by motion or on the petition of any interested party pursuant to the procedures of the Administrative Procedure Act, and after notice and hearing, add a substance as a controlled dangerous substance. In making such a determination the Department shall consider the following:

(1) Its actual or relative potential for abuse;

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- (2) Scientific evidence of its pharmacological effect, if known;
- (3) State of current scientific knowledge regarding the substance;
- (4) Its history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) What, if any, risk there is to the public health;
- (7) Its psychic or physiological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this subheading.

After considering the above factors, the Department shall make findings with respect thereto and shall issue an order controlling the substance if it finds that the substance has a potential for abuse.

(b) Precursors of controlled precursors. — If the Department designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(c) New substances controlled under federal law. — Any new substance which is designated as controlled under federal law shall be similarly controlled under this subheading unless the Department objects to such inclusion or rescheduling. In such case the Department shall cause to be published and made public the reasons for such objection and shall afford all interested parties an opportunity to be heard. At the conclusion of such hearing, the Department shall publish and make public its decision, which shall be final. An appeal from a designation made pursuant to this section shall not stay the effect of such designation.

(d) Updating and republishing schedules. — The Department shall update and republish a schedule on a semiannual basis for two years from July 1, 1970, and thereafter on an annual basis.

### **Section 279. Schedules.**

The following schedules include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

(a) Schedule I — In determining that a substance comes within this schedule, the Department shall find:

- (1) A high potential for abuse, and
- (2) No accepted medical use in the United States, and
- (3) A lack of accepted safety for use under medical supervision. The following are controlled dangerous substances and are included in this schedule:

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a. Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol.
- 1A. Alfentanil.
2. Allylprodine.
3. Alphacetylmethadol, except levoalphacetylmethadol.
4. Alphameprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Dextrorphan.
14. Diampromide.
15. Diethylthiambutene.
16. Dimenoxadol.
- 16A. Difenoxin.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxidine.
24. Furethidine.

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25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacymorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Propiram.
42. Racemoramide.
43. Trimeperidine.

b. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
- 1A. Acetyldihydrocodeine.
2. Acetylocodone.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Codoxime.

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7. Cyprenorphine.
8. Desomorphine.
- 8A. Dihydromorphine.
- 8B. Drotebanol.
9. Ethylmorphine methyl iodide.
10. Etorphine.
11. Etorphine 3-methylether.
12. Heroin.
13. Hydromorphanol.
14. Methyldesorphine.
15. Methyldihydromorphinone.
16. Methylhydromorphine.
17. Morphine methylbromide.
18. Morphine methylchloride.
19. Morphine methylsulfonate.
20. Morphine-N-Oxide.
21. Myrophine.
22. Nicocodeine.
23. Nicodicodine.
24. Nicomorphine.
25. Norcodeine.
26. Normorphine.
27. Pholcodine.
28. Thebacon.

c. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic or hallucinogenic-like substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Bufotenine.
2. Diethyltryptamine.

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3. Dimethyltryptamine.
4. 4-methyl-2, 5-dimethoxyamphetamine.
5. Ibogaine.
6. Lysergic acid diethylamide.
7. Marihuana.
8. Mescaline.
9. Peyote.
10. Psilocybin.
11. Psilocyn.
12. Tetrahydrocannabinol.
13. Thiophene analog of phencyclidine.
14. 2, 5-dimethoxyamphetamine.
15. 4-bromo-2, 5-dimethoxyamphetamine.
16. 4-methoxyamphetamine.
17. 3, 4-methylenedioxyamphetamine.
- 17A. 3, 4-methylenedioxyamphetamine (MDMA).
18. 5-methoxy-3, 4-methylenedioxyamphetamine.
19. 3, 4, 5-trimethoxyamphetamine.
20. N-methyl-3-piperidyl benzilate.
21. N-ethyl-3-piperidyl benzilate.
22. N-ethyl-1-phenylcyclohexylamine.
23. 1-(1-phenylcyclohexyl)-pyrrolidine.
24. 1-(1-(2-thienyl)-cyclohexyl)-piperidine.
25. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
26. 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP).

d. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers when the existence of those salts, isomers and salts of isomers is possible within the specific chemical designation.

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1. Mecloqualone.
2. Methaqualone.

e. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

1. 3-methylfentanyl  
(N-3-methyl-1-(2-phenylethyl)-4-piperidyl-1-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers.
2. Acetyl-alpha-methylfentanyl.
3. Alpha-methylthiofentanyl.
4. Benzylfentanyl.
5. Beta-hydroxy-3-methylfentanyl.
6. Beta-hydroxyfentanyl.
7. Thenylfentanyl.
8. Thiofentanyl.
9. 3-methylthiofentanyl.

(b) Schedule II - In determining that a substance comes within this schedule, the Department shall find:

1. A high potential for abuse, and
2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions, and
3. Abuse may lead to severe psychic or physical dependence.

The following are controlled dangerous substances and are included in this schedule:

a. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
  - (i) Raw opium;
  - (ii) Opium extracts;
  - (iii) Opium fluid;

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- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in item 1 of this paragraph, except that these substances shall not include the isoquinoline alkaloids of opium.

3. Opium poppy and poppy straw.

4. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

b. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

- 1. Alphaprodine.
- 2. Anileridine.
- 2A. Bezitramide.
- 2B. Dihydrocodeine.
- 3. Diphenoxylate.

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4. Fentanyl.
- 4A. Isomethadone.
- 4B. Levoalphacetylmethadol.
- 4C. Levomethorphan.
5. Levorphanol.
6. Metazocine.
7. Methadone.
8. Methadone—Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
9. Moramide—Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid.
10. Pethidine.
11. Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine.
12. Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate.
13. Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
14. Phenazocine.
15. Piminodine.
16. Racemethorphan.
17. Racemorphan.
18. Sulfentanil.

c. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts.
3. Any substance which contains any quantity of methamphetamine, including its salts, optical isomers, and salts of its optical isomers, in combination with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

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4. Methylphenidate.

5. Methamphetamine, its salts, optical isomers, and salts of optical isomers.

d. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.
4. Phencyclidine.
5. 1-(1-phenylcyclohexyl) piperidine.
6. 1-Phenylcyclohexylamine.
7. 1-Piperidinocyclohexanecarbonitrile.

(c) Schedule III – In determining that a substance comes within this schedule, the Department shall find:

1. A potential for abuse less than the substances listed in Schedules I and II; and
2. Well documented and approved medical use in the United States; and
3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

The following are classes of controlled dangerous substances and are included in this schedule:

a. Unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Mazindol.

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### 5. Phendimetrazine.

b. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of a barbituric acid, except those substances which are specifically listed in other schedules.

2. Chlorhexadol.

3. Glutethimide.

4. Lysergic acid.

5. Lysergic acid amide.

6. Methyprylon.

7. Pentazocine.

8. Sulfondiethylmethane.

9. Sulfonethylmethane.

10. Sulfonmethane.

### c. Nalorphine.

d. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

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6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams, or not more than 5 milligrams per dosage unit.

8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

e. Any compound, mixture or preparation or any salt thereof and one or more other active medicinal ingredients which are not listed in another schedule containing:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

f. Any suppository dosage form or salt thereof, if not combined with one or more active medicinal ingredients which are listed in another schedule, containing:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

g. Anabolic steroid.

(d) Schedule IV – In determining that a substance comes within this schedule, the Department shall find that:

1. The substance has a low potential for abuse relative to the substances listed in Schedule III; and

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

The following are controlled substances and are included in this schedule:

a. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

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- (1) Barbital;
- (2) Bromazepam;
- (3) Camazepam;
- (4) Chloral betaine;
- (5) Chloral hydrate;
- (6) Ethchlorvynol;
- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Estazolam;
- (16) Ethinamate;
- (17) Ethylloflazepate;
- (18) Fludiazepam;
- (19) Flunitrazepam;
- (20) Flurazepam;
- (21) Halazepam;
- (22) Haloxazolam;
- (23) Ketazolam;
- (24) Loprazolam;
- (25) Lorazepam;
- (26) Lormetazepam;
- (27) Mebutamate;
- (28) Medazepam;

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- (29) Methohexital;
- (30) Meprobamate;
- (31) Methylphenobarbital;
- (32) Nimetazepam;
- (33) Nitrozepam;
- (34) Nordiazepam;
- (35) Oxazepam;
- (36) Oxazolam;
- (37) Paraldehyde;
- (38) Petrichloral;
- (39) Phenobarbital;
- (40) Pinazepam;
- (41) Prazepam;
- (42) Temazepam;
- (43) Tetrazepam;
- (44) Triazolam;

b. Any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

Fenfluramine.

c. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Diethylpropion.
- (2) Pemoline (including organometallic complexes and chelates thereof).

- (3) Phentermine.

d. The Department may except by rule any compound, mixture, or preparation containing any depressant substance listed in sub-subparagraph a. of this paragraph from the application of all or any part of this section if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant

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effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(e) Schedule V – In determining that a substance comes within this schedule, the Department shall find:

1. A low potential for abuse relative to the substances listed in Schedule IV; and
2. Currently accepted medical use in the United States; and
3. Limited physical dependence and/or psychological dependence liability relative to the substances listed in Schedule IV.

The following are controlled dangerous substances and are included in this schedule:

a. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
3. Not more than 50 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
5. Unless specifically excepted, or unless listed in another schedule. any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

1. Buprenorphine.

### **Section 280. Rules and Regulations concerning Manufacture, Distribution and Dispensing; Fees.**

The Department is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled dangerous substances within the State.

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**Section 281. Registration Generally.**

(a) Every person who manufactures, distributes, or dispenses any controlled dangerous substance within the State or who proposes to engage in the manufacture, distribution, or dispensing of any controlled dangerous substance within the State, shall obtain every two years a registration issued by the Department in accordance with the rules and regulations promulgated by the Department. Persons registered by the Department under this subheading to manufacture, distribute or dispense controlled dangerous substances are authorized to possess, manufacture, distribute, or dispense such substances (including any such activity in the conduct of research) to the extent authorized by their registration and in conformity with the other provisions of this subheading.

(b) The following persons shall not be required to register and in addition to the aforementioned registrants while acting in the course of their business or profession may lawfully possess controlled dangerous substances under the provisions of this subheading:

(1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled dangerous substance if such agent is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled dangerous substance is in the usual course of his business or employment;

(3) An ultimate user or a person in possession of any controlled dangerous substance pursuant to a lawful order of a practitioner, while acting in good faith and in the ordinary course of business or professional practice.

(c) The Department may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if the Department finds it consistent with the public health and safety.

(d) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled dangerous substances.

(e) The Department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by the Department.

(f) The Department shall register an applicant to manufacture or distribute controlled dangerous substances included in Schedules I through V unless the Department determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled dangerous substances and any Schedule I or II substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;

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- (2) Compliance with applicable State, federal, and local law;
- (3) Prior conviction record of applicant under federal, State, and local laws relating to the manufacture, distribution, or dispensing of such substances;
- (4) Past experience in the manufacture and distribution of controlled dangerous substances, and the existence in the establishment of effective controls against diversion; and
- (5) Such other factors as may be relevant to and consistent with the public health and safety.

(g) Registration granted under subsection (f) of this section shall not entitle a registrant to manufacture and distribute controlled dangerous substances in Schedule I or II other than those specified in the registration.

(h) Practitioners shall be registered by the Department to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this State. The Department need not require separate registration under this section for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this section in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this State upon furnishing the Department evidence of that federal registration.

(i) The Department shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled dangerous substances prior to July 1, 1970, and who are registered or licensed by the State.

(j) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) shall be deemed compliance with this section.

**Section 281A. Using or Transporting Firearms in Drug Trafficking Crime.**

- (a) (1) In this section the following terms have the meanings indicated.
- (2) "Drug trafficking crime" means:
  - (i) Any felony involving the possession, distribution, manufacture, or importation of a controlled dangerous substance under §§ 286 and 286A of this article; or
  - (ii) Conspiracy to commit any felony involving possession, distribution, manufacture, or importation of a controlled dangerous substance under § 286 or § 286A of this article.

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(3) "Firearm silencer or muffler" means any device that is designed for silencing, muffling, or diminishing the report of a firearm including any combination of parts designed, redesigned, or intended for use in assembling or fabricating a firearm silencer or muffler.

(b) During and in relation to any drug trafficking crime, a person who uses, wears, carries, or transports a firearm is guilty of a separate felony and on conviction shall, in addition to the sentence provided for the drug trafficking crime, be sentenced as follows:

(1) (i) For a first offense, for a term of not less than 5 nor more than 20 years.

(ii) It is mandatory upon the court to impose no less than the minimum sentence of 5 years, no part of which may be suspended and the person may not be eligible for parole except in accordance with the provisions of Article 31B, § 11 of the Code; and

(2) (i) For a second or subsequent offense, for a term of not less than 10 nor more than 20 years.

(ii) It is mandatory upon the court to impose no less than a minimum consecutive sentence of 10 years, no part of which may be suspended and the person may not be eligible for parole except in accordance with the provisions of Article 31B, § 11 of the Code.

(iii) The sentence shall be served consecutively and not concurrently to any other sentence imposed by virtue of the commission of the drug trafficking crime.

(c) The minimum mandatory sentence provided in subsection (b)(1) and (2) of this section shall be doubled if the firearm is:

(1) Any firearm listed in § 36H-1 or § 481E of this article;

(2) A machine gun; or

(3) Equipped with a firearm silencer or muffler.

(d) (1) Any firearm or ammunition seized under this section is contraband and shall be summarily forfeited.

(2) If the owner or possessor of property seized under this section is acquitted or the charges against the person are dismissed, the seized property shall be returned to the owner or possessor within 90 days if not otherwise prohibited by law unless forfeiture proceedings have commenced.

(3) If the State enters a nolle prosequi against the owner or possessor of property seized under this section and does not charge the person within 90 days after the nolle prosequi is entered, the seized property shall be promptly returned to the owner or possessor if not otherwise prohibited by law.

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### **Section 282. Suspension, Revocation and Denial of Registration.**

(a) A registration pursuant to § 281, as amended from time to time, to manufacture, distribute, or dispense a controlled dangerous substance, may be suspended or revoked by the Department upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to this subheading or required by this subheading;

(2) Has been convicted of an offense under this subheading or any of the prior laws of this State, of the United States, or of any state, relating to any substances defined herein as a controlled dangerous substance;

(3) Has had his federal registration suspended or revoked by competent federal authority and is no longer authorized by federal law to engage in the manufacturing, distribution, or dispensing of controlled dangerous substances; or

(4) Has violated any of the provisions of this subheading.

(b) The Department may limit revocation or suspension of a registration to the particular controlled dangerous substance with respect to which grounds for revocation or suspension exist.

(c) Before taking action pursuant to this section or pursuant to a denial of registration or to a refusal of renewal of registration under § 281, the Department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, suspended, or renewal refused. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Department at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. In the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this section in accordance with the Administrative Procedure Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this subheading or any law of the State. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(d) The Department may, in its discretion, suspend any registration simultaneously with the institution of proceedings under this section in cases where it finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Department or dissolved by the appropriate circuit court.

(e) In the event the Department suspends or revokes a registration granted under § 281, all controlled dangerous substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the Department be placed under seal. No

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disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless the court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled dangerous substances shall be forfeited to the State.

(f) The Bureau of Narcotics and Dangerous Drugs shall promptly be notified of all orders suspending or revoking registration and all forfeitures of controlled dangerous substances.

### **Section 283. Records and Inventories Required of Registrants.**

Upon July 1, 1970, each registrant manufacturing, distributing or dispensing controlled dangerous substances in Schedule I, II, III, IV, or V in § 279 of this subheading shall make a complete and accurate record of all stocks of such dangerous substances on hand. Thereafter, complete and accurate records of all such dangerous substances shall be maintained for two years. Each two-year period after July 1, 1970, at the time of his regular fiscal inventory, each registrant manufacturing, distributing or dispensing controlled dangerous substances shall prepare an inventory of each dangerous substance in his possession. Records and inventories shall contain such information as shall be provided by rules and regulations promulgated by the Department. This section shall not apply to practitioners who lawfully prescribe or administer, but not otherwise dispense, controlled dangerous substances listed in Schedule II, III, IV, or V in § 279 of this subheading. Compliance with the provisions of the federal law respecting records and reports shall be deemed compliance with this section.

### **Section 284. Order Forms Required for Distribution of Substances in Schedules I and II.**

Controlled dangerous substances in Schedules I and II shall be distributed only by a registrant, pursuant to an order form. Compliance with the provisions of the federal law respecting order forms for these schedules shall be deemed compliance with this section.

### **Section 285. Prescriptions Required in Certain Instances.**

(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule II, which is a prescription drug as determined under the Health - General Article, may be dispensed without the written prescription of a practitioner: Provided, that in emergency situations, as prescribed by the Department by regulation, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist, if such oral prescription is authorized by federal law. Prescriptions shall be retained in conformity with the requirements of § 282 of this subheading, as amended from time to time. No prescription for a Schedule II substance may be refilled.

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(a-1) No practitioner shall dispense methadone, directly or by prescription, unless he is associated with a controlled drug therapy program sanctioned by the Alcohol and Drug Abuse Administration of the Department, or unless an emergency or medical situation, as prescribed by the Department by regulation, in cooperation with the medical and chirurgical faculty of Maryland, exists.

(a-2) No practitioner shall dispense methamphetamine, directly or by prescription, except in recognized cases of medical need, as prescribed by the Department by regulation in cooperation with the medical and chirurgical faculty of Maryland.

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled dangerous substance included in Schedule III or IV which is a prescription drug as determined under the Health - General Article, may be dispensed without a written or oral prescription. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

(b-1) No practitioner shall dispense amphetamine, directly or by prescription, except in recognized cases of medical need, as prescribed by the Department by regulation in cooperation with the medical and chirurgical faculty of Maryland.

(c) No controlled dangerous substance included in Schedule V may be distributed or dispensed other than for a medical purpose; and in addition to compliance with the provisions of this subheading and the federal requirements, any such practitioner shall upon dispensing any such controlled dangerous substance securely affix to the container thereof, in addition to any other label already affixed thereto, a label bearing the dispenser's name and signature, his registry number, the date on which dispensed, and the purchaser's name.

(d) (1) In this subsection, "opium" or its derivatives includes codeine and any compound, manufacture, salt, derivative, mixture, or preparation of opium, natural or synthetic.

(2) (i) A person may not sell, dispense, or give any preparation containing opium or any of its derivatives, except upon a valid prescription of a duly authorized prescriber as defined in § 12-101 of the Health Occupations Article.

(ii) This prohibition does not apply to:

1. Sales made to registered practitioners of pharmacy, medicine, dentistry, podiatry, or veterinary medicine; or

2. Sales made by any manufacturer, distributor, or licensed pharmacy to a hospital or institution operating a dispensary in which a practitioner licensed by law to dispense dangerous drugs is in charge.

(3) (i) A person may not possess or control any preparation containing opium or its derivatives, unless the person obtained the drug on prescription of a duly authorized prescriber as defined in § 12-101 of the Health Occupations Article.

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(ii) This prohibition does not apply if the control or possession is in the regular course of business, occupation, profession, employment, or duty of the person.

(4) (i) Any person who violates the provisions of this subsection is guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000 for the first offense.

(ii) Any person convicted a second time for a violation of this subsection shall be fined a sum not more than \$2,000.

(iii) Any person convicted more than twice for a violation of this subsection shall be imprisoned for not more than 18 months.

### **Section 286. Unlawful Manufacture, Distribution, etc.; Counterfeiting, etc.; Manufacture, Possession, etc., of Certain Equipment for Illegal Use; Keeping Common Nuisance.**

(a) Except as authorized by this subheading, it is unlawful for any person:

(1) To manufacture, distribute, or dispense, or to possess a controlled dangerous substance in sufficient quantity to reasonably indicate under all circumstances an intent to manufacture, distribute, or dispense, a controlled dangerous substance;

(2) To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance;

(3) To manufacture, distribute, or possess any punch, die, plate, stone, or any other equipment which is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit controlled dangerous substance;

(4) To manufacture, distribute, or possess any machine, equipment, instrument, implement, device, or combination thereof which is adopted for the production of controlled dangerous substances under circumstances which reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled dangerous substance in violation of the provisions of this subheading;

(5) To keep or maintain any common nuisance which means any dwelling house, apartment, building, vehicle, vessel, aircraft, or any place whatever which is resorted to by drug abusers for purposes of illegally administering controlled dangerous substances or which is used for the illegal manufacture, distribution, dispensing, storage or concealment of controlled dangerous substances or controlled paraphernalia, as defined in § 287(d) of this subheading; or

(6) To possess, pass, utter, make, or manufacture a false, forged, or altered prescription or prescriptions for a controlled dangerous substance with the intent to distribute the controlled dangerous substance. Information communicated to an authorized prescriber in an effort to obtain a controlled dangerous substance in violation of the provisions of this item shall not be deemed a privileged communication.

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(b) Any person who violates any of the provisions of subsection (a) of this section with respect to:

(1) A substance classified in Schedules I or II which is a narcotic drug is guilty of a felony and is subject to imprisonment for not more than 20 years, or a fine of not more than \$25,000, or both.

(2) Phencyclidine, 1-(1-phenylcyclohexyl) piperidine, 1-phenylcyclohexylamine, or 1-piperidinocyclohexanecarbonitrile, classified in Schedule II, or n-ethyl-1-phenylcyclohexylamine, 1-(1-phenylcyclohexyl)-pyrrolidine, 1-(1-(2-thienyl)-cyclohexyl)-piperidine, or lysergic acid diethylamide, classified in Schedule I, is guilty of a felony and is subject to imprisonment for not more than 20 years, or a fine of not more than \$20,000, or both.

(3) Any other controlled dangerous substance classified in Schedule I, II, III, IV, or V shall, upon conviction, be deemed guilty of a felony and sentenced to a term of imprisonment for not more than 5 years or a fine of not more than \$15,000, or both. Any person who has previously been convicted under this paragraph shall be sentenced to imprisonment for not less than 2 years. The prison sentence of a person sentenced under this paragraph as a repeat offender may not be suspended to less than 2 years, and the person may be paroled during that period only in accordance with Article 31B, § 11 of the Code.

(c) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall be sentenced to imprisonment for not less than 10 years if the person previously has been convicted:

(i) Under subsection (b)(1) or subsection (b)(2) of this section;

(ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section; or

(iii) Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State.

(2) The prison sentence of a person sentenced under subsection (b)(1) or subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section or any combination of these offenses, as a second offender may not be suspended to less than 10 years, and the person may be paroled during that period only in accordance with Article 31B, § 11 of the Code.

(3) This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health - General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section.

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(d) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section shall be sentenced to imprisonment for the term allowed by law, but, in any event, not less than 25 years if the person previously:

(i) Has served at least 1 term of confinement of at least 180 days in a correctional institution as a result of a conviction of a previous violation of this section or § 286A of this article; and

(ii) Has been convicted twice, where the convictions do not arise from a single incident:

1. Under subsection (b)(1) or subsection (b)(2) of this section;
2. Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section;
3. Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State; or
4. Of any combination of these offenses.

(2) Neither the sentence required under paragraph (1) of this subsection nor any part of it may be suspended, and the person may not be eligible for parole except in accordance with Article 31B, § 11 of the Code.

(3) A separate occasion shall be considered one in which the second or succeeding offense is committed after there has been a charging document filed for the preceding offense.

(e) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section shall be sentenced to imprisonment for the term allowed by law, but in any event, not less than 40 years if the person previously has served 3 separate terms of confinement as a result of 3 separate convictions:

(i) Under subsection (b)(1) or subsection (b)(2) of this section;

(ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section;

(iii) Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State; or

(iv) Of any combination of these offenses.

(2) Neither the sentence required under paragraph (1) of this subsection nor any part of it may be suspended, and the person may not be eligible for parole except in accordance with Article 31B, § 11 of the Code.

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(f) (1) If a person violates subsection (a)(1) of this section and the violation involves any of the following controlled dangerous substances, in the amounts indicated, the person is subject to the penalties provided in paragraph (3) of this subsection upon conviction:

(i) 50 pounds or more of marijuana;

(ii) 448 grams or more of cocaine or 448 grams or more of any mixture containing a detectable amount of cocaine;

(iii) 50 grams or more of cocaine base, commonly known as "crack";

(iv) 28 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium or any mixture containing 28 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;

(v) 1,000 dosage units of lysergic acid diethylamide or any mixture containing the equivalent of 1,000 dosage units of lysergic acid diethylamide;

(vi) 16 ounces or more of phencyclidine in liquid form or 448 grams or more of any mixture containing phencyclidine; or

(vii) 448 grams or more of methamphetamine or any mixture containing 448 grams or more of methamphetamine.

(2) For purposes of determining the quantity of a controlled dangerous substance under paragraph (1) of this subsection, the quantity of controlled dangerous substances involved in individual acts of manufacturing, distribution, dispensing, or possessing with intent to distribute may be aggregated if each aggregate act of manufacturing, distribution, dispensing, or possessing with the intent to distribute occurred within a period of 90 days.

(3) (i) A person convicted of violating paragraph (1) of this subsection is guilty of a felony and shall be sentenced as otherwise provided for in this section, except that it is mandatory upon the court to impose no less than 5 years' imprisonment, and neither that term of imprisonment nor any part of it may be suspended.

(ii) The person may not be eligible for parole except in accordance with Article 31B, § 11 of the Code.

(g) (1) In this subsection, "drug kingpin" means a person who occupies a position of an organizer, supervisor, financier, or manager as a coconspirator in a conspiracy to manufacture, distribute, dispense, bring into, or transport in the State controlled dangerous substances.

(2) A drug kingpin who conspires to manufacture, distribute, dispense, bring into, or transport in the State controlled dangerous substances in one or more of the amounts described under subsection (f) of this section is guilty of a felony and on conviction is subject to:

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(i) Imprisonment for not less than 20 nor more than 40 years without the possibility of parole, and it is mandatory on the court to impose no less than 20 years' imprisonment, no part of which may be suspended; and

(ii) A fine of not more than \$1,000,000.

(3) The provisions of § 641 of this article are not applicable to a conviction under this subsection.

(4) Notwithstanding any other provision of this subheading, a conviction under this subsection does not merge with the conviction for any offense which is the object of the conspiracy.

(5) Nothing contained in this subsection prohibits the court from imposing an enhanced penalty under § 293 of this article. This subsection may not be construed to preclude or limit any prosecution for any other criminal offense.

(6) It is not a defense to a prosecution under this section that the controlled dangerous substance was brought into or transported in this State solely for ultimate distribution or dispensing in another jurisdiction.

### **Section 286A. Bringing into State in Excess of Certain Amounts.**

(a) A person who brings into this State any of the following controlled dangerous substances which it is unlawful for that person to possess, in the amounts indicated, upon conviction, is subject to the penalty provided in subsection (b) of this section:

(1) 100 pounds or greater of marijuana;

(2) 28 grams or greater of cocaine or any mixture containing 28 grams or greater of cocaine;

(3) 4 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;

(4) 1,000 dosage units of lysergic acid diethylamide or any mixture containing the equivalent of 1,000 dosage units of lysergic acid diethylamide;

(5) 28 grams or more of phencyclidine in liquid or powder form or 112 grams or more of any mixture containing phencyclidine;

(6) 1,000 dosage units or more of methaqualone;

(7) 28 grams or more of methamphetamine or any mixture containing 28 grams or more of methamphetamine; or

(8) 4 grams or more of fentanyl or a fentanyl analogue.

(b) A person convicted of violating subsection (a) of this section is guilty of a felony and may be fined not more than \$50,000 or imprisoned for not more than 25 years, or both fined and imprisoned in the discretion of the court.

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**Section 286B. Distribution of Noncontrolled Substances as Controlled Dangerous Substances.**

For purposes of this section,

(a) (1) "Noncontrolled substance" means any substance not classified as a controlled dangerous substance by State law or regulation.

(2) "Distribute" means the actual, constructive, or attempted transfer, exchange, or delivering of a noncontrolled substance, other than by dispensing, from one person to another with or without remuneration, whether or not there exists an agency relationship.

(b) A person may not distribute, attempt to distribute, or possess with intent to distribute, a noncontrolled substance upon the representation that the substance is a controlled dangerous substance.

(c) It is unlawful for a person to distribute, attempt to distribute, or possess with intent to distribute, any noncontrolled substance intended by that person for use or distribution as a controlled dangerous substance or under circumstances where one reasonably should know that the noncontrolled substance will be used or distributed for use as a controlled dangerous substance.

(d) For the purpose of determining whether this section has been violated, the court or other authority shall include in its consideration the following:

(1) Whether the noncontrolled substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) Whether the distribution or attempted distribution included an exchange of or demand for money or other property as consideration, and whether the amount of the consideration was substantially greater than the reasonable value of the noncontrolled substance;

(3) Whether the physical appearance of the noncontrolled substance is substantially identical to that of a controlled dangerous substance.

(e) In any prosecution brought under this section, it is not a defense to a violation of this section that the defendant believed the noncontrolled substance to actually be a controlled dangerous substance.

(f) Any person who violates the provisions of this section with respect to the distribution, attempt to distribute, or possession with intent to distribute a noncontrolled substance as a controlled dangerous substance, is guilty of a felony and, upon conviction, is subject to imprisonment for not more than 5 years, or a fine of not more than \$15,000 or both.

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### **Section 286C. Using Minors for Distribution of Controlled Dangerous Substances.**

(a) A person may not hire, solicit, engage, or use a minor, in any manner, for the purpose of manufacturing, distributing, or delivering, on behalf of that person, any controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to distribute, unless the manufacturing, delivery, or distribution has a lawful purpose.

(b) Any person who violates this section is guilty of a felony and, upon conviction, shall be sentenced to imprisonment for up to 20 years, or fined up to \$20,000, or both.

### **Section 286D. Distribution of Controlled Dangerous Substances in School Zone.**

(a) A person who manufactures, distributes, dispenses, or possesses with intent to distribute a controlled dangerous substance in violation of § 286(a)(1) of this subheading, or who conspires to commit any of these offenses, is guilty of a felony if the offense occurred:

(1) In, on, or within 1,000 feet of any real property owned by or leased to any elementary school, secondary school, or school board, and used for elementary or secondary education, as defined under § 1-101 of the Education Article, regardless of whether:

(i) School was in session at the time of the offense; or

(ii) The real property was being used for other purposes besides school purposes at the time of the offense; or

(2) On a school vehicle, as defined under § 11-154 of the Transportation Article.

(b) (1) A person who violates the provisions of this section, on conviction, shall be subject to the following penalties:

(i) For a first offense, imprisonment for not more than 20 years or a fine of not more than \$20,000 or both; or

(ii) For a second or subsequent offense, imprisonment for not less than 5 or more than 40 years or a fine of not more than \$40,000 or both. It is mandatory for the court to impose a minimum sentence of 5 years, which may not be suspended, and a person is not eligible for parole during that period, except in accordance with Article 31B, § 11 of the Code.

(2) A sentence imposed under this subsection shall be served consecutively to any other sentence imposed.

(c) Notwithstanding any other provision of law, a conviction arising under this section may not merge with a conviction for a violation of § 286 or § 286C of this subheading.

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(d) (1) In a prosecution under this section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of the property of a public or nonpublic elementary or secondary school that is used for school purposes, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area.

(2) A map approved under this section may be revised from time to time by the governing body of the municipality or county.

(3) The original of every map approved or revised under this section, or a true copy, shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county.

(4) This section does not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense.

(5) This section does not preclude the use or admissibility of map or diagram other than the one which has been approved by the municipality or county.

### **Section 287. Unlawful Possession or Administering to Another; Obtaining, etc., Substance or Paraphernalia by Fraud, Forgery, Misrepresentation, etc.; Affixing Forged Label; Altering, etc., Label; Unlawful Possession or Distribution of Controlled Paraphernalia; Penalties.**

Except as authorized by this subheading, it is unlawful for any person:

(a) To possess or administer to another any controlled dangerous substance, unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice.

(b) To obtain or attempt to obtain a controlled dangerous substance or controlled paraphernalia or to procure or attempt to procure the administration of any controlled dangerous substance by (1) fraud, deceit, misrepresentation or subterfuge, or (2) by the forgery or alteration of a prescription or a written order, or (3) by the concealment of any material fact or by the use of false name or address, or (4) by falsely assuming the title of or representing himself to be a manufacturer, distributor or practitioner, or (5) by making or uttering any false or forged prescription or written order.

Information communicated to a physician in an effort to obtain controlled dangerous substances or controlled paraphernalia in violation of the provisions of this subsection shall not be deemed a privileged communication.

(c) To affix any false or forged label to a package, container or other receptacle containing any controlled dangerous substance, or to omit, remove, alter or obliterate any label or symbol on any such controlled dangerous substance as required by the federal, State, or local law.

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(d) To possess or distribute controlled paraphernalia, which shall mean:

(1) A hypodermic syringe, needle or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances which reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled dangerous substance;

(2) Gelatin capsules, glassine envelopes or any other container suitable for the packaging of individual quantities of controlled dangerous substances in sufficient quantity to and under circumstances which reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled dangerous substance. Evidence of such circumstances shall include but not be limited to close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled dangerous substances, such as but not limited to any of the following: scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled dangerous substance; or

(3) Lactose, quinine, mannite, mannitol, dextrose, sucrose, procaine hydrochloride or any other substance suitable as a diluent or adulterant in sufficient quantity and under such circumstances which reasonably indicate an intention to use any such substance for the illegal manufacture, distribution or dispensing of any controlled substance. Evidence of such circumstances shall include but not be limited to close proximity of any such controlled paraphernalia to any other adulterants, diluents or equipment commonly used in the illegal manufacture and distribution of controlled substances, such as but not limited to any of the following: scales, sieves, strainers, measuring spoons, staples and staplers, glassine envelopes, gelatin capsules, or any controlled substance.

(e) Any person who violates this section shall, upon conviction, be deemed guilty of a misdemeanor and be sentenced to a term of imprisonment for not more than four (4) years, a fine of not more than twenty-five thousand dollars (\$25,000), or both; provided, however, that any such person convicted of a violation of this section involving the use or possession of marihuana shall be punished by a period of imprisonment not to exceed one (1) year or by a fine not to exceed \$1,000.00, or both.

### **Section 287A. Drug Paraphernalia.**

(a) As used in this section, the term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance in violation of this subheading. It includes but is not limited to:

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- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled dangerous substances;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled dangerous substance;
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled dangerous substances;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled dangerous substances;
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled dangerous substances;
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled dangerous substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled dangerous substances;
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled dangerous substances;
- (11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled dangerous substances into the human body;
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
  - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (ii) Water pipes;
  - (iii) Carburetion tubes and devices;
  - (iv) Smoking and carburetion masks;

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(v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs;

(xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or federal law relating to any controlled dangerous substance;

(3) The proximity of the object, in time and space, to a direct violation of this section or to a controlled dangerous substance;

(4) The existence of any residue of controlled dangerous substances on the object;

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this section; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(6) Instructions, oral or written, provided with the object concerning its use;

(7) Descriptive materials accompanying the object which explain or depict its use;

(8) National and local advertising concerning its use;

(9) The manner in which the object is displayed for sale;

(10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

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(11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(12) The existence and scope of legitimate uses for the object in the community;

(13) Expert testimony concerning its use.

(c) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance in violation of this subheading. Any person who violates this subsection is guilty of a misdemeanor and upon conviction for a first offense may be fined not more than \$500. A person who is convicted of a subsequent violation of this subsection may be imprisoned for not more than 2 years or fined not more than \$2,000 or both. Any person convicted of violating this subsection who previously has been convicted of violating subsection (d)(2) shall be subject to the same penalties specified for subsequent violations of this subsection.

(d) (1) It is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance in violation of this subheading. Any person who violates this subsection is guilty of a misdemeanor and upon conviction for a first offense may be fined not more than \$500. A person who is convicted of a subsequent violation of this subsection may be imprisoned for not more than 2 years or fined not more than \$2,000 or both. Any person convicted of violating this subsection who previously has been convicted of violating paragraph (2) of this subsection shall be subject to the same penalties specified for subsequent violations of this subsection.

(2) Any person 18 years of age or over who violates paragraph (1) of this subsection by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a separate offense and upon conviction may be imprisoned for not more than 8 years, fined not more than \$15,000, or both.

(e) (1) It is unlawful for any person to advertise in any newspaper, magazine, handbill, poster, sign, mailing, or other writing or publication, or by sound truck, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale or delivery of drug paraphernalia.

(2) Any person who violates this subsection is guilty of a misdemeanor and upon conviction for a first offense may be fined not more than \$500. A person who is convicted of a subsequent violation of this subsection may be imprisoned for not more than 2 years or fined not more than \$2,000, or both.

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**Section 287B. Possession or Purchase of Noncontrolled Substances Believed to be Controlled Dangerous Substances.**

(a) In this section, "noncontrolled substance" means any substance not classified as a controlled dangerous substance by State law or regulation.

(b) Except as authorized by this subheading, it is unlawful for any person to possess or purchase a noncontrolled substance that the person reasonably believes to be a controlled dangerous substance.

(c) If the person reasonably believed the noncontrolled substance was a controlled dangerous substance, it is not a defense to a prosecution under this section that the noncontrolled substance the person possessed or purchased was not a controlled dangerous substance.

(d) For purposes of determining whether this section has been violated the court shall include in its consideration the following:

(1) Whether the noncontrolled substance was packaged in a manner normally used for the illegal distribution of controlled dangerous substances;

(2) If the noncontrolled substance was purchased, whether the amount of the consideration was substantially greater than the reasonable value of the noncontrolled substance; and

(3) Whether the physical appearance of the noncontrolled substance is substantially identical to that of a controlled dangerous substance.

(e) Any person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 1 year or both.

**Section 288. Certain Unlawful Acts Particularly Applicable to Registrants.**

(a) Except as authorized by the provisions of this subheading, it shall be unlawful for any person:

(1) Who is subject to the requirements of §§ 281 through 284 of this subheading, as amended from time to time, to distribute or dispense a controlled dangerous substance in violation of § 284;

(2) Who is a registrant to manufacture, distribute, or dispense a controlled dangerous substance not authorized by his registration to another registrant or other authorized person;

(3) To omit, remove, alter, or obliterate a symbol required by the federal law;

(4) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this subheading;

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(5) To refuse any entry into any premises or inspection authorized by this subheading;

(6) To keep or maintain as a registrant or as any other person authorized under this subheading any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled dangerous substances in violation of this subheading for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this subheading.

(b) Any person described hereinabove who violates this section is punishable by a civil fine of not more than fifty thousand dollars (\$50,000). Provided, that if the violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally, such person shall be deemed guilty of a misdemeanor and punished by imprisonment, upon conviction, for not more than two (2) years or a fine of not more than one hundred thousand dollars (\$100,000), or both.

(c) It is unlawful for any practitioner to prescribe, administer, manufacture, distribute, dispense, or possess any controlled dangerous substance or controlled paraphernalia except in the course of his regular professional duties, and in conformance with both the provisions of this subtitle and the standards of his particular profession relating to any such controlled dangerous substance or controlled paraphernalia. Any practitioner who violates any of the provisions of this subsection shall be subject to the penalties specified in subsection (b) of this section; and any controlled dangerous substances or controlled paraphernalia so manufactured, distributed, dispensed, possessed, prescribed, or administered in violation of this subsection shall be deemed contraband.

### **Section 289. Distribution by Registrants of Certain Substances without Required Order Form; Use of Fictitious, Revoked, etc., Registration Number.**

(a) It shall be unlawful for any person:

(1) Who is a registrant to distribute a controlled dangerous substance classified in Schedule I or II, in the course of his legitimate business, except pursuant to an order form as required by § 284 of this subheading;

(2) To use in the course of the manufacture or distribution of a controlled dangerous substance a registration number which is fictitious, revoked, suspended or issued to another person.

(b) Any person who wilfully violates this section shall be deemed guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than ten (10) years, and/or a fine of not more than one hundred thousand dollars (\$100,000), or both.

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### **Section 290. Attempts, Endeavors and Conspiracies.**

Except as provided otherwise under this subheading, any person who attempts, endeavors or conspires to commit any offense defined in this subheading is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt, endeavor or conspiracy.

### **Section 291. Penalties are Additional.**

Any penalty imposed for violation of this subheading shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

### **Section 291A. Possession, Ownership or Transportation of a Firearm.**

(a) In this section "firearm" includes:

- (1) Handgun, antique firearm, rifle, shotgun, short-barreled shotgun, and short-barreled rifle, as those terms are defined in § 36F of this article;
- (2) Pistol, revolver, and antique pistol or revolver, as those terms are defined in § 441 of this article;
- (3) Assault weapon, as defined in § 481E of this article; and
- (4) Machine gun, as defined in § 372 of this article.

(b) A person may not possess, own, carry, or transport a firearm if the person has been convicted of:

- (1) A felony under this subheading;
- (2) An offense under the laws of the United States, another state, or the District of Columbia that would be a felony under this subheading if committed in this State; or
- (3) Conspiracy or attempt to commit any of the offenses listed in paragraphs (1) and (2) of this subsection.

(c) A person who violates this section is guilty of a felony and shall, on conviction, be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

### **Section 293. Second or Subsequent Offenses.**

(a) Any person convicted of any offense under this subheading is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both.

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(b) For purposes of this section, an offense shall be considered a second or subsequent offense, if, prior to the conviction of the offense, the offender has at any time been convicted of any offense or offenses under this subheading or under any prior law of this State or any law of the United States or of any other state relating to the other controlled dangerous substances as defined in this subheading.

(c) Any person convicted of a second or subsequent offense under any law superseded by this subheading shall be eligible for parole, probation, and suspension of sentence in the same manner as those persons convicted under this subheading.

### **Section 294. Administrative Inspections and Warrants.**

(a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of this State may, within his jurisdiction, and upon proper oath or affirmation showing probable cause, as defined hereinafter, issue warrants for the purpose of conducting administrative inspections authorized by this subheading or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, "probable cause" means a valid public interest in the effective enforcement of the subheading or regulations sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the item or types of property to be seized, if any. The warrant shall be directed to a person authorized to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken,

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if they are present, or in the presence of at least one credible person other than the person executing the warrant. The judge, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the court from which the warrant was issued.

(b) The Department is authorized to make administrative inspections of controlled premises in accordance with the following provisions and to designate who may make seizures of property pursuant to the provisions of this section:

(1) For purposes of this section only, "controlled premises" means:

(a) Places where persons registered or exempted from registration requirements under this subheading are required to keep records; and

(b) Places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this subheading are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled dangerous substance.

(2) When so authorized by an administrative inspection warrant issued pursuant to subsection (a) of this section an officer or employee designated by the Department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, shall have the right to enter controlled premises for the purpose of conducting an administrative inspection.

(3) When so authorized by an administrative inspection warrant, an officer or employee designated by the Department shall have the right:

(a) To inspect and copy records required by this subheading to be kept;

(b) To inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labelling found therein, and, except as provided in subsection (b)(5) of this section, all other things therein (including records, files, papers, processes, controls, and facilities) bearing on violation of this subheading; and

(c) To inventory any stock of any controlled dangerous substance therein and obtain samples of any such substance.

(4) The Department and its agents shall have authority to inspect without a warrant books and records pursuant to this subheading and to enter and conduct administrative inspections (including seizures of property) without a warrant:

(a) With the consent of the owner, operator, or agent in charge of the controlled premises;

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(b) In situations presenting imminent danger to health or safety;

(c) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(e) In all other situations where a warrant is not legally required.

(5) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:

(a) Financial data;

(b) Sales data other than shipment data; or

(c) Pricing data.

### **Section 295. Injunctions against Violations.**

In addition to the other remedies provided by this subheading and notwithstanding any other provisions of law, the Department, the Attorney General, and the State's Attorney of any county or Baltimore City, as the case may be, may apply to the appropriate court for a temporary or permanent injunction restraining any person from violation of any provision of this subheading irrespective of whether or not there exists an adequate remedy at law.

### **Section 296. Enforcement of Subheading; Cooperative Arrangements; Plant Eradication Programs.**

It is hereby made the duty of the Department and those of its officers, agents, inspectors and representatives who are so designated by the Secretary of the Department and of all police officers and State's Attorneys within the State to enforce all provisions of this subheading, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State and of any political subdivision of this State and of all other states or political subdivisions thereof relating to controlled dangerous substances. To this end, the Department is authorized to:

(1) Arrange for the exchange of information between governmental officials concerning the use and abuse of dangerous substances;

(2) Coordinate and cooperate in training programs on dangerous substance law enforcement at the local and State levels;

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(3) Cooperate with the federal Bureau of Narcotics and Dangerous Drugs by establishing a centralized unit which will accept, catalogue, file, and collect statistics obtained from law-enforcement agencies, including records of drug dependent persons convicted of drug offenses and other dangerous substance law offenders within the State, and make such information available for federal, State, and local law-enforcement purposes;

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled dangerous substances may be extracted.

### **Section 297. Forfeitures and Seizures Generally; Motor Vehicles.**

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

(2) "Chief executive officer" means:

(i) For Baltimore City, the Mayor;

(ii) For charter counties, the county executive or, if there is no county executive, the county council;

(iii) For code counties, the county commissioners or county council;

(iv) For county commissioner counties, the county commissioners; and

(v) For municipal corporations, the legislative body established by municipal charter.

(3) "Convicted" means a finding of guilt by a criminal court of competent jurisdiction.

(4) "Final disposition" means the date on which any criminal charge giving rise to a forfeiture under this section is terminated by dismissal, the entry of a nolle prosequi or stet, the entry of a not guilty verdict, the pronouncement of sentence, or the imposition of probation under § 641 of this article.

(5) (i) "Forfeiting authority" means the office or person designated, from time to time, by agreement between the State's Attorney for a county and the chief executive officer of the governing body having jurisdiction over the assets subject to forfeiture.

(ii) The Attorney General or the Attorney General's designee when the seizing agency is an instrumentality of the State, may, by agreement with any State's Attorney, or county or municipal attorney, designate an office or person as forfeiting authority to act on behalf of the State regarding any assets subject to forfeiture by the State.

(6) "Governing body" includes:

(i) The State, if the seizing agency is an instrumentality of the State;

(ii) A county, if the seizing agency is an instrumentality of a county;

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(iii) A municipality, if the seizing agency is an instrumentality of a municipality; and

(iv) Baltimore City, if the seizing agency is the Baltimore City Police Department.

(7) "Lien" includes a mortgage, deed of trust, pledge, security interest, encumbrance, or right of setoff.

(8) "Lienholder" means a person who has a lien or a secured interest on property created before the seizure.

(9) (i) "Owner" means a person having a legitimate legal, equitable, or possessory interest in property.

(ii) "Owner" includes:

1. A coowner;
2. A life tenant;
3. A remainderman to a life tenancy in real property;
4. A holder of an inchoate interest in real property; and
5. A bona fide purchaser for value.

(10) "Proceeds" includes property derived directly or indirectly in connection with or as a result of an offense or offenses under this subheading.

(11) (i) "Property" includes:

1. Real property and anything growing on or attached to real property;
2. Tangible and intangible personal property including securities, negotiable and nonnegotiable instruments, vehicles and conveyances of any type, privileges, interest, claims and rights;
3. Any item, object, tool, substance, device, or weapon used in connection with an enumerated offense; and
4. Money.

(ii) "Property" does not include:

1. Any item unlawfully in the possession of a person other than the owner when used in connection with an offense under this subheading; and
2. A lessor's interest in property subject to a bona fide lease, unless the forfeiting authority can show that the lessor participated in an offense under this subheading or that the property was the proceeds of an offense under this subheading.

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(12) (i) "Real property" means any land or improvements to land.

(ii) "Real property" includes:

1. A leasehold or other limited interest in real property;
2. An easement; and
3. A reversionary interest in a 99-year ground lease renewable

forever.

(13) "Seizing agency" means any law enforcement authority within the State authorized to investigate violations of this subheading which has seized property under this section.

(b) The following shall be subject to forfeiture and no property right shall exist in them:

(1) All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the provisions of this subheading;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled dangerous substance in violation of the provisions of this subheading;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) of this subsection, except that:

(i) No conveyance used by any person as a common carrier or vehicle for hire in the transaction of business as a common carrier or vehicle for hire shall be seized or forfeited under this subheading unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subheading; and

(ii) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subheading;

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(6) All money, coin, currency, or weapons which have been used or intended for use in connection with the illegal manufacture, distribution, dispensing or possession of controlled dangerous substances or controlled paraphernalia. All money, coin, currency, or weapons which are found in close proximity to contraband controlled dangerous substances, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are presumed to be forfeitable under this paragraph. The burden of proof is upon a claimant of the property to rebut this presumption.

This money, currency, or weapons shall be deemed to be contraband of law and all rights, title and interest in and to the money, currency, or weapons shall immediately vest in and to Baltimore City or the county in which it was seized if it was seized by a county or Baltimore City law enforcement agency, including a local sheriff's department which is the law enforcement agency, the municipal corporation, if seized by municipal authorities, or, if it was seized by State law enforcement authorities, the State; and no such money, currency, or weapons shall be returned to any person claiming it, or to any other person, except in the manner hereinafter provided;

(7) All drug paraphernalia as prohibited by § 287A of this article, and controlled paraphernalia as prohibited by § 287 of this article;

(8) The remaining balance of the proceeds of a sale by a holder of an installment sale agreement under § 12-626 of the Commercial Law Article of goods seized by a police department, bureau, or force, under this subtitle;

(9) In the manner provided under subsections (l) and (m) of this section, all real property; and

(10) Everything of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of this subheading, all proceeds traceable to such an exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate any violation of this subheading.

(c) Property or an interest in property described under subsection (b)(4), (9), and (10) of this section may not be forfeited if the owner establishes by a preponderance of the evidence that the violation of this subheading was done without the owner's actual knowledge.

(d) (1) Any property subject to forfeiture under this subheading may be seized upon process issued by any court having jurisdiction over the property except that seizure without such process may be made when:

(i) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(ii) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this subheading;

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(iii) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) There is probable cause to believe that the property has been used or intended to be used in violation of this subheading.

(2) In the event of seizure pursuant to paragraph (1)(iii) and (iv) of this subsection, proceedings under subsection (f) of this section shall be instituted promptly, except all proceedings relating to money or currency, that shall be instituted within 90 days from the date of final disposition of criminal proceedings that arise out of §§ 276 through 302 of this article.

(i) All applications for the forfeiture of money or currency contraband shall be made by the director of finance of Baltimore City, the county treasurer or appropriate county finance officer, municipal treasurer, or the Attorney General. The applications shall be by complaint, affidavit and show cause order and shall be filed in the District Court or circuit court of the county.

(ii) The complaint, affidavit and show cause order shall be served in the first instance pursuant to Maryland Rule 2-121 or Maryland Rule 3-121(a), and thereafter, the summons having been returned non est, the director of finance of Baltimore City, county treasurer or appropriate county finance officer, municipal treasurer, or Attorney General may proceed pursuant to Maryland Rule 2-122 or Maryland Rule 3-121(b) or (c).

(3) (i) If proceedings relating to money or currency are not instituted by the State or a political subdivision within the 90-day period, the money or currency seized under this section, upon petition by the defendant, shall be returned to the defendant.

(ii) If the defendant fails to petition for return of the money or currency within 1 year from the date of final disposition of criminal proceedings, the money or currency shall revert to the treasury as provided by subsection (f) of this section.

(e) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the seizing agency subject only to the orders, judgments, and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this subheading, the seizing agency may:

- (1) Place the property under seal; and
- (2) Remove the property to a place designated by the court.

(f) Except as provided under subsection (k) of this section, whenever property is forfeited under this subheading, the political subdivision in which such property was seized, or, if the property was seized by State authorities, the State may:

(1) Retain the property for official use (except, whenever coin, currency, or property is seized by the Baltimore City police, and forfeited under this subheading, it shall be surrendered to the City of Baltimore for disposition according to this section);

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(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs; or

(3) Require an appropriate agency to take custody of the property and remove it for disposition in accordance with law, or destruction.

(g) All substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of the provisions of this subheading shall be deemed contraband and seized and summarily forfeited to the State. Similarly, all substances listed in Schedule I, which are seized or come into the possession of the State, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the State.

(1) All species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this subheading, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

(2) The failure, upon demand by the Department, or its duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(h) (1) Except as provided in § 4-401(8) of the Courts and Judicial Proceedings Article, all proceedings under this section shall be instituted in the circuit court by the appropriate forfeiting authority.

(2) (i) Except as provided under subsection (d)(2) of this section and subparagraph (ii) of this paragraph, a complaint seeking forfeiture shall be filed within the earlier of:

1. 90 days following the seizure; or
2. One year following the final disposition of a criminal charge for a violation under this subheading giving rise to the forfeiture.

(ii) A complaint for the forfeiture of a motor vehicle shall be filed within 45 days after the seizure of the motor vehicle.

(3) A complaint shall contain the following:

- (i) A description of the property seized;
- (ii) A statement of the time and place where seized;
- (iii) The owner, if known;
- (iv) The person in possession, if known;

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(v) The name of any lienholder, if any, if known or reasonably subject to discovery;

(vi) An allegation that the property is subject to forfeiture;

(vii) If the forfeiting authority is seeking to forfeit a lienholder's interest in property, an allegation that the lien was created with actual knowledge that the property was being, or was to be, used in violation of this subheading;

(viii) A statement of the facts and circumstances surrounding the seizure;

(ix) A statement setting forth the specific causes or grounds for forfeiture or both; and

(x) An oath or affirmation by the forfeiting authority that the contents of the complaint are true to the best of the forfeiting authority's knowledge, information, and belief.

(4) Within 10 days after the filing of the complaint:

(i) Copies of the summons and complaint shall be sent by certified mail requesting "restricted delivery - show to whom, date, address of delivery" and first class mail on all known owners and lienholders whose identities are reasonably subject to discovery, including for real property all owners and lienholders shown in the records prescribed by law for notice or perfection of the lien.

(ii) A notice which includes a description of the property, the date and place of seizure, the known owners and lienholders of the property, the violation or violations of law alleged to be the basis for forfeiture, a statement that a complaint has been filed and that the property shall be forfeited if no answer is timely filed, and instructions on where to file an answer and whom to contact for additional information concerning the forfeiture shall be:

1. Posted by the sheriff on the door of the courthouse in which the action is pending or on a bulletin board within its immediate vicinity;

2. With respect to real property, posted by the sheriff in a conspicuous place on the land; and

3. Except if the property is a boat or motor vehicle, published at least once a week in each of 3 successive weeks in 1 or more newspapers of general circulation published in the county in which the action is pending.

(5) The answer shall comply with the Maryland Rules and:

(i) Set forth the nature and extent of the person's right, title, or interest in the property;

(ii) Set forth the date and circumstances of the creation of the person's right, title, or interest in the property; and

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(iii) Contain a request for relief.

(6) (i) The court shall set a hearing on the forfeiture claim within 60 days after the later of the posting or final publication of the notice under paragraph (4) of this subsection if an answer has been timely filed.

(ii) The court may order forfeiture without a hearing of the property interest of any person who fails to timely file an answer.

(i) In exercising the authority to seize motor vehicles pursuant to this section the following standards shall be utilized:

(1) A motor vehicle used in violation of this section shall be seized and forfeiture recommended to the forfeiting authority when:

(i) Controlled dangerous substances in any quantity are sold or attempted to be sold in violation of this subtitle;

(ii) Although the violator has not sold or attempted to sell controlled dangerous substances in violation of this subtitle, an amount of such substances or paraphernalia is located which would reasonably indicate that sale is contemplated by the violator; or

(iii) The total circumstances of the case dictate that seizure and forfeiture is justified; these circumstances would include such factors as the following:

1. The possession of controlled dangerous substances;
2. An extensive criminal record of the violator;
3. A previous conviction of the violator for a controlled dangerous substances violation;
4. Corroborated information is developed indicating that the violator is or was recently a seller, or frequently associates with individuals known to be distributors of illegal controlled dangerous substances or paraphernalia;
5. Circumstances of the arrest; or
6. The manner in which the vehicle was being used.

(2) A motor vehicle used in violation of this subtitle shall not be seized and forfeiture shall not be recommended to the forfeiting authority when:

(i) The motor vehicle is being used by a member of the family other than the registered owner and controlled dangerous substances or paraphernalia are located therein in a quantity insufficient to suggest a sale is contemplated, and where no sale was made or attempted, and the registered owner did not know that such material was in the motor vehicle;

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(ii) An innocent registered owner lends his motor vehicle to another and the latter or someone invited into the motor vehicle by such person causes controlled dangerous substances or paraphernalia to be brought into the vehicle without the knowledge of the owner; or

(iii) The motor vehicle falls within the provisions of subsection (b)(4)(i) or (ii) of this section.

(3) Forfeiture of the motor vehicle used in violation of this subtitle shall be recommended to the forfeiting authority only after the chief law enforcement officer of the police department, bureau, or force that seized the motor vehicle has determined from the records of the Motor Vehicle Administration the names and addresses of all registered owners and secured parties as defined in the Code, has personally reviewed the facts and circumstances of the seizure and has personally determined, according to the above guidelines, that forfeiture is warranted and so represents in writing to the appropriate forfeiting authority.

(j) If the forfeiting authority determines independent of the decision of the police department, bureau, or force that seized the motor vehicle that the motor vehicle falls within the purview of subsection (i)(2) of this section or that the standards to be utilized pursuant to subsection (i)(1) of this section were not met, the forfeiting authority shall surrender the vehicle upon request to the owner.

(k) (1) If, after a full hearing, the court determines that the property should not be forfeited, the court shall order that the property be released.

(2) (i) Except as provided in subparagraph (v) of this paragraph, if the court determines that the property should be forfeited, the court shall order that the property be forfeited to the appropriate governing body.

(ii) If, however, the court determines that the forfeited property is subject to a valid lien created without actual knowledge that the property was being, or was to be, used in violation of this subheading, the court shall order that the property be released within 5 days to the first priority lienholder.

(iii) The lienholder shall sell the property in a commercially reasonable manner.

(iv) The proceeds of the sale shall be applied as follows:

1. To the court costs of the forfeiture proceeding;
2. To the balance due the lienholder including all reasonable costs incident to the sale;
3. To payment of all other expenses of the proceedings for forfeiture, including expenses of seizure, or maintenance of custody; and
4. Except as provided in subparagraph (v) of this paragraph, to the general funds of the State or the political subdivision that seized the property.

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(v) If the property was seized by State law enforcement agencies:

1. The court under subparagraph (i) of this paragraph shall order the property to be forfeited to the State law enforcement agencies; or

2. The proceeds of the sale under subparagraph (iv) 4 of this paragraph shall be paid to the State law enforcement agencies.

(vi) Except as provided in subparagraph (vii) of this paragraph, the State law enforcement agency that receives forfeited property or proceeds from a sale of forfeited property under this paragraph shall:

1. Dispose of the forfeited property as provided in subsection (f) of this section; and

2. Pay to the General Fund of the State any proceeds of the sale of the forfeited property.

(vii) Except as otherwise provided by federal law, if a law enforcement agency other than a State law enforcement agency participated in the seizure of property forfeited under this subsection that was seized by the State law enforcement agency:

1. The State law enforcement agency shall pay to the other law enforcement agency the share of the proceeds from the sale of the forfeited property as agreed by the law enforcement agencies; or

2. The other law enforcement agency may apply to the Governor's Drug and Alcohol Abuse Commission for a determination of the share of the proceeds of the forfeited property to be paid to that law enforcement agency and the State law enforcement agency shall pay that amount to the other law enforcement agency.

(viii) If a law enforcement agency of a political subdivision receives a share of proceeds under subparagraph (vii) of this paragraph, the proceeds shall be deposited in the general fund of the political subdivision.

(l) (1) Except as provided in paragraph (2) of this subsection, when the State establishes by clear and convincing evidence that a person has committed a violation of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these offenses, there is a rebuttable presumption that any property or any portion thereof in which that person has an ownership interest is subject to forfeiture as proceeds if the State establishes by clear and convincing evidence that:

(i) The property was acquired by such person during the period in which such person had committed violations of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these offenses, or within a reasonable time after such period; and

(ii) There was no likely source for such property other than the violation of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these offenses.

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(2) Except as provided in subsection (n)(2) of this section, real property used as the principal family residence may not be forfeited under this subsection unless it is shown that one of the owners of the real property was convicted of one or more of the offenses described under paragraph (1) of this subsection.

(3) The burden of proof is on a claimant of the property to rebut the presumption in paragraph (1) of this subsection.

(m) (1) (i) Except as provided in subsection (l) of this section and paragraph (2) of this subsection, an owner's interest in real property may be forfeited if the real property was used in connection with a violation of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these offenses.

(ii) An owner's interest in real property may not be forfeited for a violation of § 287 or § 287A of this article.

(2) Except as provided in subsections (l)(2) and (n)(2) of this section, real property used as the principal family residence by a husband and wife and held by the husband and wife as tenants by the entirety, and which was used in connection with a violation of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these offenses, may not be forfeited unless both the husband and wife are convicted of one or more of these offenses.

(3) (i) Forfeiture proceedings for real property may be brought in the jurisdiction where:

1. The criminal charges are pending;
2. The owner resides; or
3. The real property is located.

(ii) 1. If forfeiture proceedings for real property are brought in a jurisdiction other than where the real property is located lis pendens shall be filed in the jurisdiction where the property is located.

2. A lis pendens required under this subparagraph shall include at a minimum:

- A. The name and address of the owner of the property;
- B. A description of the property; and
- C. A description of the reasons for the filing of the forfeiture proceedings and the lis pendens.

(4) Seizure of real property occurs when a complaint for forfeiture under this subtitle is filed or lis pendens is filed in the circuit court of the jurisdiction where the property is located, whichever occurs first.

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(5) Unless agreed to by the forfeiting authority or ordered by the court, or unless the owner posts a bond under subsection (o) of this section, an owner may not attempt to convey or encumber an interest in seized real property, or remove a building or fixture on seized property until the court enters judgment in favor of the owner.

(n) (1) If an owner of real property used as the principal family residence is convicted of a violation under § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these offenses, and the owner files an appeal of the conviction, the court shall stay, during the pendency of the appeal, any forfeiture proceedings under subsection (1)(2) or subsection (m)(2) of this section against real property used as the principal family residence.

(2) A court may order a forfeiture of real property used as the principal family residence under subsection (1)(2) or subsection (m)(2) of this section without a conviction if the owner:

(i) Fails to appear for a required court appearance; and

(ii) Does not surrender to the jurisdiction of the court within 180 days of the date of the required court appearance.

(o) (1) Except as provided in subsection (m)(4) and (p) of this section, if an owner of seized property wants to obtain possession of the property, regardless of whether forfeiture proceedings have been commenced, or to convey an interest in real property, or remove a building or fixture on real property, where forfeiture proceedings have been commenced against the real property, the owner shall notify:

(i) If forfeiture proceedings have been commenced, the clerk of the court where the proceedings have been commenced;

(ii) If criminal proceedings have been commenced but forfeiture proceedings have not, the clerk of the court where the criminal proceedings have been commenced; or

(iii) If neither forfeiture nor criminal proceedings have been commenced, the clerk of the circuit court of the jurisdiction where the property was seized.

(2) If the property is not needed for evidentiary purposes in a judicial proceeding:

(i) For property other than motor vehicles, the clerk shall obtain an independent appraisal of the value of the property.

(ii) For motor vehicles, the clerk shall have an appraisal made by the sheriff of the jurisdiction in which the court is located.

(3) The sheriff or other person responsible for an appraisal under paragraph (2) of this subsection shall promptly:

(i) Inspect and render an appraisal of the value of the property; and

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(ii) Return the appraisal, in writing, under oath, to the clerk of the court.

(4) Notice of the appraisal shall be sent to all lienholders shown in the records prescribed by law for notice or the perfection of the lien.

(5) (i) Upon the filing of the appraisal, the owner may give bond payable to the clerk of the court in an amount equal to the greater of the appraised value of the property plus costs which may accrue, or the aggregate amount of the liens on the property as shown in the records prescribed by law for the notice or perfection of liens, with security to be approved by the clerk of the court, and conditioned for performance on final judgment by the court.

(ii) The bond authorized in this subsection shall be filed in the District Court or circuit court where the criminal action that gave rise to the seizure is pending and shall be part of that same criminal proceeding, unless a complaint for forfeiture has been filed. However, if no criminal action is pending or if no forfeiture complaint has been filed, the bond shall be filed in the circuit court or District Court where the property was seized.

(6) (i) If forfeiture of the property or of an interest or equity in the property or proceeds is directed under this section, judgment shall be entered against the obligors on the bond without further proceedings, to be discharged by payment of the amount of the bond, on which judgment may issue.

(ii) Payment of the amount of the bond shall be applied as provided under subsection (k)(2)(iv) of this section.

(p) (1) Subject to the rights of a lienholder to sell the real property, an owner or the owner's tenants may remain in possession of seized real property until forfeiture is ordered.

(2) The forfeiting authority may apply to the court for the appointment of a receiver to apply income from income-producing property.

(3) If an owner or the owner's tenants remain in possession of the real property and that owner's or tenant's interest in the real property is forfeited, that owner or tenant shall immediately surrender the property to the seizing agency in substantially the same condition as when seized.

(q) Any sale ordered pursuant to this section shall be made for cash and vest in the purchaser a clear and absolute title to the property that is sold.

(r) (1) This section may not be construed to prohibit a lienholder from exercising its rights under applicable law, including the right to sell property that has been seized 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 property that has been seized under this section shall notify the forfeiting authority in writing of the lienholder's intention to sell the property.

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(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) Upon request of the lienholder, the property 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 property.

(4) (i) The lienholder may not be required to take possession of the property prior to the sale of the property.

(ii) The proceeds of the sale shall be applied first to the costs of the forfeiture proceeding, then as provided by law for distribution of proceeds of a sale by the lienholder.

(iii) Any portion of the proceeds that would be paid to an owner of the property under the applicable law relating to distribution of proceeds shall be paid to the seizing agency and shall be property subject to forfeiture. If no order of forfeiture is entered, the State shall remit to the owner that portion of the proceeds and any costs of the forfeiture proceedings paid from the proceeds of the sale.

(5) (i) If the interest of the owner in the property is redeemed, the lienholder shall mail a notice of the redemption to the forfeiting authority within 10 days after the redemption.

(ii) If the property has been repossessed or otherwise lawfully taken by the lienholder, the lienholder shall return the property to the seizing agency within 21 days after the redemption.

(iii) The seizing agency and the forfeiting authority may then proceed with the forfeiture of the property or proceeds, and all time limitations required under this section for notice and filing of the complaint for forfeiture shall run from the date of the redemption or purchase of the property.

(s) In a proceeding under this section, a court may:

(1) Grant requests for mitigation or remission of forfeiture, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) Resolve claims arising under this section; or

(3) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

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### **Section 297A. Contraband Coin and Currency.**

Upon the seizure of contraband coin and currency pursuant to §§ 264 and 297 of this article, the seizing authority shall cause it to be immediately photographed and an immediate record to be made specifying the quantity of each denomination of coin or currency seized. The photographs may be substituted for the coin and currency as evidence in a criminal or forfeiture proceeding.

The coin and currency when photographed and recorded shall immediately be deposited by the seizing authority to the account of the county treasurer or Director of Finance of Baltimore City, or the municipal treasurer or director of finance of the municipality, as the case may be.

### **Section 297B. Illegal Financial Transactions.**

- (a) (1) In this section the following words have the meanings indicated.
- (2) "Controlled dangerous substance offense" means:
- (i) An offense under this subheading; or
  - (ii) An offense committed in another jurisdiction that would be a crime under this subheading if committed in Maryland.
- (3) "Financial transaction" means:
- (i) A payment;
  - (ii) A purchase;
  - (iii) A sale;
  - (iv) A loan;
  - (v) A pledge;
  - (vi) A transfer;
  - (vii) A delivery;
  - (viii) A deposit;
  - (ix) A withdrawal; and
  - (x) An extension of credit or exchange of any monetary instrument or equivalent property, including precious metals, stones or jewelry, airline tickets, stamps, or credit in a financial institution as defined in § 1-101(h) of the Financial Institutions Article.
- (4) "Monetary instrument" means:
- (i) Coins and currency of the United States or any other country;
  - (ii) Bank checks;

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- (iii) Travelers' checks;
- (iv) Money orders;
- (v) Investment securities; and
- (vi) Negotiable instruments.

(5) "Proceeds" means money or any other property with a value greater than \$10,000

(b) (1) Except for any financial transactions necessary to preserve a person's right to representation as guaranteed by the 6th Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, a person may not, with the intent to promote a controlled dangerous substance offense or with the intent to conceal or disguise the nature, location, source, ownership or control of proceeds of a controlled dangerous substance offense:

(i) Receive or acquire proceeds knowing that the proceeds are derived from a controlled dangerous substance offense;

(ii) Engage in financial transactions involving proceeds knowing that the proceeds are derived from a controlled dangerous substance offense;

(iii) Give, sell, transfer, trade, invest, conceal, transport or maintain an interest in proceeds knowing that the proceeds are derived from a controlled dangerous substance offense;

(iv) Direct, promote, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds knowing that the proceeds are derived from a controlled dangerous substance offense; or

(v) Conduct a financial transaction involving proceeds knowing that the proceeds are derived from a controlled dangerous substance offense.

(2) Notwithstanding any other provision of law, for purposes of this section each financial transaction shall constitute a separate offense.

(c) (1) A person who violates this section is guilty of a felony and on conviction is subject to a fine not exceeding the greater of \$250,000 or twice the value of the proceeds involved in the financial transaction or imprisonment not exceeding 5 years or both.

(2) A person convicted of a second or subsequent conviction of this section is subject to a fine not exceeding the greater of \$500,000 or 5 times the value of the proceeds involved in the financial transaction or imprisonment not exceeding 10 years or both.

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**Section 298. Burden of Proof; Liability of Officers; Witnesses' Immunity; Notice of Conviction; Standard Governing Arrest, Search and Seizure; Hearsay Evidence; Authority of State Police.**

(a) It shall not be necessary for the State to negate any exemption, proviso or exception set forth in this subheading in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this subheading, and the burden of proof of any such exemption, proviso or exception shall be upon the person claiming its benefit. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this subheading, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

(b) No criminal liability shall be imposed by virtue of this subheading upon any duly authorized officer of the United States, this State or any political subdivision of this State, or upon any duly authorized police department civilian employee of the United States, this State, or any political subdivision of this State, engaged in the enforcement or prosecution of this subheading, who shall be engaged in the enforcement of any law or municipal ordinance relating to controlled dangerous substances. Every such public official or employee may temporarily possess controlled dangerous substances or controlled paraphernalia incidental to the discharge of his official or employee duties.

(c) Notwithstanding any other provision of law to the contrary, any violation of any provision of this subheading, shall be deemed to be a felony for purposes of arrest, search and seizure regardless of whether a defendant is subsequently charged with or convicted of a violation which amounts only to a misdemeanor.

(d) Notwithstanding any provision of law to the contrary, at any hearing relating to bail or sentencing arising out of any violation or alleged violation of any provision of this subheading, hearsay evidence shall be admissible if relevant to the issue and if the underlying circumstances upon which it is based and the reliability of the source of the information is demonstrated.

(e) Notwithstanding any provision of law to the contrary, the Department of State Police may initiate investigations and otherwise enforce the provisions of §§ 276 through 302 of this article throughout the State without any limitation as to activities within municipal corporations or other subdivisions.

(f) (1) Notwithstanding any provision of law to the contrary, law enforcement officers of the Maryland Transportation Authority Police, the Maryland Port Administration Police, or any municipality, or county of this State may conduct investigations and otherwise enforce the provisions of §§ 276 through 302 of this article throughout the State without any limitations as to jurisdiction, to the same extent as a police employee of the Department of State Police. This authority may only be exercised in accordance with regulations adopted by the Superintendent of the State Police. Such regulations are not subject to the provisions of Title 10, Subtitle 1 of the State Government Article.

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(2) When acting under the authority granted in this subsection, the following notifications of an investigation or enforcement action shall be made:

(i) When in an incorporated municipality, to the chief of police, if any, or his designee;

(ii) When in a county which has a county police department, to the chief of police or his designee;

(iii) When in a county without a police department, to the sheriff or his designee;

(iv) When in Baltimore City, to the Police Commissioner or the Police Commissioner's designee; and

(v) When on any property owned, leased, or operated by or under the control of the Maryland Transportation Authority, the Maryland Aviation Administration, or the Maryland Port Administration, to the respective chief of police or the chief's designee.

(3) When acting under the authority granted in this section, any law enforcement officer shall have all the immunities from liability and exemptions as that of a law enforcement officer of the Department of State Police in addition to any other immunities and exemptions to which the law enforcement officer may otherwise be entitled. Any law enforcement officers who use the authority granted in this section shall at all times and for all purposes remain an employee of their respective employing agency.

### **Section 298A. License Sanctions.**

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

(2) "Controlled dangerous substance offense" means:

(i) A violation of any provision of this subheading; or

(ii) A violation of the law of any other jurisdiction if the prohibited conduct would be a violation of this subheading if committed in this State.

(3) "License" has the meaning stated in Article 41, § 1-501 of the Code.

(4) "Licensing information" means a statement of:

(i) The licenses held by the defendant on the date of sentencing;

(ii) The full name of the licensee as it appears on the licenses and, if different, as it appears in the court's docket;

(iii) The birth date of the licensee; and

(iv) The name of each licensing authority by whom the defendant is licensed.

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(5) "Licensing authority" has the meaning stated in Article 41, § 1-501 of the Code.

(b) The provisions of this section shall apply only to a conviction for a controlled dangerous substance offense committed on or after January 1, 1991.

(c) If an individual is convicted of a controlled dangerous substance offense, the court shall determine at time of sentencing whether the individual holds a license and, if so, shall obtain the licensing information.

(d) (1) The provisions of this subsection shall apply to an individual who is convicted of a controlled dangerous substance offense and does not have a prior conviction or probation before judgment for a controlled dangerous substance offense committed on or after January 1, 1991.

(2) If the individual holds a license, the court at time of sentencing shall make a prima facie finding of fact as to whether there is a relationship between the conviction and the license, including:

(i) The individual's ability to perform the tasks authorized by the license;

(ii) Whether the public will be protected if the individual continues to perform the tasks authorized by the license;

(iii) Whether the nature and circumstances of the controlled dangerous substance offense warrant referral to the licensing authority; and

(iv) Any other facts that the court deems relevant.

(3) If the court makes a prima facie finding of fact that there is a relationship between the conviction and the license, the court shall follow the procedures established under subsection (e) of this section.

(e) (1) The provisions of this subsection shall apply to a conviction for a controlled dangerous substance offense if:

(i) 1. The individual has no prior convictions or probations before judgment for a controlled dangerous substance offense committed on or after January 1, 1991; and

2. The court makes a prima facie finding of fact that there is a relationship between the conviction and the license under subsection (d) of this section; or

(ii) The individual has one or more prior convictions or probations before judgment for a controlled dangerous substance offense committed on or after January 1, 1991.

(2) If the provisions of paragraph (1) of this subsection apply, the court shall:

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- (i) Notify the clerk of the court of the determination; and
- (ii) Provide the clerk of the court with the licensing information.

(3) The clerk of the court shall certify and report the conviction and the licensing information to the licensing authority, under regulations adopted by the Chief Judge of the Court of Appeals.

(f) If the court makes a prima facie finding of fact under subsection (d) of this section that there is no relationship between the conviction and the license, the clerk may not certify or report to a licensing authority the conviction or the licensing information.

### **Section 299. Payments by State Police in Connection with Purchase.**

(a) The Superintendent of State Police may pay any person, from funds appropriated for the Department of State Police, Intelligence Division, for information concerning a violation of this subheading, a sum or sums of money he deems appropriate, without reference to any moieties or rewards to which the person may otherwise be entitled by law.

(b) Moneys expended from appropriations of the Department of State Police, Intelligence Division, for purchase of controlled dangerous substances and subsequently recovered shall be reimbursed to the current appropriation for that agency.

(c) The Superintendent of State Police may advance funds in connection with the enforcement of this section.

### **Section 300. Prescription Drugs.**

(a) "Prescription drugs" shall mean and include any drug intended for use by man which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary for its use, bears a cautionary label warning against dispensing without a prescription under federal law or is designated by the Department as not safe for use except under the supervision of a practitioner licensed by law to administer such drugs. Provided that this term shall not mean any controlled dangerous substance as defined in this subheading.

(b) Any drug which bears a cautionary label warning against dispensing without a prescription under federal law shall be dispensed only:

- (1) Upon the written prescription of a practitioner licensed by law to administer such drugs, or
- (2) Upon the oral prescription of such practitioner, which shall be reduced to writing and filed by the pharmacist, or
- (3) By refilling any such written or oral prescription if such refilling is authorized by the prescriber, either in the original prescription or by oral direction. Such authorization must be reduced to writing and filed by the pharmacist.

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(c) Any prescription drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drugs shall in addition to any requirements of the Department or federal law bear a label containing the name and address of the dispenser, the serial number and date of the prescription, the name of the prescriber, and, if stated in the prescription, the name and address of the patient, and the directions for use as contained in the written or oral prescription.

(d) The provisions of this subheading shall not apply to sales of prescription drugs made to registered practitioners of pharmacy, medicine, dentistry, or veterinary medicine, or to sales made by any manufacturer, wholesale druggist, or licensed pharmacist to another manufacturer, wholesale druggist, or licensed pharmacist or to a hospital or institution operating a dispensary in which a practitioner licensed by law to administer prescription drugs is in charge, providing records of such sales are maintained, and available for inspection, showing date of sale, name and address of purchaser, and quantity purchased.

(e) (1) Generally the provisions of this section shall apply to the sale by any manufacturer, wholesale druggist, retail pharmacist, or jobber of prescription drugs, to any person, other than those legally qualified and authorized to purchase and hold same for use or resale, and to any practitioner's assistant who is not legally licensed to administer prescription drugs.

(2) No person shall be permitted to advertise through any media other than a professional or trade publication any controlled dangerous substance or prescription drug by either its "trade name" or by its generic or formulary name.

(f) The provisions of this subsection shall not apply to the distribution of prescription drugs, as defined in this section, devices or supplies of any kind whatsoever for the treatment, care or cure of farm animals, poultry, fowl, or other animals used in furtherance of farming activities, providing further that the provisions of this subheading shall not apply to the sale or offering for sale, or distribution of seeds, feed for livestock and poultry, fertilizers, lime, land plaster, fungicides and insecticides, nor to apply to any drug which on June 1, 1961, may be sold without a prescription.

(g) The Department is hereby authorized to promulgate necessary regulations and interpretations, not inconsistent with law, for the administration and enforcement of this section.

(g-1) Except as authorized by this subheading it is unlawful for any person to:

(1) Manufacture, distribute, or possess with intent to distribute a prescription drug.

(2) Obtain or attempt to obtain a prescription drug by (i) fraud, deceit, misrepresentation, or subterfuge, (ii) the forgery or alteration of a prescription or a written order, (iii) the concealment of any material fact or the use of false name or address, (iv) falsely assuming the title of or representing himself to be a manufacturer, distributor or practitioner, or (v) making or uttering any false or forged prescription or written order.

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(3) Affix any false or forged label to a package, container, or other receptacle containing any prescription drug, or to omit, remove, alter, or obliterate any label or symbol on a prescription drug as required by federal, State, or local law.

(h) Any person who violates any of the provisions of this section, or refuses, neglects or fails to comply with the provisions and requirements thereof, or who obtains or possesses a prescription drug in violation of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000) and/or imprisoned for not more than two (2) years, or both.

(i) Any person or corporation engaged in the business of selling prescription drugs, controlled dangerous substances, medicines, chemicals, or preparations for medical use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical, or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia and National Formulary, or prepared according to the private formula of some individual or firm, other or different from the prescription drug, controlled dangerous substances, medicine, chemical, or preparation, ordered or called for by such person, or called for in a physician's or other authorized prescriber's prescription, except as authorized under § 12-508 of the Health Occupations Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500, or by not less than one month nor more than 12 months' imprisonment, or by both, and any person so convicted shall forfeit the right to practice pharmacy under any certificate or registration issued under the laws of this State.

(j) It shall be unlawful for any person, persons, firm or corporation to mail any prescription drug, controlled dangerous substances, medicines, etc. as defined in this subheading or by bulk mailing to "Resident," "Occupant," or to a named addressee who has not requested that such prescription drug, controlled dangerous substances, medicines, etc. be mailed to him. Any person, or if a firm or corporation, it and all its agents, who shall violate any of the provisions of this subsection shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in jail not to exceed six months, or by both fine and imprisonment. The provisions of this subsection shall not apply to the mailing of any drugs to those persons, institutions or corporations who under the laws of Maryland are permitted to disburse, prescribe or administer such drugs.

### **Section 301. Smelling or Inhaling Certain Harmful Substances – Prohibited; Exceptions; Penalty.**

(a) It is unlawful for any person to deliberately smell or inhale such excessive quantities of any drugs, or any other noxious substances or chemicals containing any ketones, aldehydes, butyl nitrite, methyl benzene, organic acetates, ether, chlorinated hydrocarbons, fluorinated hydrocarbons, or any other substances containing solvents releasing toxic vapors, as cause conditions of intoxication, inebriation, excitement, stupefaction or dulling of the brain or nervous system. This section applies with particularity to fingernail polish, model airplane glue, or any other substance or chemical

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which has the aforementioned effect upon the brain or nervous system when smelled or inhaled; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anaesthesia for medical or dental purposes, and further provided, that nothing in this section shall be interpreted as applying to the controlled dangerous substances as defined in this subheading.

(b) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding \$500, or imprisonment not exceeding six months, or both.

### **Section 301A. Same – Minors.**

(a) No person may distribute, or possess with intent to distribute, to any minor any of the substances enumerated in § 301 of this article if such distribution is with the intent to induce unlawful inhaling of the substance or is with the knowledge that the minor will unlawfully inhale the substance.

(b) No person may instruct a minor in the practice of unlawful inhaling as defined in § 301 of this article.

(c) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding \$500, or imprisonment not exceeding 18 months, or both.

(d) Any person found guilty of a second or subsequent violation of any provision of this section is subject to a fine not exceeding \$1,000, or imprisonment not exceeding 3 years, or both.

### **Section 302. Miscellaneous Provisions.**

(a) Prosecutions for any violation of law occurring prior to July 1, 1970, shall not be affected by these repealers or amendments, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to July 1, 1970, shall not be affected by these repealers or amendments, or abated by reason thereof.

(c) All administrative proceedings pending before the Department on July 1, 1970, shall be continued and brought to final determination in accord with laws and regulations in effect prior to July 1, 1970. Such drugs placed under control prior to July 1, 1970, which are not listed within Schedules I through V shall automatically be controlled and listed in the appropriate schedule.

(d) The provisions of this subheading shall be applicable to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective dates.

(e) Any orders, rules, and regulations which have been promulgated under any law affected by this subheading which are in effect on the day preceding July 1, 1970, shall continue in effect until modified, superseded or repealed by the Department.

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(f) This subheading may be cited as the Maryland Controlled Dangerous Substances Act.

(g) Repealed.

(h) The Department shall have the authority to adopt such rules and regulations as are necessary to carry out the power granted herein.

### **Section 303. Educational Program on AIDS.**

In addition to any penalty imposed under this subheading, a court may require any person who pleads guilty or nolo contendere to, or who is found guilty of, violating any provision of this subheading and who the judge believes will attend and benefit from the educational program on acquired immune deficiency syndrome (AIDS) developed under § 18-339 of the Health - General Article to complete the program.

### **Section 304. Use of Anabolic Steroids or Growth Hormones.**

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

(2) "Athletic facility" means any commercial health club, public recreation center, weight training gym, school gymnasium, or other establishment operated primarily for the exercise, physical fitness, athletic training, or physical education of the individuals using the facility.

(3) "Human growth hormone" means:

(i) Somatrem, somatropin, and any of their analogs; or

(ii) Any substance labeled as being or containing somatrem or somatropin and any one of their analogs.

(b) (1) Any person or school operating an athletic facility shall obtain and affix at least 1 warning notice in each locker room maintained in the facility.

(2) The lettering in each warning notice shall be at least 1 inch in height, and shall be conspicuously positioned for the maximum possible visibility.

(3) The text of the warning notice shall be as follows:

#### WARNING

THE NONPRESCRIPTION USE, POSSESSION, OR DISTRIBUTION OF ANABOLIC STEROIDS OR HUMAN GROWTH HORMONE IS ILLEGAL IN THE STATE OF MARYLAND. UPON CONVICTION, VIOLATORS ARE SUBJECT TO A FINE OR IMPRISONMENT OR BOTH.

### **Article 41 - Governor - Executive and Administrative Departments**

#### **Section 18-306. Commission on White Collar Dealers of Illegal Drugs.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

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// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 509 OF 1994 AND WILL REMAIN IN EFFECT UNTIL DECEMBER 31, 1995 //

- (a) (1) In this section the following words have the meanings indicated.
- (2) "Commission" means the Commission on White Collar Dealers of Illegal Drugs.
- (3) "White collar dealer" means an individual who directly or indirectly uses business or professional entities, or government agencies to aid or further the sale, distribution, or importation of a controlled dangerous substance.
- (b) There is a Commission on White Collar Dealers of Illegal Drugs.
- (c) The Commission consists of nine members, as follows:
- (1) Six members shall be appointed by the Governor as follows:
- (i) Two shall be representatives of the Department of Public Safety and Correctional Services, including at least one representative of the Department of State Police Bureau of Drug Enforcement;
- (ii) One shall be a representative of a local police department;
- (iii) Two shall be representatives of the general public; and
- (iv) One shall be a representative of the State's Attorney's Association.
- (2) (i) One member shall be a member of the Senate of Maryland, appointed by the President of the Senate.
- (ii) One member shall be a member of the House of Delegates, appointed by the Speaker of the House.
- (3) One member shall be a judge in the Circuit Court of Baltimore City, appointed by the Chief Judge of the Court of Appeals.
- (d) A member of the Commission:
- (1) May not receive compensation; but
- (2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.
- (e) The Governor shall designate a member of the Commission to serve as chairman.
- (f) The Department of Legislative Reference shall provide staff for the Commission.
- (g) The Commission shall:

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(1) Formulate recommendations for statutory and procedural changes needed to facilitate prosecution of white collar drug dealers by studying and reviewing:

(i) Reports, research, studies, and other information available on the importation and wholesale distribution of illegal drugs;

(ii) Recommendations made by the Governor's Drug and Alcohol Abuse Commission; and

(iii) The report, findings, and recommendations of the May term 1993 Grand Jury and the extended May term 1993 Grand Jury issued by the Circuit Court for Baltimore City;

(2) Determine the financial impact and demographics of white collar drug activities in Maryland;

(3) Review the priority and impact of law enforcement agencies operating in the State as they relate to white collar dealers;

(4) Make recommendations to the Governor for legislation designed to aid local law enforcement agencies with respect to white collar drug dealers; and

(5) Gather any other relevant information that the Commission considers appropriate.

(h) On or before December 31, 1995, the Commission shall submit its findings and recommendations to the Governor for further action.

(i) This section shall terminate and be of no effect after December 31, 1995.

### Article – Education

#### Section 4-122. Drug Free School Zone Signs.

A county board may adopt regulations requiring the posting of signs designating the areas within 1,000 feet of public and nonpublic elementary and secondary schools as "drug free school zones". The signs shall be designed in order to provide notice of the provisions of Article 27, § 286D of the Code.

### Article – Real Property

#### Section 14-120. Abatement of Nuisance Where Property is Used for Controlled Dangerous Substance Offenses.

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

(2) "Community association" means:

(i) A nonprofit association, corporation, or other organization that is:

1. Comprised of residents of a community within which a nuisance is located;

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2. Operated exclusively for the promotion of social welfare and general neighborhood improvement and enhancement; and

3. Exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; or

(ii) A nonprofit association, corporation, or other organization that is:

1. Comprised of residents of a contiguous community that is defined by specific geographic boundaries, within which a nuisance is located; and

2. Operated for the promotion of the welfare, improvement and enhancement of that community.

(3) "Controlled dangerous substances" has the meaning stated in Article 27, § 279(a) and (b) of the Code.

(4) "Nuisance" means a property that is used:

(i) By persons who assemble for the specific purpose of illegally administering a controlled dangerous substance;

(ii) For the illegal manufacture, or distribution of:

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in Article 27, § 287(d) of the Code; or

(iii) For the illegal storage or concealment of a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to manufacture, distribute, or dispense:

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in Article 27, § 287(d) of the Code.

(5) "Property" includes a mobile home.

(6) (i) "Tenant" means the lessee or a person occupying property, whether or not a party to a lease.

(ii) "Tenant" includes a lessee or a person occupying a mobile home, whether or not a party to a lease.

(iii) "Tenant" does not include a mobile home owner who leases or rents a site for residential use and resides in a mobile home park.

(b) An action under § 4-401 of the Courts Article to abate a nuisance may be brought by:

(1) The State's Attorney of the county in which the nuisance is located;

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(2) The county attorney or solicitor of the county in which the nuisance is located; or

(3) A community association within whose boundaries the nuisance is located.

(c) (1) An action may not be brought under this section concerning a commercial property until 45 days after the tenant, if any, and owner of record receive notice from a person entitled to bring an action under this section that a nuisance exists.

(2) The notice shall specify:

(i) The date and time of day the nuisance was first discovered; and

(ii) The location on the property where the nuisance is allegedly occurring.

(3) The notice shall be:

(i) Hand delivered to the tenant, if any, and the owner of record; or

(ii) Sent by certified mail to the tenant, if any, and the owner of record.

(d) (1) In addition to any service of process required by the Maryland Rules, the plaintiff shall cause to be posted in a conspicuous place on the property within 48 hours of filing the complaint the notice required under paragraph (2) of this subsection.

(2) The notice shall indicate:

(i) The nature of the proceedings;

(ii) The time and place of the hearing; and

(iii) The name and telephone number of the person to contact for additional information.

(e) The court may issue an injunction or order other equitable relief whether or not an adequate remedy exists at law.

(f) (1) Notwithstanding any other provision of law, and in addition to or as a component of any remedy ordered under subsection (e) of this section, the court, after a hearing, may order a tenant with knowledge of the existence of the nuisance to vacate the property within 72 hours.

(2) The court, after a hearing, may grant a judgment of restitution or the possession of the property to the owner if:

(i) The owner and lessee are parties to the action; and

(ii) A tenant has failed to obey an order under subsection (e) of this section or paragraph (1) of this subsection.

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(3) If the court orders restitution of the possession of the property under paragraph (2) of this subsection, the court shall immediately issue its warrant to the sheriff or constable commanding execution of the warrant within 5 days after issuance of the warrant.

(4) The court may order the owner of the property to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if:

- (i) The owner is a party to the action; and
- (ii) The owner knew of the existence of the nuisance.

(g) Except as provided in subsection (f) (1) and (4) of this section, the court may order appropriate relief under subsections (e) and (f) of this section without proof that a defendant knew of the existence of the nuisance.

(h) In any action brought under this section:

(1) Evidence of the general reputation of the property is admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but shall not, in and of itself, be sufficient to establish the existence of a nuisance under this section; and

(2) Evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing does not bar the imposition of appropriate relief by the court under subsections (e) and (f) of this section.

(i) The court may award court costs and reasonable attorney's fees to a community association that is the prevailing plaintiff in an action brought under this section.

(j) An action under this section shall be heard within 14 days after service of process on the parties.

(k) This section does not abrogate any equitable or legal right or remedy under existing law to abate a nuisance.

(l) (1) An appeal from a judgment or order under this section shall be filed within 10 days after the date of the order or judgment.

(2) (i) Upon motion of either party, the circuit court shall set a date for the hearing of the appeal, which shall be not less than 5 or more than 15 days after the date the motion is filed.

(ii) Notice of the order for a hearing shall be served on the opposite party or the party's attorney at least 20 days before the hearing.

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**D. DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE**

**Article 27 – Crimes and Punishments**

**Section 388A. Homicide by Motor Vehicle or Vessel While Intoxicated.**

(a) In this section “intoxicated” and “under the influence of alcohol” have the same meanings as indicated in and are subject to the same presumptions and evidentiary rules of § 10-307 of the Courts Article regarding intoxication and being under the influence of alcohol under the vehicle laws of this State.

(b) Any person causing the death of another as the result of the person’s negligent driving, operation, or control of a motor vehicle or vessel while intoxicated is guilty of a misdemeanor to be known as “homicide by motor vehicle or vessel while intoxicated”, and the person so convicted shall be punished by imprisonment for not more than 5 years, or by fine of not more than \$3,000 or both fine and imprisonment.

(c) A person who causes the death of another as the result of the person’s negligent driving, operation, or control of a motor vehicle or vessel while under the influence of alcohol is guilty of a misdemeanor to be known as “homicide by motor vehicle or vessel while under the influence”, and on conviction shall be punished by imprisonment for not more than 1 year or a fine of not more than \$1,000 or both.

(d) (1) In any indictment, information, or other charging document under this section, it is not necessary to set forth the manner and means of death.

(2) It shall be sufficient to use a formula substantially to the following effect:

(i) “That A–B on the ..... day of ....., nineteen hundred and ..... at the County (City) aforesaid, unlawfully, while intoxicated did kill C–D, against the peace, government, and dignity of the State.”; or

(ii) “That A–B on the..... day of ....., nineteen hundred and ..... at the County (City) aforesaid, unlawfully, while under the influence of alcohol, did kill C–D, against the peace, government, and dignity of the State.”

**Section 639. Suspension of Sentence; Intoxicated Drivers.**

(a) (1) The courts may suspend sentence generally or for a definite time, and may make such orders and impose such terms as to costs, recognizance for appearance, or matters relating to the residence or conduct of the convicts as may be deemed proper; and if the convict is a person under 18 years of age, the courts may also make such orders as to his detention in any care or custody as may be deemed proper.

(2) In Charles County, St. Mary’s County, and Calvert County, the court may impose a sentence of confinement as a condition of probation.

(b) However, when the conviction is for violation of § 21-902(a) or (b) of the Transportation Article, if the court places the person on probation, it shall require, as a condition of the suspension of sentence, that the person participate in an alcohol

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treatment or education program approved by the Department of Health and Mental Hygiene, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition.

(c) In Prince George's County, the courts may also impose such sentences as may be provided by law with respect to the offense upon which an accused has been convicted and cause the convict to serve the sentence by attendance at the county detention center or place of confinement under the jurisdiction of the sheriff, where the sentence is to be performed during any 48-hour period, in any 7-day period, with each period of confinement to constitute not less than 2 days of the sentence imposed; provided, however, that the offense leading to such conviction shall permit confinement in the county detention center and the total sentence imposed by the judge may not exceed 30 2-day periods of confinement.

(d) When the conviction is for violation of any provision of §§ 276 through 303 of this article, if the court places the person on probation, it shall require, as a condition of the suspension of sentence, that the person participate in a drug treatment or education program approved by the Department of Health and Mental Hygiene, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition.

### **Section 641. Probation Before Judgment.**

(a) (1) (i) 1. Whenever a person accused of a crime pleads guilty or nolo contendere or is found guilty of an offense, a court exercising criminal jurisdiction, if satisfied that the best interests of the person and the welfare of the people of the State would be served thereby, and with the written consent of the person after determination of guilt or acceptance of a nolo contendere plea, may stay the entering of judgment, defer further proceedings, and place the person on probation subject to reasonable terms and conditions as appropriate. The terms and conditions may include ordering the person to pay a fine or pecuniary penalty to the State, or to make restitution, but before the court orders a fine, pecuniary penalty, or restitution the person is entitled to notice and a hearing to determine the amount of the fine, pecuniary penalty, or restitution, what payment will be required, and how payment will be made. The terms and conditions also may include any type of rehabilitation program or clinic, or similar program, or the parks program or voluntary hospital program.

2. In Charles County, St. Mary's County, and Calvert County, the court may impose a sentence of confinement as a condition of probation.

(ii) However, when the offense for which the judgment is being stayed is for violation of any provision of § 21-902 of the Transportation Article, the court:

1. Shall impose a period of probation and, as a condition of the probation, require the person to participate in an alcohol treatment or education program approved by the Department of Health and Mental Hygiene, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition; and

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2. May, as a condition of probation, prohibit the person from operating a motor vehicle unless the motor vehicle is equipped with an ignition interlock system under § 27-107 of the Transportation Article.

(iii) When the offense for which the judgment is being stayed is for a violation of any provision of §§ 276 through 303 of this article, the court shall require the person to participate in a drug treatment or education program approved by the Department of Health and Mental Hygiene, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition.

(iv) Any fine or pecuniary penalty imposed as a term or condition of probation shall be within the amount prescribed by law for a violation resulting in conviction.

(2) Notwithstanding paragraph (1) of this subsection, a court may not stay the entering of judgment and place a person on probation for a violation of any provision of § 21-902 of the Transportation Article if the person has been convicted under, or has been placed on probation under this section after being charged with a violation of, § 21-902 of the Transportation Article within the preceding 5 years.

(3) Notwithstanding paragraph (1) of this subsection, a court may not stay the entering of judgment and place a person on probation for a second or subsequent controlled dangerous substance offense under §§ 276 through 303 of this article.

(4) By consenting to and receiving a stay of entering of the judgment as provided by this subsection, the person waives the right to appeal from the judgment of guilt by the court at any time. Prior to the person consenting to the stay of entering of the judgment, the court shall notify the person that by consenting to and receiving a stay of entry of judgment, the person waives the right to appeal from the judgment of guilt by the court at any time.

(b) Upon violation of a term or condition of probation, the court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation.

(c) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person from probation. The discharge is final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of crime.

### **Section 641A. Suspended Imposition of Sentence.**

(a) (1) Upon entering a judgment of conviction, the court having jurisdiction may suspend the imposition or execution of sentence and place the defendant on probation upon such terms and conditions as the court deems proper.

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(2) In Charles County, St. Mary's County, Cecil County, Harford County, and Calvert County, the court may impose as a condition of probation a sentence of confinement.

(3) The court may impose a sentence for a specified period and provide that a lesser period be served in confinement, suspend the remainder of the sentence and grant probation for a period longer than the sentence but not in excess of 5 years.

(4) However, if the defendant consents in writing, the court may grant probation in excess of 5 years, but only for purposes of making restitution.

(b) Probation may be granted whether the offense is punishable by fine or imprisonment or both. If the offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to the imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment. The court may revoke or modify any condition of probation or may reduce the period of probation.

(c) If a sentence of imprisonment is imposed, a portion of it is suspended, and the defendant is placed on probation, the court may impose as a condition of probation that the probation commence on the date the defendant is actually released from imprisonment.

(d) When the probation granted is for violation of any provision of §§ 276 through 303 of this article, if the court places the person on probation, it shall require, as a condition of the suspension of sentence, that the person participate in a drug treatment or education program approved by the Department of Health and Mental Hygiene, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition.

### Article 48A – Insurance Code

#### Section 242. Insurance Rates.

(a) This section applies to all types of insurers. It applies to the following types of insurance subject to the exceptions set forth in subsection (b) of this section:

- (1) "Property insurance" as defined in § 67.
- (2) "Casualty insurance" as defined in § 68.
- (3) "Surety insurance" as defined in § 69.
- (4) "Marine" and "wet marine and transportation" insurance as defined in § 70.

(b) This section does not apply to:

- (1) Reinsurance, other than joint reinsurance to the extent stated in subsection (m) of this section;

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(2) Insurance of vessels or craft, their cargoes, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(3) Insurance against loss of or damage to aircraft including their accessories and equipment, or against liability other than workers' compensation, employer's liability arising out of the ownership, maintenance, or use of aircraft;

(4) Title insurance; or

(5) The Maryland Injured Workers' Insurance Fund.

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to this section, is also subject to regulation by another rate regulatory section of the statutes of this State, an insurer to which both sections are otherwise applicable shall file with the Commissioner a designation as to which rate regulatory section is applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

(c) All rates shall be made in accordance with the following principles:

(1) Due consideration shall be given to (i) past and prospective loss experience within and outside this State; (ii) conflagration and catastrophe hazards, if any; (iii) past and prospective expenses both countrywide and those specially applicable to this State; (iv) underwriting profits; (v) contingencies; (vi) investment income from unearned premium reserve and reserve for losses; (vii) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders; (viii) and to all other relevant factors within and outside this State.

(2) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer, or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(4) (i) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any difference among risks that are demonstrated objectively to the Commissioner to have had a direct and substantial effect upon losses or expenses. However, no rate may be based partially or entirely on geographic area itself, as opposed to underlying risk considerations, even though expressed in geographic terms.

(ii) 1. Any insurer providing a private passenger automobile insurance policy shall provide the policyholder at the time of issuance or renewal with a statement that:

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A. Defines the policyholder's rate classifications; and

B. In the case of a licensed insurer, includes a summary, in a format approved by the Commissioner, of the licensed insurer's approved surcharge plan or driver record point plan for that policy.

2. The statement shall be sufficiently clear and specific so that a person of average intelligence can identify the classifications without making further inquiry.

(5) Uniformity among insurers in any matters within the scope of this subsection is neither required nor prohibited.

(6) Unless the filer demonstrates that the proposed rate is not excessive or inadequate or unfairly discriminatory, the Commissioner may disapprove the filing.

(7) (i) No insurer under an automobile liability insurance policy may classify or maintain an insured in a classification entailing a higher premium because of a specific claim for a period longer than three years, and no such insurer may classify or maintain an insured in a classification entailing a higher premium because of the insured's driving record for a period longer than three years. However the removal of a discount may not be considered a violation of this subsection.

(ii) An insurer's automobile and physical damage insurance premiums shall reflect the reduction in claims, if any, which is attributable to the requirement that drivers under the age of 18 must acquire a provisional driver's license before acquiring a driver's license.

(iii) An insurer under an automobile insurance policy may not consider accident reports and abstracts of court convictions pertaining to driving an emergency vehicle that are on record with the Motor Vehicle Administration, as provided in Section 16-117(b)(3) of the Transportation Article, for purposes of reclassifying an insured in a classification entailing a higher premium.

(iv) An insurer under an automobile insurance policy may not consider a probation before judgment disposition of a motor vehicle law offense or a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of the Transportation Article on record with the Motor Vehicle Administration, as provided in Section 16-117(b) of the Transportation Article, for purposes of reclassifying an insured in a classification entailing a higher premium.

(v) If the insured notifies the insurer under an automobile insurance policy of a change in circumstances that justifies reclassifying the insured in a different classification or territory, the insurer shall adjust the premium charged the insured from the date of notification.

(8) An insurer may provide a reduction in rates based on actuarial justification, for motor vehicle personal injury and property damage coverage, to an insured who:

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- (i) Is at least 55 years of age; and
- (ii) Within the last 2 years, has completed successfully a course in accident prevention:
  - 1. That is approved by the Motor Vehicle Administration;
  - 2. That includes classroom instruction or practice driving of the number of hours that the Motor Vehicle Administration requires; and
  - 3. For which the insured has received a certificate that certifies the completion of the course.

(d) (1) Every insurer, except as otherwise provided below, shall file with the Commissioner every manual, policy form, endorsement, minimum rate, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated.

(2) When a filing is not accompanied by the information upon which the insured supports the filing and the Commissioner does not have sufficient information to determine whether the filing meets the requirements of this section, he shall require the insurer to furnish the information within 60 days upon which it supports the filing and in this event the waiting period shall commence as of the date the information is furnished. The information furnished in support of a filing may include (i) the judgment of the filer, (ii) its interpretation of any statistical data it relies upon, (iii) the experience of other filers, or (iv) any other relevant factors.

(3) Each filing must include the experience of the filer.

(4) A filing and any supporting information shall be open to public inspection upon the date of filing.

(5) An insurer may satisfy its obligation to make filings by becoming a member of or a subscriber to a licensed rating organization which makes filings, and by authorizing the Commissioner to accept filings on its behalf.

(6) The Commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this section.

(7) Subject to the exception specified in paragraphs (8) and (9) of this subsection, each filing shall be on file for a waiting period of 30 working days before it becomes effective, which period may be extended by the Commissioner for an additional period not to exceed 30 working days if he gives written notice within this waiting period to the insurer or rating organization which made the filing that he needs the additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the Commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof or at any later date. A filing shall be deemed approved unless disapproved by the Commissioner

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within the waiting period or any extension thereof. A filing may be withdrawn or amended by the filer at any time prior to approval. After approval or disapproval, a filing may be withdrawn or amended only upon approval of the Commissioner, who shall make the approval in accordance with this section. "Working days" are defined as those days on which the Insurance Division is open for business.

(8) Inland marine risks which by general custom of the business are not written according to manual rates or rating plans need not be filed, but specific inland marine rates on risks specially related by a rating organization shall be filed, become effective when filed, and remain effective until the Commissioner finds the filing does not meet the requirements of this section.

(9) Any special filing with respect to a surety or guarantee bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing shall become effective when filed and remain effective until the Commissioner finds that it does not meet the requirements of this section.

(10) In the case of fire insurance rates, consideration shall be given to experience during a period of not less than the most recent five-year period for which experience is available.

(11) The Commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practically be filed before they are used.

(12) An insurer that provides professional liability insurance to a physician or other health care provider shall notify each policyholder in writing:

(i) Of a proposed rate increase at the time of filing for the rate increase with the Commissioner;

(ii) That a hearing may be requested with respect to any filing under subsection (f)(4) of this section; and

(iii) That an order, hearing, or refusal of a hearing by the Commissioner may be appealed under § 242B of this article.

(e) No insurer, officer, agent or representative thereof shall knowingly issue or deliver, or knowingly permit the issuance or delivery of, a policy of insurance, or any endorsement, certificate, or addition to the policy, except in accordance with the filings which are in effect for the insurer as provided in this section or in accordance with subsection (h) of this section. As compensation for procuring business, any insurer may pay or allow a commission to any licensed agent of the insurer.

(e-1)(1) Notwithstanding any other provisions of this section, an insurer may reduce its rates previously approved by the Commissioner upon filing the reduced rates with the Commissioner within 30 days after the reduced rates become effective. Any insurer which has so reduced its rates may withdraw the reduction in whole or in part by filing revised rates at a level no higher than the level approved by the Commissioner prior to the reduction within 30 days after they become effective.

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(2) The Commissioner may revoke any reduction of rates made in accordance with this subsection upon a finding after notice and hearing that the rates produced are in violation of this section.

(f) (1) If, within the waiting period or any extension of the waiting period provided under subsection (d)(7) of this section, the Commissioner finds that a filing does not meet the requirements of this section, he shall send to the filer written notice of disapproval, specifying therein in what respects he finds the filing fails to meet the requirements of this section and stating that the filing shall not become effective.

(2) If, within 30 days after a filing made pursuant to subsection (d)(8) or subsection (d)(9) of this section, the Commissioner finds that the filing does not meet the requirements of this section, he shall send to the filer written notice of disapproval, specifying therein in what respects he finds that the filing fails to meet the requirements of this section, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Disapproval shall not affect any contract made or issued prior to the expiration of the period.

(3) If at any time subsequent to the applicable review period provided for in paragraph (1) or (2) of this subsection, the Commissioner finds that a filing does not meet the requirements of this section, he shall after a hearing held upon not less than ten days' written notice to the filer, specifying the matters to be considered at the hearing, issue an order to the filer specifying in what respects he finds that the filing fails to meet the requirements of this section, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(4) Any person or organization aggrieved with respect to any filing which is in effect, or which has been filed and has not yet become effective may make written application to the Commissioner for a hearing thereon, but the filer which made the filing shall not be authorized to proceed under this paragraph. The application shall specify the grounds to be relied upon by the applicant. If the Commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that the grounds otherwise justify holding a hearing, he shall, within thirty days after receipt of the application, hold a hearing upon not less than ten days' written notice to the applicant and to each filer which made a filing.

If, after the hearing, the Commissioner finds that the filing does not meet the requirements of this section, he shall issue an order to the filer specifying in what respects he finds that the filing fails to meet the requirements of this section, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. A copy of the order shall be sent to the applicant. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(g) (1) Any person, whether located within or outside this State, may apply to the Commissioner for a license as a rating organization for kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (i) a copy of its constitution, its articles of agreement

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or association or its certificate of incorporation and of its bylaws, rules, and regulations governing the conduct of its business, (ii) a list of its members and subscribers, (iii) the name and address of a resident of this State upon whom notices or orders of the Commissioner or process affecting the rating organization may be served and (iv) a statement of its qualifications as a rating organization. If the Commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, conform to the requirements of law, he shall grant or deny the application in whole or in part, within sixty days of the filing date. Licenses issued pursuant to this subsection shall remain in effect for three years unless sooner suspended or revoked by the Commissioner. The fee for the license shall be twenty-five dollars. Licenses issued pursuant to this subsection may be suspended or revoked by the Commissioner after hearing upon notice, if the rating organization ceases to meet the requirements of this paragraph. Every rating organization shall notify the Commissioner promptly of every change in (i) its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business (ii) its list of members and subscribers and (iii) the name and address of the resident of this State designated by it upon whom notices or orders of the Commissioner or process affecting the rating organization may be served.

(2) Subject to rules and regulations which have been approved by the Commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in the rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, at the request of any subscriber or any such insurer, shall be reviewed by the Commissioner at a hearing held upon at least ten days' written notice to the rating organization and to the insurer. If the Commissioner finds that the rule or regulation is unreasonable in its application to subscribers, he shall order that the rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made the insurer may request a review by the Commissioner as if the application had been rejected. If the Commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(3) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

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(4) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this section is authorized, if the filings resulting from cooperation are subject to all the provisions of this section which are applicable to filings generally. The Commissioner may review cooperative activities and practices and if, after hearing, he finds that any activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this section, he may require the discontinuance of the activity or practice.

(5) Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidence of insurance or the cancellation thereof, and may make reasonable rules governing their submission. The rules shall contain a provision that if any insurer does not within sixty days furnish satisfactory evidence of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the Commissioner thereof. All information so submitted for examination shall be confidential.

(6) Any rating organization may subscribe for or purchase actuarial, technical or other services, and the services shall be available to all members and subscribers without discrimination.

(7) Associations or other entities which have been organized pursuant to regulation or law to provide insurance not available through the voluntary market shall apply to the Commissioner for permission to file rates to be used by it. If the Commissioner finds that permitting the entity to file rates will be in the public interest, he shall thereafter treat any filing made by the entity as made by a rating organization.

(h) (1) Any insurer may deviate from the rates promulgated by the rating organization if (i) the insurer has filed the deviation to be applied both with the rating organization and the Commissioner; (ii) the deviation is uniform in its application to all risks in the State of the class of insurance to which the deviation is to apply; and (iii) the deviation is approved by the Commissioner. The Commissioner may approve or disapprove a deviation as if the deviation filing were a rate filing, and he may specify the period of time during which an approval will be effective.

(2) Under rules and regulations he adopts the Commissioner, by written order, may suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes or risks, the rates for which cannot practicably be filed before they are used. The order, rules and regulations shall be made known to insurers and rating organizations affected thereby. The Commissioner may make the examination as he deems advisable to ascertain if any rates affected by the order meet the standards set forth in subsection (c) of this section.

(3) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the Commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

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(i) Any member of or subscriber to a rating organization may appeal to the Commissioner from the action or decision of the rating organization in approving or rejecting any proposed changes in or addition to the filings of the rating organization and the Commissioner, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, shall issue an order approving the action or decision of the rating organization or directing it to give further consideration to the proposal, or, if the appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, if he finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of the order.

If the appeal is based upon the failure of the rating organization to make a filing on behalf of the member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in paragraph (3) of subsection (c), from the system of expense provisions included in a filing made by the rating organization, the Commissioner, if he grants the appeal, shall order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the Commissioner shall apply the standards set forth in this section.

(j) Every filer within a reasonable time after receiving written request therefor and upon payment of a reasonable charge shall furnish to any insured affected by a filing made by it, or to the authorized representative of the insured, all pertinent information as to the filing.

(k) Every filer shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by his authorized representative, on his written request to review the manner in which the rating system has been applied in connection with the insurance afforded him. If the filer fails to grant or reject the request within thirty days after it is made, the applicant may proceed as if his application had been rejected. Any person affected by the action of the filer, within thirty days after written notice of the action, may appeal to the Commissioner who, after a hearing held upon not less than ten days' written notice to the appellant and to the filer, may affirm or reverse the action.

(l) (1) Every group, association or other organization of insurers, whether located within or outside this State which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this section, shall be known as an advisory organization.

(2) Every advisory organization shall file with the Commissioner (i) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities, (ii) a list of its members, (iii) the name and address of a resident of this State upon whom notices or orders of the Commissioner or process issued at his direction may be served, and (iv) an agreement that the Commissioner may examine the advisory organization in accordance with the provisions of subsection (n).

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(3) If, after a hearing, the Commissioner finds that the furnishing of the information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this section, he may issue a written order specifying in what respects the act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this section, and requiring the discontinuance of the act or practice.

(4) No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this subsection or with an order of the Commissioner involving the statistics or recommendations issued under paragraph (3) of this subsection. If the Commissioner finds the insurer or rating organization to be in violation of this paragraph he may issue an order requiring the discontinuance of the violation.

(m) (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance is subject to this section and to § 242B of this subtitle, with respect thereto.

(2) If, after a hearing, the Commissioner finds that any activity or practice of the group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this section, he may issue a written order specifying in what respects he makes the findings, and requiring the discontinuance of the activity or practice.

(n) The Commissioner, at least once in five years, shall make an examination of each rating organization licensed in this State, and as often as he deems it expedient he may make an examination of each advisory organization, and of each group, association or other organization. The reasonable costs of any examination shall be paid by the entity examined upon presentation to it of a detailed account of the costs. The officers, manager, agents and employees of the entity examined may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its methods of operation. In lieu of an examination the Commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

(o) (1) Recording and Reporting of Loss and Expense Experience. The Commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in form and detail necessary to aid him in determining whether rating systems comply with the standards set forth in this section. The rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this State and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating the rules and plans, the Commissioner shall give due consideration to the rating systems on file with him and in order that the rules and plans may be as uniform as is practicable among the several

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states, to the rules and to the form of the plans used for the rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The Commissioner may designate one or more rating organizations or other agencies to assist him in gathering experience and making compilations thereof, and the compilations shall be made available, subject to reasonable rules promulgated by the Commissioner to insurers and rating organizations.

(2) Interchange of Rating Plan Data. Reasonable rules and plans may be promulgated by the Commissioner for the interchange of data necessary for the application of rating plans.

(3) Consultation With Other States. In order to further uniform administration of rate regulatory laws, the Commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

(4) Rules and Regulations. The Commissioner may make reasonable rules and regulations necessary to effect the purposes of this section.

(p) No person shall wilfully withhold information from, or knowingly give false or misleading information to the Commissioner, any statistical agency designated by the Commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this section, or the proper issuance of a contract, policy or guarantee of insurance.

(q) (1) The Commissioner, if he finds that any person has violated any provision of this subtitle, may impose a penalty of not more than \$250.00 for each violation, but, if he finds the violation to be wilful, he may impose a penalty of not more than \$1,000.00 for the violation. These penalties may be in addition to any other penalty provided by law.

(2) The Commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the Commissioner within the time limited by the order, or any extension thereof which the Commissioner may grant. The Commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The Commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded or reversed.

(3) No penalty shall be imposed and no license shall be suspended or revoked except upon written order of the Commissioner, stating his findings, made after a hearing held upon not less than ten days' written notice specifying the alleged violation.

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**Section 243D. Rejection of Application for Insurance; Cancellation of Policy.**

(a) (1) The Executive Director may reject an application of insurance or cancel a policy of insurance if he finds that the driving license of the applicant or policyholder is or becomes suspended, except for a suspension for a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of the Transportation Article, or revoked. The Executive Director shall promptly notify the applicant or policyholder of his action. If the policy of insurance covers a spouse or other household member of the family of the policyholder, the cancellation of the policy shall not cancel the coverage of such spouse or family member who has not had his or her driving license suspended or revoked, and the insurer shall reclassify the rate of risk of such spouse or family member for premium purposes.

(2) The Executive Director may reject an application if the applicant owes to the Fund any unpaid insurance premium with respect to a prior expired or cancelled policy.

(3) When a person does not have a valid license or other privilege to operate an automobile in Maryland, or is otherwise ineligible to be insured by the Fund as set forth in this subtitle, the Fund may issue the appropriate motor vehicle policy together with an excluded operator endorsement as otherwise provided for in § 240C-1 of this article.

(4) (i) The Fund may cancel a policy covering a vehicle if:

1. The vehicle's temporary registration issued under § 13-405 or § 23-107(b) of the Transportation Article has expired; and
2. The vehicle is not otherwise validly registered in this State.

(ii) The cancellation shall be effective no earlier than the date following the date of expiration of the vehicle's temporary registration.

(b) An applicant whose application for insurance has been rejected or a policyholder whose policy has been cancelled except for nonpayment of premiums may, within ten days after receipt of notice of the rejection or cancellation, appeal the decision of the Executive Director to a special board composed of two members of the Board of Trustees and the Commissioner of Insurance or his designee. The Executive Director may not sit on the special board. The special board may affirm, reverse, or modify the decision of the Executive Director, upon the record, or may hold a hearing upon not less than ten days' written notice to the applicant and thereafter affirm, reverse, or modify the decision of the Executive Director. If there is a current policy, and if the policyholder appeals the decision of the Executive Director to the special board, his policy shall remain in effect until the special board decides his appeal.

(c) The Fund may, at any time, cancel a policy written by it for nonpayment of premiums or for suspension, except for a suspension for a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of the Transportation Article, or revocation of the driving license of the policyholder.

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(d) The Executive Director shall, upon rejection of an application for insurance which has not been reversed or modified by the special board in such a way as to require issuance of a policy, and upon cancellation of a policy or termination of coverage as to any insured, immediately notify the Motor Vehicle Administrator of such action.

(e) (1) If the Executive Director finds that, after being insured by the Fund for any ten months during an 18-month period, an insured had three or more chargeable accidents, as defined in the rules and rates schedules of the Maryland Automobile Insurance Fund filed with the Commissioner of Insurance, without regard to the number of points, and which produce a claim payment of \$300 or more, based upon third-party liability, he shall refer the matter to the Motor Vehicle Administrator for a determination. If, after a hearing, the Administrator suspends or revokes the insured's driving license, the Executive Director shall cancel or nonrenew the policy of insurance after the notice required by § 240A(c). If the policy of insurance covers a spouse or other household member of the family of the policyholder, the cancellation of the policy shall not cancel the coverage of the spouse or family member who has not had his or her driving license suspended or revoked, and the Fund shall reclassify the rate of risk of the spouse or family member for premium purposes.

(2) If the Administrator does not suspend or revoke the insured's driving license pursuant to paragraph (1), the Executive Director may not cancel or refuse to renew the policy of insurance.

(3) The Executive Director may refer any other matter concerning any insured's driving record to the Administrator for a determination.

### **Section 244D. Effect of Probation Before Judgment or First Offense under Administrative per se Law.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// THE FOLLOWING SECTION WAS CHANGED BY CHAPTER 119 OF 1993 AND WILL REMAIN IN EFFECT UNTIL JULY 1, 1997 //

(e) All rates shall be made in accordance with the following special principles:

(4) An insurer under an automobile insurance policy may not consider a probation before judgment disposition of a motor vehicle law offense or a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of the Transportation Article on record with the Motor Vehicle Administration, as provided in § 16-117(b) of the Transportation Article, for purposes of reclassifying an insured in a classification entailing a higher premium.

### **Article - Courts and Judicial Proceedings**

#### **Section 10-301.1. Definitions.**

(a) In §§ 10-302 through 10-309 of this subtitle, the following words have the meanings indicated.

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(b) "Specimen of blood" and "1 specimen of blood" have the meaning stated in § 16-205.1 of the Transportation Article.

(c) "Test" has the meaning stated in § 16-205.1 of the Transportation Article.

### **Section 10-302. Chemical Test for Intoxication.**

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 Article 27, § 388 or § 388A of the Code, 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.

### **Section 10-303. Same - Time Limitation.**

(a) (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) (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 3 hours after the person accused is apprehended.

### **Section 10-304. Qualifications of Person Administering Test.**

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

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(c) (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) (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.

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(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 Rule 4-265, 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) 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) 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.

### **Section 10-305. Type of Test to be Administered.**

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

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

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

(3) The equipment for administering the test of breath is not available.

(b) 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.

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(c) 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.

**Section 10-306. Admissibility of Test Results Without Presence or Testimony of Technician.**

(a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in any criminal trial in which a violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, or a violation of Article 27, § 388 or § 388A of the Code 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 Article 27, § 388 or § 388A of the Code 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) (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. 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.

(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, 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.

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(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.

### **Section 10-307. Same – Results of Analysis and Presumption.**

(a) (1) In a proceeding in which a person is charged with a violation of Article 27, § 388 or § 388A of the Code, or with driving or attempting to drive a vehicle in violation of § 16-113(a)(2), § 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 (e) 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.

(b) 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 defendant was not intoxicated and that the defendant was not driving while under the influence of alcohol.

(c) 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 defendant was or was not intoxicated or that the defendant was or was not driving while under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(d) If at the time of testing a person has an alcohol concentration of 0.07 or more, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving while under the influence of alcohol.

(e) If at the time of testing a person has an alcohol concentration of 0.10 or more, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving while intoxicated.

(f) 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 defendant was driving with alcohol in the defendant's blood.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(g) 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 a defendant was driving in violation of § 16-113(b) of the Transportation Article.

### **Section 10-308. Other Evidence of Intoxication.**

(a) The evidence of the analysis does not limit the introduction of other evidence bearing upon whether the defendant was intoxicated or whether the defendant was driving while under the influence of alcohol, while so far under the influence of 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 under the influence of a controlled dangerous substance.

(b) 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 under § 21-902 of the Transportation Article or a violation of Article 27, § 388 or § 388A of the Code and only if other admissible evidence is introduced that creates an inference that the person was driving or attempting to drive while so far under the influence of 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 under the influence of a controlled dangerous substance; and

(2) Are not admissible in a prosecution other than a prosecution under § 21-902 of the Transportation Article or a violation of Article 27, § 388 or § 388A of the Code.

### **Section 10-309. Refusal to Submit to Test.**

(a) (1) 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. Evidence of a test or analysis is not admissible in a prosecution for a violation of § 21-902 of the Transportation Article if obtained contrary to its provisions.

(2) No inference or presumption concerning either guilt or innocence arises because of refusal to submit. The fact of refusal to submit is admissible in evidence at the trial.

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

(c) 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 § 21-902 of the Transportation Article.

(d) 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.

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Article – Natural Resources

**Section 8-738. Operating Vessel While Intoxicated or While Under the Influence of Alcohol and/or Drugs.**

(a) A person may not operate or attempt to operate a vessel while the person:

(1) Is intoxicated;

(2) Is under the influence of alcohol;

(3) Is so far under the influence of any drug, combination of drugs, or combination of drugs and alcohol that the person cannot operate a vessel safely; or

(4) Is under the influence of any controlled dangerous substance, as defined in Article 27, § 277 of the Code, unless the person is entitled to use the controlled dangerous substance under the laws of the State.

(b) The evidentiary requirements of Sections 10-302 through 10-307 of the Courts Article are applicable to any violation of this section.

(c) It is not a defense to a charge of violating subsection (a)(3) of this section that the person charged is or was entitled under the laws of this State to use the drug, combination of drugs, or combination of 1 or more drugs and alcohol, unless the person was unaware that the drug or combination would make the person incapable of safely operating a vessel.

(d) (1) Notwithstanding any other provision of this title, a person who violates paragraph (1) of subsection (a) of this section is guilty of a misdemeanor and upon conviction:

(i) For a first offense, shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year or both;

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

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

(2) Notwithstanding any other provision of this title, a person who violates paragraph (2), (3), or (4) of subsection (a) of this section is guilty of a misdemeanor and upon conviction:

(i) For a first offense, shall be subject to a fine of not more than \$500 or imprisonment for not more than 2 months or both; and

(ii) For a second or subsequent offense, shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year or both.

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### **Section 8-740. Safety Equipment Violations.**

(a) If a person is convicted of 2 boating violations concerning the operation of, or safety equipment on, a vessel within a 2-year period of time, the person is required, as a condition of probation or sentencing, to complete successfully a boating safety education course that is offered or approved by the Department.

(b) Notwithstanding the provisions of subsection (a) of this section, if a person is convicted of any of the following boating safety violations in the operation of a vessel, the person is required, as a condition of probation or sentencing, to successfully complete a boating safety education course that is offered or approved by the Department:

- (1) Negligent operation;
- (2) Reckless operation; or
- (3) Operating under the influence of alcohol, any drug, combination of drugs, or combination of drugs and alcohol, in violation of § 8-738 of this subtitle.

(c) The requirement to take and successfully complete the boating safety education course under subsections (a) and (b) of this section is in addition to any other punishment that a judge imposes for violation of the boating laws or regulations of the State.

## **Article – Transportation**

### **Section 5-1006. Reckless Operation of Aircraft.**

(a) Conduct prohibited. — A person may not operate any aircraft in this State:

- (1) While under the influence of any intoxicating liquor, narcotic, or other habit forming drug; or
- (2) In a careless or reckless manner that endangers the life or property of another.

(b) Determination of careless or reckless operation. — In determining whether there has been careless or reckless operation of aircraft, the standards required by federal law governing aeronautics for safe operation of aircraft shall be considered.

(c) Penalties. — (1) In addition to or instead of the penalties provided for in Subtitle 11 of this title or as a condition to the suspension of a sentence imposed under that subtitle, the court may prohibit any person who violates a provision of this section from operating an aircraft in this State for any period of not more than 1 year.

(2) Violation of an imposed prohibition of a court under this subsection may be treated as a separate offense under this section or as a contempt of court.

(d) Limitations. — This section does not authorize the court or any other agency or person to take away, impound, hold, or mark any federal certificate, permit, rating, or license.

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

**Section 11-103.1. Definition of "Alcohol".**

"Alcohol" means any substance or substances containing any form of alcohol, including ethanol, methanol, propynol, and isopropynol.

**Section 11-103.2. Definition of "Alcohol Concentration".**

"Alcohol concentration" means:

- (1) The number of grams of alcohol per 100 milliliters of blood; or
- (2) The number of grams of alcohol per 210 liters of breath.

**Section 13-705.1. Suspension of Registration for Driving with Suspended or Revoked License.**

(a) If a person is convicted of driving or attempting to drive a motor vehicle while the driver's license of the person is suspended or revoked for a violation of § 21-902 or § 16-205.1 of this article or Article 27, § 388A of the Code, the Administration may, after a hearing, suspend, for not more than 120 days, the registration of the motor vehicle.

(b) The Administration may not suspend the registration of the motor vehicle if:

(1) The motor vehicle was operated by anyone other than the registered owner with his implied or express consent, and the registered owner neither knew nor should have known that the driver's license of the operator was suspended or revoked for a violation of § 21-902 or § 16-205.1 of this article or Article 27, § 388A of the Code; or

(2) The motor vehicle was operated by anyone other than the registered owner without his implied or express consent; or

(3) The motor vehicle is used as a common carrier or vehicle for hire and the owner or other person in charge of the vehicle was not a consenting party or privy to the unlawful action of the operator of the motor vehicle; or

(4) The motor vehicle was operated after being obtained by the violator through duress or coercion from an owner or coowner who is a member of the immediate family of the violator.

(c) The Administration shall bear the burden of proving that the registered owner knew or should have known that the driver's license of the operator of the vehicle was suspended or revoked for a violation of § 21-902 or § 16-205.1 of this article or Article 27, § 388A of the Code.

**Section 16-103.1. Persons not to be Licensed - Disqualifications.**

The Administration may not issue a driver's license to an individual:

(1) During any period for which the individual's license to drive is revoked, suspended, refused, or canceled in this or any other state, unless the individual is eligible for a restricted license under § 16-113(e) of this subtitle;

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) Who is an habitual drunkard, habitual user of narcotic drugs, or habitual user of any other drug to a degree that renders the individual incapable of safely driving a motor vehicle;

(3) Who previously has been adjudged to be suffering from any mental disability or mental disease and who, at the time of application, has not been adjudged competent;

(4) Who is required by this title to take an examination, unless the individual has passed the examination;

(5) Whose driving of a motor vehicle on the highways the Administration has good cause to believe would be inimical to public safety or welfare;

(6) Who is unable to exercise reasonable control over a motor vehicle due to disease or a physical disability, including the loss of an arm or leg or both, except that, if the individual passes the examination required by this title, the Administration may issue the individual a restricted license requiring the individual to wear a workable artificial limb or other similar body attachment;

(7) Who is unable to understand highway warning or direction signs written in the English language;

(8) Who is unable to sign the individual's name for identification purposes;

(9) Who is 70 years old or older and applying for a new license, unless the applicant presents to the Administration:

(i) Proof of the individual's previous satisfactory operation of a motor vehicle; or

(ii) A written certification acceptable to the Administration from a licensed physician attesting to the general physical and mental qualifications of the applicant; or

(10) On or after July 1, 1993, if the individual is at least 18 years of age and has never held a driver's license issued by the Administration or by any other state, unless the individual successfully completes a 3-hour alcohol and drug education course established by the Administration under § 16-212.1 of this subtitle.

### **Section 16-113. Restricted Licenses.**

(a) In addition to the vision and other restrictions provided for in this subtitle, when it issues a driver's license, the Administration for good cause may impose on the licensee:

(1) Any restrictions suitable to the licensee's driving ability with respect to the type of special mechanical control devices required on motor vehicles that the licensee may drive; and

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(2) An alcohol restriction which prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee's blood; and

(3) Any other restrictions applicable to the licensee that the Administration determines appropriate to assure the safe driving of a motor vehicle by the licensee.

(b) (1) Notwithstanding the licensee's driving record, the Administration shall impose on each licensee under the age of 21 years an alcohol restriction that prohibits the licensee from driving or attempting to drive a motor vehicle with an alcohol concentration of 0.02 or more as determined by an analysis of the person's blood or breath.

(2) An alcohol restriction imposed under this subsection expires when the licensee reaches the age of 21 years.

(3) This subsection may not be construed or applied to limit:

(i) The authority of the Administration to impose on a licensee an alcohol restriction described in subsection (a)(2) of this section; or

(ii) The application of any other provision of law that prohibits consumption of an alcoholic beverage by an individual under the age of 21 years.

(c) (1) Subject to the provisions of paragraph (2) of this subsection, the Administration may:

(i) Issue a special restricted license; or

(ii) Set forth the restrictions on the usual license form.

(2) The Administration shall indicate on the license of a licensee under the age of 21 years that an alcohol restriction has been imposed on the licensee under subsection (b) of this section.

(d) (1) In addition to the other restrictions provided in this subtitle, the Administration may issue a provisional driver's license to applicants who are under the age of 18.

(2) The license may be restricted by requiring that the licensee be accompanied and supervised at certain times by a licensed driver who is at least 21 years old.

(3) The Administrator may modify or waive the restriction if the restriction would affect adversely:

(i) The employment or opportunity for employment of the licensee;

(ii) The participation of the licensee in an organized volunteer program approved by the Administration and designed to provide transportation to prevent alcohol- or drug-related driving offenses and promote highway safety; or

(iii) The opportunity of the licensee to participate in athletic events and related training sessions.

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(e) In addition to the other restrictions provided under this subtitle, the Administration may issue a driver's license that is valid only in the State of Maryland to an applicant who has been suspended in another jurisdiction as a result of failing to comply with the financial responsibility requirements of that jurisdiction.

(f) After receiving satisfactory evidence of any violation of a restricted or provisional driver's license, the Administration may suspend or revoke the license. However, the licensee may request a hearing as provided for a suspension or revocation under Subtitle 2 of this title.

(g) (1) The Administration shall impose an alcohol restriction under subsection (a)(2) of this section that prohibits an individual for a period of 3 years from driving or attempting to drive with alcohol in the individual's blood on any licensee who is convicted of any combination of two or more violations under § 21-902(a) or (b) of this article.

(2) If a circuit court or a District Court orders a licensee not to drive or attempt to drive a motor vehicle with alcohol in the licensee's blood, the Administration shall have the licensee's driving record and driver's license reflect that the court ordered restriction was imposed, and shall keep records of the order.

(h) An individual may not drive a vehicle in any manner that violates any restriction imposed in a restricted license issued to the individual.

(i) An individual may not drive a vehicle in any manner that violates any restriction imposed in a provisional license issued to the individual.

### **Section 16-117. Records of License Suspension for Driving While Intoxicated.**

(a) The Administration shall keep a record of:

- (1) Each driver's license application that it receives;
- (2) Each driver's license that it issues; and
- (3) Each licensee whose license to drive the Administration has suspended or revoked, and the reasons for the action.

(b) (1) The Administration shall file each accident report and abstract of court disposition records that it receives under the laws of this State.

(2) The Administration shall keep convenient records or make suitable notations showing the convictions or traffic accidents in which each licensee has been involved and every probation before judgment disposition of any violation of § 21-902 of this article. A record or notation of a probation before judgment disposition, or a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of this article, shall be segregated by the Administration and shall be available only to the Administration, the courts, criminal justice agencies, and the defendant or his attorney. However, a record or notation of a probation before judgment, or a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of this article, may not be received or considered by the courts until a plea of guilty or nolo contendere is made by the defendant or a finding of guilty is made by the court.

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(3) These records or notations shall be made so that they are readily available for consideration by the Administration of any license renewal application and at any other suitable time.

(4) Accident reports and abstracts of court convictions pertaining to driving an emergency vehicle, if received by a person who was driving an emergency vehicle pursuant to the provisions of § 21-106 of this article, shall be segregated by the Administration and shall be available only to the Administration.

(5) Except as provided in this section, an employee of the Administration may not disclose any records or information regarding probation before judgment, or a first offense of driving with an alcohol concentration of 0.10 or more under § 16-205.1 of this article.

(c) If a charge of a Maryland Vehicle Law violation against any individual is dismissed by a court of competent jurisdiction, a record of the charge and dismissal may not be included in his driving record.

### **Section 16-117.1. Expungement of Certain Records.**

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

(2) "Criminal offense" does not include any violation of the Maryland Vehicle Law.

(3) "Moving violation" means a moving violation as defined in regulations adopted by the Administration for the purpose of assessing points under § 16-402 of this article or a violation of a substantially similar nature reported from another jurisdiction, other than a violation of any of its size, weight, load, equipment, or inspection provisions.

(b) Except as provided in subsection (c) of this section and in Subtitle 8 of this title, if a licensee applies for the expungement of the licensee's public driving record, the Administration shall expunge the record if, at the time of application:

(1) The licensee does not have charges pending for allegedly committing a moving violation or a criminal offense involving a motor vehicle; and

(2) (i) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 3 years, and the licensee's license never has been suspended or revoked;

(ii) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 5 years, and the licensee's record shows not more than one suspension and no revocations; or

(iii) Within the preceding 10 years:

1. The licensee has not been convicted of nor been granted probation before judgment for a violation of § 20-102 or § 21-902 of this article;

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2. The licensee's driving record shows no convictions from another jurisdiction of a moving violation identical or substantially similar to § 20-102 or § 21-902 of this article; and

3. The licensee has not been convicted of any other moving violation or criminal offense involving a motor vehicle, regardless of the number of suspensions or revocations.

(c) The Administration may refuse to expunge a driving record if it determines that the individual requesting the expungement has not driven a motor vehicle on the highways during the particular conviction-free period on which the request is based.

(d) The Administration shall expunge from its driver record data base the driving record of an individual:

(1) Who has not been convicted of a moving violation or criminal offense involving a motor vehicle for the preceding 3 years;

(2) Who has not been convicted of, or been granted probation before judgment for:

(i) A violation of § 20-102 of this article;

(ii) A violation of § 21-902 of this article; or

(iii) A moving violation identical or substantially similar to § 20-102 or § 21-902 of this article; and

(3) Whose license or privilege to drive never has been suspended or revoked.

### **Section 16-205. Suspension and Revocation on Conviction of Certain Alcohol or Drug Related Offenses.**

(a) The Administration may revoke the license of any person who:

(1) Is convicted under § 21-902(a) or (d) of this article of driving or attempting to drive a motor vehicle while intoxicated or while under the influence of a controlled dangerous substance; or

(2) Within a 3-year period, is convicted under § 21-902(b) or (c) of this article of driving or attempting to drive a motor vehicle while under the influence of alcohol or while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely and who was previously convicted of any combination of two or more violations under:

(i) § 21-902(a) of this article of driving or attempting to drive a motor vehicle while intoxicated;

(ii) § 21-902(b) of this article of driving or attempting to drive a motor vehicle while under the influence of alcohol;

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(iii) § 21-902(c) of this article of driving or attempting to drive a motor vehicle while so far under the influence of 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

(iv) § 21-902(d) of this article of driving or attempting to drive a motor vehicle while under the influence of a controlled dangerous substance.

(b) The Administration may suspend for not more than 60 days the license of any person who is convicted under § 21-902(b) or (c) of this article of driving or attempting to drive a motor vehicle while under the influence of alcohol or while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely.

(c) The Administration may suspend for not more than 120 days the license of any person who, within a 3-year period, is convicted under § 21-902(b) or (c) of this article of driving or attempting to drive a motor vehicle while under the influence of alcohol or while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a motor vehicle safely and who was previously convicted of a violation under:

(1) § 21-902(a) of this article of driving or attempting to drive a motor vehicle while intoxicated;

(2) § 21-902(b) of this article of driving or attempting to drive a motor vehicle while under the influence of alcohol;

(3) § 21-902(c) of this article of driving or attempting to drive a motor vehicle while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a motor vehicle safely; or

(4) § 21-902(d) of this article of driving or attempting to drive a motor vehicle while under the influence of a controlled dangerous substance.

(d) When a suspension imposed under subsections (b) and (c) of this section expires, the Administration immediately shall return the license or reinstate the privilege of the driver, unless the license or privilege has been refused, revoked, suspended, or canceled under any other provisions of the Maryland Vehicle Law.

### **Section 16-205.1. Suspension for Refusal to Submit to Chemical Tests for Intoxication.**

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

(ii) "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.

(iii) "Test" means:

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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 intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title.

(b) (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 0.10 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 0.10 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 0.10 or more at the time of testing:

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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 intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of 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, and for test results indicating an alcohol concentration of 0.10 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 0.10 or more at the time of testing, the police officer shall:

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

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(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 0.10 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 0.10 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 intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of 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 0.10 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.

(c) (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

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attempting to drive while intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of a controlled dangerous substance, or in violation of § 16-813 of this title, the person shall be required to submit to a test, as directed by the officer.

(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) (1) If a police officer has reasonable grounds to believe that a person has been driving or attempting to drive a motor vehicle while intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of 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) (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) (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:

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(i) The person is arrested for driving or attempting to drive a motor vehicle while intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of 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 0.10 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 0.10 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.

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(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:

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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.

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(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 intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of 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;

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 0.10 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 0.10 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 intoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that

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the person could not drive a vehicle safely, while under the influence of 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; 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 0.10 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 intoxicated, while under the influence of alcohol, while so far under the influence of 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 under the influence of 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;

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3. The police officer did not have reasonable grounds to believe the driver was driving while intoxicated, driving while under the influence of alcohol, while so far under the influence of 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 under the influence of 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 0.10 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) (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:

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(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 3 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 3 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.

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(h) 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 0.10 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) 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; and

(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;

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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 Mass 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 Board of Trustees of State Universities and Colleges;
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) 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) Subject to § 16-812(n) 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) (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) (1) Except as otherwise provided in this subsection, a suspension imposed under this section may not be stayed by the Administration pending appeal.

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(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) (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) of this subsection, the Administration may modify a suspension under this section or issue a restrictive license if:

(i) The licensee is under the age of 21 years;

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

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

(iv) 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.

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**Section 16-205.2. Preliminary Breath Tests.**

(a) 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 intoxicated or while under the influence of 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) 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) 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 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.

**Section 16-206. Authority of Administration to Suspend, Revoke, or Refuse License.**

(a) (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 his license;

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

(v) 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

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(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.

(b) (1) Pursuant to a court order under § 3-820(d) of the Courts Article, the Administration shall initiate an action to suspend the driving privileges of a child for the time specified by the court.

(2) If a child subject to a suspension under § 3-820(d) 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 on the date that the license is issued, or after the child applies and becomes qualified to receive a license, or on the child's eighteenth birthday, whichever occurs first.

(3) On receipt of a notice described under Article 27, § 403(f) of the Code, the Administration shall suspend the license of an individual described under Article 27, § 403(f) of the Code:

(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 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.

(c) (1) After the Administration refuses to issue a license under this section or after the Administration determines that a suspension should be imposed under subsection (a)(2) 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.

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(2) 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.

(3) 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.

(d) (1) If a licensee fails to appear for a hearing after receiving the written notice under subsection (c)(2) 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.

### **Section 16-208.1. Disqualification of Commercial Drivers.**

(a) In addition to any suspensions or revocations of an individual's license or privilege to drive provided for in this title, if the individual holds a Class A, B, C, or D license issued under § 16-104 of this title, the Administration shall disqualify the individual from operating a commercial motor vehicle if the convictions resulted from an offense involving a commercial motor vehicle and the offenses would subject the individual to disqualification under § 16-812 of this title.

(b) Any disqualification imposed under subsection (a) of this section shall be for the period of time provided in § 16-812 of this title.

(c) If an individual has been disqualified from operating a commercial motor vehicle pursuant to subsection (a) of this section, but that individual is otherwise eligible for a license or privilege to operate vehicles other than commercial motor vehicles, the Administration may issue a noncommercial driver's license to that individual.

(d) The Administration may not issue a commercial driver's license to an individual until the disqualification imposed under subsection (a) of this section has expired.

(e) Notwithstanding any law to the contrary, if an individual has been disqualified from operating a commercial motor vehicle pursuant to subsection (a) of this section, that individual may not drive a commercial motor vehicle after the period of disqualification unless the individual:

(1) Applies for a commercial driver's license;

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- (2) Is qualified to be issued a commercial driver's license;
- (3) Pays the fees required by § 16-818(a)(3) of this title; and
- (4) Is issued a commercial driver's license by the Administration.

**Section 16-209. Fees for Reinstatement.**

(a) On filing an application for a new license or for reinstatement of his privilege to drive, any individual whose license or privilege to drive has been revoked, shall pay to the Administration a fee established by the Administration.

(b) (1) If the new license or reinstatement is granted, subject to the provisions of paragraph (2) of this subsection, the applicant shall pay to the Administration, in addition to any other fees provided by law, an additional fee established by the Administration.

(2) If the applicant's license was revoked as a result of a conviction under § 21-902 of this article or a violation of an alcohol restriction, the applicant shall pay a fee established by the Administration in addition to the amount charged under paragraph (1) of this subsection.

**Section 16-212. Driver Improvement and Alcohol Education Programs.**

(a) The Administration may conduct:

- (1) A driver improvement program; and
- (2) An alcohol education program.

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

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

(c) 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, or as a condition of reinstatement of a driver's license 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) 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) (1) An individual who attends a program under this section shall pay, in advance, a fee as provided in this subsection.

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(2) The Administration shall set a reasonable fee based on the costs of operating the programs 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) (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 shall establish criteria for approving private providers of alcohol education or driver improvement programs and alcohol education or driver improvement programs provided by a political subdivision of the State.

### **Section 16-212.1. Alcohol and Drug Abuse Education.**

(a) The Administration, in cooperation with the Alcohol and Drug Abuse Administration, shall establish an alcohol and drug education course to educate driver's license applicants who are subject to the provisions of § 16-103.1(10) of this subtitle.

(b) The course shall provide 3 hours of instruction in:

(1) The hazards of driving while impaired or intoxicated;

(2) The criminal penalties and administrative sanctions for alcohol and drug related motor vehicle violations;

(3) The medical, biological, and psychological effects of the consumption of alcohol and drugs and their impact on the operation of a motor vehicle; and

(4) Any other drug and alcohol related information that the administration determines would be beneficial to applicants for a driver's license.

(c) The Administration shall establish and collect a fee not to exceed \$35 designed to recover the cost of operating the alcohol and drug education course established under this section.

(d) The Administration shall adopt regulations establishing criteria for certifying a private entity to offer the alcohol and drug education course established under this section.

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**Section 16-402. Assessment of Points.**

(a) After the conviction of an individual for a violation of Article 27, § 388 or § 388A of the Code, or of the vehicle laws or regulations of this State or of any local authority, points shall be assessed against the individual as of the date of violation and as follows:

- (1) Any moving violation not listed below and not contributing to an accident..... 1 point
- (2) Following another vehicle too closely..... 2 points
- (3) Speeding in excess of the posted speed limit by 10 miles an hour or more..... 2 points
- (4) Driving with an improper class of license..... 2 points
- (5) Failing to stop for a school vehicle with alternately flashing lights ..... 2 points
- (6) Any violation of § 21-1111 of this article ..... 2 points
- (7) Passing an emergency or police vehicle under the provisions of § 21-405(d) of this article ..... 2 points
- (8) Any moving violation contributing to an accident..... 3 points
- (9) Driving after suspension of license under the provisions of § 17-106, § 26-204, § 26-206, or § 27-103 of this article, or under the traffic laws or regulations of another state as described in § 16-303(i) of this title..... 3 points
- (10) Any violation, except violations committed on the John F. Kennedy Memorial Highway, of § 21-1411 of this article ..... 3 points
- (11) Reckless driving ..... 4 points
- (12) Speeding in excess of the posted speed limit by 30 miles an hour or more..... 5 points
- (13) Driving while not licensed..... 5 points
- (14) Failure to report an accident..... 5 points
- (15) Driving on a learner's permit unaccompanied..... 5 points
- (16) Any violation of § 17-107 of this article ..... 5 points
- (17) Participating in a race or speed contest on a highway..... 5 points
- (18) Any violation of § 16-304 or § 16-305 of this title ..... 5 points
- (19) Any violation of § 22-404.5 of this title ..... 5 points

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- (20) Driving while under the influence of alcohol or while under influence of a drug, combination of drugs, or combination of drugs and alcohol. 8 points
- (21) Turning off lights of a vehicle to avoid identification..... 8 points
- (22) Failing to stop after accident resulting in damage to attended vehicle or property..... 8 points
- (23) Failing to stop after accident resulting in damage to unattended vehicle or property..... 8 points
- (24) Any violation of § 16-815 or § 16-816 of this title ..... 8 points
- (25) Failing to stop after an accident resulting in bodily injury or death.....12 points
- (26) Driving after refusal, suspension, cancellation, or revocation of license except for suspensions of license under the provisions of § 17-106, § 26-204, § 26-206, or § 27-103 of this article, or under the traffic laws or regulations of another state as described in § 16-303(i) of this title.....12 points
- (27) Any violation of § 16-301, § 16-302, § 16-804, or § 16-808(1) through (9) of this title .....12 points
- (28) Homicide or assault committed by means of a vehicle .....12 points
- (29) Driving while intoxicated or while under the influence of illegally used controlled dangerous substance .....12 points
- (30) Any felony involving use of a vehicle .....12 points
- (31) Fleeing or attempting to elude a police officer .....12 points
- (32) The making of a false affidavit or statement under oath, or falsely certifying to the truth of any fact or information to the Administration under the Maryland Vehicle Law or under any law relating to the ownership or operation of motor vehicles .....12 points

(b) If a conviction occurs on multiple charges based on offenses alleged to have been committed at the same time or arising out of circumstances simultaneous in time and place, the Administration:

- (1) Shall assess points against the individual convicted only on the charge that has the highest point assessment; and
- (2) May not assess points on the remainder of the multiple charges.

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### **Section 16-402.1. Assessment of Points for Certain Convictions.**

(a) When the Administration receives a notice of conviction from a party state to the Driver License Compact under Subtitle 7 of this title, the Administration may not assess points against an individual, except upon receipt of reports of the following convictions:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used; or

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) Points assessed pursuant to subsection (a) of this section shall be assessed as if the licensee were convicted of the offense under the Maryland Vehicle Law.

### **Section 16-701. Driver's License Compact; Definitions.**

(c) "Compact" means the Driver License Compact.

### **Section 16-703. Driver's License Compact; Effect of Conviction.**

#### Article IV Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this Compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

### **Section 16-812. Periods of Disqualification of Commercial Drivers.**

(a) The Administration shall disqualify any individual from driving a commercial motor vehicle for a period of 1 year if:

(1) The individual is convicted of committing any of the following offenses while driving a commercial motor vehicle:

(i) Driving in violation of § 21-902 of this article;

(ii) Driving in violation of a federal law or any other state's law which is substantially similar in nature to the provisions in § 21-902 of this article;

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(iii) Leaving the scene of an accident which requires disqualification as provided by the United States Secretary of Transportation; or

(iv) A crime, other than a crime described in subsection (e) of this section, that is punishable by death or imprisonment for a term exceeding 1 year;

(2) The individual, while driving a commercial motor vehicle, refuses to undergo testing as provided in § 16-205.1 of this title or as is required by any other state's law or by federal law in the enforcement of 49 CFR § 383.51(b)(2)(i)(A) or (B), or 49 CFR § 392.5(a)(2); or

(3) The individual drives or attempts to drive a commercial motor vehicle while the alcohol concentration of the person's blood or breath is 0.04 or more.

(b) If any of the offenses in subsection (a) of this section occurred while transporting a hazardous material required to be placarded, the Administration shall disqualify the individual for a period of 3 years.

(c) The Administration shall disqualify any person from driving a commercial motor vehicle for life for 2 or more violations of any of the offenses specified in subsection (a) or (b) of this section, or any combination of those offenses, arising from 2 or more separate incidents.

(d) The Administration may adopt regulations establishing guidelines, including conditions, under which a disqualification for life may be reduced to a period of time which may be permitted by federal regulations.

(e) The Administration shall disqualify any person from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled dangerous substance, or possession with intent to manufacture, distribute, or dispense a controlled dangerous substance.

(f) The Administration shall disqualify any person from driving a commercial motor vehicle for a period of 60 days if convicted under the laws of this State or any other state of 2 serious traffic violations committed in a commercial motor vehicle arising from separate incidents occurring within a 3-year period.

(g) The Administration shall disqualify any person from driving a commercial motor vehicle for a period of 120 days if convicted under the laws of this State or any other state of 3 serious traffic violations committed in a commercial motor vehicle arising from separate incidents occurring within a 3-year period.

(h) The Administration may disqualify a person from driving a commercial motor vehicle for a controlled dangerous substance offense in the manner provided under Article 41, Title 1, Subtitle 5 of the Code.

(i) The Administration shall cancel a commercial driver's license if the applicant provides information that is incomplete or incorrect.

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(j) After suspending, revoking, or canceling a commercial driver's license, or after disqualifying a commercial driver from operating a commercial motor vehicle, the Administration shall update its records to reflect that action within 10 days.

(k) After suspending, revoking, or canceling a nonresident commercial driver's privilege, or after disqualifying a nonresident driver from operating a commercial motor vehicle, the Administration shall notify the licensing authority of the state which issued the commercial driver's license within 10 days.

(l) An individual who is disqualified from driving a commercial motor vehicle under this section shall surrender the individual's driver's license to the Administration.

(m) The Administration may issue a noncommercial driver's license of an appropriate class to an individual who is disqualified under this section if:

(1) The individual surrenders the commercial driver's license; and

(2) The individual's driving privilege is not otherwise refused, suspended, revoked, or canceled in this State or any other state.

(n) Upon termination of a disqualification period, an individual may apply for a new commercial driver's license. The Administration shall issue a commercial driver's license to the applicant when the applicant:

(1) Passes the skills and knowledge tests required by this subtitle;

(2) Is eligible to drive pursuant to the Commercial Driver's License Information System, and National Driver's Register;

(3) Surrenders any previously issued driver's instructional permit or license; and

(4) Pays the fees required by § 16-818(a)(1) of this subtitle.

(o) If an individual is disqualified based on multiple 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 disqualify the individual from driving a commercial motor vehicle for the offense which results in the lengthiest period of disqualification; and

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

### **Section 16-813. Alcohol Restriction for Commercial Drivers.**

(a) An individual may not drive, operate, or be in physical control of a commercial motor vehicle while the individual has any alcohol concentration in the individual's blood or breath.

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(b) A person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol in the person's system or who, subject to § 16-205.1 of this title, refuses to take a chemical test to determine the alcohol concentration, shall be placed out-of-service for the 24-hour period immediately following the time the police officer or employer detects alcohol in the driver's blood or breath.

### **Section 18-105. Renting Vehicles to Another – Persons under Influence of Alcohol or Drugs.**

(a) A person may not rent a motor vehicle to any other person if he knows that the other person is under the influence of alcohol or drugs.

(b) A person may not rent a motor vehicle to any other person if the person knows that an individual who will drive the rented vehicle is under the influence of alcohol or drugs.

### **Section 21-902. Driving While Intoxicated, under the Influence of Alcohol, or under the Influence of a Drug or a Controlled Dangerous Substance.**

(a) A person may not drive or attempt to drive any vehicle while intoxicated.

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

(c) (1) A person may not drive or attempt to drive any vehicle while he is so far under the influence of 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 him incapable of safely driving a vehicle.

(d) A person may not drive or attempt to drive any vehicle while he is under the influence of any controlled dangerous substance, as that term is defined in Article 27, § 279 of the Code, if the person is not entitled to use the controlled dangerous substance under the laws of this State.

### **Section 21-903. Consumption of Alcoholic Beverages While Driving on Highway.**

A person may not consume an alcoholic beverage while driving a motor vehicle on a highway of this State.

### **Section 25-111. Motor Carrier Regulations.**

(f) (1) Except as provided in subsection (i) of this section the Administration may adopt rules and regulations as are necessary for the safe operation of vehicles that exceed 10,000 pounds registered gross weight and are engaged in the transportation of property or passengers over the highways of this State.

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(2) Any rule or regulation adopted pursuant to this subsection shall:

(i) Be formulated jointly by the Administration and the Department of State Police;

(ii) Duplicate or be consistent with the Federal Motor Carrier Safety Regulations contained in 49 CFR, Parts 390 through 399;

(iii) Apply to all vehicles over 10,000 pounds registered gross vehicle weight that are subject to the Federal Motor Carrier Safety Regulations;

(iv) Apply to vehicles over 10,000 pounds registered gross vehicle weight that are not subject to the Federal Motor Carrier Safety Regulations, if the rule or regulations adopted by the Motor Vehicle Administration specifically states that it applies to the vehicle; and

(v) Be consistent with 49 CFR, Parts 40 and 382, with respect to alcohol and drug testing regulations applicable to drivers of:

1. Vehicles with a gross vehicle weight rating over 26,000 pounds;

2. Vehicles transporting hazardous materials of a type and quantity requiring placarding; and

3. Vehicles designed to transport 16 or more passengers, including the driver.

(3) The rules or regulations adopted under this subsection may require that registrants of motor vehicles subject to this subsection have knowledge of applicable federal and State motor carrier safety regulations.

### **Section 26-202. Power of Arrest.**

(a) A police officer may arrest without a warrant a person for a violation of the Maryland Vehicle Law, including any rule or regulation adopted under it, or for a violation of any traffic law or ordinance of any local authority of this State, if:

(3) The officer has probable cause to believe that the person has committed the violation, and the violation is any of the following offenses:

(i) Driving or attempting to drive while intoxicated, while under the influence of alcohol, or in violation of an alcohol restriction;

(ii) Driving or attempting to drive while under the influence of any drug, any combination of drugs, or any combination of drugs and alcohol or while under the influence of any controlled dangerous substance;

(iii) Failure to stop, give information, or render reasonable assistance, as required by §§ 20-102 and 20-104 of this article, in the event of an accident resulting in bodily injury to or death of any person;

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(iv) Driving or attempting to drive a motor vehicle while the driver's license or privilege to drive is suspended or revoked;

(v) Failure to stop or give information, as required by §§ 20-103 through 20-105 of this article, in the event of an accident resulting in damage to a vehicle or other property;

(vi) Any offense that caused or contributed to an accident resulting in bodily injury to or death of any person; or

(vii) Fleeing or attempting to elude a police officer;

(b) An arrest under this section shall be made in the same manner as, and without more force than, in misdemeanor cases.

(c) A person arrested under this section shall be taken without unnecessary delay before a District Court commissioner, as specified in § 26-401 of this title, unless the arresting officer in his discretion releases the individual upon the individual's written promise to appear for trial.

### **Section 26-404. Guaranteed Arrest Bond Certificate; Inapplicable to DWI/DUI.**

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

(2) "Guaranteed arrest bond certificate" means any certificate that is issued under this section by an insurance company or motor club to provide bail bond services to any of its insureds or members.

(3) "Insurance company" means an insurance company that is authorized to write automobile liability insurance in this State.

(4) "Motor club" has the meaning stated in Article 48B, § 1 of the Code.

(5) "Surety company" means any company designated as a surety company under Article 48A, Subtitle 29 of the Code.

(b) Within the limitations of this section, the following persons may issue a guaranteed arrest bond certificate:

(1) Any insurance company that is also a surety company; or

(2) If acting in conjunction with a surety company, any other insurance company or any motor club.

(c) A guaranteed arrest bond certificate shall:

(1) Specify its expiration date; and

(2) Contain printed statements that:

(i) The issuer and surety company guarantee the court appearance of the person to whom the certificate is issued; and

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(ii) If the person fails to appear in court at the time of the trial, it will pay any fine or forfeiture that is imposed on the person and does not exceed \$1,000.

(d) Any surety company may become surety for persons posting guaranteed arrest bond certificates, by filing an undertaking to become surety with the State Insurance Division.

(e) (1) A guaranteed arrest bond certificate may not be delivered or issued for delivery in this State unless the form has been filed with and approved by the Insurance Commissioner.

(2) Unless the Insurance Commissioner affirmatively approves or disapproves the form within 30 days after it is filed with him, he is considered to have approved it.

(3) An order of the Insurance Commissioner disapproving the form or withdrawing a previous approval shall state the reasons for the action taken.

(f) A guaranteed arrest bond certificate may not be accepted:

(1) As a part of a surety undertaking or bail bond requirement of more than \$1,000; or

(2) To guarantee the appearance of any person in a court of this State, if the offense charged is:

(i) Driving or attempting to drive while intoxicated or while driving under the influence of alcohol;

(ii) Driving or attempting to drive while under the influence of any drug, any combination of drugs, or any combination of drugs and alcohol or while under the influence of any controlled dangerous substance; or

(iii) Any felony.

(g) (1) Except as provided in subsection (f) of this section, if the offense allegedly was committed before the expiration date of the certificate, the posting of a guaranteed arrest bond certificate by the person to whom it was issued shall be accepted, instead of cash bail or other bond, to guarantee the appearance in any court in this State, at a time designated by the court, of any person arrested for a violation of:

(i) Any provision of the Maryland Vehicle Law; or

(ii) Any traffic law or ordinance of any political subdivision of this State.

(2) A guaranteed arrest bond certificate posted as bail bond is subject to forfeiture if the person who posted it fails to appear in court at the time of the trial.

(3) The provisions of this section apply to both residents and nonresidents of this State.

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### **Section 26-405. Lesser included Offenses Under §§ 21-901.1 and 21-902.**

If a person is charged with a violation of § 21-901.1 of this article ("Reckless and negligent driving") or § 21-902 of this article ("Driving while intoxicated, under the influence of alcohol, or under the influence of a drug, a combination of alcohol and a drug, or a controlled dangerous substance"), the court may find him guilty of any lesser included offense under any subsection of the respective section.

### **Section 27-101. Penalties for Misdemeanors.**

(a) It is a misdemeanor for any person to violate any of the provisions of the Maryland Vehicle Law unless the violation is declared to be a felony by the Maryland Vehicle Law or by any other law of this State.

(b) Except as otherwise provided in this section, any person convicted of a misdemeanor for the violation of any of the provisions of the Maryland Vehicle Law is subject to a fine of not more than \$500.

(c) Any person who is convicted of a violation of any of the provisions of the following sections of this article is subject to a fine of not more than \$500 or imprisonment for not more than 2 months or both:

- (1) § 12-301(c), (d), (e), or (f) ("Special identification cards: Fraud and misrepresentation prohibited");
- (2) § 14-102 ("Taking or driving vehicle without consent of owner");
- (3) § 14-104 ("Damaging or tampering with vehicle");
- (4) § 14-107 ("Removed, falsified, or unauthorized identification number or registration card or plate");
- (5) § 14-110 ("Altered or forged documents and plates");
- (6) § 15-312 ("Dealers: Prohibited acts - Vehicle sales transactions");
- (7) § 15-313 ("Dealers: Prohibited acts - Advertising practices");
- (8) § 15-314 ("Dealers: Prohibited acts - Violation of licensing laws");
- (9) § 15-411 ("Vehicle salesmen: Prohibited acts");
- (10) § 15-502(b) ("Storage of certain vehicles by unlicensed persons prohibited");
- (11) § 16-301 ("Unlawful application for or use of license");
- (12) § 16-303(h) ("Licenses suspended under certain provisions of Code");
- (13) § 16-303(i) ("Licenses suspended under certain provisions of the traffic laws or regulations of another state");
- (14) § 18-106 ("Unauthorized use of rented motor vehicle");

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- (15) § 20-103 ("Driver to remain at scene - Accidents resulting only in damage to attended vehicle or property");
- (16) § 20-104 ("Duty to give information and render aid");
- (17) § 20-105 ("Duty on striking unattended vehicle or other property");
- (18) § 20-108 ("False reports prohibited");
- (19) § 21-206 ("Interference with traffic control devices or railroad signs and signals");
- (20) As to a pedestrian in a marked crosswalk, § 21-502(a) ("Pedestrians' right-of-way in crosswalks: In general");
- (21) As to another vehicle stopped at a marked crosswalk, § 21-502(c) ("Passing of vehicle stopped for pedestrian prohibited");
- (22) § 21-902(b) ("Driving while under the influence of alcohol");
- (23) § 21-902(c) ("Driving while under influence of drugs or drugs and alcohol");
- (24) § 21-902(d) ("Driving while under influence of controlled dangerous substance"); or
- (25) § 27-107(d), (e), (f), or (g) ("Prohibited acts - Ignition interlock systems").

(d) Any person who is convicted of a violation of any of the provisions of the following sections of this article is subject to a fine of not more than \$500 or imprisonment for not more than 6 months or both:

- (1) § 18-104 ("Renting motor vehicle with incorrect odometer");
- (2) § 22-405.1 ("Regrooved tires");
- (3) § 22-415 ("Tampering with or altering odometer"); or
- (4) For each vehicle for which there is a violation, § 23-109 ("Inspections of used vehicles and warnings for defective equipment: Prohibited activities").

(e) Any person who is convicted of a violation of any of the provisions of § 21-1411 of this article ("Transportation of hazardous materials") is subject to:

- (1) For a first offense, a fine of not more than \$1,000 or imprisonment for not more than 6 months or both; and
- (2) For any subsequent offense, a fine of not more than \$2,000 or imprisonment for not more than 1 year or both.

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(f) (1) Any person who is convicted of a violation of any of the provisions of § 14-103 of this article ("Possession of motor vehicle master key"), or of a second or subsequent violation of any of the provisions of § 16-101 of this article ("Drivers must be licensed") or § 21-902(b) of this article ("Driving while under the influence of alcohol") is subject to a fine of not more than \$500 or imprisonment for not more than 1 year or both.

(2) For the purpose of second or subsequent offender penalties for a violation of § 21-902(b) of this article provided under this subsection, a prior conviction of § 21-902(a) of this article ("Driving while intoxicated") shall be considered a conviction of § 21-902(b) of this article.

(g) Any person who is convicted of a violation of any of the provisions of § 13-704 of this article is subject to a fine of not more than \$1,000.

(h) Any person who is convicted of a violation of any of the provisions of § 15-502(a) of this article ("License required"), § 16-303(a), (b), (c), (d), (e), (f), or (g) of this article ("Driving while license is canceled, suspended, refused, or revoked"), or § 17-107 of this article ("Prohibitions") is subject to:

(1) For a first offense, a fine of not more than \$1,000, or imprisonment for not more than 1 year, or both; and

(2) For any subsequent offense, a fine of not more than \$1,000, or imprisonment for not more than 2 years, or both.

(i) Any person who is convicted of a violation of any of the provisions of § 15-302 of this article ("Dealer's license required") or § 15-402 of this article ("Vehicle salesman's license required") is subject to:

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

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

(j) (1) In this subsection, "imprisonment" includes confinement in an inpatient rehabilitation or treatment center.

(2) A person who is convicted of a violation of § 21-902(a) of this article within 3 years after a prior conviction under that subsection is subject to a mandatory minimum penalty of:

(i) Imprisonment for not less than 48 consecutive hours; or

(ii) Community service for not less than 80 hours.

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

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(k) (1) Any person who is convicted of a violation of any of the provisions of § 21-902(a) of this article ("Driving while intoxicated"):

(i) For a first offense, shall be subject to a fine of not more than \$1,000, or imprisonment for not more than 1 year, or both;

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

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

(2) For the purpose of second or subsequent offender penalties for violation of § 21-902(a) of this article provided under this subsection, a prior conviction of § 21-902(b), (c), or (d) of this article, within 5 years of the conviction for a violation of § 21-902(a) of this article, shall be considered a conviction of § 21-902(a) of this article.

(l) Any person who is convicted of a violation of any of the provisions of § 22-409 of this article ("Transportation of hazardous materials"), § 24-111(d) or (e) of this article (Obeying signs to stop for inspection), § 24-111.1(b), (d)(2), or (e)(2) of this article (Overweight vehicles), or § 25-111 of this article (Motor carrier safety violations) is subject to a fine of not more than \$1,000.

(m) Any person who is convicted of a violation of any of the provisions of § 21-802.1 of this article (Exceeding speed limit within highway work zone) is subject to a fine of not more than \$1,000.

(n) If a different penalty for the violation of any provision of the Maryland Vehicle Law is provided for in the Maryland Vehicle Law or in any other law of this State, the specific penalty prevails over the penalty provided for in this section.

(o) Any person who is convicted of a violation of § 20-102 of this article ("Driver to remain at scene — Accidents resulting in bodily injury or death") is subject to:

(1) For a first offense, a fine of not more than \$1,000 or imprisonment for not more than 1 year or both;

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

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

(p) (1) Except as provided in paragraphs (2) and (3) of this subsection, any person who is convicted of a violation of any of the provisions of § 21-904 of this article ("Fleeing or eluding police") is subject to:

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

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(ii) For any subsequent offense, a fine of not more than \$1,000, or imprisonment for not more than 2 years, or both.

(2) Any person who is convicted of a violation of § 21-904(b) or (e) of this article that results in bodily injury to another person is subject to a fine of not more than \$3,000, or imprisonment for not more than 3 years, or both.

(3) Any person who is convicted of a violation of § 21-904(b) or (e) of this article that results in a death of another person is subject to a fine of not more than \$5,000, or imprisonment for not more than 5 years, or both.

### **Section 27-107. Ignition Interlock Systems – Imposition of Penalty.**

(a) 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) 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 intoxicated”), or § 21-902(b) of this article (“driving while under the influence of alcohol”), or in addition to any other condition of probation, a court may prohibit a person who is convicted of, or granted probation under Article 27, § 641 of the Code 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) 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;

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(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) A person prohibited under this section 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) 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 from operating a motor vehicle that is not equipped with an ignition interlock system.

(f) 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.

(g) (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 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 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.

### **Section 27-108. Ignition Interlock Systems – Regulations.**

(a) (1) The Administration shall certify or cause to be certified ignition interlock systems for use in the State and adopt rules and regulations for the certification of the ignition interlock systems.

(2) The regulations adopted under paragraph (1) of this subsection shall include requirements that ignition interlock systems:

(i) Do not impede the safe operation of the vehicle;

(ii) Minimize opportunities to be bypassed;

(iii) Correlate accurately with established measures of blood alcohol levels;

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- (iv) Work accurately and reliably in an unsupervised environment;
- (v) Require a proper and accurate measure of blood alcohol levels;
- (vi) Resist tampering and provide evidence of attempted tampering;
- (vii) Are difficult to circumvent, and require premeditation to circumvent;
- (viii) Minimize inconvenience to a sober user;
- (ix) Are manufactured by a party responsible for installation, user training, service, and maintenance;
- (x) Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards;
- (xi) Are manufactured by a person who is adequately insured for products liability; and
- (xii) Provide the option for an electronic log of the driver's experience with the system.

(3) (i) The Administration shall design and adopt a warning label to be affixed to an ignition interlock system on installation.

(ii) The warning label shall state that a person tampering with, circumventing, or otherwise misusing the ignition interlock system is guilty of a misdemeanor, and, on conviction, is subject to a fine or imprisonment or both.

(4) (i) The Administration shall publish a list of certified ignition interlock systems.

(ii) A manufacturer of an ignition interlock system that seeks to sell or lease the ignition interlock system to persons subject to the provisions of § 27-107 of this subtitle in the State shall pay the costs of obtaining the required certification.

(b) A person may not sell or lease or offer to sell or lease an ignition interlock system to a person subject to the provisions of Section 27-107 of this subtitle in the State unless:

(1) The system has been certified by the Administration; and

(2) A warning label approved by the Administration is affixed to the system stating that a person who tampers, circumvents, or otherwise misuses the system is guilty of a misdemeanor, and, on conviction, is subject to a fine or imprisonment or both.

(c) A person who sells or leases an ignition interlock system in the State shall:

(1) Monitor the use of the system as required by the court; and

(2) Issue a report of the results of the monitoring to the appropriate office of the Division of Parole and Probation.

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**E. JUVENILES**

**Article 83C – Juvenile Services**

**Section 2-104. State Comprehensive Juvenile Services 3-Year Plan.**

(e) (1) The Secretary is responsible for the coordination and direction of all planning that the office of the Secretary initiates.

(2) The Secretary shall keep fully apprised of plans, proposals, and projects of each unit in the Department and, except as expressly provided otherwise, may approve, disapprove, or modify any of them.

(3) (i) Prior to January 1, 1990, the Secretary shall develop a State Comprehensive Juvenile Services 3-Year Plan. The Plan shall:

1. Include an inventory of all in-day treatment programs and residential care programs and an accounting of the residence of all clients;
2. Set out the needs of the various areas of services for clients including alcohol and drug abuse rehabilitation services;
3. Establish priorities for the different services needed;
4. Set standards for the quality of residential services, and out-reach services;
5. Include a program dedicated to reducing recidivism rates of clients; and
6. Include any other matters that the Secretary deems appropriate.

(ii) The Plan shall be revised for each subsequent calendar year and shall be submitted, subject to § 2-1312 of the State Government Article, to the General Assembly by February 1 of each year.

**Section 2-118. Education, Prevention and Treatment Services in Juvenile Facilities.**

(e) The Department shall develop and provide within each facility:

- (1) Educational programs that are designed to meet the particular needs of its population;
- (2) Alcohol abuse and drug abuse assessment services; and
- (3) Either alcohol abuse and drug abuse referral services or an alcohol abuse and drug abuse treatment program that has been certified in accordance with the requirements of Title 8 of the Health – General Article.

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### Section 2-122. Youth Services Bureau.

(a) In this section, "youth services bureau" means a community-based entity that is operated:

(1) To provide community-oriented delinquency prevention, youth suicide prevention, drug and alcohol abuse prevention, and youth development;

(2) To ameliorate conditions that breed delinquency, youth suicide, drug and alcohol abuse, and family disruption; and

(3) To function as an advocate of youth needs.

(b) (1) The Department shall adopt rules and regulations that set eligibility guidelines for State funding of youth services bureaus under this section.

(2) The rules and regulations shall require that each State-aided youth services bureau:

(i) Provide, free of charge or at a rate established by each youth services bureau's board of directors, in consultation with the Department, that is based upon the client's family income, at convenient hours:

1. Individual, family, and group counseling;

2. Referral and information services;

3. Crisis intervention, including intervention relating to youth suicide prevention;

4. Alcohol and drug abuse assessment and referral services by staff who have received substance abuse assessment and referral training from the Office of Education and Training for Addictions Services (OETAS) in the Department of Health and Mental Hygiene or from any other entity that the Secretary determines to be qualified to provide substance abuse assessment and referral training;

5. Informal counseling; and

6. In accordance with particular community needs:

A. Tutoring;

B. Alternative leisure activities;

C. Employment assistance;

D. Community education, including training and information relating to youth suicide prevention; and

E. Other specialized services; and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(ii) Dispose of all information and records on each individual receiving services from a youth services bureau under this section 5 years after services to the individual are no longer necessary.

(3) Any fees charged under paragraph (2) of this subsection may be retained by the youth services bureau for the purposes of the youth services bureau.

(4) Fees authorized under paragraph (2) of this subsection do not apply to youth referred to a youth services bureau by court order.

### **Article – Courts and Judicial Proceedings**

#### **Section 3-804. Juvenile Court – Jurisdiction.**

(a) The court has exclusive original jurisdiction over a child alleged to be delinquent, in need of supervision, in need of assistance or who has received a citation for a violation.

(b) The court has exclusive original jurisdiction over proceedings arising under the Interstate Compact on Juveniles.

(c) The court has concurrent jurisdiction over proceedings against an adult for the violation of § 3-831 of this subtitle. However, the court may waive its jurisdiction under this subsection upon its own motion or upon the motion of any party to the proceeding, if charges against the adult arising from the same incident are pending in the criminal court. Upon motion by either the State's Attorney or the adult charged under § 3-831, the court shall waive its jurisdiction, and the adult shall be tried in the criminal court according to the usual criminal procedure.

(d) The jurisdiction of the court is concurrent with that of the District Court in any criminal case arising under the compulsory public school attendance laws of this State.

(e) The court does not have jurisdiction over:

(1) A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under Article 27, § 594A of the Code;

(2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;

(3) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration; or

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(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under Article 27, § 594A of the Code:

- (i) Abduction;
- (ii) Kidnapping;
- (iii) Second degree murder;
- (iv) Manslaughter, except involuntary manslaughter;
- (v) Mayhem or maiming in violation of Article 27, § 384, § 385, or § 386 of the Code;
- (vi) Second degree rape;
- (vii) Robbery with a dangerous or deadly weapon;
- (viii) Second degree sexual offense in violation of Article 27, § 464A(a)(1) of the Code;
- (ix) Third degree sexual offense in violation of Article 27, § 464B(a)(1) of the Code;
- (x) A crime in violation of Article 27, § 36B, § 373, § 374, § 445, § 446, § 481C, or § 481E of the Code;
- (xi) Using, wearing, carrying, or transporting of firearm during and in relation to a drug trafficking crime in violation of Article 27, § 281A of the Code;
- (xii) Use of a firearm in violation of Article 27, § 291A of the Code;
- (xiii) Carjacking or armed carjacking in violation of Article 27, § 348A of the Code;
- (xiv) Assault with intent to murder;
- (xv) Assault with intent to rape;
- (xvi) Assault with intent to rob; or
- (xvii) Assault with intent to commit a sexual offense in the first or second degree.

(f) If the child is charged with two or more violations of the Maryland Vehicle Law, another traffic law or ordinance, or the State Boat Act, allegedly arising out of the same incident and which would result in the child being brought before both the court and a court exercising criminal jurisdiction, the court has exclusive jurisdiction over all of the charges.

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### **Section 3-806. Juvenile Court – Termination of Jurisdiction.**

(a) If the court obtains jurisdiction over a child, that jurisdiction continues until that person reaches 21 years of age unless terminated sooner.

(b) This section does not affect the jurisdiction of other courts over a person who commits an offense after he reaches the age of 18.

(c) Unless otherwise ordered by the court, the court's jurisdiction is terminated over a person who has reached 18 years of age when he is convicted of a crime, including manslaughter by automobile, unauthorized use or occupancy of a motor vehicle, or operating a vehicle while under the influence of intoxicating liquors or drugs, but excluding a conviction for a violation of any other traffic law or ordinance or any provision of the State Boat Act, or the fish and wildlife laws of the State.

(d) If the court in a child in need of assistance proceeding places a child in the care and custody of a person other than the parent, guardian, or custodian who had custody at the time the petition is filed, the custody order of the court shall continue after the termination of the child in need of assistance proceeding unless:

- (1) The custody order is terminated by the court; or
- (2) The custody order is modified by an order of any other court with jurisdiction.

### **Section 3-810. Handling of Complaints.**

(l) If the intake officer receives a citation other than a citation authorized under Article 27, § 405A of the Code, the intake officer may:

- (1) Refer the child to an alcohol education or rehabilitation program;
- (2) Assign the child to a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second or subsequent violation;
- (3) Require the parent or guardian of the child to withdraw the parent or guardian's consent to the child's license to drive, and advise the Motor Vehicle Administration of the withdrawal of consent; or
- (4) Forward the citation to the State's Attorney.

(m) The intake officer shall forward the citation, other than a citation authorized under Article 27, § 405A of the Code, to the State's Attorney if:

- (1) The parent or guardian of the child refuses to withdraw consent to the child's license to drive;
- (2) The child fails to comply with an alcohol education or rehabilitation program referral; or
- (3) The child fails to comply with a supervised work program assignment.

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(n) If the intake officer receives a citation authorized under Article 27, § 405A of the Code, the intake officer may:

(1) Refer the child to a smoking cessation clinic, or other suitable presentation of the hazards associated with tobacco use;

(2) Assign the child to a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for a second or subsequent violation; or

(3) Forward the citation to the State's Attorney.

(o) The intake officer shall forward the citation authorized under Article 27, § 405A of the Code to the State's Attorney if the child fails to comply with a smoking program referral or a supervised work program assignment described under subsection (n) of this section.

### **Section 3-815. Shelter Care.**

(h) (3) The Secretary of Human Resources and the Secretary of the Department of Juvenile Services together, when appropriate, with the Secretary of Health and Mental Hygiene shall jointly adopt regulations to ensure that any child placed in shelter care pursuant to a petition filed under subsection (d) of this section be provided appropriate services, including:

- (i) Health care services;
- (ii) Counseling services;
- (iii) Education services;
- (iv) Social work services; and
- (v) Drug and alcohol abuse assessment or treatment services.

### **Section 3-820. Suspension of Driving Privilege.**

(d) (1) (i) Subject to the provisions of item (iii) of this paragraph, in making a disposition on a finding that the child has committed the violation specified in a citation, the court may order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) In this paragraph "driver's license" means a license or permit to drive a motor vehicle that is issued under the laws of this State or any other jurisdiction.

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(iii) In making a disposition on a finding that the child has committed a violation under Article 27, § 400 of the Code specified in a citation that involved the use of a driver's license or a document purporting to be a driver's license, the court may order the Motor Vehicle Administration to initiate an action under the Maryland Vehicle Law to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration:

1. For a first offense, for 6 months; and
2. For a second or subsequent offense, until the child is 21 years old.

(iv) If a child subject to a suspension under this subsection does not hold a license to operate a motor vehicle on the date of the disposition, the suspension shall commence on the date that the license is issued, or after the child applies and becomes qualified to receive a license, or on the child's eighteenth birthday, whichever occurs first.

(2) In addition to the dispositions under subsection (d)(1) of this section, the court also may:

(i) Counsel the child or the parent or both, or order the child to participate in an alcohol education or rehabilitation program that is in the best interest of the child;

(ii) Impose a civil fine of not more than \$25 for the first violation and a civil fine of not more than \$100 for the second and subsequent violations; or

(iii) Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second and subsequent violations.

(3) (i) The provisions of paragraphs (1) and (2) of this subsection do not apply to a child found to have committed a violation under Article 27, § 405A of the Code.

(ii) In making a disposition on a finding that the child has committed a violation under Article 27, § 405A of the Code, the court may:

1. Counsel the child or the parent or both, or order the child to participate in a smoking cessation clinic, or other suitable presentation of the hazards associated with tobacco use that is in the best interest of the child;

2. Impose a civil fine of not more than \$25 for the first violation and a civil fine of not more than \$100 for a second or subsequent violation; or

3. Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for a second or subsequent violation.

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### **Section 3-824. Effect of DWI Conviction.**

(a) (1) An adjudication of a child pursuant to this subtitle is not a criminal conviction for any purpose and does not impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(2) An adjudication and disposition of a child in which the child's driving privileges have been suspended may not affect the child's driving record or result in a point assessment. The State Motor Vehicle Administration may not disclose information concerning or relating to a suspension under this subtitle to any insurance company or person other than the child, the child's parent or guardian, the court, the child's attorney, a State's Attorney, or law enforcement agency.

(3) However, an adjudication of a child as delinquent by reason of his violation of the State vehicle laws shall be reported by the clerk of the court to the Motor Vehicle Administration, which shall assess points against the child under Title 16, Subtitle 4 of the Transportation Article, in the same manner and to the same effect as if the child had been convicted of the offense.

(4) A finding that a child has committed a delinquent act by reason of the child's violation of § 21-902 of the Transportation Article, without an adjudication of the child as delinquent, shall be reported by the clerk of the court to the Motor Vehicle Administration; however, no points shall be assessed against the child. The Motor Vehicle Administration shall retain the report in accordance with § 16-117(b)(2) of the Transportation Article pertaining to records of licensees who receive a disposition of probation before judgment.

(b) An adjudication and disposition of a child pursuant to this subtitle are not admissible as evidence against the child:

- (1) In any criminal proceeding prior to conviction; or
- (2) In any adjudicatory hearing on a petition alleging delinquency; or
- (3) In any civil proceeding not conducted under this subtitle.

(c) Evidence given in a proceeding under this subtitle is not admissible against the child in any other proceeding in another court, except in a criminal proceeding where the child is charged with perjury and the evidence is relevant to that charge and is otherwise admissible.

(d) An adjudication or disposition of a child under this subtitle shall not disqualify the child with respect to employment in the civil service of the State or any subdivision of the State.

### **Section 3-835. Citation for Violation of Certain Alcohol Beverages Laws.**

(a) A law enforcement officer authorized to make arrests shall issue a citation to a child if the officer has probable cause to believe that the child is violating:

- (1) Article 27, § 400, § 400A, § 401, or § 405A of the Code; or

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(2) § 26-103 of the Education Article.

(b) A citation issued under this section shall be in a format prescribed by the Chief Judge of the District Court of Maryland after consultation with police administrators and the Motor Vehicle Administrator. The uniform motor vehicle citation form shall be printed by the District Court, and all other citation forms shall be printed by the law enforcement agencies of the State and signed by the issuing officer and shall contain:

- (1) The name, address, and birth date of the child being charged with the violation;
- (2) The name and address of the child's parent or legal guardian;
- (3) The statute allegedly violated;
- (4) The time, place, and date of the violation;
- (5) The driver's license number of the child, if the child possesses a driver's license;
- (6) The registration number of the motor vehicle, motorcycle, or other vehicle, if applicable;
- (7) The signature of the child; and
- (8) The penalties which may be imposed under § 3-820 of the this subtitle.

(c) A copy of the citation issued under this section shall be:

- (1) Given to the child being charged;
- (2) Retained by the officer issuing the citation;
- (3) Mailed within 7 days to the child's parent or legal guardian; and
- (4) Filed with the intake officer of the court having jurisdiction under this subtitle.

### **Article -- Transportation**

#### **Section 16-113. Alcohol Restriction.**

(a) In addition to the vision and other restrictions provided for in this subtitle, when it issues a driver's license, the Administration for good cause may impose on the licensee:

- (1) Any restrictions suitable to the licensee's driving ability with respect to the type of special mechanical control devices required on motor vehicles that the licensee may drive; and
- (2) An alcohol restriction which prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee's blood; and

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(3) Any other restrictions applicable to the licensee that the Administration determines appropriate to assure the safe driving of a motor vehicle by the licensee.

(b) (1) Notwithstanding the licensee's driving record, the Administration shall impose on each licensee under the age of 21 years an alcohol restriction that prohibits the licensee from driving or attempting to drive a motor vehicle with an alcohol concentration of 0.02 or more as determined by an analysis of the person's blood or breath.

(2) An alcohol restriction imposed under this subsection expires when the licensee reaches the age of 21 years.

(3) This subsection may not be construed or applied to limit:

(i) The authority of the Administration to impose on a licensee an alcohol restriction described in subsection (a)(2) of this section; or

(ii) The application of any other provision of law that prohibits consumption of an alcoholic beverage by an individual under the age of 21 years.

(c) (1) Subject to the provisions of paragraph (2) of this subsection, the Administration may:

(i) Issue a special restricted license; or

(ii) Set forth the restrictions on the usual license form.

(2) The Administration shall indicate on the license of a licensee under the age of 21 years that an alcohol restriction has been imposed on the licensee under subsection (b) of this section.

(d) (1) In addition to the other restrictions provided in this subtitle, the Administration may issue a provisional driver's license to applicants who are under the age of 18.

(2) The license may be restricted by requiring that the licensee be accompanied and supervised at certain times by a licensed driver who is at least 21 years old.

(3) The Administrator may modify or waive the restriction if the restriction would affect adversely:

(i) The employment or opportunity for employment of the licensee;

(ii) The participation of the licensee in an organized volunteer program approved by the Administration and designed to provide transportation to prevent alcohol- or drug-related driving offenses and promote highway safety; or

(iii) The opportunity of the licensee to participate in athletic events and related training sessions.

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(e) In addition to the other restrictions provided under this subtitle, the Administration may issue a driver's license that is valid only in the State of Maryland to an applicant who has been suspended in another jurisdiction as a result of failing to comply with the financial responsibility requirements of that jurisdiction.

(f) After receiving satisfactory evidence of any violation of a restricted or provisional driver's license, the Administration may suspend or revoke the license. However, the licensee may request a hearing as provided for a suspension or revocation under Subtitle 2 of this title.

(g) (1) The Administration shall impose an alcohol restriction under subsection (a)(2) of this section that prohibits an individual for a period of 3 years from driving or attempting to drive with alcohol in the individual's blood on any licensee who is convicted of any combination of two or more violations under § 21-902(a) or (b) of this article.

(2) If a circuit court or a District Court orders a licensee not to drive or attempt to drive a motor vehicle with alcohol in the licensee's blood, the Administration shall have the licensee's driving record and driver's license reflect that the court ordered restriction was imposed, and shall keep records of the order.

(h) An individual may not drive a vehicle in any manner that violates any restriction imposed in a restricted license issued to the individual.

(i) An individual may not drive a vehicle in any manner that violates any restriction imposed in a provisional license issued to the individual.

### **F. FIREARMS**

#### **Article 27 – Crimes and Punishments**

##### **Section 36E. Permit to Carry a Handgun.**

(a) A permit to carry a handgun shall be issued within a reasonable time by the Superintendent of the State Police, upon application under oath therefor, to any person whom he finds:

(1) Is eighteen years of age or older; and

(2) Has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted of such a crime, has been pardoned or has been granted relief pursuant to Title 18, § 925(c) of the United States Code; and

(3) Has not been committed to any detention, training, or correctional institution for juveniles for longer than one year after an adjudication of delinquency by a juvenile court; provided, however, that a person shall not be disqualified by virtue of this paragraph (3) if, at the time of the application, more than ten years has elapsed since his release from such institution; and

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(4) Has not been convicted of any offense involving the possession, use, or distribution of controlled dangerous substances; and is not presently an addict, an habitual user of any controlled dangerous substance not under legitimate medical direction, or an alcoholic; and

(5) Has, based on the results of investigation, not exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law-abiding persons; and

(6) Has, based on the results of investigation, good and substantial reason to wear, carry, or transport a handgun, provided however, that the phrase "good and substantial reason" as used herein shall be deemed to include a finding that such permit is necessary as a reasonable precaution against apprehended danger.

(f) The Superintendent may revoke any permit issued or renewed at any time upon a finding that (i) the holder no longer satisfies the qualifications set forth in subsection (a), or (ii) the holder of the permit has violated subsection (e) hereof. A person holding a permit which is revoked by the Superintendent shall return the permit to the Superintendent within ten days after receipt of notice of the revocation. Any person who fails to return a revoked permit in violation of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$100 or more than \$1,000, or be imprisoned for not more than one year, or both.

(l) It is unlawful for a person to whom a permit has been issued or renewed to carry, wear, or transport a handgun while he is under the influence of alcohol or drugs. A person violating this subsection is guilty of a misdemeanor, and upon conviction he shall be fined \$1,000 or be imprisoned for not more than one year or both.

### **Section 442. Application to Purchase Pistol or Revolver.**

(a) All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on sales of pistols or revolvers are superseded by this section, and the State of Maryland hereby preempts the rights of such jurisdictions to regulate the sale of pistols and revolvers.

(b) No dealer shall sell or transfer any pistol or revolver until after seven days shall have elapsed from the time an application to purchase or transfer shall have been executed by the prospective purchaser or transferee, in triplicate, and forwarded by the prospective seller or transferor to the Superintendent of the State Police.

(c) The dealer shall promptly after receiving an application to purchase or transfer, completed in accordance with subsection (e) below, forward one copy of the same, by certified mail, to the Superintendent of the State Police. The copy forwarded to the said Superintendent shall contain the name, address, and signature of the prospective seller or transferor. The prospective seller or transferor shall retain one copy of the application for a period of not less than three years. The prospective purchaser or transferee shall be entitled to the remaining copy of the application.

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(d) (1) A person who makes an application to purchase or transfer a pistol or revolver shall pay to the dealer a \$10 application fee with the application to purchase or transfer.

(2) The dealer shall forward the \$10 application fee along with the application to the Superintendent of the State Police.

(e) The application to purchase or transfer shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than three years, or a fine of not more than \$5,000, or both."

(f) The application to purchase or transfer shall contain the following information:

(1) Applicant's name, address, occupation, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A statement by the applicant that he or she:

(i) Has never been convicted of a crime of violence, in this State or elsewhere, or of a violation of any of the provisions of §§ 286, 286A or 286C of this article or any conspiracy to commit any crimes established by those sections, or of any of the provisions of this subtitle.

(ii) Is not a fugitive from justice.

(iii) Is not a habitual drunkard.

(iv) Is not an addict or a habitual user of narcotics, barbiturates or amphetamines.

(v) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(vi) Is at least 21 years of age as required by federal law.

(vii) Has or has not submitted a prior application and, if so, when and where.

(3) The date and hour the application was delivered in completed form to the prospective seller or transferor by the prospective purchaser or transferee.

(g) The Superintendent of the State Police may request the assistance of the police commissioner of Baltimore City, the chief of police in any county maintaining a police force, or the sheriff in a county not maintaining a police force and shall promptly

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upon receipt of an application to purchase or transfer conduct an investigation in order to determine the truth or falsity of the information supplied and statements made in said application. If it be thereupon determined that any false information or statement has been supplied or made by the applicant, or that the application has not been properly completed, the said Superintendent or any specific member of the Department of State Police authorized by the Superintendent to act as his agent in matters relating to pistol or revolver sales shall notify the prospective seller or transferor, in writing, within seven days from the date the executed application to purchase or transfer was forwarded by certified mail, of his disapproval of said application. Written notification of such disapproval shall be thereafter forwarded by the said Superintendent and/or his duly authorized agent or agents to the prospective purchaser or transferee. The date upon which the executed application to purchase or transfer was forwarded by certified mail by the prospective seller or transferor shall be considered as the first day of the seven-day period allowed for notice of disapproval to the said prospective seller or transferor. If the seventh day of the seven-day period allowed for the said notice of disapproval shall fall on a Sunday or legal holiday, the computation period shall be extended to the first day next following, which is neither a Sunday nor a legal holiday.

(h) No dealer shall sell or transfer a pistol or revolver to an applicant whose application has been timely disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (i) of this section.

(i) (1) Any prospective purchaser or transferee aggrieved by the action of the Department of State Police may request a hearing within 30 days from the date when written notice was forwarded to the aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of the request.

(2) The hearing and subsequent proceedings of judicial review, if any, thereupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act.

(3) The hearing shall be held in the county of the legal residence of the aggrieved person. If the aggrieved person is not a State resident, the hearing shall be held at a location designated by the Superintendent of State Police.

(j) Any dealer who sells or transfers a pistol or revolver in compliance with this subtitle shall forward a copy of the written notification of such completed transaction, within seven days from the date of delivery of the said pistol or revolver, to the Superintendent of the State Police, whose duty it shall be to maintain a permanent record of all such completed sales and transfers of pistols and revolvers in the State. The notifications shall contain an identifying description of the pistol or revolver sold or transferred including its caliber, make, model, manufacturer's serial number, if any, and any other special or peculiar characteristics or marking by which the said pistol or revolver may be identified.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(k) Nothing in this section shall be construed to affect sales and/or transfers for bona fide resale in the ordinary course of business of a person duly licensed under § 443 of this subtitle, or sales, transfer, and/or the use of pistols or revolvers by any person authorized or required to sell, transfer, and/or use such pistols or revolvers as part of his or her duties as a member of any official police force or other law enforcement agency, the armed forces of the United States, including all official reserve organizations, or the Maryland National Guard.

(l) Any person who knowingly gives any false information or makes any material misstatement in an application required by this section, or who fails to promptly forward such application to the Superintendent of the State Police or his duly authorized agent or agents, or who sells or transfers a pistol or revolver to a person other than the one by whom application was made, or who otherwise sells, transfers, purchases, or receives transfer of a pistol or revolver in violation of this section, shall upon conviction thereof be subject to the penalties hereinafter provided in § 448 of this subtitle.

### **Section 443. Application for Dealer's License.**

(a) No person shall engage in the business of selling pistols or revolvers unless he lawfully possesses and conspicuously displays at his place of business, in addition to any other license required by law, a pistol and revolver dealer's license issued by the Superintendent of the State Police or his duly authorized agent or agents. Such license shall identify the licensee and the location of his place of business. One such license shall be required for each place of business where pistols or revolvers are sold.

(b) (1) The license required by subsection (a) above shall expire on the 30th day of June of each year.

(2) The initial fee for the license shall be \$50, and the annual renewal shall be \$25, payable to the Comptroller of the State of Maryland.

(3) The license shall not be transferable nor shall any refund or proration of the annual fee therefor be allowed. Provided, however, that before any licensee changes his place of business he shall so inform the Superintendent of the State Police or his duly authorized agent or agents and surrender his license, whereupon the Superintendent or his duly authorized agent or agents shall, if no cause exists for the revocation of the license, issue a new license, without fee, covering the new place of business for the duration of the unexpired term of the surrendered license.

(4) As part of the application for a license, the applicant shall submit to the Department of State Police:

(i) A complete set of the applicant's legible fingerprints taken on standard fingerprint cards; and

(ii) Payment for the cost of the fingerprint card record checks.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(c) Every annual application for a pistol and revolver dealer's license shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than \$1,000, or both."

(d) The application for a pistol and revolver dealer's license shall contain the following information:

(1) Applicant's name, address, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A clear and recognizable photograph of the applicant, except where such photograph has been submitted with a prior year's application.

(3) A set of the applicant's fingerprints, except where such fingerprints have been submitted with a prior year's application.

(4) A statement by the applicant that he or she:

(i) Is a citizen of the United States.

(ii) Is at least 21 years of age as required by federal law.

(iii) Has never been convicted of a crime of violence, in this State or elsewhere, or of a violation of any of the provisions of §§ 286, 286A, or 286C of this article or any conspiracy to commit any crimes established by those sections or of any of the provisions of this subtitle.

(iv) Is not a fugitive from justice.

(v) Is not a habitual drunkard.

(vi) Is not an addict or a habitual user of narcotics, barbiturates or amphetamines.

(vii) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(e) The Superintendent of the State Police and/or his duly authorized agent or agents shall conduct an investigation in order to determine the truth or falsity of the information supplied and statements made in an application for a pistol and revolver dealer's license. If it be thereupon determined that any false information or statement has been supplied or made by the applicant, or that the application has not been properly completed, the said Superintendent and/or his duly authorized agent or agents shall forward written notification to the prospective licensee of his or their disapproval of said application.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(f) No person shall engage in the business of selling pistols or revolvers whose application for a pistol and revolver dealer's license has been disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (g) below.

(g) Any person aggrieved by the action of the Superintendent of the State Police and/or his duly authorized agent or agents may appeal the disapproval of his or her application for a pistol and revolver dealer's license to the circuit court of the county where the applicant's intended place of business is to be conducted. Such appeal must be filed not later than thirty days from the date written notification of disapproval to the prospective licensee was mailed by the said Superintendent and/or his duly authorized agent or agents. The court wherein an appeal is properly and timely filed shall affirm or reverse the determination of disapproval rendered by the said Superintendent and/or his duly authorized agent or agents, depending upon whether it finds that any false information or statement was supplied or made by the applicant, or that the application was not properly completed. A further appeal to the Court of Special Appeals may be prosecuted by either the Superintendent of the State Police or the applicant from the decision reached by the circuit court in accordance with this subsection.

(h) The Superintendent of the State Police or his duly authorized agent or agents shall revoke an issued pistol and revolver dealer's license, by written notification forwarded to the licensee, under any of the following circumstances:

(1) When it is discovered false information or statements have been supplied or made in an application required by this section.

(2) If the licensee is convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle, or is a fugitive from justice, or is a habitual drunkard, or is addicted to or a habitual user of narcotics, barbiturates or amphetamines, or has spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless the licensee produces a physician's certificate, issued subsequent to the last period of institutionalization, certifying that the licensee is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(3) If the licensee has willfully manufactured, offered to sell, or sold a handgun not on the handgun roster in violation of § 36-I of this article.

(i) No person shall engage in the business of selling pistols or revolvers whose pistol and revolver dealer's license has been revoked, unless such revocation has been subsequently withdrawn by the Superintendent of the State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (j) below.

(j) Any prospective dealer aggrieved by the action of the Department of State Police may request a hearing within thirty (30) days from the date when written notice was forwarded to such aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of said request. Said hearing and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

subsequent proceedings of judicial review, if any, thereupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act. A suspension or revocation shall not take effect while an appeal is pending.

(k) Any person who engaged in the business of selling pistols or revolvers in violation of this section or who knowingly gives any false information or makes any material misstatement in an application required by this section shall upon conviction thereof be subject to the penalties hereinafter provided in § 448 of this subtitle. Each day on which pistols or revolvers are unlawfully sold or offered for sale shall be considered a separate offense.

(l) The Superintendent of the State Police shall adopt regulations to implement the inclusion of an assault weapon, as defined under § 481E of this article, within the license, sales, and transfer requirements under this section.

### **Section 445. Restrictions on Sale, Transfer and Possession of Pistols and Revolvers.**

(a) All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on possession or transfers by private parties of pistols and revolvers are superseded by this section and the State of Maryland hereby preempts the right of such jurisdictions to regulate the possession and transfer of pistols and revolvers.

(b) A dealer or person may not sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime of violence, or of a violation of any of the provisions of § 286, § 286A, or § 286C of this article, or any conspiracy to commit any crimes established by those sections or of any of the provisions of this subtitle, or is a fugitive from justice, or is a habitual drunkard, or is addicted to or a habitual user of narcotics, barbiturates or amphetamines, or is of unsound mind, or to any person visibly under the influence of alcohol or drugs, or to any person under 21 years of age as required by federal law.

(c) A person may not possess a pistol or revolver if the person:

(1) Has been convicted of:

- (i) A crime of violence; or
- (ii) Any provisions of this subtitle; or

(2) Is:

- (i) A fugitive from justice;
- (ii) A habitual drunkard;
- (iii) A habitual abuser of narcotics, barbiturates, or amphetamines; or

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(iv) Suffering from a mental disorder as defined in § 10-101(h)(2) of the Health – General Article and has a history of violent behavior against another person or self, or has been confined for more than 30 consecutive days to a facility as defined in § 10-101 of the Health – General Article, unless the person possesses a physician's certification that the person is capable of possessing a pistol or revolver without undue danger to the person or to others.

### **Section 481E. Restrictions on Sale and Transfer of Assault Weapons.**

(a) (1) In this section, "assault weapon" means any of the following specific firearms or their copies regardless of which company produced and manufactured that firearm:

- (i) American Arms Spectre DA semiautomatic carbine;
- (ii) AK-47 in all forms;
- (iii) Algimec AGM-1 type semi-auto;
- (iv) AR 100 type semi-auto;
- (v) AR 180 type semi-auto;
- (vi) Argentine L.S.R. semi-auto;
- (vii) Australian Automatic Arms SAR Type semi-auto;
- (viii) Auto-Ordnance Thompson M1 and 1927 semi-automatics;
- (ix) Barrett light .50 cal. semi-auto;
- (x) Beretta AR70 type semi-auto;
- (xi) Bushmaster semi-auto rifle;
- (xii) Calico models M-100 and M-900;
- (xiii) CIS SR 88 type semi-auto;
- (xiv) Claridge HI TEC C-9 carbines;
- (xv) Colt AR-15, CAR-15 and all imitations except Colt AR-15 Sporter H-BAR rifle;
- (xvi) Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2;
- (xvii) Dragunov Chinese made semi-auto;
- (xviii) Famas semi-auto (.223 caliber);
- (xix) Feather AT-9 semi-auto;
- (xx) FN LAR and FN FAL assault rifle;

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

- (xxi) FNC semi-auto type carbine;
- (xxii) F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun;
- (xxiii) Steyr-AUG-SA semi-auto;
- (xxiv) Galil models AR and ARM semi-auto;
- (xxv) Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3;
- (xxvi) Holmes model 88 shotgun;
- (xxvii) Avtomat Kalashnikov semiautomatic rifle in any format;
- (xxviii) Manchester Arms "Commando" MK-45, MK-9;
- (xxix) Mandell TAC-1 semi-auto carbine;
- (xxx) Mossberg model 500 Bullpup assault shotgun;
- (xxxi) Sterling Mark 6;
- (xxxii) P.A.W.S. carbine;
- (xxxiii) Ruger mini-14 folding stock model (.223 caliber);
- (xxxiv) SIG 550/551 assault rifle (.223 caliber);
- (xxxv) SKS with detachable magazine;
- (xxxvi) AP-74 commando type semi-auto;
- (xxxvii) Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, M1A, excluding the M1 Garand;
- (xxxviii) Street sweeper assault type shotgun;
- (xxxix) Striker 12 assault shotgun in all formats;
- (xl) Unique F11 semi-auto type;
- (xli) Daewoo USAS 12 semi-auto shotgun;
- (xlii) UZI 9mm carbine or rifle;
- (xliii) Valmet M-76 and M-78 semi-auto;
- (xliv) Weaver Arms "Nighthawk" semi-auto carbine; and
- (xlv) Wilkinson Arms 9mm semi-auto "Terry".

(2) "Assault weapon" does not include any firearm modified to render it permanently inoperative.

(b) (1) A dealer or person may not sell or transfer any assault weapon to a person whom the dealer or person knows or has reasonable cause to believe:

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(i) Has been convicted of a crime of violence or of any of the provisions of this subtitle or § 281A of this article;

(ii) Is a fugitive from justice;

(iii) Is an habitual drunkard or is addicted to or an habitual user of narcotics, barbiturates, or amphetamines;

(iv) Is of unsound mind;

(v) Is visibly under the influence of alcohol or drugs; or

(vi) Is under 21 years of age.

(2) A dealer may not sell or transfer any assault weapon until the dealer and the person making an application to purchase or transfer comply with all of the requirements for the sale or transfer of a pistol or revolver as provided for under § 442 of this article, including payment of the application fee.

(c) A person who knowingly violates any provision of this section or who knowingly gives false information in order to obtain an assault weapon shall, on conviction, be fined not more than \$10,000 or imprisoned for not more than 3 years or both.

### Article – Natural Resources

#### Section 10-410. Carrying Firearm to Hunt While Intoxicated or Under the Influence.

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

(i) A person may not carry a firearm to hunt any wild bird, mammal, amphibian, or reptile while intoxicated or under the influence of alcohol or any narcotic drug.

// SPECIAL NOTE: THE ABOVE SECTION WAS CHANGED BY CHAPTER 500 OF 1994 AND WILL REMAIN IN EFFECT UNTIL JUNE 30, 1996 //

(i) A person may not carry a firearm to hunt any wild bird, mammal, amphibian, or reptile while intoxicated or under the influence of alcohol or any narcotic drug.

### G. CASH TRANSACTIONS

#### Article – Business Regulation

#### Section 1-501. Legislative Purpose.

It is the purpose of this subtitle to require certain reports and records of transactions involving currency where such reports and records have a high degree of usefulness in criminal investigations or proceedings which pertain to the subject of the report.

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### **Section 1-502. Definitions.**

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Currency" means currency and coin of the United States or any other country.
- (c) "Department" means the Department of Licensing and Regulation.
- (d) "Person engaged in a trade or business" means an individual, partnership, limited liability company, firm, trust, estate, association, corporation, or other entity:
  - (1) engaged in vehicle sales, including motor vehicle, airplane, and boat sales;
  - (2) that conducts real estate closings and settlements; or
  - (3) engaged in the sale or pledging of jewelry.
- (e) "Secretary" means the Secretary of Licensing and Regulation.

### **Section 1-503. Records and Reporting of Cash Transactions.**

- (a) A person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in currency in 1 transaction shall keep a record of the transaction and shall file with the Department within 15 days of the date of the transaction a report of the transaction.
- (b) The reporting requirements of this section are complied with if the person engaged in a trade or business files with the Department a duplicate copy of the report required by 26 U.S.C. § 6050-I.
- (c) The Secretary shall adopt regulations appropriate to carry out the purposes of this subtitle and to provide for exemption of transactions which are clearly of a legitimate nature for which mandatory reporting would serve no useful purpose.

### **Section 1-504. Access to Reports.**

- (a) The Department of Public Safety and Correctional Services and the Office of the Attorney General shall have access to and shall be authorized to inspect and copy any reports filed with the Department under this article.
- (b) The Department may make the contents of a report available to other criminal justice agencies only for purposes of investigation or prosecution of the subject of the report.

### **Section 1-505. Penalties.**

- (a) (1) The Secretary may assess a civil penalty against a person engaged in a trade or business for each knowing and willful violation of this subtitle.
- (2) The civil penalty may not exceed \$50 for each day the violation continues.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(3) For purposes of this section, a separate violation occurs at each office, branch, or place of business where a violation occurs or continues.

(4) The total civil penalty may not exceed \$1,000.

(b) In the event of the failure of a person to pay a penalty assessed under this section, a civil action for recovery of the penalty may be brought by the State against the person.

### Article – Financial Institutions

#### Section 12-801. Legislative Purpose.

It is the purpose of this subtitle to require certain reports and records of transactions involving currency where the reports and records have a high degree of usefulness in criminal investigations or proceedings which pertain to the subject of the report.

#### Section 12-802. Definitions.

(a) In this subtitle the following words have the meanings indicated.

(b) "Currency" means currency and coin of the United States or any other country.

(c) "Department" means the Department of Licensing and Regulation.

(d) "Financial institution" means:

(1) A national banking association;

(2) A State banking institution;

(3) A credit union that is organized under the laws of this State or of the United States;

(4) Any other organization that is organized under the banking laws of the State and subject to the supervision of the Bank Commissioner;

(5) A savings and loan association that is organized under the laws of the State or of the United States; or

(6) Persons engaged in the business of cashing checks for a fee unless performed incidental to the sale of goods or services.

(e) "Person" means an individual, partnership, firm, trust, estate, association, corporation, or other entity.

(f) "Secretary" means the Secretary of Licensing and Regulation.

(g) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, pledge payment or exchange of currency by, through or to the financial institution.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 12-803. Records and Reporting of Cash Transactions.**

(a) A financial institution shall keep a record of currency transactions in excess of \$10,000 and shall file with the Department within 15 days of the date of the transaction pursuant to regulations adopted by the Secretary a complete report of currency transactions in excess of \$10,000.

(b) The reporting requirements of this section are complied with if:

(1) A financial institution files with the Department a duplicate copy of the report required by 31 U.S.C. § 5313; or

(2) The information in the report required by 31 U.S.C. § 5313 is available to the Department from a federal agency.

(c) The Secretary shall adopt regulations to carry out the purposes of this subtitle and to provide for the exemption of transactions which are clearly of a legitimate nature and for which mandatory reporting would serve no useful purpose.

(d) A transaction that is exempt from reporting by a financial institution under federal law is also exempt from the reporting requirements of this subtitle.

### **Section 12-804. Access to Reports.**

(a) The Department of Public Safety and Correctional Services and the Office of the Attorney General shall have access to and shall be authorized to inspect and copy any reports filed with the Department under this article.

(b) The Department may make the contents of a report available to other criminal justice agencies only for purposes of investigation or prosecution of the subject of the report.

### **Section 12-805. Penalties.**

(a) The Secretary may assess a civil penalty against any financial institution and any officer, employee, agent, or director of the institution for each knowing and willful violation of this subtitle.

(b) (1) The civil penalty may not exceed \$50 for each day the violation continues.

(2) For purposes of this section, a separate violation occurs at each office, branch, or place of business where a violation occurs or continues.

(3) The total civil penalty may not exceed \$1,000.

(c) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for recovery of the penalty may be brought by the State against the person.

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### **Section 12-806. Exception.**

If the information required by § 12-803(a) of this subtitle has been available to the Department from a federal agency, a financial institution may not be subject to the civil penalties provided for in this subtitle unless the financial institution has been notified by the Department that:

- (1) The information is no longer available; and
- (2) The financial institution is now required to provide the information to the Department.

## **H. MISCELLANEOUS CRIMES**

### **Article 27 – Crimes and Punishments**

#### **Section 55. Physicians' Prescriptions, Orders, etc.**

If any person falsely makes, alters, forges or counterfeits, or causes or procures to be falsely made, altered, forged or counterfeited, or willingly aids or assists in falsely making, altering, forging or counterfeiting, or utters, passes or possesses, knowing it to be falsely made, altered, forged or counterfeited, any order, paper, letter writing, prescription, recipe or other device purporting to have been made by a duly licensed practitioner, for any drugs, medicines, spirituous or fermented liquors or obtains or attempts to obtain any prescription drug by fraud, deceit, or misrepresentation, that person shall be deemed guilty of a misdemeanor, and on conviction in any court in this State shall be imprisoned for not more than two years, in the discretion of the court. If upon trial of any person charged with, or indicted for that misdemeanor, it appears that he paid for, or offered or promised to pay for, the drugs, medicine, spirituous liquor or fermented liquor obtained by means of the falsely made, altered, forged or counterfeited order, paper, letter writing, prescription, recipe or other device purporting to have been made by a duly licensed practitioner, he may not by reason thereof be acquitted of the misdemeanor.

#### **Section 122A. Delivery or Receipt of Intoxicating Beverages, Controlled Dangerous Substances or Anything to Effect Escape.**

- (a) In this section, the following words have the meanings indicated.
  - (1) "Alcoholic beverage" means any beer, wine or distilled spirits.
  - (2) "Contraband" means any item, material, substance, or other thing of value that:
    - (i) Is not authorized for inmate possession by the managing officer of the correctional facility; or
    - (ii) Is brought into the correctional facility in a manner prohibited by the managing officer of the correctional facility.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(3) "Controlled dangerous substance" means any drug, substance, or precursor as defined in § 277(f) of this article. "Controlled dangerous substance" does not include any drug or substance which is legally possessed by an inmate under a written prescription issued by a physician authorized to prescribe inmate medication by the managing officer of the correctional facility.

(4) "Correctional facility" means any prison, jail, pre-release center, halfway house, or other place of legal confinement in this State.

(5) "Managing officer" means the warden, superintendent, director, administrator or other person with the authority to establish policy and procedure in a correctional facility.

(6) "Weapon" means any gun, knife, club, explosive, or other article that can be used to kill, maim, or inflict bodily injury.

(b) Any person who commits any of the following offenses is guilty of a felony and on conviction is subject to a fine not exceeding \$5,000 or imprisonment for not more than 10 years, or both:

(1) Delivery of any contraband to effect an escape or a weapon to any prisoner or inmate detained or confined in a correctional facility;

(2) Possession with intent to deliver to any prisoner or inmate detained or confined in a correctional facility, of any contraband to effect an escape or a weapon;

(3) Depositing or concealing, in or about a correctional facility, or on any land appurtenant to the facility, any contraband to effect an escape; or

(4) Receipt of any contraband to effect an escape or a weapon.

(c) Any person who commits any of the following offenses is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment for not more than 3 years, or both:

(1) Delivery of any alcoholic beverage, any controlled dangerous substance, or other contraband not specifically designated in subsection (b) of this section to any prisoner or inmate detained or confined in a correctional facility; or

(2) Possession, with intent to deliver to any prisoner or inmate detained or confined in a correctional facility, of any alcoholic beverage, any controlled dangerous substance, or any other contraband not specifically designated in subsection (b).

### **Section 123. Disorderly Conduct in Public Places.**

(a) A person may not act in a disorderly manner to the disturbance of the public peace, upon any public street, highway, alley, park or parking lot, or in any vehicle that is in or upon any street, highway, alley, park or parking lot, in any city, town, or county in this State, or at any place of public worship, or public resort or amusement in any city,

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

town or county in this State, or in any store during business hours, or in any elevator, lobby or corridor of any office building or apartment house having more than three separate dwelling units, or in any public building in any city, town or county of this State.

(b) Any person violating the prohibitions of this section is guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than \$500, or be confined in jail for a period of not more than 60 days or be both fined and imprisoned in the discretion of the court.

### **Section 124. Disorderly Conduct on Land of Another.**

Any person who shall enter upon the land or premises of any other person, whether such person be the owner or lessee of the land or premises and wilfully act in a disorderly manner by making loud and unseemly noises, or by profanely cursing or swearing or using obscene language or acting in any other disorderly manner while thereon, shall upon conviction be subject to a fine not exceeding \$500. However, the provisions of this section shall only apply to Allegany County, Anne Arundel County, Calvert County, Caroline County, Cecil County, Charles County, Frederick County, Garrett County, Harford County, Howard County, Montgomery County, Prince George's County, St. Mary's County, Carroll County, Queen Anne's County, Washington County, Worcester County, Talbot County, Wicomico County, Dorchester County, Kent County and Somerset County. In Worcester County this section shall also apply to beaches adjacent to residential riparian property and provided further that no bonfires shall be built nor allowed to burn on any beach or other property in Worcester County between the hours of 1:00 o'clock a.m. and 5:00 o'clock a.m.

### **Section 125. Keeping Disorderly House.**

Any person who shall keep a disorderly house shall on conviction thereof be subject to a fine of not less than fifty dollars nor more than three hundred dollars, or to imprisonment in jail for not less than ten days nor more than six months, or to both fine and imprisonment.

### **Section 139. Escape from Alcohol and Drug Abuse Administration.**

(a) (1) If any individual who is legally detained in the State penitentiary or a jail, house of correction, reformatory, station house, or other place of confinement in this State or who is committed to the Alcohol and Drug Abuse Administration for examination or inpatient treatment escapes, the individual is guilty of a felony and on conviction by the circuit court for the county in which the escape takes place, is subject to confinement in the State penitentiary or a jail or house of correction for an additional period not exceeding 10 years. The sentence imposed under this subsection shall be consecutive to any sentence which was being served at the time of the escape, or any sentence which had been imposed but was not yet being served at the time of sentencing on the escape. A sentence imposed under this subsection may not be suspended.

(2) (i) The following are places of confinement for the purposes of this section:

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

1. Detention centers and youth centers operated by the Department of Juvenile Services;

2. The programs for committed delinquent or detained youth at the Charles H. Hickey, Jr. School, the Thomas O'Farrell Youth Center, the Doncaster Facility, and the Victor Cullen Center; and

3. The programs for committed delinquent youth operated by the Department of Juvenile Services at the Cheltenham Youth Facility.

(ii) The sentence for escape from a facility designated in this paragraph that does not involve an assault may not exceed confinement for 3 years.

(3) If any individual escapes from a facility of the Department of Health and Mental Hygiene after commitment as incompetent to stand trial or not criminally responsible, the individual is guilty of a felony and on conviction is subject to confinement in the State penitentiary or a jail or house of correction for a period not exceeding 10 years.

(b) An escapee who is convicted under subsection (a)(1) of this section is liable for all expenses incurred in the return of the escapee to the jurisdiction of the Division of Correction, State penitentiary, or a jail, house of correction, reformatory, station house, other place of confinement in this State, or the Alcohol and Drug Abuse Administration. The Commissioner, sheriff, or director of the appropriate facility shall notify the returned escapee of any charges. A hearing shall be granted to any returned escapee who wishes to challenge the reasonableness of the charges. The Commissioner, sheriff, or director of the appropriate facility may establish appropriate rules, regulations, and procedures for charging an escapee with expenses, collecting those expenses, and for hearings to challenge those expenses.

(c) A person who aids in the escape of the individual under this section is guilty of a felony and on conviction by the circuit court for the county in which the escape takes place is subject to imprisonment not exceeding 10 years.

### **Section 159. Manufacture or Sale of Malt Extract, Beer, etc., Not Brewed as Such; Coloring Matter or Porterine; Sale by Proper Name.**

No person shall manufacture, sell or offer for sale, or order or permit any employee or other person to sell or offer for sale either at wholesale or retail, any malt extract, beer, porter, ale or stout unless the same shall have been brewed and fermented as such; and any person or corporation or officer or agent thereof violating this provision, or any person or corporation or officer thereof selling or offering for sale, or ordering or permitting any employee or other person to sell or offer for sale any beer (to which coloring matter or porterine has been added) representing the same to be malt extract or porter or other beverage, or any malt or spirituous liquor other than by its proper name, shall be deemed guilty of a misdemeanor, and punished by imprisonment for not longer than one year, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment in the discretion of the court having jurisdiction.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 230B. Medicaid Fraud.**

(a) In this subheading, the following words have the meanings indicated.

(b) "Medicaid fraud" means:

(7) Fraudulently obtaining, attempting to obtain, or aiding another person in obtaining or attempting to obtain any drug product or any medical care, the benefit or payment of any part of which is or may be made from federal or State funds under a State medical assistance program, by use of:

(i) Fraud, deceit, misrepresentation or subterfuge;

(ii) Forgery or alteration of a medical assistance or pharmacy assistance prescription; or

(iii) Concealment of any material fact or by the use of false names or addresses;

### **Section 322. Advertising Cures for Venereal Disease.**

No person or persons, firm, company or corporation, shall advertise or permit to be advertised, or in any manner whatsoever call public attention to, any drug, medicine, preparation or substance for the treatment, alleviation or cure of gonorrhea, syphilis, chancroid or any other venereal disease or of any diseased condition of the human genitalia caused by, related to, or resulting from the aforesaid venereal diseases, or to any person from whom, or to any place at which, such drug, medicine, preparation or substance may be obtained, except that the provisions of this section shall not apply to any health department or other governmental agency, or to any health or medical agency approved under this section by the Secretary of Health and Mental Hygiene, or to medical, pharmaceutical or other professional publications not subject to public sale or distribution, or to bona fide news items or bona fide articles, published in newspapers, magazines or books. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) for each such violation.

### **Section 323. Sale of Drugs for the Treatment of Venereal Disease.**

No person or persons, firm, company or corporation, except as hereinafter provided, shall sell, dispense or give to any person any drug, medicine, preparation or substance for the treatment, alleviation or cure of gonorrhea, syphilis, chancroid or any other venereal disease or diseased condition of the human genitalia caused by, related to, or resulting from the aforesaid venereal diseases, or sell, dispense or give to any person any sulfonamide drug or preparation which contains such sulfonamide drug for the treatment or cure of the diseases mentioned in this section, except upon the written prescription of a physician licensed to practice medicine. Such prescription shall bear the date upon which it was written, the signature and address of the physician by whom it was written, and the date upon which it was filled. Such prescription shall not be refilled, except on order of said physician, shall be open to the inspection of State and local health authorities, and shall be kept on file for at least two years after it was filled. The

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

provisions of this section shall not apply to any physician licensed to practice medicine, to any health department or other governmental agency, or to the otherwise lawful conduct of business between commercial, medical, pharmaceutical, scientific or governmental agencies. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not to exceed fifty dollars (\$50.00) for the first offense and not more than two hundred and fifty dollars (\$250.00) for each subsequent offense.

### Article – Corporations and Associations

#### **Section 1-405. Forfeiture of Charter, Revocation of Permit or Injunction Against Business Other than Corporation for Illegal Conduct Connected with Organized Crime.**

(a) “Organized crime” defined. — In this section, “organized crime” means any combination or conspiracy:

(1) To engage in criminal activity as a significant source of income or livelihood; or

(2) To violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, drug abuse, illegal drug distribution, counterfeiting, extortion, or corruption of law-enforcement officers or other public officers or employees.

(b) Proceeding to forfeit charter of Maryland corporation or to revoke authority of foreign corporation. — The Attorney General may institute a civil proceeding in the courts to forfeit the charter of any Maryland corporation and to revoke the authority of any foreign corporation to do business in this State, if:

(1) (i) A corporate officer or any person controlling the management or operation of the corporation, with the knowledge of the president and a majority of the board of directors or under circumstances where the president and a majority of the directors should have knowledge, is a person engaged in organized crime or connected directly or indirectly with an organization or criminal society engaged in organized crime; or

(ii) A director, officer, employee, agent, or stockholder acting for, through, or on behalf of a corporation in conducting its affairs purposely engages in a persistent course of organized crime or other criminal conduct with the knowledge of the president and a majority of the board of directors or under circumstances where the president and a majority of the directors should have knowledge, with the intent to compel or induce any person to deal with the corporation or to engage in organized crime; and

(2) For the prevention of future illegal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the authorization to be revoked.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(c) Proceeding to enjoin operation of business other than corporation. — The Attorney General may institute a civil proceeding in the courts to enjoin the operation of any business other than a corporation, including a partnership, limited partnership, unincorporated association, joint venture, or sole proprietorship, if:

(1) Any person in control of the business, who may be a partner in a partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any of these businesses, or a person who, in fact, exercises control over the operations of the business in conducting its business affairs, purposely engages in a persistent course of organized crime or other illegal conduct with the intent to compel or induce any person to deal with the business or engage in organized crime; and

(2) For the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.

(d) Venue; availability of other proceedings. — (1) The proceeding authorized by subsection (b) of this section may be instituted against a corporation in any county in which it is doing business. The proceeding shall be in addition to any other proceeding authorized by law for the purpose of forfeiting the charter of a corporation or revoking the authorization of a foreign corporation to do business in this State.

(2) The proceeding authorized by subsection (c) of this section may be instituted in any county in which the noncorporate entity is doing business.

### Article – Education

#### Section 26–103. Drinking or Possessing Intoxicating Beverages on School Premises.

(a) (1) Unless locally approved by the county board of education, a person may not drink or possess any alcoholic beverage on the premises of any public school.

(2) A person who drinks or possesses any alcoholic beverage and causes a public disturbance at any elementary or secondary school athletic contest may not refuse to comply with a request by a law enforcement officer to stop drinking and causing the public disturbance. If the person complies with the first request, he may not be charged under this paragraph.

(b) (1) Any person under 18 years of age who violates the provisions of this section shall be issued a citation and be subject to the dispositions for a violation under Subtitle 8 of Title 3 of the Courts and Judicial Proceedings Article.

(2) Any person 18 years old or older violating the provisions of this section shall be issued a citation and be subject to the provisions of § 403 of Article 27 of the Code.

#### Section 26–104. Portable Pagers on School Property.

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

(2) “Portable pager” means any device carried, worn, or transported by an individual to receive or communicate messages.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(3) "Public school property" means the grounds of any public school.

(b) Except as provided in subsection (c) of this section, an individual may not possess a portable pager on public school property.

(c) This section does not apply to:

(1) Handicapped students using portable pagers for medical reasons;

(2) Law enforcement officers;

(3) Visitors on public school property for an authorized program, meeting, or function;

(4) Faculty or staff members employed by a county board; and

(5) Members of any volunteer fire department, ambulance company, or rescue squad, who are designated to possess a portable pager on public school property by the chief of the volunteer fire department, ambulance company, or rescue squad, and the school principal.

(d) If an individual violates subsection (b) of this section, the school authorities shall immediately contact a law enforcement officer.

(e) A law enforcement officer contacted by school authorities in accordance with subsection (d) of this section shall arrest the violator.

(f) Any person who violates subsection (b) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500, imprisonment not exceeding 6 months, or both.

### Article - Health - General

#### Section 19-513. Prohibited Acts; Chronic Disease Centers.

(a) Except with the approval of the administrative head of a center, a person other than an employee of the center may not bring any alcoholic beverage into any area of the center that is used by individuals under treatment in the center.

(b) An employee of the center may not:

(1) Drink any alcoholic beverage while on duty; or

(2) Give any alcoholic beverage to an individual who is under treatment in the center.

(c) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a penalty not exceeding \$100 or imprisonment not exceeding 60 days or both.

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**I. CRIMINAL PROCEDURE AND CORRECTIONS**

**Article 27 – Crimes and Punishments**

**Section 551. Sealing of Affidavit in Support of Search Warrant.**

(a) Whenever it be made to appear to any judge of any of the circuit courts in the counties of this State, or to any judge of the District Court, by written application signed and sworn to by the applicant, accompanied by an affidavit or affidavits containing facts within the personal knowledge of the affiant or affiants, that there is probable cause, the basis of which shall be set forth in said affidavit or affidavits, to believe that any misdemeanor or felony is being committed by any individual or in any building, apartment, premises, place or thing within the territorial jurisdiction of such judge, or that any property subject to seizure under the criminal laws of the State is situated or located on the person of any such individual or in or on any such building, apartment, premises, place or thing, then the judge may forthwith issue a search warrant directed to any duly constituted policeman, or police officer authorizing him to search such suspected individual, building, apartment, premises, place or thing, and to seize any property found liable to seizure under the criminal laws of this State, provided that any such search warrant shall name or describe, with reasonable particularity, the individual, building, apartment, premises, place or thing to be searched, the grounds for such search and the name of the applicant on whose written application as aforesaid the warrant was issued, and provided further that any search or seizure under the authority of such search warrant, shall be made within 15 calendar days from the date of the issuance thereof and after the expiration of the 15-day period said warrant shall be null and void. If, at any time, on application to a judge of the circuit court of any county or judge of the District Court, it appears that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, or that the property was taken under a warrant issued more than 15 calendar days prior to the seizure, said judge must cause it to be restored to the person from whom it was taken. In the discretion of the judge, an oral motion made in open court may be received at any time making application for the return of seized property if the application for return is based on the grounds that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, or that the property was taken under a warrant issued more than 15 calendar days prior to the seizure. If the judge grants the oral motion, the order of the court shall be in writing and a copy of the order shall be sent to the State's Attorney. If the judge rejects the proffer on an oral motion and requires the person from whom the property was taken to proceed for return of the seized property by petition and an order to show cause to the police authority seizing the property and it is subsequently ordered that the property be restored to the person from whom it was taken, court costs shall not be assessed against the petitioner. However, if it appears that the property taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then said judge shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(b) If the criminal case in which property of a person was seized pursuant to a search warrant issued under subsection (a) of this section is disposed of because of (i) an entry of nolle prosequi, (ii) dismissal, or (iii) acquittal, or if the State does not appeal such a criminal case or if the time for appeal has expired, all property of the person, except contraband or any property prohibited by law from being recoverable, may be returned to the person to whom it belongs without the necessity of that person instituting an action for replevin or any other legal proceeding against the agency having custody of the property.

(c) (1) If, at any time, on application to a judge of the circuit court of any county or judge of the District Court, it is found that property rightfully taken under a search warrant is being wrongfully withheld after there is no further need for retention of the property, the judge must cause it to be restored to the person from whom it was taken.

(2) In the discretion of the judge, an oral motion made in open court may be received at any time making application for the return of seized property if the application for return is based on the grounds that the property, although rightfully taken under a search warrant, is being wrongfully withheld after there is no further need for retention of the property. If the judge grants the oral motion, the order of the court shall be in writing and a copy of the order shall be sent to the State's Attorney.

(3) If the judge rejects the proffer of an oral motion and requires the person from whom the property was taken to proceed for return of the seized property by petition and an order to show cause to the authority wrongfully withholding the property and it is subsequently ordered that the property be restored to the person from whom it was taken, court costs shall not be assessed against the petitioner.

(d) (1) In this subsection, "good cause" shall be established by evidence of the following:

(i) The criminal investigation to which the affidavit is related is of an ongoing nature and likely to yield further information which could be of use in prosecuting alleged criminal activities; and

(ii) The failure to maintain the confidentiality of the investigation would jeopardize the use of information already obtained in the investigation, would impair the continuation of the investigation, or would jeopardize the safety of a source of information.

(2) In this subsection, "criminal investigation" means inquiries into alleged criminal activities in violation of Article 27, §§ 286, 286A, 286B, 286C, 287, and 287A of the Code conducted by a law enforcement agency, a grand jury, or a State's Attorney under Article 10, § 39A of the Code.

(3) Notwithstanding any provision of the Maryland Rules of Criminal Procedure, a judge of the District Court or circuit court, on a finding of good cause, may order that an affidavit presented in support of a search and seizure warrant be sealed for a period of not more than 30 days.

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(4) Upon the expiration of the order sealing the affidavit, the affidavit shall be:

- (i) Unsealed; and
- (ii) Delivered within 15 days to:

1. The person from whom the property was taken; or

2. If that person is not present on the premises at the time of delivery, the person apparently in charge of the premises from which the property was taken.

**Section 594B. Arrest Without a Warrant.**

(a) A police officer may arrest without a warrant any person who commits, or attempts to commit, any felony or misdemeanor in the presence of, or within the view of, such officer.

(b) A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the officer may reasonably believe to have committed such offense.

(c) A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has been committed or attempted and that such person has committed or attempted to commit a felony whether or not in the officer's presence or view.

(d) A police officer may arrest a person without a warrant if:

(1) The officer has probable cause to believe that:

(i) The person battered the person's spouse or other individual with whom the person resides;

(ii) There is evidence of physical injury; and

(iii) Unless the person is immediately arrested:

1. The person may not be apprehended;

2. The person may cause injury to the person or damage to the property of one or more other persons; or

3. The person may tamper with, dispose of, or destroy evidence;

and

(2) A report to the police was made within 12 hours of the alleged incident.

(e) A police officer may arrest a person without a warrant if the officer has probable cause to believe:

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(1) That an offense listed in subsection (f) of this section has been committed;

(2) That the person has committed the offense; and

(3) That unless the person is immediately arrested:

(i) The person may not be apprehended;

(ii) The person may cause injury to the person or damage to the property of one or more other persons; or

(iii) The person may tamper with, dispose of, or destroy evidence.

(f) The offenses referred to in subsection (e) of this section are:

(1) Those offenses specified in the following sections of Article 27, as they may be amended from time to time:

(i) Section 8(a) (relating to malicious burning);

(ii) Section 36 (relating to carrying or wearing weapon);

(iii) Section 111 (relating to destroying, injuring, etc., property of another);

(iv) Section 156 (relating to giving a false alarm of a fire);

(v) Section 287 (relating to possession of hypodermic syringes, etc., restricted);

(vi) Sections 342 through 344 (theft) where the value of the property stolen was less than \$300;

(vii) Section 33A (relating to breaking into building or boat with intent to steal);

(viii) The common-law crime of assault when committed with intent to do great bodily harm;

(ix) Sections 276 through 302 (relating to drugs and other dangerous substances) as they shall be amended from time to time;

(x) Section 36B (relating to handguns);

(xi) Section 388 (relating to manslaughter by automobile, motorboat, etc.); and

(xii) Section 335A (relating to indecent exposure).

(2) Attempts to commit the offenses specified in the following sections of Article 27 as they may be amended from time to time:

(i) Section 8(a) (relating to malicious burning);

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(ii) Section 111 (relating to destroying, injuring, etc., property of another);

(iii) Sections 342 through 344 (theft) where the value of the property stolen was less than \$300;

(iv) Section 33A (relating to breaking into a building or boat with intent to steal);

(v) Sections 276 through 302 (relating to drugs and other dangerous substances), as they shall be amended from time to time.

(g) For purposes of this section, the term "police officer" means any person who, in his official capacity, is authorized by law to make arrests and who is:

(1) A member of the Department of State Police;

(2) A member of the Baltimore City Police Department;

(3) A member of the Baltimore City School Police Force;

(4) A member of the police department, bureau, or force of any county;

(5) A member of the police department, bureau, or force of any incorporated city or town, except Baltimore City, which is a "qualifying municipality", as defined in § 66(a)(7) and § 69 of Article 88B of this Code;

(6) A member of the Mass Transit Administration Police Force, or the Maryland Port Administration Police Force of the Department of Transportation or the Maryland Transportation Authority Police Force;

(7) A member of the University of Maryland or Morgan State University Police Force;

(8) Appointed, or given the powers of, a special policeman employed and compensated by the State for the enforcement of law and the maintenance of order on property of the State or of any of its agencies, or for the protection of such property; a member of the Department of General Services security force;

(9) The sheriff of any county and whose usual duties include the making of arrests;

(10) A regularly employed deputy sheriff of any county and who is compensated by the county and whose usual duties include the making of arrests;

(11) A member of the Natural Resources Police of the Department of Natural Resources;

(12) A member of the Maryland Alcohol and Tobacco Tax Enforcement Unit;

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(13) A member of the Maryland-National Capital Park and Planning Commission Park Police;

(14) Housing Authority of Baltimore City Police Force; or

(15) A member of the Crofton Police Department.

(h) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Emergency" means a sudden or unexpected happening or an unforeseen combination of circumstances that calls for immediate action to protect the health, safety, welfare, or property of an individual from actual or threatened harm or from an unlawful act.

(iii) "Federal law enforcement officer" means an officer who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of the officer's duties.

(2) Subject to the limitations provided in paragraph (3) of this subsection, a federal law enforcement officer is granted:

(i) The powers of arrest as set forth in this section; and

(ii) The power to execute arrest and search and seizure warrants issued under the laws of this State.

(3) A federal law enforcement officer may exercise the powers granted in this subsection if:

(i) The officer is participating in a joint investigation with officials from any State or local law enforcement agency;

(ii) The officer is rendering assistance to a police officer;

(iii) The officer is acting at the request of a local police officer or a Department of State police officer; or

(iv) An emergency exists.

(4) When acting under the authority granted in this subsection, the following notifications of an investigation or enforcement action shall be made:

(i) 1. When in an incorporated municipality, to the chief of police, if any, or the chief's designee;

2. When in a county which has a county police department, to the chief of police or the chief's designee;

3. When in a county without a police department, to the sheriff or the sheriff's designee;

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4. When in Baltimore City, to the Police Commissioner or the Police Commissioner's designee;

5. When on any property owned, leased, operated by, or under the control of the Department of Natural Resources, to the Secretary of Natural Resources or the Secretary's designee; or

6. When on any property owned, leased, or operated by or under the control of the Maryland Transportation Authority or the Maryland Port Administration, to the respective chief of police or the chief's designee; and

(ii) Unless there is an agreement otherwise with the Department of State Police, to the Department of State Police barrack commander or designee.

(5) When a federal law enforcement officer is acting under the authority granted in paragraph (3)(i) of this subsection, the notification required under paragraph (4) of this subsection shall be made at a reasonable time in advance.

(6) A federal law enforcement officer who exercises the powers set forth in this subsection has the same legal status as a police officer of this State.

(7) Nothing in this subsection shall be construed to impose liability upon or to require indemnification by the State of Maryland or any local subdivision for any act performed by a federal law enforcement officer pursuant to this subsection.

(8) (i) Any federal law enforcement officer acting pursuant to this subsection shall enjoy the same protections provided to police officers of this State as set forth in § 2-608 of the Courts Article with regard to charging documents against police officers.

(ii) A federal law enforcement officer acting under this subsection shall have the immunity from liability described under § 5-327 of the Courts Article.

(i) (1) The State Fire Marshal or a full-time assistant of the office of the State Fire Marshal has the same powers of arrest set forth in subsection (c) of this section as to offenses listed under §§ 6, 7, 119, 139B, and 139C of this article.

(2) The State Fire Marshal or a full-time assistant of the office of the State Fire Marshal has the same powers of arrest set forth in subsection (e) of this section as to offenses listed under §§ 8(a), 9, 9A, 11D, 111B, 139A, 151C, 156, and 470A(b) (4) of this article, and attempting, causing, aiding, counseling, or procuring arson in the first or second degree or malicious burning in the first or second degree.

(j) Nothing in this section shall impair any right of arrest otherwise existing under this Code.

(k) Nothing in this section deprives a person of the right to receive a citation for a traffic violation as provided in the Maryland Vehicle Law or for a criminal violation, as provided by law or rule of court.

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

(ii) "Emergency" means a sudden or unexpected happening or an unforeseen combination of circumstances that calls for immediate action to protect the health, safety, welfare, or property of an individual from actual or threatened harm or from an unlawful act.

(iii) "Police officer" does not include a State Police officer.

(iv) "State Police officer" means a police employee as defined in Article 88B, § 2 of the Code.

(2) (i) Except as provided in subparagraph (ii) of this paragraph and subject to the limitations provided in paragraph (3) of this subsection, and in addition to the powers granted in § 298 of this article, a police officer of this State may make arrests, conduct investigations and otherwise enforce the laws of this State throughout the State without limitations as to jurisdiction.

(ii) Under this subsection a police officer may not enforce the provisions of the Maryland Vehicle Law beyond the officer's sworn jurisdiction.

(3) A police officer may exercise the powers granted in this subsection if:

(i) 1. The police officer is participating in a joint investigation with officials from any other state, federal, or local law enforcement agency at least one of which shall have local jurisdiction;

2. The police officer is rendering assistance to a police officer;

3. The police officer is acting at the request of a local police officer or a State Police officer; or

4. An emergency exists; and

(ii) The police officer is acting in accordance with regulations adopted by the police officer's employing agency to implement this subsection.

(4) When acting under the authority granted in this subsection, the following notifications of an investigation or enforcement action shall be made:

(i) 1. When in an incorporated municipality, to the chief of police, if any, or the chief's designee;

2. When in a county that has a county police department, to the chief of police or the chief's designee;

3. When in a county without a police department, to the sheriff or the sheriff's designee;

4. When in Baltimore City, to the Police Commissioner or the Police Commissioner's designee;

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

5. When on any property owned, leased, operated by, or under the control of the Department of Natural Resources, to the Secretary of Natural Resources or the Secretary's designee; or

6. When on any property owned, leased, or operated by or under the control of the Maryland Transportation Authority, the Maryland Aviation Administration or the Maryland Port Administration, to the respective chief of police or the chief's designee; and

(ii) Unless there is an agreement otherwise with the Department of State Police, to the Department of State Police barrack commander or designee.

(5) When the police officer is acting under the authority granted in paragraph (3)(i)1 of this subsection, the notification required under paragraph (4) of this subsection shall be made at a reasonable time in advance.

(6) (i) When acting under the authority granted in this subsection, any police officer shall have all the immunities from liability and exemptions as that of a State Police officer in addition to any other immunities and exemptions to which the police officer may otherwise be entitled.

(ii) Any police officer who uses the authority granted in this subsection shall at all times or for all purposes remain an employee of the respective employing agency.

(m) Correctional employees assigned by the Commissioner of Correction to monitor inmates on home detention under § 689A of this article have the same powers of arrest for inmates in the home detention program as are set forth in this section for police officers.

(n) Parole and probation employees assigned by the Director of Parole and Probation to supervise offenders under Article 41, § 4-602A of the Code have the same powers of arrest for these offenders as are set forth in this section for police officers.

(o) A police officer may arrest a person without a warrant if:

(1) The police officer has probable cause to believe a stalking under § 121B of this article has been committed;

(2) The police officer has reason to believe that the alleged stalking victim or a third person is in danger of imminent bodily harm or death; and

(3) The probable cause under paragraph (1) of this subsection is supported by credible evidence other than statements of the alleged stalking victim.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 614. Indictment for Unlawful Sale of Alcohol.**

In any indictment for the unlawful sale or disposition of spirituous or fermented liquors or lager beer, it shall not be necessary to specify the particular variety, provided the indictment sets forth an unlawful sale or disposition of intoxicating liquor, but the defendant, on application to the State's Attorney before trial, may obtain a statement of the particular variety of liquor expected to be proved.

### **Section 616 1/2. Bail in Drug Cases.**

(a) Subject to the provisions of subsection (c) of this section, in a criminal case in the circuit court of a county wherein the accused has been allowed to give bail, if the court shall adjourn before he has secured the bail, the clerk of the court may take the bail, on its being directed by order of court before adjournment, or of one of the judges after adjournment, fixing the amount thereof; but the clerk shall accept no security without the oath or affirmation of the person offering himself as security, that he or she is worth the amount of the bail in real or personal estate, exclusive of his or her right to exemption, nor unless the clerk shall be satisfied of the truth of such statement on oath or affirmation; and whenever a party is arrested on indictment in any of those courts, and is imprisoned during the recess of the court, any judge thereof, if it be aailable case, may, by his order in writing, fix the bail and direct the clerk to take the same, with security or securities, who shall justify on oath or affirmation as hereinbefore provided, and no security shall be taken whom the clerk is not fully satisfied to be worth the amount sworn to.

(b) (1) Subject to the provisions of subsection (c) of this section, every District Court judge may set bond or bail or release on personal recognizance, bond, personal or otherwise, commit to jail in default of bond, forfeit bonds upon failure of the defendant to meet the conditions of the bond and exercise all of the powers of justices of the peace under the Constitution of 1867.

(2) In the District Court, in all criminal or traffic violations for which bond has been set, a defendant or a private surety acting in his behalf may post the bond by executing it in the full penalty amount and by depositing with the clerk of the court or a commissioner a sum of money equal to 10% of the penalty amount or \$25, whichever is greater. A judge may increase the percentage of cash surety required in a particular case but in no event shall a cash deposit be less than \$25. This paragraph does not apply if the defendant has been arrested for failure to appear in court or for contempt of court.

(3) Upon depositing the sum provided in paragraph (2) of this subsection and executing the recognizance, the defendant shall be released from custody subject to the conditions of the bail bond. When all conditions of the bond have been performed without default and the defendant has been discharged from all obligations in the cause for which the recognizance was posted, the clerk of the court shall return the amount deposited to the person or private surety who first deposited it.

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(4) If the defendant fails to perform any or all of the conditions of the bail bond, it shall be forfeited; and in the event of forfeiture, the liability of the bond shall extend to the full amount of the bond set and the amount previously posted as a deposit shall be applied to reduce the liability incurred by the forfeiture.

(c) Any person charged with an offense hereinafter enumerated committed during the time that person had been released on bail or his own recognizance for committing an offense hereinafter enumerated, is ineligible to give bail or be released on recognizance on the subsequent charge, until all prior charges hereunder have finally been determined by the courts. But a person charged with a subsequent crime hereinafter set forth, may rebut his ineligibility for release on bail before determination of the prior charge. If, after consideration of the matters presented in rebuttal, the court hearing the application for bail is persuaded that the applicant would not pose a danger to any other person or to the community, and would appear at the time set for trial, the court may allow release pending trial on suitable bail and on such other conditions as will reasonably assure that the person charged will not flee. For the purposes of this subsection, court does not mean District Court commissioners and the offenses are those specified in the following sections of Article 27 of the Annotated Code of Maryland (1967 Repl. Vol.) as they may be amended from time to time:

- (1) Section 6 (relating to arson in the first degree) and attempting, aiding, counseling, or procuring arson in the first degree;
- (2) Section 7 (relating to arson in the second degree) and attempting, aiding, counseling, or procuring arson in the second degree;
- (3) Section 12 (relating to assault with intent to murder, ravish or rob);
- (4) Section 29 (relating to burglary in the first degree);
- (5) Section 30 (relating to burglary in the second degree);
- (6) Section 31 (relating to burglary in the third degree);
- (7) Section 35A (causing abuse to child under 18);
- (8) Section 286 (relating to the manufacture, distribution, etc., or to the counterfeiting, etc., of a controlled dangerous substance or of certain equipment relating thereto and relating to the keeping of a common nuisance as related to drug abuse);
- (9) Section 337 (relating to kidnapping generally);
- (10) Section 338 (relating to kidnapping children under sixteen);
- (11) Section 386 (relating to unlawful shooting, stabbing, assaulting, etc., with intent to maim, disfigure or disable or to prevent lawful apprehension);
- (12) Section 388 (relating to manslaughter by automobile, motorboat, etc.);
- (13) Section 407 (relating to first degree murder);
- (14) Section 408 (relating to murder committed in perpetration of arson);

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(15) Section 409 (relating to murder committed in burning barns, etc.);

(16) Section 410 (relating to murder committed in perpetration of rape in any degree, sexual offense in the first or second degree, sodomy, etc.);

(17) Section 411 (relating to second degree murder);

(18) Sections 462 and 463 (relating to rape in the first and second degree);

(19) Section 486 (relating to robbery generally); and

(20) Section 488 (relating to robbery with a deadly weapon).

(d) If a person is charged with an offense listed in subsection (c) of this section after being convicted for an offense listed in subsection (c) of this section, the person may not be released on personal recognizance.

(e) (1) In this subsection, unless the context indicates otherwise, "produce" or "produced" means placing the defendant in the custody of a police officer, sheriff, or other commissioned law enforcement officer authorized to make arrests within the jurisdiction of the court or a judicial officer.

(2) Subject to item (ii) of this paragraph, any court exercising criminal jurisdiction shall strike out a forfeiture of bail or collateral and discharge the underlying bond, where the defendant can show reasonable grounds for his nonappearance. However the court shall:

(i) Allow a surety 90 days, or for good cause shown, 180 days from the date of failure to appear to produce the defendant before requiring the payment of any forfeiture of bail or collateral; and

(ii) Strike out a forfeiture of bail or collateral deducting only the actual expense incurred for the defendant's arrest, apprehension, or surrender if the defendant is produced and if the arrest, apprehension, or surrender occurs more than 90 days after the defendant's failure to appear or at the termination of the period allowed by the court to produce the defendant.

(3) Evidence of incarceration of a fugitive defendant in any penal institution within the United States is a wholly sufficient ground to strike out a forfeiture, if the defendant upon expiration of his sentence, at no expense to the State, county, or municipality is produced or returned to the jurisdiction of the court as a result of a detainer or extradition.

(4) If a criminal case is setted, (i) the defendant is entitled to a refund of any collateral put up by him for bail or recognizance; (ii) any other person who has furnished collateral is likewise entitled to refund; and (iii) if any bond or other security has been furnished, the bond or other security shall be discharged, unless it has been declared forfeited and 10 years have elapsed since the bond or other security was posted, in which event neither the defendant nor any other person is entitled to a refund or discharge.

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(5) Any court exercising criminal jurisdiction may not exercise a forfeiture of the bond or collateral posted by a surety and shall return the bond or collateral to the surety where:

(i) The defendant fails to appear in court; and

(ii) The surety produces evidence, in compliance with the time constraints of paragraph (2) of this subsection, that:

1. The defendant is incarcerated in a penal institution outside the State;

2. The State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant; and

3. The surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with paragraph (2) of this subsection.

(6) Any court exercising criminal jurisdiction that has ordered forfeiture of a bond or collateral, after expiration of the time allotted by paragraph (2) of this subsection for a surety to produce a defendant, shall return the forfeited bond or collateral if the surety, within 10 years from the date the bond or collateral was posted, produces evidence that:

(i) The defendant is incarcerated in a penal institution outside the State;

(ii) The State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant; and

(iii) The surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with paragraph (2) of this subsection.

(f) (1) The circuit courts for each of the counties are authorized to prescribe by rule of court the terms and conditions of bail bonds filed in the circuit court for each county respectively. This power includes but is not limited to prescribing the qualifications of and fees charged by bondsmen. A bond commissioner may be appointed to administer the rules of court adopted pursuant to this section. Violations of any rule of court promulgated hereunder shall be considered contempt of court and punished as for contempt. In addition a person may not engage in the business of becoming surety for compensation on bonds in criminal cases until he shall have been approved by such rules as the circuit court may have adopted and licensed in accordance with Article 48A of the Code.

(2) In the circuit courts for each of the counties of the second and seventh judicial circuits, the bondsmen so approved and licensed shall pay a license fee of 1 percent of the gross value of all bonds written in all courts of the circuit, provided that this fee is approved by the court of the county in which it applies. The fee shall be paid to

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the court as prescribed by the rules of court. The fee shall be used for the payment of any expenses incident to the administration of this section. Any absolute bond forfeitures collected may be used to defray the above expenses.

(g) In a criminal case, any judge may reinstate any bail, bond or recognizance for criminal charges discharged at a preliminary hearing in the District Court, provided the new charging document or indictment arises out of substantially the same set of facts.

(h) In the circuit court if a defendant is found guilty and sentenced to imprisonment, any bond on which the defendant was released prior to the sentencing is terminated. If the defendant takes an appeal and the sentencing court requires a bond to be posted, the defendant shall post a new bond.

(i) A District Court commissioner may not establish conditions of pretrial release for an individual charged with escaping from a penitentiary, jail, house of correction, reformatory, station house, or any other place of confinement in this State.

(j) (1) A District Court commissioner may not authorize the pretrial release of a defendant charged as a drug kingpin under § 286(g) of this article.

(2) A judge may allow the release of a defendant charged as a drug kingpin pending trial on suitable bail and on such other conditions as will reasonably assure that the defendant will not flee, or pose a danger to another person or the community.

(3) A rebuttable presumption exists that any defendant charged as a drug kingpin if released will flee and pose a danger to another person or the community.

(k) If a defendant is charged with stalking under § 121B of this article and is released pretrial, the Court or District Court commissioner shall consider including as a condition of release reasonable protections for the safety of the alleged victim.

(l) (1) A District Court commissioner may not authorize the release pretrial of a defendant charged with a crime of violence under § 643B of this article who is on parole, probation, or mandatory supervision for an earlier crime of violence.

(2) A judge may allow the release pretrial of a defendant described in paragraph (1) of this subsection pending trial on suitable bail and on any other conditions that will reasonably assure that the defendant will not flee or pose a danger to another person or the community.

(3) A rebuttable presumption exists that any defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community.

### **Section 678C. Prerelease Unit for Women.**

(a) The Commissioner may operate a pre-release unit for women. The Commissioner may operate the "Pre-release Unit for Women", formerly known as the "Pre-release Community Adult Rehabilitation Center for Women", as a pre-release unit.

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(b) The Commissioner has all powers, authority, duties, and functions relating to the Pre-release Unit for Women as conferred upon the Commissioner in this article relating to correctional and reformatory institutions.

(c) (1) The Commissioner shall develop comprehensive rehabilitative pre-release services, and shall make these services available to inmates of the Pre-release Unit for Women.

(2) Comprehensive rehabilitative pre-release services shall:

(i) Assist inmates to improve their education, upgrade their vocational skills, and obtain suitable employment;

(ii) Grant inmates the opportunity to strengthen family and community relationships through extended family leave;

(iii) Assist inmates to improve their physical and mental health, and reduce any tendency to abuse alcohol or drugs; and

(iv) Provide appropriate counseling, instruction, supervision, and medical and psychological treatment as necessary to help inmates achieve stable and productive roles in society.

(3) The Division of Correction, by purchase of service agreement or by contract, may arrange for any person, firm, organization, or governmental agency to furnish comprehensive rehabilitative pre-release services.

(d) (1) The Commissioner, with approval of the Secretary, may contract with municipal or county authorities, or any private persons, firms, or organizations, to provide food, housing, transportation, and programs to inmates in a pre-release unit for women.

(2) The Commissioner may house federal prisoners in a pre-release unit for women based on contract with the federal government.

(e) (1) In conformity with rules and regulations adopted by the Commissioner, the Commissioner may delegate authority to directors or assistant directors of the Pre-release Unit for Women to grant inmates the privilege of leaving the confines of the pre-release facility for the purpose of:

- (i) Employment or seeking employment;
- (ii) Participating in educational programs;
- (iii) Vocational training;
- (iv) Community or civic activities;
- (v) Volunteer work;
- (vi) Athletic competition; or
- (vii) Personal or family visits.

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(2) An inmate, when outside the confines of the pre-release facility, shall carry at all times a copy of the forms and conditions governing the grant of leave signed by the director or assistant director.

(3) Inmates on leave are deemed to be in the custody of the Division of Correction to the same extent, and subject to the same supervision and control, as inmates actually in confinement, and any escape shall be punishable as provided in § 139 of this article.

### **Section 700F. Methadone Treatment for Prisoners Determined to be Drug Addicts.**

Any prisoner detained in any local or State penal institution who is determined to be a drug addict by a physician shall be placed on a program of methadone detoxification with proper supervision if the treatment is prescribed by a physician. Any treatment prescribed shall not begin until the prisoner to be treated has given written consent to the treatment. All procedures and standards relating to the determination of drug addiction and treatment of addicted prisoners shall be subject to the guidelines and regulations set forth by the Alcohol and Drug Abuse Administration. The State of Maryland shall provide funding for this program.

### **Article 41 – Governor – Executive and Administrative Departments**

#### **Section 4-519. Fees for Drug and Alcohol Testing Ordered by the Parole Commission.**

(a) In this section “supervisee” means a person supervised by the Division of Parole and Probation for the Parole Commission.

(g) (1) In addition to fees imposed under this section, the Division may require a supervisee to pay for drug or alcohol abuse testing if testing is ordered by the Parole Commission.

(2) Failure to make a payment required for drug or alcohol abuse testing may be considered grounds for revocation by the Parole Commission.

(3) The Division may exempt a supervisee in whole or in part from a payment for testing if the Division determines that any of the criteria provided in subsection (d) of this section are applicable.

(h) The Division of Parole and Probation shall:

- (1) Adopt guidelines for collecting the fee;
- (2) Adopt guidelines for collecting the cost of drug and alcohol testing; and
- (3) Investigate requests for an exemption from payment if the Parole Commission requests an investigation.

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### Article - Courts and Judicial Proceedings

#### Section 4-202. Authority of District Court.

A District Court has the following authority provided in the Health - General Article:

- (1) Under Title 8 of that article, the authority to commit an individual for detoxification or for observation, evaluation, or treatment of alcoholism;
- (2) Under Title 8 of that article, the authority to commit an individual for observation, evaluation, or treatment of drug abuse;
- (3) Under Title 10 of that article, the authority to order emergency evaluation of an individual for a mental disorder; and
- (4) Under Title 12 of that article, authority as to the competency or sanity of a criminal defendant.

#### Section 4-301. Exclusive Original Jurisdiction of District Court.

(a) Except as provided in § 4-302 and § 3-804, the District Court has exclusive original jurisdiction in a criminal case in which a person at least 16 years old or a corporation is charged with violation of the vehicle laws, or the State Boat Act, or rules and regulations adopted pursuant to it.

(b) Except as provided in § 4-302, the District Court also has exclusive original jurisdiction in a criminal case in which a person at least 18 years old or a corporation is charged with:

- (1) Commission of a common-law or statutory misdemeanor regardless of the amount of money or value of the property involved;
- (2) Violation of §§ 342 through 344 of Article 27 of the Code, whether a felony or a misdemeanor;
- (3) Violation of a county, municipal, or other ordinance, if the violation is not a felony;
- (4) Criminal violation of a State, county, or municipal rule or regulation, if the violation is not a felony;
- (5) Doing or omitting to do any act made punishable by a fine, imprisonment, or other penalty as provided by the particular law, ordinance, rule, or regulation defining the violation if the violation is not a felony;
- (6) Violation of Article 27, § 141 of this Code, whether a felony or a misdemeanor;
- (7) Violation of Article 27, § 145 of this Code, whether a felony or misdemeanor; or

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- (8) Violation of Article 27, § 44 of the Code.

**Section 4-302. Exceptions.**

(a) Except as provided in § 4-301(b)(2), (6), (7), and (8) of this subtitle, the District Court does not have jurisdiction to try a criminal case charging the commission of a felony.

(b) Except as provided in § 4-303 of this subtitle, the District Court does not have criminal jurisdiction to try a case in which a juvenile court has exclusive original jurisdiction.

(c) The jurisdiction of the District Court is concurrent with that of the juvenile court in any criminal case arising under the compulsory public school attendance laws of this State.

(d) The jurisdiction of the District Court is concurrent with that of the circuit court in a criminal case:

(1) In which the penalty may be confinement for three years or more or a fine of \$2,500 or more; or

(2) Which is a felony, as provided in § 4-301(b)(2), (6), (7), and (8) of this subtitle.

(e) (1) The District Court is deprived of jurisdiction if a defendant is entitled to and demands a jury trial at any time prior to trial in the District Court.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, unless the penalty for the offense with which the defendant is charged permits imprisonment for a period in excess of 90 days, a defendant is not entitled to a jury trial in a criminal case.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, the presiding judge of the District Court may deny a defendant a jury trial if:

1. The prosecutor recommends in open court that the judge not impose a penalty of imprisonment for a period in excess of 90 days, regardless of the permissible statutory or common law maximum;

2. The judge agrees not to impose a penalty of imprisonment for a period in excess of 90 days; and

3. The judge agrees not to increase the defendant's bond if an appeal is noted.

(iii) The State may not demand a jury trial.

(f) (1) Except as provided in Title 4, Subtitle 5 of the Family Law Article, the District Court does not have jurisdiction of an offense otherwise within the District Court's jurisdiction if a person is charged:

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(i) With another offense arising out of the same circumstances but not within the District Court's jurisdiction; or

(ii) In the circuit court with an offense arising out of the same circumstances and within the concurrent jurisdictions of the District Court and the circuit court described under subsection (d) of this section.

(2) In the cases described under paragraph (1) of this subsection, the circuit court for the county has exclusive original jurisdiction over all the offenses.

### **Section 4-401. Civil Jurisdiction of District Court; Forfeiture.**

Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

(9) Proceedings under Article 27, § 264 or § 297 of the Code for the forfeiture or return of moneys involved in a gambling or controlled dangerous substances seizure where the amount involved, excluding any interest and attorney's fees, if attorney's fees are recoverable by law or contract, does not exceed \$20,000;

### **Section 5-106. Statute of Limitations for Misdemeanors.**

(a) Except as provided by this section, a prosecution for a misdemeanor shall be instituted within one year after the offense was committed.

(c) A prosecution under the vehicle code shall be instituted within two years after the offense was committed if the charge is:

(1) Unlawfully using a driver's license; or

(2) Fraudulently using a false or fictitious name when applying for a driver's license.

(d) A prosecution for Sabbath breaking or drunkenness shall be instituted within 30 days after the offense was committed.

(n) A prosecution for an offense under Article 27, § 388 or § 388A of the Code shall be instituted within 3 years after the offense was committed.

### **Section 10-402. Interception of Communications.**

(a) Except as otherwise specifically provided in this subtitle it is unlawful for any person to:

(1) Wilfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(2) Wilfully disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle; or

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(3) Wilfully use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle.

(b) Any person who violates subsection (a) of this section is guilty of a felony and is subject to imprisonment for not more than 5 years or a fine of not more than \$10,000, or both.

(c) (2) It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence of the commission of the offenses of murder, kidnapping, rape, a sexual offense in the first or second degree, child abuse, gambling, robbery, any felony punishable under the "Arson and Burning" subheading of Article 27, bribery, extortion, or dealing in controlled dangerous substances, including violations of Article 27, § 286B or § 287A, fraudulent insurance acts, as defined in Article 48A, § 233 or any conspiracy or solicitation to commit any of these offenses, or where any person has created a barricade situation and probable cause exists for the investigative or law enforcement officer to believe a hostage or hostages may be involved, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

### **Section 10-406. Attorney General May Apply for Order Authorizing Interception.**

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction, and the judge, in accordance with the provisions of § 10-408 of this subtitle, may grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, any felony punishable under the "Arson and Burning" subheading of Article 27 of this Code, bribery, extortion, or dealing in controlled dangerous substances, or any conspiracy or solicitation to commit any of the foregoing offenses. No application or order shall be required if the interception is lawful under the provisions of § 10-402(c) of this subtitle.

### **Section 10-914. Revocation of probation; Laboratory Tests.**

(a) A laboratory test, performed by a laboratory certified by the Department of Health and Mental Hygiene and approved by the Division of Parole and Probation of the Department of Public Safety and Correctional Services, indicating that the defendant has used a controlled dangerous substance as defined in Article 27 of the Code or alcohol in violation of a condition of the defendant's probation or work release, is sufficiently reliable to justify revocation of the defendant's probation or work release, without an expert witness from the laboratory testifying in court to support the contents of a report of the laboratory test.

(b) A report of a laboratory test described under this section shall:

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(1) Identify the chemist or analyst who performed the laboratory test as an individual qualified, under standards approved by the Department of Health and Mental Hygiene, to perform the laboratory test;

(2) Be signed by the chemist or analyst who performed the laboratory test;  
and

(3) Contain a statement that:

(i) The material delivered to the chemist or analyst who performed the laboratory test was properly tested under procedures and equipment approved by the Department of Health and Mental Hygiene;

(ii) The procedures of the laboratory test are reliable; and

(iii) The laboratory test indicates that the defendant used a controlled dangerous substance or alcohol.

(c) A report of a laboratory test is prima facie evidence of the results of the laboratory test.

(d) Nothing in this section precludes the right of any party to introduce any evidence that supports or contradicts the evidence contained in or the presumptions raised by the report of the laboratory test described under subsection (b) of this section.

(e) Subject to the provisions of subsection (f) of this section, if a laboratory report or statement is admitted in evidence, the chemist or analyst who performed the laboratory test is subject to cross-examination by any party to the proceeding.

(f) (1) On written demand of a defendant filed in the proceeding at least 5 days before the hearing to revoke a defendant's probation or work release, the prosecution shall require the presence of the chemist or analyst who performed the test or any individual in the chain of custody or control as a prosecution witness.

(2) The provisions of subsections (a), (b), and (c) of this section concerning prima facie evidence do not apply to the testimony of a witness whose presence is required under this subsection.

(3) Subsections (a), (b), and (c) of this section apply in a proceeding to revoke a defendant's probation or work release only when a copy of the report of the laboratory test or the statement to be introduced is mailed, delivered, or made available to counsel for the defendant or to the defendant personally when the defendant is not represented by counsel, at least 10 days prior to the introduction of the report of the laboratory test or the statement at the hearing.

### **Section 10-1001. Chemical Test Report.**

For the purpose of establishing that physical evidence in a criminal or civil proceeding constitutes a particular controlled dangerous substance defined under Article 27 of this Code, a report signed by the chemist or analyst who performed the test or tests as to its nature is prima facie evidence that the material delivered to him was properly

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tested under procedures approved by the Department of Health and Mental Hygiene, that those procedures are legally reliable, that the material was delivered to him by the officer or person stated in the report, and that the material was or contained the substance therein stated, without the necessity of the chemist or analyst personally appearing in court, provided the report identifies the chemist or analyst as an individual certified by the Department of Health and Mental Hygiene, the Department of State Police, the Baltimore City Police Department, or any county police department employing analysts of controlled dangerous substances, as qualified under standards approved by the Department of Health and Mental Hygiene to analyze those substances, states that he made an analysis of the material under procedures approved by that department, and also states that the substance, in his opinion, is or contains the particular controlled dangerous substance specified. Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumptions raised by the report.

### **Section 10-1002. Chain of Custody.**

(a) In this part:

(1) "Chain of custody" means:

(i) The seizing officer;

(ii) The packaging officer, if the packaging officer is not also the seizing officer; and

(iii) The chemist or other person who actually touched the substance and not merely the outer sealed package in which the substance was placed by the law enforcement agency before or during the analysis of the substance; and

(2) "Chain of custody" does not include a person who handled the substance in any form after analysis of the substance.

(b) (1) For the purpose of establishing, in a criminal or civil proceeding, the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled dangerous substance defined under Article 27 of this Code, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received.

(3) The statement may be placed on the same document as the report provided for in § 10-1001 of this part.

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(4) Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumption raised by the statement.

### **Section 10-1003. Presence of Chemist or Analyst at Criminal Proceeding.**

(a) (1) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 5 days prior to a trial in the proceeding, require the presence of the chemist, analyst, or any person in the chain of custody as a prosecution witness.

(2) The provisions of §§ 10-1001 and 10-1002 of this part concerning prima facie evidence do not apply to the testimony of that witness.

(3) The provisions of §§ 10-1001 and 10-1002 of this part are applicable in a criminal proceeding only when a copy of the report or statement to be introduced is mailed, delivered, or made available to counsel for the defendant or to the defendant personally when the defendant is not represented by counsel, at least 10 days prior to the introduction of the report or statement at trial.

(b) Nothing contained in this part shall prevent the defendant from summoning a witness mentioned in this part as a witness for the defense.

### **Section 12-302. Interlocutory Appeals; Controlled Dangerous Substances.**

(a) Unless a right to appeal is expressly granted by law, § 12-301 does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body.

(b) Section 12-301 of this subtitle does not apply to appeals in contempt cases, which are governed by §§ 12-304 and 12-402 of this title.

(c) In a criminal case, the State may appeal as provided in this subsection.

(1) The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition.

(2) The State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code.

(3) (i) In a case involving a crime of violence as defined in § 643B of Article 27, and in cases under §§ 286 and 286A of Article 27, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Constitution of Maryland, or the Maryland Declaration of Rights.

(ii) The appeal shall be made before jeopardy attaches to the defendant. However, in all cases the appeal shall be taken no more than 15 days after the decision has been rendered and shall be diligently prosecuted.

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(iii) Before taking the appeal, the State shall certify to the court that the appeal is not taken for purposes of delay and that the evidence excluded or the property required to be returned is substantial proof of a material fact in the proceeding. The appeal shall be heard and the decision rendered within 120 days of the time that the record on appeal is filed in the appellate court. Otherwise, the decision of the trial court shall be final.

(iv) If the State appeals on the basis of this paragraph, and if on final appeal the decision of the trial court is affirmed, the charges against the defendant shall be dismissed in the case from which the appeal was taken. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident.

(v) Pending the prosecution and determination of an appeal taken under paragraph (1) or (3) of this subsection, the defendant shall be released on personal recognizance bail. If the defendant fails to appear as required by the terms of the recognizance bail, the trial court shall subject the defendant to the penalties provided in Article 27, § 12B.

(vi) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney fees incurred by the defendant as a result of the appeal.

(d) Section 12-301 does not permit an appeal from the decision of the judges of a circuit court sitting in banc pursuant to Article IV, § 22 of the Constitution, if the party seeking to appeal is the party who moved to have the point or question reserved for consideration of the court in banc.

(e) Section 12-301 does not permit an appeal from a final judgment entered following a plea of guilty in a circuit court. Review of such a judgment shall be sought by application for leave to appeal.

(f) Section 12-301 of this subtitle does not permit an appeal from the order of a sentence review panel of a circuit court under Article 27, §§ 645JA through 645JG of the Code, unless the panel increases the sentence.

(g) Section 12-301 of this subtitle does not permit an appeal from an order of a circuit court revoking probation. Review of an order of a circuit court revoking probation shall be sought by application for leave to appeal.

### **Section 13-101. State Administrative Office of the Courts.**

(a) There is an Administrative Office of the Courts, headed by the State Court Administrator. The Administrator is appointed by and holds office during the pleasure of the Chief Judge of the Court of Appeals of Maryland. The Administrator shall have the compensation provided in the State budget. The Administrative Office of the Courts shall have a seal in the form the Chief Judge of the Court of Appeals approves. The courts of the State shall take judicial notice of the seal.

(e) The Administrative Office of the Courts shall:

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(1) Keep a current list of alcoholism education or treatment programs that the Department of Health and Mental Hygiene approves for use under Article 27, § 639(b) or § 641(a)(1)(ii) of the Code; and

(2) Notify promptly the appropriate judges whenever the Department of Health and Mental Hygiene approves a new alcoholism education or treatment program or withdraws approval for a program.

### **II. EDUCATION – TREATMENT PROGRAMS**

#### **Article 27 – Crimes and Punishments**

##### **Section 297C. Maryland Drug and Alcohol Grants Program.**

(a) The Governor's Drug and Alcohol Abuse Commission may establish a grants program for neighborhood crime prevention programs and drug and alcohol abuse education, prevention, treatment, adjudication, and law enforcement programs.

(b) The Governor's Drug and Alcohol Abuse Commission shall adopt regulations to carry out a grants program established under this section.

##### **Section 297D. Maryland Drug and Alcohol Grants Program Fund.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 607 OF 1992 AND WILL REMAIN IN EFFECT UNTIL JUNE 30, 1995 //

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

(2) "Commission" means the Governor's Drug and Alcohol Abuse Commission.

(3) "Fund" means the Maryland Drug and Alcohol Grants Program Fund.

(b) (1) There is a Maryland Drug and Alcohol Grants Program Fund.

(2) The Fund is a special continuing fund which is subject to § 7-302 of the State Finance and Procurement Article.

(3) The Treasurer shall separately hold and the Comptroller shall account for the Fund.

(4) The Fund shall be invested and reinvested in the same manner as other State funds.

(5) Any investment earnings shall be retained to the credit of the Fund.

(6) The Comptroller shall pay out money from the Fund as directed by the Commission or as approved in the State budget.

(7) The Fund shall be subject to an audit by the Office of Legislative Audits as provided for in § 2-1215 of the State Government Article.

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(8) The purpose of the Fund is to provide funding for a grants program for neighborhood crime prevention grant programs and drug and alcohol abuse education, prevention, treatment, adjudication, and law enforcement programs as provided under § 297C of this subheading.

(9) Administrative expenditures under this section shall only be made pursuant to an appropriation approved by the General Assembly in the annual State budget prior to the expenditure or obligation of funds.

(10) The Commission shall administer the Fund.

(11) Disbursements from the Fund shall supplement and may not be a substitute for any money designated in the State budget for assistance to the State for law enforcement, adjudication, drug abuse education, prevention, and treatment programs.

(c) The Fund shall consist of any money given to the Fund by public or private sources.

### Article 44A – Housing Authorities

#### Section 1-301. Drug Rehabilitation Services for Housing Projects.

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

(3) To provide directly or arrange or contract for the furnishing by any person or agency, public or private, of services or facilities for, or in connection with, a housing project or the occupants thereof including drug rehabilitation, elderly or child day care, or other social services; and, notwithstanding anything to the contrary contained in this article or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the State or federal government may have attached to its financial aid of the project;

### Article 83C – Juvenile Services

#### Section 2-118. Assessment and Treatment at Juvenile Services Facilities.

(a) Each facility provided for in § 2-117 of this article shall operate under the control and general management of the Department.

(b) Subject to the provisions of Title 3, Subtitle 8 of the Courts Article, the Department shall:

(1) Adopt rules and regulations that set:

(i) Policies for admission, transfer, discharge, and aftercare supervision; and

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(ii) Standards of care, including provisions to administer any early, periodic screening diagnosis and treatment program that the Department approves for establishment under Title 42, § 1396d(a)(4)(B) of the United States Code and to treat appropriately any condition that the screening reveals; and

(2) Order any needed changes in the policy, conduct, or management of a facility to provide adequate care for the children and adequate services to the courts.

(c) The Department shall adopt regulations applicable to residential facilities it operates that:

(1) Prohibit the use of locked door seclusion and restraints as punishment, and describe the circumstances under which locked door seclusion and restraints may be used; and

(2) Prohibit abuse of a child.

(d) The Department shall develop within each facility special programs that are designed to meet the particular needs of its population.

(e) The Department shall develop and provide within each facility:

(1) Educational programs that are designed to meet the particular needs of its population;

(2) Alcohol abuse and drug abuse assessment services; and

(3) Either alcohol abuse and drug abuse referral services or an alcohol abuse and drug abuse treatment program that has been certified in accordance with the requirements of Title 8 of the Health - General Article.

### **Section 2-122. Youth Services Bureaus.**

(a) In this section, "youth services bureau" means a community-based entity that is operated:

(1) To provide community-oriented delinquency prevention, youth suicide prevention, drug and alcohol abuse prevention, and youth development;

(2) To ameliorate conditions that breed delinquency, youth suicide, drug and alcohol abuse, and family disruption; and

(3) To function as an advocate of youth needs.

(b) (1) The Department shall adopt rules and regulations that set eligibility guidelines for State funding of youth services bureaus under this section.

(2) The rules and regulations shall require that each State-aided youth services bureau:

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(i) Provide, free of charge or at a rate established by each youth services bureau's board of directors, in consultation with the Department, that is based upon the client's family income, at convenient hours:

1. Individual, family, and group counseling;
2. Referral and information services;
3. Crisis intervention, including intervention relating to youth suicide prevention;
4. Alcohol and drug abuse assessment and referral services by staff who have received substance abuse assessment and referral training from the Office of Education and Training for Addictions Services (OETAS) in the Department of Health and Mental Hygiene or from any other entity that the Secretary determines to be qualified to provide substance abuse assessment and referral training;
5. Informal counseling; and
6. In accordance with particular community needs:
  - A. Tutoring;
  - B. Alternative leisure activities;
  - C. Employment assistance;
  - D. Community education, including training and information relating to youth suicide prevention; and
  - E. Other specialized services; and

(ii) Dispose of all information and records on each individual receiving services from a youth services bureau under this section 5 years after services to the individual are no longer necessary.

(3) Any fees charged under paragraph (2) of this subsection may be retained by the youth services bureau for the purposes of the youth services bureau.

(4) Fees authorized under paragraph (2) of this subsection do not apply to youth referred to a youth services bureau by court order.

(c) The Department shall:

- (1) As to each youth services bureau receiving State funding:
  - (i) Monitor its operations;
  - (ii) Evaluate annually its effectiveness; and
  - (iii) Stop funding a youth services bureau that is ineffective or that, for 2 years, fails to meet the eligibility guidelines for State funding; and

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(2) Review and either approve or disapprove the application for State funding of a youth services bureau or proposed youth services bureau.

(d) (1) The funding of an eligible youth services bureau shall be a shared responsibility of this State and of local governments. This State's share shall be 75 percent of the funding of an eligible youth services bureau, as provided in the State budget.

(2) Each eligible youth services bureau shall submit to the Department a proposed annual budget for review and approval, at the times that the Department specifies.

(3) The proposed budget of the Department shall list the eligible youth services bureaus and estimate the amount of State funds to be allocated to each.

(4) At the option of the local governing body that provides the matching funds for an eligible youth services bureau, the State funds for the support of the eligible youth services bureau shall be paid directly to its private sponsor or to the local governing body. Before the State funds are paid, the fiscal officer of the local government shall certify, in writing, the source of the 25 percent local funds.

### Article – Courts and Judicial Proceedings

#### Section 3-815. Shelter Care.

(a) Only the court or an intake officer may authorize detention or shelter care for a child who may be in need of supervision or delinquent. The local department, pursuant to regulations promulgated by the Department of Human Resources, may authorize shelter care for a child who may be in need of assistance.

(b) If a child is taken into custody, the child may be placed in detention prior to a hearing if:

(1) Such action is required to protect the child or person and property of others;

(2) The child is likely to leave the jurisdiction of the court; or

(3) There are no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required.

(c) A child taken into custody may be placed in emergency shelter care prior to a hearing if:

(1) One or more of the circumstances stated in subsection (b) of this section exist; and

(2) (i) 1. Continuation of the child in the child's home is contrary to the welfare of the child; and

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2. Removal of the child from the child's home is reasonable under the circumstances due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) 1. Reasonable, but unsuccessful, efforts have been made to prevent or eliminate the need for removal from the child's home; and

2. As appropriate, reasonable efforts are being made to return the child to the child's home.

(d) (1) If the child is not released, the intake officer or the official who authorized detention or shelter care shall immediately file a petition to authorize continued detention or shelter care.

(2) A hearing on the petition shall be held not later than the next court day, unless extended by the court upon good cause shown.

(3) Reasonable notice, oral or written, stating the time, place, and purpose of the hearing, shall be given to the child and, if they can be found, the child's parents, guardian, or custodian.

(4) (i) Detention and shelter care shall not be ordered for a period of more than 30 days unless an adjudicatory or waiver hearing is held.

(ii) Detention time may be extended for not more than 30 days where the petition charges the child with a delinquent act and where the court finds, after a subsequent hearing, that extended detention is necessary either:

1. For the protection of the child; or

2. For the protection of the community.

(e) (1) Detention may not be continued beyond emergency detention unless, upon an order of court after a hearing, the court has found that one or more of the circumstances stated in subsection (b) of this section exist.

(2) A court order under this paragraph shall contain a written determination of whether or not the criteria contained in subsection (c)(1) and (2) of this section have been met.

(f) Shelter care may only be continued beyond emergency shelter care if the court has found that:

(1) Continuation of the child in the child's home is contrary to the welfare of the child; and

(2) (i) Removal of the child from the child's home is necessary due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) Reasonable, but unsuccessful, efforts were made to prevent or eliminate the need for removal of the child from the home.

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(3) (i) If the court continues shelter care on the basis of an alleged emergency, the court shall assess whether the absence of efforts to prevent removal was reasonable.

(ii) If the court finds that the absence of efforts to prevent removal was not reasonable, the court shall make a written determination so stating.

(4) The court shall make a determination as to whether reasonable efforts are being made to make it possible to return the child to the child's home or whether the absence of such efforts is reasonable.

(g) A child alleged to be delinquent may not be detained in a jail or other facility for the detention of adults.

(h) (1) (i) A child alleged to be in need of supervision or in need of assistance may not be placed in detention and may not be placed in a State mental health facility.

(ii) If the child is alleged to be in need of assistance by reason of a mental handicap, the child may be placed in shelter care facilities maintained or licensed by the Department of Health and Mental Hygiene or if these facilities are not available, then in a private home or shelter care facility approved by the court.

(iii) If the child is alleged to be in need of assistance for any other reason, or in need of supervision, he may be placed in shelter care facilities maintained or approved by the Social Services Administration, or the Department of Juvenile Services, or in a private home or shelter care facility approved by the court.

(2) A child alleged to be in need of supervision or in need of assistance may not be placed in a shelter care facility that is not operating in compliance with applicable State licensing laws.

(3) The Secretary of Human Resources and the Secretary of the Department of Juvenile Services together, when appropriate, with the Secretary of Health and Mental Hygiene shall jointly adopt regulations to ensure that any child placed in shelter care pursuant to a petition filed under subsection (d) of this section be provided appropriate services, including:

- (i) Health care services;
- (ii) Counseling services;
- (iii) Education services;
- (iv) Social work services; and
- (v) Drug and alcohol abuse assessment or treatment services.

(4) In addition to any other provision, the regulations shall require:

(i) The local department of social services or the Department of Juvenile Services to develop a plan within 45 days of placement of a child in a shelter care facility to assess the child's treatment needs; and

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(ii) The plan to be submitted to all parties to the petition and their counsel.

(i) The intake officer or the official who authorized detention or shelter care shall immediately give written notice of the authorization for detention or shelter care to the child's parent, guardian, or custodian, and to the court. The notice shall be accompanied by a statement of the reasons for taking the child into custody and placing him in detention or shelter care. This notice may be combined with the notice required under subsection (d) of this section.

### Article - Education

#### Section 6-109. Immunity for School Staff Reporting.

(a) Whether or not an individual receives compensation for the individual's services, an employee of a county health department functioning as a school nurse or school health aide, or a member of the administrative, educational, or support staff of, or an individual who serves under a contract for services to, any public, private or parochial school shall have the immunity from liability described under § 5-354 of the Courts and Judicial Proceedings Article.

(b) A county superintendent or any employee of a county school system who presents or enters findings of fact, recommendations, or reports or who participates in an employee dismissal, disciplinary, administrative, or judicial proceeding relating to a school system employee that results from these actions shall have the immunity from liability described under § 5-354 of the Courts and Judicial Proceedings Article.

#### Section 7-409. Drug Education Program.

(a) The State Board shall develop and implement a program of drug education in the public schools.

(b) (1) This program shall be started before the sixth grade in each public school by teachers who are trained in the field of drug education.

(2) The State Board shall establish standards for determining how a teacher is considered to be "trained in the field of drug education" for the purposes of this section.

(c) This program shall be coordinated with other State agencies that are responsible for drug abuse education and control.

#### Section 7-410. Preservation of Rights of Student Seeking to Overcome Drug Abuse.

(a) If a student seeks information to overcome any form of drug abuse, as defined in § 8-101 of the Health - General Article, from a teacher, counselor, principal, or other professional educator employed by an educational institution that has received a certificate of approval under § 2-206 of this article, a statement, whether oral or written, made by the student or an observation or conclusion derived from the statement is not admissible against the student in any proceeding.

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(b) A rule, regulation, or order may not require disclosure of any report, statement, observation, conclusion, or other information that has been assembled or obtained by an educator through this contact.

### **Section 7-411. Alcohol Abuse Program.**

(a) (1) By the fall of 1978, the State Board shall develop and implement a program of health education that deals specifically with the abuse of alcohol.

(2) This program may be included in the drug education program under § 7-409 of this subtitle.

(b) This program shall be coordinated with other State agencies that are responsible for alcohol abuse education and control.

### **Section 7-414. Pediatric-School Nurse Practitioner in Baltimore City.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS CHANGED BY CHAPTER 114 OF 1991 AND WILL REMAIN IN EFFECT UNTIL JULY 1, 1997 //

(a) (1) In Baltimore City, the nurse practitioner, physician assistant, or other appropriate health care provider shall be assigned to Walbrook Senior High School, P.S. 411.

(2) The range of services provided by the nurse practitioner, physician assistant, or other appropriate health care provider with appropriate physician collaboration should, to the extent feasible, include:

(i) Total health assessment including history, physical examination, and neurological evaluation for all entering students and handicapped students, provided however, that existing health records of the student shall be used if available;

(ii) Selected screening tests, including scoliosis screening;

(iii) Referral to and follow-up with identified primary care sources for each student in the targeted population;

(iv) Follow-up on treated sports injuries;

(v) Management of selected minor illnesses and injuries in the school according to treatment protocols which will be developed; and

(vi) Establishment of working relationships with all teachers, especially health education teachers.

(b) The nurse practitioner, physician assistant, or other appropriate health care provider shall, to the extent practicable:

(1) Participate actively in the School Screening Committee;

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- (2) Be responsible for the basic medical evaluation and certification for student placement;
  - (3) Concentrate on early identification, health counseling, and referral for:
    - (i) Venereal disease;
    - (ii) Drug abuse;
    - (iii) Alcoholism;
    - (iv) Handicapping conditions; and
    - (v) Mental health problems;
  - (4) Evaluate the relationship between use of the school health clinic services and use of hospital emergency room services;
  - (5) Establish working relationships with parents, students, and community organizations to demonstrate the efficacy of involving parents, students, and community organizations in school health clinics to enhance recruitment and retention of students;
  - (6) Evaluate, to the extent possible, the effect of participation in the program on the physical and mental well-being and school performance of the students;
  - (7) Assess, to the extent possible, whether school health programs could be used as a basis for advising other family members of the student of other sources of primary care;
  - (8) Be responsible to the Bureau of School Health of the Baltimore City Health Department; and work closely with the school principal and staff;
  - (9) Continue to function within the Baltimore City Health Department when the schools are not in session, by managing his or her caseload of school-age children in the community, including follow-through on referrals made during the school year, and the assessment of selected children in summer programs for certification of school placement; and
  - (10) Be a part of the well-child clinic delivery system provided by the Baltimore City Health Department.
- (c) (1) Physician consultation and collaboration in medical management of care shall be available at all times onsite or by telephone.
- (2) Other consultant services in the school health program, in the maternal child health program, or in the community health nursing program will be available as needed by the nurse practitioner, physician assistant, or other appropriate health care provider.

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**Subtitle 4A. Youth Suicide Prevention School Programs**

**Section 7-4A-01. Legislative Findings and Declaration.**

The General Assembly finds and declares that:

(1) A statewide Youth Suicide Prevention School Program is essential to address the continuing problem of youth suicide throughout the State;

(2) The youth suicide problem often exists in combination with other problems, including drug abuse and alcohol use;

(3) A suicide prevention program for young people must emphasize a partnership between educational programs at the State and local levels and community suicide prevention and crisis center agencies;

(4) It is of vital importance that a statewide Youth Suicide Prevention School Program be established with shared responsibility at both the State and county levels, and that this cooperation shall be a major tool in efforts to achieve the successful prevention of youth suicide; and

(5) County suicide prevention and crisis center agencies along with local education agencies are best suited for developing and implementing programs for statewide youth suicide prevention.

**Section 7-4A-02. Definitions.**

(a) In this subtitle the following words have the meanings indicated.

(b) "Program" means a Youth Suicide Prevention School Program established under this subtitle.

(c) "Youth service bureau" means a program defined under Article 83C, § 2-122 of the Code.

**Section 7-4A-03. Establishment.**

(a) (1) There is a statewide Youth Suicide Prevention School Program administered by the Department in cooperation with:

- (i) Participating local education agencies;
- (ii) Local community agencies involved in suicide prevention;
- (iii) Local community mental health programs; and
- (iv) Youth services bureaus.

(2) On or before October 1, 1986, the Department may establish a demonstration Youth Suicide Prevention School Program in cooperation with local education agencies in the following political subdivisions:

- (i) Anne Arundel County;

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- (ii) Baltimore City;
- (iii) Baltimore County;
- (iv) Harford County;
- (v) Howard County; and
- (vi) Montgomery County.

(b) Any political subdivision in the State may apply for assistance or grant funds under this subtitle to establish a local Youth Suicide Prevention School Program.

### **Section 7-4A-04. Eligibility Guidelines; Authorized Programs.**

(a) (1) The Department shall adopt regulations that set eligibility guidelines for State funding of Youth Suicide Prevention School Programs under this subtitle.

(2) The regulations shall:

(i) Establish procedures for developing local programs, in cooperation with local education agencies, youth service bureaus, and community mental health centers; and

(ii) Establish standards and policies for programs to offer:

1. Individual, family, and group counseling related to youth suicide prevention;

2. Referral, crisis intervention, and information for students, parents, and school personnel; and

3. Training for school personnel, and others responsible for counseling or supervising student activities.

(b) A Youth Suicide Prevention School Program established under this subtitle shall plan, fund, and implement educational programs, which may include any of the following:

(1) Classroom instruction designed to achieve any of the following objectives:

(i) Encourage sound decisionmaking and promote ethical development;

(ii) Increase pupils' awareness of the relationship between drug and alcohol use and youth suicide;

(iii) Teach pupils to recognize signs of suicidal tendencies, and other facts about youth suicide;

(iv) Inform pupils of available community youth suicide prevention services;

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(v) Enhance school climate and relationships between teachers, counselors, and pupils; and

(vi) Further cooperative efforts of school personnel and community youth suicide prevention program personnel;

(2) School or community based alternative programs outside of the classroom, including:

(i) Positive peer group programs;

(ii) A 24-hour "hotline" telephone service, staffed by trained professional counselors;

(iii) Programs to collect data on youth suicide attempts;

(iv) Intervention and follow-up; and

(v) Parent education and training programs; and

(3) Teacher training programs.

(c) Any Program established under this subtitle shall:

(1) Assist in increasing the awareness, among school personnel and community leaders, of the incidence of teenage suicide;

(2) Train school personnel in individual and school wide strategies for teenage suicide prevention;

(3) Develop and implement school-based teenage suicide prevention programs and pilot projects; and

(4) Through cooperative efforts, utilize community resources in the development and implementation of teenage suicide prevention programs under this subtitle.

### **Section 7-4A-05. Duties of Department; Funding.**

(a) The Department shall:

(1) As to each program receiving State funding:

(i) Monitor its operations; and

(ii) Evaluate annually its effectiveness.

(2) Review and either approve or disapprove the application for State funding of a proposal program.

(b) (1) The funding of an eligible program shall be a shared responsibility of this State and the local education agencies.

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(2) Each eligible program shall submit to the Department a proposed annual budget for review and approval, at the times that the Department specifies.

(3) The proposed budget of the Department shall list the eligible programs and estimate the amount of State funds to be allocated to each.

(c) The State funds designated for Youth Suicide Prevention School Programs may be included in the budgets of:

- (1) The Department; and
- (2) The Department of Health and Mental Hygiene.

### **Section 7-4A-06. Funds; Reports.**

(a) The local education agency and the local health department shall identify funds from public and private agencies for development and implementation of the Program.

(b) The Department shall submit an annual report to the Governor and, subject to § 2-1312 of the State Government Article, the General Assembly regarding the current status and effectiveness of the Programs established under this subtitle.

(c) The Governor shall include funds in the budget to carry out the provisions of this subtitle.

### **Section 18-110. Pledge to Remain Drug Free.**

As a condition of receiving a scholarship or grant awarded under this title, each recipient shall sign a statement pledging to remain drug free. The Commission shall determine the contents of the drug free statement.

## **Article – Family Law**

### **Section 5-1101. Authority of Governor to Award Grants for the Development of Community Programs.**

(a) The Governor may provide funding in the State budget for the awarding of grants for the development of community programs designed to educate children, parents, and other interested persons on the prevention of:

- (1) child physical or sexual abuse; and
- (2) child alcohol and drug abuse.

(b) Subject to the provisions of this subtitle, grants shall be awarded on a competitive basis to private organizations or public agencies submitting proposed programs for the prevention of child physical or sexual abuse and child alcohol and drug abuse.

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**Section 5-1102. Grant Award Procedures - Department of Human Resources.**

(a) All proposals for funding received under this subtitle designed to address the prevention of child physical or sexual abuse shall be reviewed by a selection committee composed of the following members:

(1) 2 persons designated by the Secretary of the Department of Human Resources, of which 1 person shall have prior experience in local community child abuse prevention programs;

(2) 2 persons designated by the State Superintendent of Schools, of which 1 person shall have prior experience in local community child abuse prevention programs; and

(3) The Director of the Office for Children and Youth, who shall serve as the chairman of the committee.

(b) The Secretary of Human Resources shall establish procedures for the grant award process and publish appropriate notice in the Maryland Register and in newspapers of general circulation concerning the submittal of proposals for funding under this section.

(c) The Department of Human Resources shall administer the child abuse prevention grant program created under this subtitle and shall compile appropriate information regarding the awarding and use of grants received under this section.

**Section 5-1103. Same - Department of Health and Mental Hygiene.**

(a) All proposals for funding received under this subtitle designed to address the prevention of child alcohol and drug abuse shall be reviewed by a selection committee composed of the following members:

(1) 2 persons designated by the Secretary of Health and Mental Hygiene, of which 1 person shall have prior experience in local community alcohol and drug abuse prevention programs;

(2) 2 persons designated by the State Superintendent of Schools, of which 1 person shall have prior experience in local community alcohol and drug abuse prevention programs;

(3) the Chairman of the State Advisory Council on Alcohol and Drug Abuse, or a designee of the Chairman from the Council; and

(4) the Director of the Office for Children and Youth, who shall serve as chairman of the committee.

(b) The Secretary of Health and Mental Hygiene shall establish procedures for the grant award process and publish appropriate notice in the Maryland Register and in newspapers of general circulation concerning the submittal of proposals for funding under this section.

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(c) The Department of Health and Mental Hygiene shall administer the alcohol and drug abuse prevention grant program created under this subtitle and shall compile appropriate information regarding the awarding and use of grants received under this section.

### **Section 5-1104. Criteria for Judging Proposals; Awards.**

(a) (1) In reviewing and ranking proposals, the selection committees established under §§ 5-1102 and 5-1103 of this subtitle shall place additional value on proposals that are designed to:

- (i) reach the largest possible number of parents, children, and youth in a community;
- (ii) involve local government officials and other community leaders; and
- (iii) be supplemented by local or private funding.

(2) The selection committees shall attempt to achieve a broad geographic distribution of funding, to the extent that a proposal has merit, in their recommendations to the Governor.

(b) Based solely on the recommendations of the selection committees, the Governor shall award grants, not to exceed \$10,000 each, to further the purposes of this subtitle.

(c) All grant awards under this subtitle shall be identified and briefly described in annual reports developed by the Department of Human Resources for grants awarded under § 5-1102 of this subtitle and by the Department of Health and Mental Hygiene for grants awarded under § 5-1103 of this subtitle. These reports shall be presented to the Governor and, subject to § 2-1312 of the State Government Article, to the General Assembly.

(d) In conjunction with the grant programs established under this subtitle, each year the Governor shall proclaim a Drug and Alcohol Abuse Prevention Awareness Week and a Child Abuse Prevention Awareness Week to focus public attention on these problems.

## **Article - Health - General**

### **Section 8-101. Definitions.**

- (a) In this title the following words have the meanings indicated.
- (b) "Administration" means the Alcohol and Drug Abuse Administration.
- (c) "Administrator" means the program director or the clinical director of an alcohol or drug abuse treatment facility or a health care facility.
- (d) "Alcohol misuse" means:

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- (1) Unlawful use of alcohol;
- (2) Alcohol abuse; or
- (3) Alcohol dependence.

(e) "Alcohol abuse" means a disease that is characterized by a pattern of pathological use of alcohol with repeated attempts to control its use, and with significant negative consequences in at least one of the following areas of life: medical, legal, financial, or psycho-social.

(f) "Alcohol dependence" means a disease characterized by:

- (1) Alcohol abuse; and
- (2) Physical symptoms of withdrawal or tolerance.

(g) "Detoxification facility" means a facility that provides direct or indirect services to an acutely intoxicated individual to fulfill the physical, social, and emotional needs of the individual by:

- (1) Monitoring the amount of alcohol and other toxic agents in the body of the individual;
- (2) Managing withdrawal symptoms; and
- (3) Motivating the individual to participate in the appropriate addictions treatment programs for alcohol or drug abuse.

(h) "Director" means the Director of the Administration.

(i) "Drug" means:

- (1) A controlled dangerous substance that is regulated under the Maryland Controlled Dangerous Substances Act;
- (2) A prescription medication; or
- (3) A chemical substance when used for unintended and harmful purposes.

(j) "Drug misuse" means:

- (1) Unlawful use of a drug;
- (2) Drug abuse; or
- (3) Drug dependence.

(k) "Drug abuse" means a disease which is characterized by a pattern of pathological use of a drug with repeated attempts to control the use, and with significant negative consequences in at least one of the following areas of life: medical, legal, financial, or psycho-social.

(l) "Drug dependence" means a disease characterized by:

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- (1) Drug abuse; and
- (2) Physical symptoms of withdrawal or tolerance.

(m) "State Advisory Council" means the State Advisory Council on Alcohol and Drug Abuse.

### **Section 8-201. Administration Established.**

There is an Alcohol and Drug Abuse Administration in the Department.

### **Section 8-202. Director of Administration.**

(a) The head of the Administration is the Director, who shall be appointed by the Secretary.

(b) The Director serves at the pleasure of the Secretary.

(c) The Director shall:

(1) Have at least:

(i) A baccalaureate degree; and

(ii) Experience in health administration; and

(2) Be knowledgeable about the functions and programs of the Administration.

(d) The Director is entitled to the salary provided in the State budget.

### **Section 8-203. Authority of Secretary; Reports to Deputy Secretary.**

(a) (1) The Director exercises the powers, duties, and responsibilities of office subject to the authority of the Secretary.

(2) The Director shall report to the Deputy Secretary for Public Health Services.

(b) The Secretary may exercise any power or perform any duty of the Administration.

### **Section 8-204. Miscellaneous Duties.**

(a) The Director is responsible for carrying out the powers, duties, and responsibilities of the Administration.

(b) In addition to the powers set forth elsewhere in this title, the Director may:

(1) Within the amounts made available by appropriation, gift, or grant, make any agreement or joint financial arrangement to do or have done anything necessary, desirable, or proper to carry out the purposes of this title; and

(2) Within the amounts made available by appropriation, employ a staff.

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(c) In addition to the duties set forth elsewhere in this title, the Director shall:

- (1) Adopt regulations to carry out the provisions of this title;
- (2) Survey and analyze the needs of the State for prevention, diagnosis, and treatment of drug misuse or alcohol misuse;
- (3) Submit each report that the Secretary, Governor, or General Assembly requests;
- (4) Gather and disseminate statistics and other information on drug misuse and alcohol misuse and drug misuse and alcohol misuse services;
- (5) Work cooperatively and coordinate with other State agencies and advisory bodies in carrying out the provisions of this title; and
- (6) Do anything necessary or proper to carry out the scope of this title.

### **Section 8-205. Information.**

(a) Each person who is authorized to administer, use professionally, or dispense a drug and each public official who has duties with respect to drugs or to users of them shall report to the administration any relevant information that the administration requires to carry out the purposes of this title, subject to the provisions of State and federal laws and regulations governing confidentiality.

(b) An employee or unit of the State or of any of its political subdivisions shall release to the administration, on its request, information that deals with drug abuse or alcohol abuse or drug dependence or alcohol dependence, including the name of an individual with a drug or alcohol problem if needed to carry out the purposes of this title, subject to the provisions of State and federal laws and regulations governing confidentiality.

### **Section 8-206. Gifts and Grants; Funds.**

(a) With the approval of the Secretary of Budget and Fiscal Planning, the Administration shall accept, on behalf of the State, a conditional or unconditional gift or grant.

(b) The Administration shall pay all funds collected under this section into a special fund of the State Treasury and use the special fund to carry out the provisions of this title.

### **Section 8-301. State Advisory Council Established.**

There is a State Advisory Council on Alcohol and Drug Abuse.

### **Section 8-302. Membership.**

- (a) (1) The State Advisory Council consists of the following 22 members:
- (i) 12 individuals from the general public, appointed by the Governor;

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- (ii) A member of the House of Delegates, appointed by the Speaker;
- (iii) A member of the Senate appointed by the President;
- (iv) As ex officio members:

- 1. Secretary, Department of Public Safety and Correctional Services;
- 2. Superintendent, Department of Education;
- 3. Secretary, Department of Juvenile Services;
- 4. Director, Alcohol and Drug Abuse Administration;
- 5. Representative of the Governor's Executive Staff;
- 6. Representative of the Governor's Office of Justice Assistance;
- 7. Secretary, Department of Human Resources; and
- 8. The President of the Governor's Youth Advisory Council who shall be at least 14 years of age or who shall designate a representative at least 14 years of age.

(2) Of the 12 members from the general public:

(i) At least 2 members shall be present or former participants in alcohol or drug treatment or recovery programs; and

(ii) No more than 4 members shall be professionally employed as providers of alcohol or drug abuse prevention or treatment services.

(b) An ex officio member of the State Advisory Council may designate a representative to act on behalf of that member.

(c) A member of the State Advisory Council is not a State employee because of the membership.

(d) (1) The term of an appointed member is 3 years and begins on January 1.

(2) The terms of the appointed members are staggered as required by the terms provided for appointed members of the State Advisory Council on June 1, 1988. The terms of one-third of those members end each year.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualified.

(e) A member shall be a resident of the State.

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**Section 8-303. Chairman and Vice Chairman.**

- (a) The Governor shall appoint a chairman and a vice chairman.
- (b) The term as chairman and vice chairman is 1 year.
- (c) The chairman and the vice chairman may be reappointed.

**Section 8-304. Committees.**

- (a) The State Advisory Council shall establish committees on:
  - (1) Alcohol abuse; and
  - (2) Drug abuse.

(b) Membership of each committee shall reflect equal representation of both alcohol and drug abuse views.

**Section 8-305. Meetings; Compensation; Staff Services.**

- (a) The State Advisory Council shall meet:

(1) At least every third month, at the times and places that it determines;  
and

- (2) At the call of its chairman.

- (b) A member of the State Advisory Council:

(1) May not receive compensation; but  
(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Department shall provide secretarial and other staff services to the State Advisory Council.

**Section 8-306. Duties.**

- (a) The State Advisory Council does not have any executive or appointive duties.

- (b) The State Advisory Council shall:

(1) Be a strong advocate of a comprehensive, broad-based approach to the social, economic, psychological, and health problems of alcohol and drug abuse; and

- (2) Advise the Governor, the Secretary, and the Administration on:

(i) Short and long term needs for services which the State Advisory Council has identified;

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(ii) Promoting and coordinating, in cooperation with other federal, State, local or private agencies, unified programs for education, prevention, diagnosis, treatment, rehabilitation, and control of alcohol abuse and drug abuse; and

(iii) Reviewing existing programs and facilities of the Administration and short and long term plans.

### **Section 8-401. Programs.**

(a) The Administration shall:

(1) Promote, develop, establish, conduct, certify, and monitor programs for the prevention, treatment, and rehabilitation related to the misuse of alcohol and drugs;

(2) Promote and conduct training and research related to the misuse of alcohol and drugs; and

(3) (i) 1. In cooperation with the Motor Vehicle Administration, courts, police, and other agencies, the Administration shall approve appropriate programs of alcohol and drug abuse education or treatment for individuals who, under § 21-902 of the Transportation Article, are convicted of driving while intoxicated or while under the influence of alcohol and/or drugs.

2. The programs under this subparagraph shall be coordinated with and integrated into broad planning for comprehensive community health and welfare services.

(ii) The Administration shall:

1. Review and, in accordance with regulations that the Administration shall adopt, approve or disapprove each program that a public or private agency wants to offer under Article 27, § 639(b) or § 641(a)(1)(ii) of the Code;

2. Promptly give the administrative office of the courts notice of each program approved under this subparagraph;

3. Monitor and biennially review each program approved under this subparagraph;

4. Investigate each complaint made in connection with a program; and

5. Promptly give the Administrative Office of the Courts notice if the Department withdraws its approval of any program.

(b) The Administration may:

(1) Develop pilot programs;

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(2) For these purposes and notwithstanding any other law, establish, direct, and conduct any experimental pilot clinical program for the treatment of alcohol or drug abusers, including any program to administer, under medical supervision and control, maintenance dosages of prescribed drugs;

(3) Either alone or with other public or private agencies, direct and conduct basic research in alcohol or drug abuse, including clinical epidemiological, social science, and statistical research; and

(4) In cooperation with the Department of Public Safety and Correctional Services or any other appropriate correctional agency, establish and maintain, in any correctional institution in this State, programs for the prevention and treatment of alcohol and drug abuse and for the rehabilitation of alcohol and drug abusers.

### **Section 8-402. Facilities.**

(a) The Administration shall:

(1) Plan and encourage development of, and coordinate the facilities and services that offer treatment, care, or rehabilitation for alcohol and drug abusers; and

(2) Adopt regulations:

(i) To set standards for treatment, care, and rehabilitation of alcohol and drug abusers; and

(ii) To ensure that before a facility is certified under this title to provide treatment, care, or rehabilitation of alcohol or drug abusers, an opportunity to comment, concerning whether the facility meets certification requirements, is provided to representatives of the county government and, if in a municipal corporation, the municipal government and to private citizens in the community where the facility is proposed to be located.

(b) The Administration may establish and operate or identify facilities and services, including evaluation facilities to determine if an individual is a drug abuser or alcohol abuser or dependent on drugs or alcohol.

(c) A facility that the Administration operates or contracts to be operated is a health facility and is not, for any purpose, a correctional institution.

(d) An individual may not be discriminated against based on an inability to pay for any services provided by the Administration either directly or by contract.

(e) To carry out the purposes of this title, the Administration may contract with any appropriate public or private agency that has proper and adequate treatment facilities, services, and staff.

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(f) (1) The Administration shall evaluate the success and effectiveness of each alcohol abuse and drug abuse treatment program licensed or certified under this subtitle by performing outcome research studies on a representative sample of individuals who have received treatment under those programs to determine the extent to which the individuals:

(i) Have been successfully discharged from the treatment program;  
and

(ii) Have successfully controlled their alcohol and drug abuse problems after being discharged from the program.

(2) The Administration shall adopt any reasonable regulations necessary to permit the Administration to perform the outcome research studies required under paragraph (1) of this subsection.

(3) The outcome research studies shall be conducted in a manner to protect the confidentiality of the individual and in accordance with the provisions of Subtitle 6 of this title.

(4) The Administration shall establish an Alcohol and Drug Abuse Treatment Research Advisory Committee to:

(i) Develop the methodology necessary to conduct the outcome research studies; and

(ii) Advise the Administration on any reasonable regulations necessary to perform the outcome research studies in accordance with this subsection.

### **Section 8-403. Certification.**

(a) In this section, "alcohol abuse and drug abuse treatment program":

(1) Means any individual or organization that provides treatment, care, or rehabilitation for individuals who show the effects of drug abuse or alcohol abuse, and represents or advertises itself as an alcohol abuse or drug abuse treatment program; and

(2) Includes a program or facility that is owned or operated by this State or any of its political subdivisions.

(b) Except as otherwise provided in this section, an alcohol abuse and drug abuse treatment program shall be certified by the Department before program services may be provided in this State.

(c) This section does not apply to:

(1) A health professional licensed under the Health Occupations Article who is treating patients within the scope of the professional's practice and who does not advertise the practice as an alcohol abuse or drug abuse program;

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(2) Alcoholics Anonymous, Narcotics Anonymous, transitional housing programs, or other similar organizations, if the organization holds meetings or provides support services to help individuals who show the effects of drug abuse or alcohol abuse; or

(3) An employees' assistance program of a business entity.

(d) Unless requested, the certification requirements of this section do not apply to the following facilities:

(1) A hospital as defined in § 19-301 of this article accredited by the Joint Commission on Accreditation of Hospitals with a separately accredited alcohol and drug abuse program; and

(2) An alcohol abuse and drug abuse treatment program accredited by the Joint Commission on Accreditation of Hospitals.

(e) An intermediate care facility, alcoholic (type c or d), shall be certified as an intermediate care alcohol abuse and drug abuse treatment facility.

### **Section 8-403.1. Treatment of Pregnant and Postpartum Women.**

(a) (1) In consultation with the Office of Maternal Health and Family Planning, the Administration shall develop a referral procedure to require alcohol abuse and drug abuse treatment programs or facilities that are owned or operated by the State or any of its political subdivisions, or that receive partial or full funding from the State, to operate an alcohol abuse and drug abuse treatment program to accept pregnant or postpartum women for treatment on a priority basis.

(2) As part of the referral procedure developed under paragraph (1) of this subsection, the Administration shall:

(i) Require alcohol abuse and drug abuse treatment programs and facilities to have protocols for referring pregnant or postpartum women for prenatal care and medical assistance services; and

(ii) Establish referral agreements with local health departments and local departments of social services as a method of identifying pregnant and postpartum women in need of and requesting alcohol abuse and drug abuse treatment services.

(b) A postpartum woman shall be allowed to continue to receive or to begin receiving alcohol abuse and drug abuse treatment services for up to 1 year following the end of the pregnancy.

(c) The Administration shall require alcohol abuse and drug abuse treatment programs and facilities to submit along with their funding applications evidence of and procedures for admitting on a priority basis into their alcohol abuse and drug abuse treatment program or facility referred pregnant and postpartum women.

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### **Section 8-404. Regulations.**

(a) The Department shall adopt regulations for establishing, operating, and certifying alcohol abuse and drug abuse treatment programs that include:

(1) Procedures for consulting with the Administration to set standards relating to alcohol abuse and drug abuse treatment care and rehabilitation services;

(2) Standards relating to environmental and safety requirements concerning physical plant, equipment, and structure;

(3) Standards relating to programmatic operations of alcohol and drug abuse treatment, care, and rehabilitation services; and

(4) Provisions for denials, suspensions, and revocations of certification.

(b) The Department may adopt regulations for certifying individuals providing alcohol abuse and drug abuse treatment.

(c) An applicant for certification shall submit an application to the Department on the form that the Department requires.

(d) The Department shall issue a certificate to an individual or organization providing alcohol abuse and drug abuse treatment, care, and rehabilitation services that meets the Department's certification requirements.

(e) Before the Department disapproves an application, the Department shall give the applicant an opportunity for a hearing.

(f) Except as otherwise provided in this subtitle, an individual or organization may not operate or attempt to operate an alcohol abuse and drug abuse treatment program in the State unless certified by the Department.

(g) An individual or organization who operates an alcohol abuse and drug abuse treatment program in violation of this title is guilty of a misdemeanor.

### **Section 8-405. Application for Program; Notice; Report.**

Within 60 days after an application for an initial certification by an alcohol abuse and drug abuse treatment program is received, the Department shall give the governing bodies of the county and the municipality and, upon request, the members of the General Assembly from the district where the program is to be located, notice of the filing of the application, if the program is designed for residential living by 4 or more unrelated people.

### **Section 8-501. Disposition of Publicly Intoxicated Individuals.**

(a) (1) In cooperation with State and local police, the Administration may adopt regulations under which personnel other than the police are authorized to exercise the powers under this section whenever feasible so that the exercise of those powers by the police are reduced to a minimum.

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(2) The police and other authorized personnel who act under this section are acting within the scope of their official duty.

(b) If a publicly intoxicated individual consents or an individual's health is in immediate danger, the police or other authorized personnel may take or send a publicly intoxicated individual to:

- (1) The individual's home;
- (2) A detoxification center; or
- (3) Any other appropriate health care facility as defined in § 19-101(e) of this article.

(c) Unless a criminal charge is filed, an entry of an action under this section may not be made on the arrest or other criminal record of the intoxicated individual.

(d) An individual taken or sent to a detoxification center or a health care facility under subsection (b) of this section may be admitted to the facility with the consent of the director of the facility or the designee of the director.

### **Section 8-502. Admission to Health Care Facility.**

(a) After a preliminary evaluation of an individual by the administrator or the designee of the administrator, the individual may be admitted to the facility if it is certified in writing that the individual:

- (1) Has acute symptoms of alcohol or drug intoxication or withdrawal; and
- (2) (i) Appears to be in imminent danger of harming one's self, or another individual, or the property of another individual; or  
(ii) Is willing to be voluntarily admitted.

(b) An individual admitted under this section may be detained up to 72 hours after admission.

(c) An individual detained under this section shall be informed in writing at the time of admission of the right of the individual to leave the facility after 72 hours.

- (d) This section does not require a facility to admit an individual when:
- (1) Space is not available;
  - (2) A patient demonstrates medical and psychiatric conditions beyond the certified capabilities of the program staff; or
  - (3) As a result of an evaluation of an individual, the individual is determined to be an inappropriate admission to the facility.

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### **Section 8-502.1. Admission of Minors to Inpatient Facilities.**

(a) A parent or guardian of the person of a minor may apply, on behalf of the minor, for admission of the minor to a certified inpatient alcohol and drug abuse program or facility under this section.

(b) A program or facility may not admit an individual under this section unless the program or facility has determined that:

(1) The individual has an alcohol or other drug dependency that necessitates the level of care provided by the program or facility;

(2) The individual would benefit from treatment;

(3) The parent or guardian making application for admission of the individual understands the nature of the request for admission and the nature of the treatment provided by the program or facility; and

(4) Assent to the admission has been given by the Director or the Director's designee of the program or facility.

(c) In order for an individual to be retained for treatment under this section:

(1) The parent or guardian who applied for admission of the individual shall have the right to be actively involved in treatment; and

(2) The facility must note on the application for admission whether or not the minor was admitted in accordance with the provisions of § 20-102(c-1) of this article.

(d) A facility has the right to discharge an individual admitted for treatment under this section if the individual is not complying with the treatment program or the facility's policies and procedures.

### **Section 8-503. Disposition of Arrested Individuals.**

(a) If, after the police arrest an intoxicated individual for a criminal offense, the individual seems to require emergency medical treatment, the police immediately shall take the individual to a detoxification center or other appropriate health care facility as defined in § 19-101(e) of this article.

(b) (1) If necessary, after medical treatment, the police shall transport the individual to a detoxification facility.

(2) The individual may be admitted to the detoxification facility in accordance with the provisions of § 8-501(d) of this subtitle.

### **Section 8-504. Police and Authorized Personnel Responsibility.**

In carrying out §§ 8-501, 8-502, and 8-503 of this subtitle, the police or other authorized personnel shall make every reasonable effort to protect the health and safety of the intoxicated individual.

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**Section 8-505. Evaluations.**

(a) (1) Before or during a criminal trial or prior to sentencing, the court may order the Department to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment if:

(i) It appears to the court that the defendant has an alcohol or drug abuse problem; or

(ii) The defendant alleges an alcohol or drug dependency.

(2) The court shall set and may change the conditions under which the examination is to be conducted.

(b) Except in a capital case, on consideration of the nature of the charge, the court:

(1) May require or permit an examination to be conducted on an outpatient basis; and

(2) If an outpatient examination is authorized, shall set bail for the defendant or authorize the release of the defendant on personal recognizance.

(c) (1) If a defendant is to be held in custody for examination under this section:

(i) The defendant may be confined in a detention facility until the Department is able to conduct the examination; or

(ii) The court may order confinement of the defendant in a medical wing or other isolated and secure unit of a detention facility, if the court finds it appropriate for the health or safety of the defendant.

(2) (i) If the court finds that, because of the apparent severity of the alcohol or drug dependency or other medical or psychiatric complications, a defendant in custody would be endangered by confinement in a jail, the court may order the Department to either:

1. Place the defendant, pending examination, in a health care facility that the Department designates as appropriate; or

2. Have local health department staff, or other qualified personnel who the Department finds appropriate, immediately conduct an evaluation of the defendant.

(ii) Unless the Department retains a defendant, the defendant shall be promptly returned to the court after an examination.

(iii) A defendant who is detained for an examination under this section may question at any time the legality of the detention by a petition for a writ of habeas corpus.

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(d) (1) If a court orders an evaluation under this section, the evaluator shall:

- (i) Conduct an evaluation of the defendant; and
- (ii) Submit a complete report of the evaluation within 7 days to the:
  1. Court;
  2. Administration; and
  3. Defendant or the defendant's attorney.

(2) On good cause shown, the court may extend the time for an evaluation.

**Section 8-506. Commitment for Evaluation.**

(a) (1) A court may commit a defendant to the Department if:

(i) The court finds it is not clinically appropriate for the defendant to be evaluated in a detention facility or an appropriate outpatient facility; or

(ii) After an evaluation in a detention facility or an outpatient facility, the Department recommends a comprehensive inpatient evaluation of the defendant.

(2) Before a court commits a defendant to the Department for evaluation, the court shall consult with the Administration.

(b) The Department shall provide the services required by this section.

(c) The Department shall have the obligation to engage in reasonable efforts to facilitate the admission of a defendant to an appropriate evaluation facility.

(d) Unless the court allows the defendant to provide the defendant's own transportation, on commitment or release of a defendant under this subtitle, the court shall order transportation by law enforcement officials, detention center staff, or sheriff's department staff within the local jurisdiction.

(e) (1) A commitment under this section shall not be for more than 7 days unless the medical condition of a defendant warrants an extension of a maximum of 14 days.

(2) Except during the first 72 hours after commitment, the Director or a designee of the Director may terminate the commitment if the Director or the designee determines that continued commitment:

- (i) Is not in the best interest of an individual; or
- (ii) Does not serve any useful purpose.

(f) Before an individual is released from commitment under this section, the Director or a designee of the Director shall give the judge that ordered the commitment notice of the proposed date and time of release.

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(g) In the event an individual committed under this section leaves an evaluation facility without authorization, the responsibility of the Department is limited to notification of the court that committed the individual as soon as it is reasonably possible.

### **Section 8-507. Commitment for Treatment.**

(a) If a court finds in a criminal case that a defendant has an alcohol or drug dependency, the court may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to treatment to the Department for inpatient, residential, or outpatient treatment.

(b) Before a court may commit a defendant to the Department for treatment, the court shall:

- (1) Offer the defendant the opportunity to receive treatment; and
- (2) Obtain the written consent of the defendant:
  - (i) To receive treatment; and
  - (ii) For the reporting of information back to the court; and
- (3) Consult with the Administration.

(c) The Department shall provide the services required by this section.

(d) The Department shall engage in reasonable efforts to facilitate the admission of a defendant to the appropriate treatment facility.

(e) Unless the court allows the defendant to provide the defendant's own transportation, on commitment or release of a defendant under this subtitle, the court shall order transportation by law enforcement officials, detention center staff, or sheriff's department staff within the local jurisdiction.

(f) (1) A defendant's withdrawal of consent to treatment shall be promptly reported to the court.

(2) The defendant shall be returned to the court within 7 days for further proceedings.

(g) A defendant who is committed for treatment under this section may question at any time the legality of the commitment by a petition for a writ of habeas corpus.

(h) (1) A commitment under this section shall be for at least 72 hours and not more than 1 year.

(2) On good cause shown by the Administration, the court may extend the time period for providing the necessary treatment services in increments of 6 months.

(3) Except during the first 72 hours after commitment, the Director or a designee of the Director may terminate the commitment if the Director or the designee determines that:

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(i) Continued commitment is not in the best interest of the individual;

or

(ii) The individual is no longer amenable to treatment.

(i) When an individual is to be released from a commitment under this section, the Director or the Director's designee shall consult with the court to determine if the individual is to be returned to the court.

(j) In the event an individual committed under this section leaves a treatment facility without authorization, the responsibility of the Department is limited to the notification of the court that committed the individual as soon as it is reasonably possible.

(k) Nothing in this section imposes any obligation on the Administration:

(1) To treat any defendant who knowingly and willfully declines to consent to further treatment; or

(2) In reporting to the court under this section, to include an assessment of a defendant's dangerousness to one's self, to another individual, or to the property of another individual by virtue of a drug or alcohol problem.

(l) Any time served by a criminal defendant held for evaluation or committed for treatment shall be credited against the sentence imposed by the court.

### **Section 8-508. Outpatient and Aftercare Treatment.**

(a) An individual may ask voluntarily for admission to an outpatient treatment program, whether or not the individual has been admitted to the program before.

(b) After an individual asks for admission to an outpatient treatment program, the administrative head of the program shall determine whether the individual is to be admitted. However, the administrative head may not deny readmission of an individual solely because the individual previously left the program against the advice of the administrative head.

(c) An outpatient treatment program shall use public and private community efforts, including welfare services, vocational rehabilitation, and job replacement, to integrate a chronic alcoholic into society as a productive citizen.

(d) (1) A chronic alcoholic may not be dropped from an outpatient treatment program solely because of a relapse into intoxication.

(2) Every reasonable method of treatment shall be used to prevent a relapse.

(3) If recovery of the chronic alcoholic is unlikely, the outpatient treatment program shall provide supportive services and residential facilities so that the individual may survive in a decent manner.

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### **Section 8-509. Admission of Intoxicated Individuals and Chronic Alcoholics to Private and Public Hospitals.**

The Administration shall promote the admission and treatment of intoxicated individuals and alcoholics in private and public hospitals without discrimination.

### **Section 8-601. Privileged Information.**

(a) If any individual seeks counseling, treatment, or therapy, for any form of drug or alcohol abuse, from a health professional licensed under the Health Occupations Article treating patients within the scope of the professional's practice, or hospital, or a person who is certified by the Administration for counseling or treating drug or alcohol abuse, the oral or written statements that the individual makes and the observations and conclusions that the health professional, hospital, or other person derives or the results of an examination to determine the existence of an illegal or prohibited drug in the body of an individual are not admissible in any proceeding against the individual, other than and subject to the federal regulations concerning the confidentiality of alcohol and drug abuse patient records:

(1) A proceeding that relates to parole or probation or conditional release from a not criminally responsible finding, if the examination had been ordered as a condition of parole or probation or the conditional release from a not criminally responsible finding; or

(2) A proceeding under Subtitle 5 of this title, if the examination had been ordered for that proceeding.

(b) The results of a proceeding under Subtitle 5 of this title and evidence in the proceeding may not be used against that individual in any other proceeding.

(c) The disclosure and use of the records of individuals served by alcohol abuse and drug abuse treatment programs shall be governed by the federal regulations on the confidentiality of alcohol and drug abuse patient records, 42 CFR Part 2.

### **Section 8-701. Unlawful or Improper Adjudication as Drug or Alcohol Abuser.**

(a) A person may not knowingly have or attempt to have an individual unlawfully or improperly adjudicated to be a drug or alcohol abuser or to have an alcohol or drug dependence under Subtitle 5 of this title.

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

### **Section 8-702. Unlawful Operation of Treatment Program.**

(a) An individual or organization may not operate an alcohol abuse and drug abuse treatment program in violation of this title.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000.

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### **Section 8-703. Unlawful Discrimination.**

No otherwise qualified alcohol abuser or drug abuser, solely by reason of the individual's status as an alcohol abuser or drug abuser, shall be denied the benefits of, or be subjected to discrimination by any public or private hospital program or activity.

### **Section 8-801. Short Title.**

This title may be cited as the Maryland Alcohol and Drug Abuse Act.

### **Section 18-339. Educational Program on Acquired Immune Deficiency Syndrome (AIDS).**

(a) The Secretary shall establish and conduct an educational program on acquired immune deficiency syndrome (AIDS) for persons who plead guilty or nolo contendere to, or who are found guilty of, violating:

(1) Article 27, § 15 of the Code (Bawdy Houses and Houses of Ill Fame; Prostitution, Etc.); or

(2) Any provision of the Maryland Controlled Dangerous Substances Act.

(b) The educational program established under subsection (a) of this section shall:

(1) Consist of at least 4 hours of instruction; and

(2) Include information on measures available to prevent the spread of acquired immune deficiency syndrome and the human immunodeficiency virus.

(c) (1) The individual who attends a program under this section shall pay in advance a fee as provided under this subsection.

(2) The Department shall set a reasonable fee based on the costs of operating the program authorized by this section.

### **Section 20-102. Treatment of Minors.**

(a) A minor has the same capacity as an adult to consent to medical treatment if the minor:

(1) Is married; or

(2) Is the parent of a child.

(b) A minor has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

(c) A minor has the same capacity as an adult to consent to:

(1) Treatment for or advice about drug abuse;

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- (2) Treatment for or advice about alcoholism;
- (3) Treatment for or advice about venereal disease;
- (4) Treatment for or advice about pregnancy;
- (5) Treatment for or advice about contraception other than sterilization;
- (6) Physical examination and treatment of injuries from an alleged rape or sexual offense; and
- (7) Physical examination to obtain evidence of an alleged rape or sexual offense.

(c-1) The capacity of a minor to consent to treatment for drug abuse or alcoholism under subsection (c)(1) or (2) of this section does not include the capacity to refuse treatment for drug abuse or alcoholism in an inpatient alcohol or drug abuse treatment program certified under Title 8 of this article for which a parent or guardian has given consent.

(d) A physician or an individual under the direction of a physician who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent under this section.

(e) Without the consent of or over the express objection of a minor, the attending physician or, on advice or direction of the attending physician, a member of the medical staff of a hospital or public clinic may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor under this section, except information about an abortion.

**Section 24-801. Baltimore City; AIDS Prevention Sterile Needle and Syringe Exchange Pilot Program; Definitions.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Commissioner of Health" means the Baltimore City Commissioner of Health.
- (c) "HIV" means the human immunodeficiency virus that causes acquired immune deficiency syndrome (AIDS).
- (d) "Participant" means an individual who has registered with the Program.
- (e) "Program" means the AIDS Prevention Sterile Needle and Syringe Exchange Pilot Program.
- (f) "Residue" means the dried remains of a controlled dangerous substance attached to or contained within a hypodermic needle or syringe.

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**Section 24-802. Pilot Program; Purpose.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

(a) There is an AIDS Prevention Sterile Needle and Syringe Exchange Pilot Program in the Baltimore City Health Department.

(b) The Program shall:

(1) Provide for the one-for-one exchange by participants of used hypodermic needles and syringes for sterile hypodermic needles and syringes; and

(2) Operate in accordance with the procedures approved, with the advice and approval of the oversight committee, by the Commissioner of Health.

**Section 24-803. Pilot Program; Procedures.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

The Program shall:

(1) Be designed and maintained to provide maximum security of exchange locations and equipment, including security measures that may be required to control the use and dispersal of hypodermic needles and syringes and security measures that allow for a full accounting of the number of hypodermic needles and syringes in circulation and the number of hypodermic needles and syringes in storage;

(2) Be operated to allow participants to exchange used hypodermic needles and syringes at any exchange location, if more than one location is available;

(3) Include appropriate levels of staff expertise in working with injecting drug users and adequate staff training in providing community referrals, counseling, and preventive education;

(4) Provide for the dissemination of other preventive means for curtailing the spread of the HIV infection;

(5) Provide a linkage for referrals to drug counseling and treatment services, and follow-up to those referrals to assure that participants receive the treatment they desire;

(6) Educate injecting drug users on the dangers of contracting the HIV infection or the Hepatitis B virus through needle-sharing practices and unsafe sexual behaviors;

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(7) Include policies and procedures for the screening of applicants to the Program in order to preclude non-injecting drug users from participating in the Program;

(8) Establish procedures for identifying Program participants that are consistent with the confidentiality provisions of this subtitle; and

(9) Establish a method of identification and authorization for Program staff members who have access to hypodermic needles, syringes, or Program records.

### **Section 24-804. Pilot Program; Oversight Committee.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

(a) The Mayor of Baltimore City shall appoint an oversight committee for the Program.

(b) The oversight committee shall consist of:

(1) Two representatives from academia who specialize in public health issues;

(2) One representative from law enforcement, nominated by the Secretary of the Department of Public Safety and Correctional Services;

(3) One representative of the Baltimore City Police Department;

(4) Two representatives from the Department of Health and Mental Hygiene, the Department of Juvenile Services, or the Department of Education, nominated by the Secretary of Health and Mental Hygiene;

(5) One representative of a Baltimore City community group;

(6) One representative of an AIDS advocacy group;

(7) One drug abuse treatment counselor;

(8) One recovering injecting drug user; and

(9) Up to three other individuals whom the Mayor of Baltimore City determines to be appropriate for appointment to the oversight committee.

(c) The oversight committee shall:

(1) Provide advice to the Commissioner of Health and the Program Director on developing:

(i) Program operating procedures for the furnishing and one-for-one exchange of hypodermic needles and syringes to injecting drug users;

(ii) A plan for community outreach and education;

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(iii) A protocol for providing a linkage for Program participants to substance abuse treatment and rehabilitation; and

(iv) A plan for evaluating the Program;

(2) Before the Program begins operating, review and make a recommendation to the Commissioner of Health for the approval or disapproval of:

(i) The Program operating procedures for the furnishing and one-for-one exchange of hypodermic needles and syringes to injecting drug users;

(ii) The community outreach and education plan;

(iii) The protocol for providing a linkage for Program participants to substance abuse treatment and rehabilitation; and

(iv) The plan for evaluating the Program; and

(3) Provide ongoing oversight of the Program and make recommendations to the Program Director or the Commissioner of Health regarding any aspect of Program procedures, operation, or evaluation.

### **Section 24-805. Pilot Program; Operating Procedures.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

(a) The Commissioner of Health shall appoint a Director for the Program.

(b) On or before July 1, 1994, with the advice and approval of the oversight committee, the Director shall develop:

(1) Program operating procedures for the furnishing and one-for-one exchange of hypodermic needles and syringes to injecting drug users;

(2) A community outreach and education program; and

(3) A protocol for providing a linkage for Program participants to substance abuse treatment and rehabilitation.

(c) The Director shall submit the operating procedures, the plan for a community outreach and education program, and the substance abuse treatment linkage protocol to the Commissioner of Health for approval prior to implementation.

### **Section 24-806. Pilot Program; Data Collection.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

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(a) The Baltimore City Health Department shall include in its Program operating procedures measures to collect the following data:

- (1) The number of participants served by the Program;
- (2) The length of time a participant is served by the Program;
- (3) Demographic profiles of participants served by the Program that include:
  - (i) Age;
  - (ii) Sex;
  - (iii) Race;
  - (iv) Occupation;
  - (v) Zip code of residence;
  - (vi) Types of drugs used;
  - (vii) Length of drug use; and
  - (viii) Frequency of injection;
- (4) The number of hypodermic needles and syringes exchanged;
- (5) The number of participants entering drug counseling and treatment; and
- (6) The number of referrals made by the Program for drug counseling and treatment.

(b) With the advice and approval of the oversight committee, the Baltimore City Health Department shall develop and implement a plan for Program evaluation that shall include the following issues:

- (1) The prevalence of HIV among Program participants;
- (2) Changes in the level of drug use among Program participants;
- (3) Changes in the level of needle-sharing among Program participants;
- (4) Changes in the use of condoms among Program participants;
- (5) The status of treatment and recovery for Program participants who entered drug treatment programs;
- (6) The impact of the Program on risk behaviors for the transmission of the HIV infection, the Hepatitis B virus, and other life-threatening blood-borne diseases among injecting drug users;

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(7) The cost-effectiveness of the Program versus the direct and indirect costs of the HIV infection in terms of medical treatment and other services normally required by HIV-infected individuals;

(8) The strengths and weaknesses of the Program; and

(9) The advisability of continuing the Program.

(c) As part of its plans for data collection and Program evaluation described under subsections (a) and (b) of this section, the Baltimore City Health Department shall develop and implement a methodology:

(1) For identifying Program hypodermic needles and syringes, such as through the use of bar coding or any other method approved by the oversight committee; and

(2) To perform HIV antibody testing on the residue left in a sample of hypodermic needles and syringes returned to the Program.

### **Section 24-807. Pilot Program; Confidentiality.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

(a) (1) Each Program participant shall be issued an identification card with an identification number.

(2) The identification number shall be cross-indexed to a confidential record containing pertinent data on the participant.

(b) Any information obtained by the Program that would identify Program participants, including Program records, is:

(1) Confidential;

(2) Not open to public inspection or disclosure; and

(3) Not discoverable in any criminal or civil proceeding.

(c) (1) Notwithstanding the provisions of subsection (b) of this section, upon the written consent of a Program participant, information obtained by the Program that identifies the Program participant may be released or disclosed to a person or agency participating in the Program.

(2) In addition to the provisions of paragraph (1) of this subsection, if a Program participant raises the issue of participation in the Program either as a subject matter or legal defense in an administrative, civil, or criminal proceeding, the Program participant waives the confidentiality as to identity provided under subsection (b)(1) of this section.

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**Section 24-808. Pilot Program; Criminal Offenses; Drug Paraphernalia.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

(a) No Program staff member or Program participant may be found guilty of violating Article 27, § 287, § 287A, or § 288 of the Code for possessing or distributing controlled paraphernalia or drug paraphernalia whenever the possession or distribution of the controlled paraphernalia or drug paraphernalia is a direct result of the employee's or participant's activities in connection with the work of the Program authorized under this subtitle.

(b) Notwithstanding the provisions of subsection (a) of this section, a Program staff member or Program participant is not immune from criminal prosecution for:

- (1) The redistribution of hypodermic needles or syringes in any form;
- (2) Any activities not authorized or approved by the Program; or
- (3) The possession or distribution of controlled paraphernalia or drug paraphernalia or any other unlawful activity outside of the Baltimore City limits.

**Section 24-809. Pilot Program; Criminal Offenses; Controlled Dangerous Substances.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

Except for violations of any laws that could arise from residue attached to or contained within hypodermic needles or syringes being returned or already returned to the Program, nothing in this subtitle provides immunity to a Program staff member or Program participant from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs or any conspiracy or attempt to commit any of those offenses.

**Section 24-810. Pilot Program; Progress and Evaluation Report.**

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

// SPECIAL NOTE: THE FOLLOWING SECTION WAS ADDED BY CHAPTER 360 OF 1994 AND WILL REMAIN IN EFFECT UNTIL MAY 2, 1997 //

(a) On or before January 1, 1996, the Baltimore City Health Department shall submit an initial progress and evaluation report of the Program to the Governor, and subject to § 2-1312 of the State Government Article, the General Assembly.

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(b) On or before January 1, 1997, the Baltimore City Health Department shall submit an evaluation report of the Program to the Governor and, subject to § 2-1312 of the State Government Article, the General Assembly.

### **III. INSURANCE**

#### **Article 48A – Insurance Code**

##### **Section 462. Standard Provisions – Loss Due to Intoxicants and Narcotics.**

There may be a provision as follows:

“Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured’s being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.”

##### **Section 490V. Health Insurance – Discrimination Against Persons with a Drug or Alcohol Abuse Disorder.**

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

(2) “Alcohol abuse” has the meaning stated in § 8-101 of the Health – General Article.

(3) “Drug abuse” has the meaning stated in § 8-101 of the Health – General Article.

(4) “Managed care system” means a method that a carrier uses to review and preauthorize a treatment plan that a health care practitioner develops for a covered person using a variety of cost containment methods to control utilization, quality, and claims.

(5) “Partial hospitalization” means the provision of medically directed intensive or intermediate short-term treatment for mental illness, emotional disorders, drug abuse or alcohol abuse for a period of less than 24 hours but more than 4 hours in a day for an insured, subscriber or member in a licensed or certified facility or program.

(b) (1) Subject to the provisions of this section, each contract or policy of health insurance delivered or issued for delivery within this State to an employer or an individual on a group or individual basis that provides coverage for health care on an expense-incurred basis may not discriminate against any person with a mental illness, emotional disorder or a drug abuse or alcohol abuse disorder by failing to provide benefits for treatment and diagnosis of these illnesses under the same terms and conditions that apply under the contract or policy for treatment of physical illness.

(2) It shall not be considered to be discriminatory under subsection (b)(1) of this section if at least the following benefits are provided:

(i) With respect to inpatient benefits provided in a licensed or certified facility, which shall include hospital inpatient benefits, the total number of days for which benefits are payable shall be:

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1. Except as provided in subsection (d) of this section, from July 1, 1994 through June 30, 1995, at least 60 days in any calendar year or a benefit period of not more than 12 months under the same terms and conditions that apply to benefits available under the contract or policy for physical illness; and

2. On or after July 1, 1995, at least equal to the same terms and conditions that apply to the benefits available under the contract or policy for physical illness;

(ii) Subject to subsection (f) of this section, with respect to benefits for partial hospitalization, at least 60 days of partial hospitalization shall be covered under the same terms and conditions that apply to the benefit available under the contract or policy for physical illness; and

(iii) With respect to outpatient coverage, other than for inpatient or partial hospitalization services, benefits for covered expenses arising from services which are rendered to treat mental illness, emotional disorders, drug abuse and alcohol abuse shall be at a rate which is, after the applicable deductible, not less than:

1. 80 percent for the first 5 visits in any calendar year or benefit period of not more than 12 months;

2. 65 percent for the 6th through 30th visit in any calendar year or benefit period of not more than 12 months; and

3. 50 percent for the 31st visit and any visit after the 31st visit in any calendar year or benefit period of not more than 12 months.

(c) (1) The benefits under this section shall be required only for expenses arising for treatment of mental illnesses, emotional disorders, drug abuse and alcohol abuse which in the professional judgment of practitioners is medically necessary and treatable.

(2) The benefits required under this section shall be provided as one set of benefits covering mental illnesses, emotional disorders, drug abuse and alcohol abuse.

(3) The benefits required under this section may be delivered under a managed care system.

(4) Except as specifically provided in this section, benefits for illnesses covered by this section and the benefits for physical illnesses covered under a contract or policy shall have the same terms and conditions.

(5) Except for the coinsurance provisions in subsection (b)(2)(iii) of this section, a contract or policy that is subject to this section may not have:

(i) Separate lifetime maximums for physical illnesses and illnesses covered under this section;

(ii) Separate deductibles and coinsurance amounts for physical illnesses and illnesses covered under this section; or

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(iii) Separate out-of-pocket limits in a benefit period of not more than 12 months for physical illnesses and illnesses covered under this section.

(6) Any copayments required under a contract or certificate for benefits for illnesses covered under this section shall be:

(i) Actuarially equivalent to any coinsurance requirements under this section; or

(ii) Where there are no coinsurance requirements, not greater than a copayment required for a benefit under the contract or a certificate for a physical illness.

(d) Notwithstanding the provisions of subsection (b)(2)(i)1 of this section, until July 1, 1995, a contract or policy that is subject to this section that offers less than 60 days coverage for inpatient care for health care for physical illness must only include coverage for mental illness, emotional disorders, drug abuse and alcohol abuse that is at least equal to the benefit offered for those other types of health care. On and after July 1, 1995, the provisions of subsection (b)(2)(i)2 of this section shall apply.

(e) An office visit to a physician or other health care provider for the purpose of medication management may not be counted against the number of visits required to be covered as a part of the benefits required under subsection (b)(2)(ii) of this section and shall be reimbursed under the same terms and conditions as an office visit for physical illnesses covered under the contract or policy.

(f) Nothing in this section shall be construed to prohibit exceeding the minimum benefits required under subsection (b)(2)(ii) of this section for any partial hospitalization day that is medically necessary and would serve to prevent inpatient hospitalization.

### **Section 490AA. Health Insurance – Coverage for Drugs.**

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

(2) "Medical literature" means scientific studies published in a peer-reviewed national professional medical journal.

(3) "Off-label use of drugs" means when drugs are prescribed for treatments other than those stated in the labeling approved by the federal Food and Drug Administration.

(4) "Standard reference compendia" means:

(i) The United States Pharmacopeia Drug Information;

(ii) The American Medical Association Drug Evaluations; or

(iii) The American Hospital Formulary Service Drug Information.

(b) (1) Each contract or policy of health insurance delivered or issued for delivery within the State to an employer or an individual on a group or individual basis that provides coverage for drugs may not exclude coverage of a drug for a particular

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indication on the ground that the drug has not been approved by the federal Food and Drug Administration for that indication if the drug is recognized for treatment of the indication in one of the standard reference compendia or in the medical literature.

(2) Coverage of a drug required by this subsection also includes medically necessary services associated with the administration of the drug.

(c) The Secretary of Health and Mental Hygiene has the authority to direct a person that issues a contract or policy of health insurance to make payments required by this section.

(d) (1) The Secretary of Health and Mental Hygiene shall appoint a panel of medical experts to review off-label uses of drugs not included in any of the standard reference compendia or in the medical literature and to advise the Secretary whether a particular off-label use is medically appropriate.

(2) The panel shall consist of:

(i) Three medical oncologists chosen by the State Medical Oncology Association;

(ii) Two specialists in the management of AIDS patients chosen by the State AIDS Medical Provider Organizations;

(iii) One specialist in heart disease appointed by the University of Maryland Medical System; and

(iv) One physician chosen by the State Medical Association.

(3) The panel shall make recommendations from time to time and whenever a particular dispute about payment for off-label use is brought to the Secretary of Health and Mental Hygiene.

(e) This section may not be construed to:

(1) Alter existing law with regard to provisions limiting the coverage of drugs that have not been approved by the federal Food and Drug Administration;

(2) Require coverage for any drug when the federal Food and Drug Administration has determined its use to be contra-indicated; or

(3) Require coverage for experimental drugs not otherwise approved for any indication by the federal Food and Drug Administration.

### **Section 643. Long Term Care Policies.**

(e) (1) No long-term care insurance policy or certificate may be delivered or issued for delivery in this State if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(i) Preexisting conditions or diseases;

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- (ii) Mental or nervous that does not include Alzheimer's disease;
  - (iii) Alcohol or drug addiction;
  - (iv) Illness, treatment, or medical conditions arising out of:
    - 1. A declared or undeclared war or act of war;
    - 2. Participation in a felony, riot, or insurrection;
    - 3. Service in the armed forces or auxiliary units;
    - 4. Suicide, attempted suicide, or intentionally self-inflicted injury; or
    - 5. Aviation where the insured is a nonfare-paying passenger;
  - (v) Unless otherwise provided by State or federal law, treatment provided in a government facility;
  - (vi) Services for which benefits are available under:
    - 1. Medicare or other governmental programs except Medicaid; or
    - 2. Any State or federal workers' compensation, employer's liability, or occupational disease law;
  - (vii) Services provided by a member of the covered person's immediate family;
  - (viii) Services for which no charge is normally made in the absence of insurance.
- (2) The provisions of paragraph (1) of this subsection may not be construed to prohibit:
- (i) Exclusions and limitations by type of provider; or
  - (ii) Limitations by territory.

### Article - Health - General

#### Section 19-703.1. Managed Care; Discrimination Against Persons with Drug and Alcohol Abuse Disorders.

- (a) (1) In this section the following terms have the meanings indicated.
- (2) "Alcohol abuse" has the meaning stated in § 8-101 of this article.
- (3) "Drug abuse" has the meaning stated in § 8-101 of this article.

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(4) "Managed care system" means a method that a carrier uses to review and preauthorize a treatment plan that a health care practitioner develops for a covered person using a variety of cost containment methods to control utilization, quality, and claims.

(5) "Partial hospitalization" means the provision of medically directed intensive or intermediate short-term treatment for mental illness, emotional disorders, drug abuse or alcohol abuse for a period of less than 24 hours but more than 4 hours in a day for a member or subscriber in a licensed or certified facility or program.

(b) (1) Subject to the provisions of this section, each contract or certificate issued to a member or subscriber by a health maintenance organization that provides health benefits and services for diseases may not discriminate against any person with a mental illness, emotional disorder or a drug abuse or alcohol abuse disorder by failing to provide benefits for treatment and diagnosis of these illnesses under the same terms and conditions as provided for covered benefits offered under the contract or certificate for the treatment of physical illness.

(2) It shall not be considered to be discriminatory under subsection (b)(1) of this section if at least the following benefits are provided:

(i) With respect to inpatient benefits provided in a licensed or certified facility, which shall include hospital inpatient benefits, the total number of days for which benefits are payable shall be:

1. Except as provided in subsection (d) of this section, from July 1, 1994 through June 30, 1995, at least 60 days in any calendar year or benefit period of not more than 12 months under the same terms and conditions that apply to benefits available under the contract or certificate for physical illness; and

2. On or after July 1, 1995, at least equal to the same terms and conditions that apply to the benefits available under the contract or certificate for physical illness;

(ii) Subject to subsection (f) of this section, with respect to benefits for partial hospitalization, at least 60 days of partial hospitalization shall be covered under the same terms and conditions that apply to the benefit available under the contract or certificate for physical illness; and

(iii) With respect to outpatient coverage, other than for inpatient or partial hospitalization services, benefits for covered expenses arising from services which are rendered to treat mental illness, emotional disorders, drug abuse and alcohol abuse shall be at a rate which is, after the applicable deductible, not less than:

1. 80 percent for the first 5 visits in any calendar year or benefit period of not more than 12 months;

2. 65 percent for the 6th through 30th visit in any calendar year or benefit period of not more than 12 months; and

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3. 50 percent for the 31st visit and any visit after the 31st visit in any calendar year or benefit period of not more than 12 months.

(c) (1) The benefits under this section shall be required only for expenses arising for treatment of mental illnesses, emotional disorders, drug abuse and alcohol abuse which in the professional judgment of practitioners is medically necessary and treatable.

(2) The benefits required under this section shall be provided as one set of benefits covering mental illnesses, emotional disorders, drug abuse and alcohol abuse.

(3) The benefits required under this section may be delivered under a managed care system.

(4) Except as specifically provided in this section, benefits for illnesses covered by this section and the benefits for physical illnesses covered under a contract or certificate shall have the same terms and conditions.

(5) Except for the coinsurance provisions in subsection (b)(2)(iii) of this section, a contract or certificate that is subject to this section may not have:

(i) Separate lifetime maximums for physical illnesses and illnesses covered under this section;

(ii) Separate deductibles and coinsurance amounts for physical illnesses and illnesses covered under this section; or

(iii) Separate out-of-pocket limits in a benefit period of not more than 12 months for physical illnesses and illnesses covered under this section.

(6) Any copayments required under a contract or certificate for benefits for illnesses covered under this section shall be:

(i) Actuarially equivalent to any coinsurance requirements under this section; or

(ii) Where there are no coinsurance requirements, not greater than a copayment required for a benefit under the contract or a certificate for a physical illness.

(d) Notwithstanding the provisions of subsection (b)(2)(i)1 of this section, until July 1, 1995, a contract or certificate that is subject to this section that offers less than 60 days coverage for inpatient care for health care for physical illness must only include coverage for mental illness, emotional disorders, drug abuse and alcohol abuse that is at least equal to the benefit offered for those other types of health care. On and after July 1, 1995, the provisions of subsection (b)(2)(i)2 of this section shall apply.

(e) An office visit to a physician or other health care provider for the purpose of medication management may not be counted against the number of visits required to be covered as a part of the benefits required under subsection (b)(2)(iii) of this section and shall be reimbursed under the same terms and conditions as an office visit for physical illnesses covered under the contract or certificate.

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(f) Nothing in this section shall be construed to prohibit exceeding the minimum benefits required under subsection (b)(2)(ii) of this section for any partial hospitalization day that is medically necessary and would serve to prevent inpatient hospitalization.

### **IV. OCCUPATIONS – LICENSING – EMPLOYMENT**

#### **A. Occupational Licensing Restrictions and Rehabilitation Programs**

##### **Article 27 – Crimes and Punishments**

###### **Section 728. Law Enforcement Officers.**

(b) Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

(7) (i) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(ii) This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol test, blood, breath, or urine test for controlled dangerous substances, polygraph examination, or interrogation, as may be required by the law enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the administrative hearing.

##### **Article 41 – Governor – Executive and Administrative Departments**

###### **Section 1-501. Definitions.**

(a) In this subtitle the following words have the meanings indicated.

(b) "Controlled dangerous substance offense" means:

(1) An offense under Article 27, §§ 277 through 303 of the Code; or

(2) A violation of the law of any other jurisdiction if the prohibited conduct would be a violation of Article 27, §§ 277 through 303 of the Code if committed in this State.

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(c) (1) "License" means a license, permit, certification, registration, or other legal authorization:

- (i) Issued to or granted to an individual by a licensing authority; and
- (ii) Required for engaging in employment or an occupation or profession.

(2) "License" includes a commercial driver's license issued under Title 16, Subtitle 8 of the Transportation Article.

(3) Except as provided in paragraph (2) of this subsection, "license" does not include:

(i) A license to drive a motor vehicle issued by the Motor Vehicle Administration under Title 16 of the Transportation Article; or

(ii) The registration of an agent, issuer agent, or investment advisor representative under the Maryland Securities Act (Title 11 of the Corporations and Associations Article) and regulations adopted under that Act.

(d) "Licensee" means a holder of a license issued by a licensing authority.

(e) (1) "Licensing authority" means an agency of the State which issues a license.

(2) "Licensing authority" includes the Motor Vehicle Administration for purposes of issuing a commercial driver's license.

### **Section 1-502. Disclosure of Convictions.**

(a) Except as provided in subsection (d) of this section, as a condition to issuance of a license or renewal of a license, a licensing authority may require an individual applying for a license to disclose whether the individual has ever been convicted of a controlled dangerous substance offense committed on or after January 1, 1991.

(b) Subject to the provisions of § 1-505 of this subtitle, if an individual applying for a license has been convicted of a controlled dangerous substance offense committed on or after January 1, 1991, a licensing authority may:

(1) Refuse to issue a license to the individual; or

(2) Issue a license subject to any terms and conditions that the licensing authority deems appropriate under § 1-504 of this subtitle.

(c) Unless a licensee shows good cause for a failure to disclose any information that a licensing authority may require under subsection (a) of this section, a licensing authority may suspend or revoke a licensee's license if a licensee fails to disclose the information that a licensing authority may require under subsection (a) of this section.

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(d) This section may not be construed to prohibit a licensing authority which on or before January 1, 1990 required an applicant for an initial license or an applicant for a license renewal to disclose a criminal record or prior offense related to a controlled dangerous substance from:

(1) Continuing to require an applicant to disclose a criminal record or prior offense related to a controlled dangerous substance, regardless of the date of the offense; and

(2) Taking any actions permitted by law, including refusing to issue a license, if the applicant:

(i) Discloses a criminal record or prior offense related to a controlled dangerous substance; or

(ii) Wrongfully conceals a criminal record or prior offense related to a controlled dangerous substance.

### **Section 1-503. License Sanctions.**

Subject to the provisions of § 1-505 of this subtitle, if a licensing authority receives notification under Article 27, § 298A of the Code that a licensee has been convicted of a controlled dangerous substance offense committed on or after January 1, 1991, the licensing authority may:

(1) (i) Place the licensee on probation for a reasonable period of time; or

(ii) Suspend or revoke the license or reprimand the licensee;

(2) Assess the licensee, in accordance with applicable regulations, all or part of the cost of any disciplinary proceeding and sanction; or

(3) Impose any other sanction or take any other action authorized by law.

### **Section 1-504. Probation.**

(a) If a licensee is placed on probation under § 1-502 or § 1-503 of this subtitle, the licensing authority may:

(1) Require the licensee to submit to periodic drug testing during the period of probation;

(2) Require the licensee to participate in appropriate counseling or treatment; and

(3) Impose any other reasonable term or condition of probation.

(b) If a licensee who is on probation violates any condition of probation, the licensing authority may:

(1) Revoke the probation;

(2) Suspend or revoke the licensee's license; or

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- (3) Impose additional terms of probation.

**Section 1-505. License Sanctions – Procedural Requirements.**

(a) (1) Except as provided in paragraph (2) of this subsection, a licensing authority, before taking any action in regard to an initial license application, an application for a license renewal, or against a licensee under this subtitle, shall comply with the provisions of Title 10, Subtitle 2 of the State Government Article.

(2) The provisions of the Maryland Rules of Procedure shall govern in the case of a lawyer or an applicant for admission to the bar.

(b) In deciding whether to deny an applicant's application for a license or whether to impose license sanctions against a licensee and the nature of the sanctions, a licensing authority shall consider the following factors:

(1) The relationship between the controlled dangerous substance offense and the license, including:

(i) The licensee's ability to perform the tasks authorized by the license; and

(ii) Whether the public will be protected if:

1. In the case of an applicant, the license is issued; or

2. In the case of a licensee, the license is not suspended or revoked;

(2) The nature and circumstances of the controlled dangerous substance offense;

(3) If an individual is applying for a license or license renewal, the date of the controlled dangerous substance offense; and

(4) Any other relevant information.

(c) If a licensing authority decides that sanctions against a licensee may be appropriate, before imposing sanctions, the licensing authority:

(1) Shall consider the impact any sanctions may have on third persons; and

(2) May take any action to protect the rights of innocent third persons which is in the interests of justice and which is not inconsistent with the provisions of this subtitle.

(d) If a licensing authority decides to suspend or revoke a license, the licensing authority may grant the licensee a reasonable time period to complete any existing contracts.

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### **Section 1-506. Sanctions against Commercial Driver's License.**

(a) Subject to the provisions of this subtitle, if an individual who is convicted of a controlled dangerous substance offense committed on or after January 1, 1991 holds a commercial driver's license, the Motor Vehicle Administration may disqualify the individual from driving a commercial motor vehicle or take any other action permitted under this subtitle.

(b) If the Motor Vehicle Administration disqualifies an individual from driving a commercial motor vehicle under this subtitle, the Motor Vehicle Administration shall issue a noncommercial driver's license to the individual if:

- (1) The individual surrenders the commercial driver's license; and
- (2) The individual's driving privilege is not otherwise refused, suspended, revoked, or cancelled in this State or any other state.

(c) This section may not be construed to limit the authority of the Motor Vehicle Administration to disqualify an individual from driving a commercial motor vehicle or taking any other action required or permitted under the Maryland Vehicle Law.

### **Section 1-507. Authority to Adopt Regulations.**

Each licensing authority may adopt regulations to carry out the provisions of this subtitle.

## **Article 65 - Militia**

### **Section 1. Exemption From Service in the Militia.**

All able-bodied citizens of the State and all able-bodied persons of foreign birth, who have declared their intentions to become citizens of the State, and who are residents therein, shall constitute the militia, subject to the following exemptions: (1) persons exempted by the laws of the United States; (2) persons exempted by the laws of Maryland; (3) the members of any regularly organized fire or police department in any city, village or town; (4) judges and clerks of courts of record, registers of wills and deeds, sheriffs, ministers of the Gospel, members of religious communities, ecclesiastical students in the various seminaries and schools of divinity, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails; all persons actually employed as teachers in any established school, college or university; lighthouse keepers, conductors and engineers of railways, seamen actually employed as such; (5) idiots, lunatics, paupers, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes; all such exempted persons, except as enumerated in items (1) and (2) shall be available for military duty in case of war, insurrection, invasion or imminent danger thereof. Whenever the masculine gender is used in this article, it also includes the feminine gender, unless otherwise provided by law.

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### Article - Agriculture

#### Section 2-302.1. Veterinary Review Committee.

(a) In this section, "veterinary review committee" means a committee or board that:

(1) Is within one of the categories described in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (c) of this section.

(c) For purposes of this section, a veterinary review committee has the following powers and duties:

(3) To evaluate and provide assistance to any veterinary practitioner who is in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

#### Section 2-309. Veterinary Technicians.

(a) A person may register with the Board as a veterinary technician.

(b) (1) There is a Veterinary Technician Committee under the Board's jurisdiction. The Committee consists of 7 members who are appointed by the Board, subject to the approval of the Secretary. The Board shall determine the qualifications and term of each member.

(2) Each member of the Committee may not receive compensation but is entitled to reimbursement for expenses under the Standard State Travel Regulations as provided in the State budget.

(c) The Committee, subject to the Board's approval shall:

(1) Evaluate, examine, and determine the qualifications for applicants for registration as a veterinary technician;

(2) Recommend to the Board the subject, scope, form, date, time, and location for each examination;

(3) Establish continuing education requirements for veterinary technicians;

(4) Define the duties and responsibilities of registered veterinary technicians;

(5) Recommend to the Board reasonable rules and regulations to carry out the provisions of this section; and

(6) Generally assist the Board in registering and regulating veterinary technicians.

(d) To apply for registration, an applicant shall:

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- (1) Submit an application to the Board on the form the Board requires; and
- (2) Pay to the Board an application fee set by the Board.

(e) The Board shall register any applicant who:

- (1) Meets the requirements of this section;
- (2) Meets the Board's educational requirements;
- (3) Passes a Board approved examination;
- (4) Is of good moral character; and
- (5) Is at least 18 years old.

(f) A registration is issued for a term of 3 years and expires on June 30 of the third year after the date issued unless the registration is renewed as provided in this section.

(g) The Board shall renew the registration of any applicant for an additional 3-year term if the applicant:

- (1) Submits a renewal application on the form that the Board requires;
- (2) Pays to the Board a renewal fee set by the Board;
- (3) Complies with the Board's continuing education requirements; and
- (4) Otherwise is entitled to be registered.

(h) In accordance with the hearing provisions of § 2-311 of this subtitle, the Board may refuse to register an applicant, suspend or revoke the registration, or reprimand and censure, or place on probation any veterinary technician, if the veterinary technician:

- (1) Practices veterinary medicine except as permitted under this subtitle;
- (2) Fraudulently or deceptively obtains a registration;
- (3) Is professionally, physically, or mentally incompetent;
- (4) Is convicted of a felony or a crime involving moral turpitude;
- (5) Is convicted of a violation of any federal or State law relating to narcotic drugs;
- (6) Is grossly negligent or deliberately cruel to an animal;
- (7) Violates any provisions of this subtitle; or
- (8) Is determined by the Board to be incompetent as a veterinary technician.

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### **Section 2-310. Veterinarians.**

The Board may prescribe reasonable standards for the practice of veterinary medicine, including conduct and ethics. It may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee after a hearing, if the veterinarian:

(2) Is convicted of a violation of any federal or State law relating to narcotic drugs;

### **Article – Business Regulation**

### **Section 4-310. Boxers.**

(c) Subject to the hearing provisions of § 4-311 of this subtitle, the Commission shall suspend or revoke a boxer or kick boxer license and the boxer or kick boxer shall forfeit the boxer's purse or other compensation from the contest if the boxer or kick boxer:

(1) refuses to submit to the urine test required under § 4-315(b) of this subtitle; or

(2) submits a urine sample that tests positive for the presence of a controlled dangerous substance defined under Article 27, § 277 of the Code or other substance that the Commission prohibits by regulation.

### **Section 4-315. Boxers.**

(b) Each boxer or kick boxer in a contest shall submit to a chemical test of the urine of the boxer or kick boxer to detect the presence of a controlled dangerous substance defined under Article 27, § 277 of the Code or other substance that the Commission prohibits by regulation.

### **Article – Business Occupations and Professions**

### **Section 4-314. Barbers.**

(a) Subject to the hearing provisions of § 4-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

(4) habitually is intoxicated or under the influence of any drug;

### **Section 5-314. Cosmetologists.**

(a) Subject to the hearing provisions of § 5-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

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(5) is addicted to alcohol or drugs to the extent of being unfit to practice cosmetology;

### Article – Environment

#### Section 11–312. Environmental Sanitarians.

(a) The Board shall adopt a code of ethics designed to protect the public's interest.

(b) Subject to the hearing provisions of § 11–313 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may deny any applicant licensure, reprimand any licensee, or place any individual who is licensed on probation, or suspend or revoke a license, if the applicant or licensee:

(6) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(c) Except as provided in subsection (d) of this section, any person, including a Board employee, may make a written, specific charge of a violation under this section, if the person:

(1) Swears to the charge; and

(2) Files the charge with the Board secretary.

### Article – Health – General

#### Section 10–522. Private Group Homes.

(a) A license expires on the second anniversary of its effective date, unless the license is renewed for a 2-year term as provided in this section.

(b) Before the license expires, the licensee periodically may renew it for an additional 2-year term, without a public hearing, if the licensee otherwise is entitled to be licensed.

(c) The Secretary may not refuse to renew the license of a private group home that existed on July 1, 1979 because that home has:

(1) Residents who had a primary diagnosis of alcoholism, drug addiction, or severe brain damage; or

(2) More residents than allowed for a large private group home or small private group home, if the home does not accept new residents.

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### **Section 10-604. Private Group Homes.**

- (a) A private group home may admit an individual only if the individual:
- (1) Is able to understand the rules and regulations of the private group home; and
  - (2) States, in writing, a willingness to comply with those rules and regulations.
- (b) A private group home may not accept an individual who:
- (1) Has a primary diagnosis of alcoholism, drug addiction, or severe brain damage; or
  - (2) Shows current violent or antisocial behavior.

### **Article – Health Occupations**

#### **Section 1A-309. Acupuncturists.**

Subject to the hearing provisions of § 1A-310 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

- (5) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without a valid medical indication;

#### **Section 2-314. Audiologists and Speech Pathologists.**

Subject to the hearing provisions of § 2-315 of this subtitle, the Board may deny a license or limited license to any applicant, reprimand any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or limited license if the applicant, licensee, or holder:

- (13) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

#### **Section 2-318. Audiologist Rehabilitation Committee.**

(a) In this section, “audiologist rehabilitation committee” means a committee that:

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- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, an audiologist rehabilitation committee is a committee of the Board or a committee of the Maryland Speech-Language and Hearing Association that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to audiologists.

(d) For purposes of this section, an audiologist rehabilitation committee evaluates and provides assistance to any audiologist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 2-318.1. Speech-Language Pathologist Rehabilitation Committee.**

(a) In this section, "speech-language pathologist rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a speech-language pathologist rehabilitation committee is a committee of the Board or a committee of the Maryland Speech-Language and Hearing Association that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to speech-language pathologists.

(d) For purposes of this section, a speech-language pathologist rehabilitation committee evaluates and provides assistance to any speech-language pathologist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 2-318.2. Hearing Aid Dispenser Rehabilitation Committee.**

(a) In this section, "hearing aid dispenser rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a hearing aid dispenser rehabilitation committee is a committee of the Board or a committee of the Maryland members of the Hearing Aid Specialist Association of Maryland, District of Columbia, and Delaware that:

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- (1) Is recognized by the Board; and
- (2) Includes but is not limited to hearing aid dispensers.

(d) For purposes of this section, a hearing aid dispenser rehabilitation committee evaluates and provides assistance to any hearing aid dispenser, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 3-313. Chiropractors.**

Subject to the hearing provisions of § 3-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (6) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 3-406. Chiropractor Rehabilitation Committee.**

(a) In this section, "chiropractor rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a chiropractor rehabilitation committee is a committee of the Board or a committee of the Maryland Chiropractic Association that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to chiropractors.

(d) For purposes of this section, a chiropractor rehabilitation committee evaluates and provides assistance to any chiropractor, chiropractic assistant, and any other individual regulated by the Board in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 4-315. Dentists; Dental Hygienists.**

(a) Subject to the hearing provisions of § 4-318 of this subtitle, the Board may deny a general license to practice dentistry, a limited license to practice dentistry, or a teacher's license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the applicant or licensee:

- (5) Provides professional services while:

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(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(b) Subject to the hearing provisions of § 4-318 of this subtitle, the Board may deny a general license to practice dental hygiene, a teacher's license to practice dental hygiene, or a temporary license to practice dental hygiene to any applicant, reprimand any licensed dental hygienist, place any licensed dental hygienist on probation, or suspend or revoke the license of any licensed dental hygienist, if the applicant or licensee:

(12) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 4-501. Dental Review Committee.**

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

(2) "Dental review committee" means a committee or board that:

(i) Is within one of the categories described in subsection (b) of this section; and

(ii) Performs any of the functions listed in subsection (c) of this section.

(3) "Provider of dental care" means any person who is licensed by law to provide dental care to individuals.

(c) For purposes of this section, a dental review committee:

(5) Evaluates and provides assistance to any provider of dental care in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 4-503. Dental Hygienist Rehabilitation Committee.**

(a) In this section "dental hygienist rehabilitation committee" means a committee that:

(1) Is defined in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (d) of this section.

(b) For the purposes of this section, a dental hygienist rehabilitation committee is a committee of the Board or of the Dental Hygienists' Association that:

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- (1) Is recognized by the Board; and
- (2) Includes but is not limited to dental hygienists.

(d) For purposes of this section, a dental hygienist rehabilitation committee evaluates and provides assistance to any dental hygienist in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 5-311. Dietitians.**

Subject to the hearing provisions of § 5-312 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

- (11) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 5-314. Dietetic Rehabilitation Committee.**

(a) In this section, "dietetic rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a dietetic rehabilitation committee is a committee of the Board or a committee:

- (1) Composed equally of members of:
  - (i) The Maryland Dietetic Association; and
  - (ii) The American Nutritionists Association;
- (2) Recognized by the Board; and
- (3) That includes but is not limited to dietitians and nutritionists.

(d) For purposes of this section, a dietetic rehabilitation committee evaluates and provides assistance to any dietitian, nutritionist, and any other individual regulated by the Board in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

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### **Section 6-312. Electrologists.**

(a) Subject to the hearing provisions of § 6-314 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

(8) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 6-504. Electrologist Rehabilitation Committee.**

(a) In this section, "electrologist rehabilitation committee" means a committee that:

(1) Is defined in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, an electrologist rehabilitation committee is a committee of the Board or a committee of any association representing electrologists that:

(1) Is recognized by the Board; and

(2) Includes but is not limited to electrologists.

(d) For purposes of this section, an electrologist rehabilitation committee evaluates and provides assistance to any electrologist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 7-316. Morticians.**

(a) Subject to the hearing provisions of § 7-319 of this subtitle and except as to a funeral establishment license, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke any license if the applicant or licensee:

(23) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

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(b) (1) Subject to the hearing provisions of § 7-319 of this subtitle and paragraph (2) of this subsection, the Board may deny, suspend, or revoke a funeral establishment license for any of the grounds listed in subsection (a) of this section.

(2) The Board may not deny, suspend, or revoke a funeral establishment license because of a violation of a provision of this title by an employee of the establishment, unless the employee has a proprietary interest in the business that is conducted from the establishment.

### **Section 7-408. Mortician Rehabilitation Committee.**

(a) In this section, "mortician rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a mortician rehabilitation committee is a committee of the Board or a committee of any association representing morticians that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to morticians.

(d) For purposes of this section, a mortician rehabilitation committee evaluates and provides assistance to any mortician, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 8-208. Nursing Rehabilitation Committee.**

(a) In this section, "program" means the rehabilitation program.

(b) (1) There is a Rehabilitation Committee in the Board.

(2) The Board may create 1 or more rehabilitation committees.

(j) In addition to the powers set forth elsewhere in this subtitle, the Committee may:

(1) Evaluate those nurses who request participation in the program according to the guidelines prescribed by the Board and consider the recommendations for admission into the program;

(2) Review and designate those treatment facilities and services to which nurses in the program may be referred;

(3) Receive and review information concerning a nurse participating in the program;

(4) Consider in the case of each nurse participating in a program whether the nurse may with safety continue or resume the practice of nursing; and

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(5) Have meetings as necessary to consider the requests of nurses to participate in the program, and consider reports regarding nurses participating in the program.

(k) In addition to the duties set forth elsewhere in this subtitle, the Committee shall:

(1) Prepare reports to be submitted to the Board; and

(2) Set forth in writing for each nurse participating in the program a rehabilitation program established for that nurse, including the requirements for supervision and surveillance.

(l) The Committee shall inform each nurse who requests participation in the program of:

(1) The procedures followed in the program;

(2) The rights and responsibilities of the nurse in the program; and

(3) The possible results of noncompliance with the program.

(m) (1) Each nurse who requests to participate in the program shall agree to cooperate with the individual rehabilitation program designed by a committee.

(2) Any failure to comply with the provisions of a rehabilitation program may result in termination of the nurse's participation in the program.

(3) The Committee shall report the name and license number of a nurse who is expelled from the program for failure to comply with the conditions of the program.

(4) (i) The program shall transfer to the Board all the records of any nurse expelled from the program.

(ii) The Board may initiate disciplinary action based on the failure of the nurse to comply with the conditions of the program in accordance with the provisions of §§ 8-316 and 8-317 of this title.

(n) After a Committee has determined that a nurse has been rehabilitated, the Committee shall purge and destroy all records concerning a nurse's participation in the program.

(o) All Board and Committee records of a proceeding concerning the rehabilitation of a nurse in the program are confidential and are not subject to discovery or subpoena in any civil or criminal action.

(p) The Board shall provide for the representation of any person making reports to a Committee or the Board under this section in any action for defamation directly resulting from reports or information given to a Committee or the Board regarding a nurse's participation in the program.

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### Section 8-316. Nurses.

(a) Subject to the hearing provisions of § 8-317 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee if the applicant or licensee:

- (7) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (18) Is habitually intoxicated;
- (19) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in Article 27 of the Code;
- (21) Is expelled from the rehabilitation program established pursuant to § 8-208 of this title for failure to comply with the conditions of the program;

### Section 8-505. Nurses; Report of Certain Actions or Conditions.

(a) Except as provided in subsection (b) of this section, the following applies:

(1) If a nursing administrator, registered nurse, or licensed practical nurse knows of an action or condition that might be grounds for action under § 8-316 of this title, the nursing administrator, registered nurse, or licensed practical nurse shall report the action or condition to the Board; and

(2) An individual shall have the immunity from liability described under § 5-386 of the Courts and Judicial Proceedings Article for making a report as required by this subsection.

(b) If a nurse administrator, registered nurse, or licensed practical nurse has reason to know that a licensee has committed an action or has a condition that might be grounds for reprimand or probation of the licensee or suspension or revocation of the license under § 8-316 of this title because the licensee is alcohol impaired or drug impaired, the nurse administrator, registered nurse, or licensed practical nurse is not required to report the licensee to the Board if:

(1) The nurse administrator, registered nurse, or licensed practical nurse knows that the licensee is in an alcohol or drug treatment program that is accredited by the Joint Commission on the Accreditation of Health Care Organizations, is certified by the Department, or is under the care of a health care practitioner who is competent and capable of dealing with alcoholism and drug abuse;

(2) The nurse administrator, registered nurse, or licensed practical nurse is able to verify that the licensee remains in the treatment program until discharge; and

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(3) The action or condition of the licensee has not caused injury to any person while the licensee is practicing registered nursing or licensed practical nursing.

(c) A person is not required under this section to make any report that would be in violation of any federal or State law, rule, or regulation concerning the confidentiality of alcohol and drug abuse patient records.

### **Section 9-314. Nursing Home Administrators.**

(a) The Board shall investigate and take appropriate action as to any complaint filed with the Board that alleges that a licensee has failed to meet any standard of the Board.

(b) Subject to the hearing provisions of § 9-315 of this subtitle, the Board may deny a license or limited license to any applicant, reprimand any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or limited license if the applicant, holder, or licensee:

(5) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 9-317. Nursing Home Administrator Rehabilitation Committee.**

(a) In this section, "nursing home administrator rehabilitation committee" means a committee that:

(1) Is defined in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a nursing home administrator rehabilitation committee is a committee of the Board or a committee of any association representing nursing home administrators that:

(1) Is recognized by the Board; and

(2) Includes but is not limited to nursing home administrators.

(d) For purposes of this section, a nursing home administrator rehabilitation committee evaluates and provides assistance to any nursing home administrator, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

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### **Section 10-315. Occupational Therapists.**

Subject to the hearing provisions of § 10-316 of this subtitle, the Board may deny a license or temporary license to any applicant, reprimand any licensee or holder of a temporary license, place any licensee or holder of a temporary license on probation, or suspend or revoke a license or temporary license if the applicant, licensee, or holder:

(8) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substances defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 10-319. Occupational Therapist Rehabilitation Committee.**

(a) In this section, "occupational therapist rehabilitation committee" means a committee that:

(1) Is defined in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, an occupational therapist rehabilitation committee is a committee of the Board or a committee of the Maryland Occupational Therapy Association that:

(1) Is recognized by the Board; and

(2) Includes but is not limited to occupational therapists.

(d) For purposes of this section, an occupational therapist rehabilitation committee evaluates and provides assistance to any occupational therapist, occupational therapy assistant, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 11-313. Optometrists.**

Subject to the hearing provisions of § 11-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

(5) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

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**Section 11-405. Optometrist Rehabilitation Committee.**

(a) In this section, "optometrist rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, an optometrist rehabilitation committee is a committee of the Board or a committee of the Maryland Optometric Association that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to optometrists.

(d) For purposes of this section, an optometrist rehabilitation committee evaluates and provides assistance to any optometrist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

**Section 12-101. State Board of Pharmacy.**

(c) "Board" means the State Board of Pharmacy.

**Section 12-313. Pharmacists.**

(a) In this section, "convicted" includes a determination of guilt, a guilty plea, or a plea of nolo contendere followed by a sentence.

(b) Subject to the hearing provisions of § 12-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant or licensee:

- (4) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (14) Without first having received a written or oral prescription for the drug from an authorized prescriber, dispenses any drug for which a prescription is required;
- (15) Except as provided in § 12-511 of this title, unless an authorized prescriber authorizes the refill in the original prescription or by oral order, refills a prescription for any drug for which a prescription is required;
- (16) Violates any provision of § 12-509 of this title, which concerns the labeling requirements for prescription medicines;

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**Section 12-317. Pharmacists Rehabilitation Committee.**

(a) In this section "pharmacist rehabilitation committee" means a committee that:

(1) Is within one of the categories described in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (c) of this section.

(b) For purposes of this section, a pharmacist rehabilitation committee is:

(1) A committee of the Maryland Pharmaceutical Association;

(2) The Maryland Society of Hospital Pharmacists; or

(3) Any other professional society or association that:

(i) Is recognized by the Board; and

(ii) Is composed of pharmacists.

(c) For purposes of this section, a pharmacist rehabilitation committee evaluates and provides assistance to any pharmacist in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

**Section 12-707. Pharmacists.**

(d) Within 10 days after a court renders the conviction, the court shall report to the Board each conviction of a pharmacist for:

(1) Any crime respecting the pharmacy or drug laws that involves professional misconduct; or

(2) Any crime that involves the State law regarding controlled dangerous substances or the federal narcotic laws.

**Section 13-316. Physical Therapists.**

Subject to the hearing provisions of § 13-317 of this subtitle, the Board may deny a license, temporary license, or restricted license to any applicant, reprimand any licensee or holder of a temporary license or restricted license, place any licensee or holder of a temporary license or restricted license on probation, or suspend or revoke a license, temporary license, or restricted license if the applicant, licensee, or holder:

(8) Is convicted of a violation of a narcotic law;

(9) To an extent that impairs professional competence, habitually uses any:

(i) Drug; or

(ii) Alcoholic beverage;

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**Section 13-319. Physical Therapist Rehabilitation Committee.**

(a) In this section "physical therapist rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of the section; and
- (2) Performs any of the functions listed in subsection (e) of the section.

(b) For purposes of this section, a physical therapist rehabilitation committee is a committee of the American Physical Therapy Association of Maryland, Inc. that:

- (1) Is recognized by the Board; and
- (2) Is composed of physical therapists.

(c) For purposes of this section, a physical therapist rehabilitation committee evaluates and provides assistance to any physical therapist and physical therapist assistant in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

**Section 14-404. Physicians.**

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

- (7) Habitually is intoxicated;
- (8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in Article 27 of the Code;
- (9) Provides professional services:
  - (i) While under the influence of alcohol; or
  - (ii) While using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes;

**Section 15-314. Physician Assistants.**

Subject to the hearing provisions of § 15-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may reprimand any certificate holder or suspend or revoke a certificate if the certificate holder:

- (3) Violates any provision of this title or any regulations adopted under this title or commits any act which could serve as the basis for disciplinary action against a physician under § 14-404 of this article;

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### **Section 16-312. Podiatrists.**

(a) Subject to the hearing provisions of § 16-314 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or a limited license to any applicant, reprimand any licensee or holder of a limited license, impose an administrative monetary penalty not exceeding \$5,000 on any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or a limited license if the applicant, licensee, or holder:

- (5) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (7) Personally uses a controlled dangerous substance in violation of the law;
- (8) Prescribes or distributes a controlled dangerous substance to any other person in violation of the law;

### **Section 16-403. Podiatrist Rehabilitation Committee.**

- (a) In this section, "podiatrist rehabilitation committee" means a committee that:
- (1) Is defined in subsection (b) of this section; and
  - (2) Performs any of the functions listed in subsection (d) of this section.
- (b) For purposes of this section, a podiatrist rehabilitation committee is a committee of the Board or a committee of the Maryland Podiatry Association that:
- (1) Is recognized by the Board; and
  - (2) Includes but is not limited to podiatrists.
- (d) For purposes of this section, a podiatrist rehabilitation committee evaluates and provides assistance to any podiatrist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 17-313. Professional Counselors.**

Subject to the hearing provisions of § 17-314 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a certificate to any applicant, reprimand any certificate holder, or suspend or revoke a certificate of any certificate holder if the applicant or certificate holder:

- (2) Is addicted to any narcotic or is habitually intoxicated;

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### **Section 17-317. Professional Counselors Rehabilitation Committee.**

(a) In this section, "professional counselor rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a professional counselor rehabilitation committee is a committee of the Board or a committee of any association or associations representing professional counselors that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to professional counselors.

(d) For purposes of this section, a professional counselor rehabilitation committee evaluates and provides assistance to any professional counselor, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

### **Section 18-313. Psychologists.**

Subject to the hearing provisions of § 18-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of any licensee if the applicant or licensee:

- (4) Is or has been addicted to any narcotic or habitually intoxicated;

### **Section 18-318. Psychologist Rehabilitation Committee.**

(a) In this section, "psychologist rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a psychologist rehabilitation committee is a committee of the Board or a committee of the Maryland Psychological Association that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to psychologists.

(d) For purposes of this section, a psychologist rehabilitation committee evaluates and provides assistance to any psychologist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

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### **Section 19-311. Social Workers.**

Subject to the hearing provisions of § 19-312 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (9) Provides professional services while:
  - (i) Under the influence of alcohol; or
  - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

### **Section 19-315. Social Worker Rehabilitation Committee.**

(a) In this section, "social worker rehabilitation committee" means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) For purposes of this section, a social worker rehabilitation committee is a committee of the Board or a committee with representatives from the Maryland Chapter of the National Association of Social Workers, Inc. and the Metropolitan Washington Chapter of the National Association of Social Workers, Inc. that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to social workers.

(d) For purposes of this section, a social worker rehabilitation committee evaluates and provides assistance to any social worker, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

## **Article - Transportation**

### **Section 5-905. Suspension, Revocation, or Refusal to Issue Air School License.**

(a) After notice and opportunity for hearing, the Administration may suspend, revoke, or refuse to issue an air school license if it reasonably determines that the air school is unqualified.

(b) In determining whether a license should be suspended, revoked, or refused, the Administration shall be governed by the standards required by § 5-208 of this title and, among other things, shall consider:

- (1) Whether the air school has violated any law of this State or of the United States relating to aeronautics; and
- (2) Whether any instructor of the air school:

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- (i) Is addicted to the use of narcotics or other habit forming drugs;
- (ii) Is addicted to the excessive use of alcoholic beverages;
- (iii) Has made a material false statement in connection with an application to the Administration under this subtitle; or
- (iv) Has been guilty of conduct dangerous to the public safety or to the safety of those engaged in aeronautics.

### Article – Labor and Employment

#### Section 9-506. Workers' Compensation.

(a) A covered employee or a dependent of a covered employee is not entitled to compensation or benefits under this title as a result of:

(1) an intentional, self-inflicted accidental personal injury, compensable hernia, or occupational disease; or

(2) an attempt to injure or kill another.

(b) A covered employee or a dependent of a covered employee is not entitled to compensation or benefits under this title as a result of an accidental personal injury, compensable hernia, or occupational disease if:

(1) the accidental personal injury, compensable hernia, or occupational disease was caused solely by the effect on the covered employee of:

(i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;

or

(ii) another drug that makes the covered employee incapable of satisfactory job performance; and

(2) the drug was not administered or taken in accordance with the prescription of a physician.

(c) A covered employee or a dependent of a covered employee is not entitled to compensation or benefits under this title as a result of an accidental personal injury, compensable hernia, or occupational disease if the accidental personal injury, compensable hernia, or occupational disease was caused solely by the intoxication of the covered employee while on duty.

(d) A covered employee or a dependent of a covered employee is not entitled to compensation or benefits under this title as a result of an accidental personal injury, compensable hernia, or occupational disease if the accidental personal injury, compensable hernia, or occupational disease was caused by the willful misconduct of the covered employee.

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(e) In a proceeding on a claim for compensation, there is, absent substantial evidence to the contrary, a presumption that an accidental personal injury, compensable hernia, or occupational disease:

(1) was not caused by the intent of the covered employee to injure or kill the covered employee or another individual;

(2) was not caused solely by the effect on the covered employee of:

(i) a depressant, hallucinogenic, hypnotic, narcotic, or stimulant drug;  
or

(ii) another drug that makes the covered employee incapable of satisfactory job performance; and

(3) was not caused solely by the intoxication of the covered employee while on duty.

### **V. MISCELLANEOUS PROVISIONS**

#### **Article 38A – Fires and Investigations**

##### **Section 23. Fireworks Plants; Safety Requirements for Personnel.**

(d) No employee or other person shall enter or attempt to enter any fireworks plant with liquor or narcotics in his possession, or while under the influence of liquor or narcotics, or partake of intoxicants or narcotics while in a fireworks plant.

#### **Article 41 – Governor – Executive and Administrative Departments**

##### **Section 2-101. Governor's Powers in Times of Public Crisis.**

(a) It is hereby declared to be the legislative intent to recognize the Governor's broad power of action in the exercise of the police power of the State to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this section shall be broadly construed to effectuate this purpose.

(b) The following terms are defined for the purposes of this subtitle.

(1) "Crisis", "disaster", "rioting", "catastrophe" and "or similar public emergency" shall refer to a situation in which three or more persons are, contemporaneously, both as to time and place, engaged in tumultuous conduct which tends to the commission of unlawful acts which disturb the public peace or which tend to precipitate the unlawful destruction or damage of public or private property.

(2) "Orders", "rules" and "regulations" shall mean directives reasonably calculated effectively to control and terminate the crisis, disaster, rioting, catastrophe or similar public emergency.

(3) "Promulgate" shall mean to announce publicly.

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(4) "Any action" shall mean such measures as shall be reasonably calculated effectively to control and terminate the crisis, disaster, rioting, catastrophe or similar public emergency.

(5) "Militia" shall mean the organized and unorganized militia as defined by Article 65, § 5 of the Annotated Code of Maryland (1957 Edition).

(c) During times of public crisis, disaster, rioting, catastrophe or similar public emergency within the State, and when public safety is imperiled, or upon reasonable apprehension of immediate danger thereof, the Governor may proclaim a state of emergency and designate the area involved upon his own volition; or upon the application of the chief executive officer of a county, city or local municipality; or upon the application of the governing body of a county, city or local municipality; or upon the application of the Superintendent of the State Police. Following such proclamation, the Governor may promulgate such reasonable orders, rules and regulations as he deems necessary to protect life and property, or to bring the emergency situation within the affected area under control, after reasonable notice of such orders, rules and regulations is given in a paper of general circulation or through television or radio serving the affected area or by circulating notices or by posting signs at conspicuous places within the affected area. Such orders, rules and regulations, by way of enumerated example rather than limitation, may provide for the control of traffic, including public and private transportation, within the affected area; designation of specific zones within the area in which, under necessitous circumstances, the occupancy and use of buildings and vehicles may be controlled; control of the movement of persons or vehicles into, within or from these designated areas; control of places of amusement, of assembly, and of persons on public streets and thoroughfares; establishment of curfews; control of the sale, transportation and use of alcoholic beverages and liquors; control of the possession, sale, carrying and use of firearms or other dangerous weapons and ammunition; and the control of the storage, use and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety, which shall include but not be limited to "Molotov cocktails". Such orders, rules and regulations shall be effective from the time and in the manner prescribed in such orders, rules and regulations and shall be made public prior to such time as provided herein. Such orders, rules and regulations may be amended, modified or rescinded, in like manner, from time to time by the Governor throughout the duration of the emergency, but in any event shall cease to be in effect upon a declaration by the Governor that the emergency no longer exists.

### Article -- Estates and Trusts

#### Section 13-201. Appointment of Guardian.

(a) Upon petition, and after any notice or hearing prescribed by law or the Maryland Rules, the court may appoint a guardian of the property of a minor or a disabled person.

(c) A guardian shall be appointed if the court determines that

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(1) The person is unable to manage his property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance, and

(2) The person has or may be entitled to property or benefits which require proper management.

### **Section 13-705. Appointment of Guardian of Disabled Person.**

(a) On petition and after any notice or hearing prescribed by law or the Maryland Rules, a court may appoint a guardian of the person of a disabled person.

(b) A guardian of the person shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

## **Article - Health - General**

### **Section 17-214.1. Job Related Alcohol and Controlled Dangerous Substance Testing.**

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

(1) "Alcohol or controlled dangerous substance testing" means a procedure used to determine whether or not a specimen contains a controlled dangerous substance or alcohol.

(2) "Certification" means the approval granted by the Department for a laboratory to engage in job-related alcohol or controlled dangerous substance testing.

(3) "Controlled dangerous substance" has the meaning stated in Article 27, § 277 of the Code.

(4) "Job-related" means any alcohol or controlled dangerous substance testing used by an employer for a legitimate business purpose.

(5) "Laboratory" means a facility or other entity that conducts job-related alcohol or controlled dangerous substance testing.

(b) An employer who requires any person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance or alcohol shall:

(1) Have the specimen tested by a laboratory that:

(i) Holds a permit under this subtitle; or

(ii) Is located outside of the State and is certified or otherwise approved under subsection (e) of this section; and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) At the time of testing, at the person's request, inform the person of the name and address of the laboratory that will test the specimen.

(c) (1) An employer who requires any employee, contractor, or other person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance or alcohol and who receives notice that an employee, contractor, or other person has tested positive for the use or abuse of any controlled dangerous substance or alcohol shall, after confirmation of the test result, provide the employee, contractor, or other person with:

(i) A copy of the laboratory test indicating the test results;

(ii) A copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol by employees, contractors, or other persons;

(iii) If applicable, written notice of the employer's intent to take disciplinary action, terminate employment, or change the conditions of continued employment; and

(iv) A statement or copy of the provisions set forth in subsection (d) of this section permitting an employee to request independent testing of the same sample for verification of the test result.

(2) The information required to be provided to the employee, contractor, or other person under paragraph (1) of this subsection shall be delivered to the employee, contractor, or other person:

(i) Either in person or by certified mail; and

(ii) Within 30 days from the date the test was performed.

(d) (1) A person who is required to submit to job-related testing, under subsection (b) of this section, may request independent testing of the same urine or blood sample for verification of the test results by a laboratory that:

(i) Holds a permit under this subtitle; or

(ii) If located outside of the State, is certified or otherwise approved under subsection (e) of this section.

(2) The person shall pay the cost of an independent test conducted under this subsection.

(e) (1) The Department of Health and Mental Hygiene shall adopt regulations governing the certification of laboratories that conduct job-related alcohol or controlled dangerous substance testing.

(2) In addition to any other laboratory standards, the regulations shall:

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(i) Require that the laboratory comply with the guidelines for laboratory accreditation as set forth by the College of American Pathologists, the U.S. Health Care Financing Administration (HCFA), or any other federal government agency or program designated to certify or approve a laboratory that is acceptable to the Secretary;

(ii) Require that a laboratory performing confirmation tests be inspected and accredited in forensic urine drug analysis by the College of American Pathologists, the U.S. Health Care Financing Administration (HCFA), or any other federal government agency or program designated to inspect and accredit a laboratory that is acceptable to the Secretary;

(iii) Require that the laboratory be a participant in a program of proficiency testing of urinary drug screening conducted by an organization acceptable to the Secretary;

(iv) Require that the laboratory comply with any federal standards regarding cutoff levels for positive testing that are established by the United States Department of Health and Human Services as mandatory guidelines for federal workplace drug testing programs; and

(v) Include procedures for annual recertification and inspection.

(f) This section does not apply to:

(1) Alcohol or controlled dangerous substance testing of a person under arrest or held by a law enforcement or correctional agency;

(2) Alcohol testing procedures conducted by a law enforcement or correctional agency on breath testing equipment certified by the State Toxicologist; or

(3) Controlled dangerous substance testing by a laboratory facility of a law enforcement or correctional agency that maintains laboratory testing standards comparable to the standards in this section.

(g) This section applies to job-related alcohol and controlled dangerous substance testing of any person, including preemployment applicants, employees, and contractors.

(h) (1) Except as provided in paragraph (2) of this subsection, in the course of obtaining information for, or as a result of, conducting job-related alcohol or controlled dangerous substance testing for an employer under this section, a laboratory, a physician, including a physician retained by the employer, or any other person may not reveal to the employer information regarding:

(i) The use of a nonprescription drug, excluding alcohol, that is not prohibited under the laws of the State; or

(ii) The use of a medically prescribed drug, unless the person being tested is unable to establish that the drug was medically prescribed under the laws of the State.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) The prohibitions against disclosure of information under paragraph (1) of this subsection do not apply to the extent that they prevent a person from complying with the applicable provisions of the Federal Commercial Motor Vehicle Safety Act of 1986 and the Federal Motor Carrier Safety Regulations.

### **Section 21-202. Scope of the Maryland Food, Drug, and Cosmetic Act.**

(a) Any drug that is designated as a "controlled dangerous substance" under the provisions of Article 27, § 276 et seq. (subheading "Health — Controlled Dangerous Substances") of the Code is governed by that subheading as well as by this subtitle.

(b) If, as to any drug that is a "controlled dangerous substance", there is any conflict between the provisions of this subtitle and those of Article 27 of the Code, the provisions of Article 27 of the Code apply.

### **Section 21-216. Adulterated Drugs and Devices.**

(a) For purposes of this subtitle, a drug or device is adulterated if the standards in this section apply.

(b) A drug or device is adulterated if:

(1) Any part of it is a filthy, putrid, or decomposed substance; or

(2) It was produced, prepared, packed, or held under unsanitary conditions that reasonably would be expected to have:

(i) Contaminated it with filth; or

(ii) Caused it to be injurious to health.

(c) In addition to the grounds specified in subsection (b) of this section, a drug is adulterated if:

(1) Any part of its container is composed of any poisonous or otherwise deleterious substance that reasonably would be expected to have caused the drug to be injurious to health;

(2) For purposes of coloring only, it is or it contains a color additive, the particular use of which has not been found safe as provided under § 21-239 of this subtitle;

(3) The mixing or packing of any substance with the drug has reduced the quality or strength of the drug;

(4) Any substance has been substituted for any part of the drug;

(5) The methods, facilities, or controls used in the manufacture, processing, packing, or holding of the drug do not conform to, or are not administered in conformity to, good practice to assure that the drug:

(i) Meets the requirements of this subtitle as to safety; and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(ii) Has the identity, strength, quality, and purity that it purports to have;

(6) It is purported to be a drug the name of which is recognized in an official compendium and:

(i) The strength of the drug differs from, or the quality or purity of the drug falls below, the standard set in the official compendium; and

(ii) The difference in strength, quality, or purity is not stated plainly on its label; or

(7) Although not purported to be a drug recognized in an official compendium, the strength of the drug differs from, or the quality or purity of the drug falls below that which the drug purports to possess.

(d) (1) For purposes of administering subsection (c)(6) of this section, any determination as to whether the strength of a drug differs from or as to whether its quality or purity falls below the standard set in an official compendium shall be made in accordance with the tests or methods of assay set forth in the official compendium, or, in the absence of or inadequacy of those tests or methods of assay, those provided under the Federal Act.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, if a drug is recognized in both the United States Pharmacopoeia and National Formulary and in the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia and National Formulary.

(ii) If the drug is labeled and offered for sale as a homeopathic drug, it is subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia and National Formulary.

### **Section 21-217. Misbranded Drugs and Devices -- In General.**

(a) For purposes of this subtitle, a drug or device is misbranded if the standards in this section or in § 21-218 or § 21-220(d) or (e) of this subtitle apply.

(b) A drug or device is misbranded if:

(1) Its labeling is false or misleading in any way;

(2) Its labeling or packaging does not conform with any provision of § 21-248 of this subtitle;

(3) It is in package form and it does not bear a label that contains the name and place of business of the manufacturer, packer, or distributor;

(4) Any word, statement, or other information required under this subtitle to appear on its labeling is not placed prominently on the labeling in a manner that is:

(i) Conspicuous as compared with other words, statements, designs, or symbols on the labeling; and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(ii) In terms likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(5) Its labeling does not include, in whatever manner and form that may be necessary to protect the user of the drug or device:

(i) Adequate directions for the use of the drug or device; and

(ii) Adequate warnings against:

1. The use of the drug or device by anyone suffering from a pathological condition that may cause its use to be dangerous to health;

2. The use of the drug or device by a child if its use by a child may be dangerous; and

3. Unsafe dosages, methods of administration, or duration of administration of the drug or device;

(6) It is dangerous to health when used in the dosage, with the frequency, or for the duration specified, recommended, or suggested in the labeling of the drug or device; or

(7) The trademark, trade name, imprint, symbol, or other identifying mark of another drug or any likeness of any of these markings of another drug or device is placed on the drug or device or its container with the intent to defraud.

(c) (1) Subsection (b)(5)(i) of this section, which concerns the provision of directions for the use of a drug or device, does not apply to a drug or device that is exempted by:

(i) A rule or regulation adopted under the Federal Act; or

(ii) A rule or regulation adopted by the Secretary under this subsection.

(2) If the Secretary finds that, as applied to a particular drug or device, any requirement of subsection (b)(5)(i) of this section is not necessary for the protection of the public health, the Secretary shall adopt a rule or regulation to exempt the drug or device from that requirement.

### **Section 21-218. Additional Grounds of Drug Misbranding.**

(a) In this section, "antibiotic drug" means any drug that:

(1) Is intended for use by a human being;

(2) Contains any quantity of a chemical substance or the chemically synthesized equivalent of a chemical substance that is produced by microorganisms; and

(3) Can inhibit or destroy microorganisms in dilute solution.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(b) In addition to any other ground that may apply under § 21-217 or § 21-220 of this subtitle, a drug is misbranded if:

(1) It is for use by a human being and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca leaves, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of any of these substances, which derivative, after investigation, has been designated as habit forming under a rule or regulation adopted under the Federal Act or by the Secretary under this subtitle, unless its label states the name and quantity or proportion of the substance or derivative and, immediately beside that information, a warning that states: "Warning — May be habit forming.";

(2) It has an established name and, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula of the drug, its label does not bear the established name of the drug;

(3) Except as otherwise permitted by a rule or regulation adopted under the Federal Act or by the Secretary under subsection (d)(2) of this section, it is made from 2 or more ingredients and its label does not bear the established name, if any, of and the quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any of these substances, but a nonprescription drug is not misbranded under this item on the ground that its label does not show the quantity or proportion of an active ingredient unless the ingredient is specifically named in this item;

(4) Except as otherwise permitted by a rule or regulation adopted under the Federal Act or by the Secretary under subsection (d)(2) of this section, it is a prescription drug, and the established name of the drug and any of its ingredients are not:

(i) Printed prominently on the label of the drug in type at least half as large as that used to print any proprietary name or other designation of the drug or of its ingredients; and

(ii) Printed in this same manner on any labeling of the drug on which any name for the drug or for an ingredient is used;

(5) It purports to be a drug whose name is recognized in an official compendium and it is not:

(i) Labeled as required by the applicable official compendium; or

(ii) Packaged as required by:

1. The applicable official compendium; or

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

2. A consent order granted under the Federal Act or by the Secretary to modify the packaging requirements of the official compendium;

(6) It has been found under the Federal Act or by the Secretary to be a drug liable to deterioration, and:

(i) It is not packaged in the form and manner required by the rules and regulations adopted under the Federal Act or by the Secretary; or

(ii) Its label does not bear a statement of precautions as required by those rules and regulations;

(7) It is a prescription drug that was manufactured after July 1, 1976 and its label does not bear the name of the actual manufacturer of the drug;

(8) Its container is made, formed, or filled in a manner that is misleading;

(9) It is an imitation of another drug;

(10) It is offered for sale under the name of another drug;

(11) It is or it is purported to be a drug that is composed in whole or in part of insulin and it is not from a batch for which a currently unexpired certificate or release has been issued under the Federal Act;

(12) It is or it is purported to be a drug composed in whole or in part of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or of any derivative of these drugs and, unless the drug has been exempted by rules and regulations adopted under the Federal Act, it is not from a batch for which a currently unexpired certificate or release has been issued under the Federal Act;

(13) It is a color additive that is intended to be used in or on a drug for the purpose of coloring only and its packaging or labeling does not conform to any requirement adopted under § 21-239 of this subtitle; or

(14) It is a prescription drug that is distributed or offered for sale in this State, and the manufacturer, packer, or distributor of the drug does not include in any advertisement, or in any other descriptive printed matter that it issues or causes to be issued regarding the drug, a true statement of:

(i) The established name of the drug, which name is printed prominently and in type at least half as large as that used for any printed trade or brand name of the drug;

(ii) The formula of the drug showing quantitatively each ingredient of the drug to the extent required for labels under the Federal Act; and

(iii) A brief summary of any other information that relates to the side effects, contraindications, or effectiveness of the drug, as is required by the rules and regulations adopted under the Federal Act.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(c) (1) For purposes of subsection (b)(5) of this section, which imposes packaging and labeling requirements on any drug that is purported to be recognized in an official compendium, the provisions of this subsection shall apply.

(2) (i) Except as otherwise provided in this subsection, if the drug is recognized in both the United States Pharmacopoeia and National Formulary and in the Homeopathic Pharmacopoeia of the United States, it is subject to the packaging and labeling requirements of the United States Pharmacopoeia and National Formulary.

(ii) If the drug is labeled and offered for sale as a homeopathic drug, it is subject to the packaging and labeling requirements of the Homeopathic Pharmacopoeia of the United States and not to the requirements of the United States Pharmacopoeia and National Formulary.

(3) If there is an inconsistency between the provisions of paragraph (2) of this subsection and the requirements of subsection (b)(2), (3), or (4) of this section as to the name by which a drug or its ingredients shall be designated, the requirements of subsection (b)(2), (3), or (4) of this section control.

(d) (1) For purposes of subsection (b)(1) of this section, after investigation, the Secretary may adopt a rule or regulation that designates any chemical derivative of any substance named in that subsection as habit forming.

(2) If, as to a particular drug, compliance with any requirement of subsection (b)(3) or (4) of this section is impractical, the Secretary shall adopt a rule or regulation that, to the extent appropriate, exempts the drug from the provisions of those subsections.

(3) (i) If the Secretary finds that a drug is liable to deterioration, the Secretary may adopt a rule or regulation that specifies how the drug is to be packaged and requires that its label bear a statement of precautions.

(ii) The Secretary may not adopt a rule or regulation under subparagraph (i) of this paragraph before the Secretary has informed the appropriate body that is charged with the revision of the official compendium of the need for the packaging or labeling requirements and that body has failed to adopt the requirements within a reasonable time.

### **Section 21-219. Exceptions from Labeling and Packaging Requirements for Drugs and Devices Subject to Additional Processing, Labeling, or Packing.**

(a) A drug or device is not subject to the labeling or packaging requirements of this subtitle if a rule or regulation is adopted under the Federal Act or as provided under this section to exempt it.

(b) The Secretary shall adopt rules and regulations to exempt from the labeling requirements of this subtitle any drug or device that is to be transported in substantial quantities from one establishment to another, if in accordance with the practice of the trade, the drug or device is to be processed, labeled, or repacked at the second establishment.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 21-220. Prescription Requirements.**

(a) A drug that is intended for use by human beings and is in any of the following classifications may be dispensed by a pharmacist only on a written or oral prescription from a health practitioner authorized by law to prescribe the drug:

(1) A habit-forming drug to which § 21-218(b)(1) of this subtitle applies.

(2) A drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a health practitioner who is authorized by law to administer such a drug.

(3) A drug that is limited by an approved application under § 355 of the Federal Act or § 21-223 of this subtitle to use under the professional supervision of a health practitioner authorized by law to administer such a drug.

(b) (1) A prescription may be written or oral. However, a pharmacist may not dispense a drug on an oral prescription unless the pharmacist promptly writes out and files the prescription.

(2) A prescription for a controlled dangerous substance within the meaning of Article 27 of the Code may not be written on a preprinted prescription form that states the name, quantity, or strength of the controlled dangerous substance.

(3) When a prescription is written, a separate prescription form is required for each controlled dangerous substance. If a pharmacist is otherwise satisfied that a prescription is valid the pharmacist may fill the prescription if the pharmacist promptly writes out and files a prescription for each substance and also files the original prescription.

(c) A pharmacist may not refill and dispense a prescription unless the refilling is authorized by:

(1) The health practitioner's specification in the original prescription as to how many times it may be refilled; or

(2) By an oral order of the health practitioner that promptly is written out and filed by the pharmacist.

(d) The dispensing of a drug without complying with the requirements of this section is the dispensing of a misbranded drug.

(e) (1) A drug that is subject to the prescription requirements of this section is misbranded if, at any time before it is dispensed, its label does not bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription".

(2) A drug to which the prescription requirements of this section do not apply is misbranded if, at any time before it is dispensed, its label bears the caution statement quoted in paragraph (1) of this subsection.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(f) (1) The prescription requirements of this section do not apply to any drug that is exempted under a rule or regulation adopted by the Secretary.

(2) The Secretary, by rule or regulation, may exempt any drug from the requirements of this section if the Secretary finds that, as to the drug, the requirements of this section are not necessary for the protection of the public health.

(3) The Secretary, by rule and regulation, may exempt from the requirements of this section any drug that is removed from the prescription requirements of the Federal Act by a rule or regulation adopted under that act.

### **Section 21-221. Label Requirements for Prescription Drugs.**

(a) A drug that is dispensed under a prescription shall bear a label that states:

- (1) The name and address of the dispenser;
- (2) The serial number of the prescription;
- (3) The date of the prescription or the date that the prescription was filled;
- (4) The name of the prescriber; and
- (5) If stated in the prescription:
  - (i) The name of the patient;
  - (ii) Any directions for use; and
  - (iii) Any cautionary statements.

(b) If a drug dispensed under a prescription meets the label requirements of this section, it is exempt from the provisions of:

- (1) § 21-217(b)(3) through (7) of this subtitle; and
- (2) § 21-218(b)(1) through (4), (7), (8), (13), and (14) of this subtitle.

(c) The exemptions under this section do not apply to any drug that is dispensed in the course of the conduct of a business of dispensing drugs on the basis of diagnosis made through the mail.

### **Section 21-222. Restrictions on Controlled Dangerous Substances.**

Nothing in §§ 21-220 or 21-221 of this subtitle relieves any person from any requirement imposed by law with respect to any drug that is classified as a controlled dangerous substance within the meaning of Article 27 of the Code or the applicable federal law.

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

**Section 21-223. New Drugs - In General.**

(a) This section does not apply to any drug that:

(1) Was sold in this State or introduced into interstate commerce at any time before the enactment of the Federal Act, if its labeling contained the same representations concerning the conditions of its use; or

(2) Is licensed under the Public Health Service Act of July 1, 1944 or under the Animal Virus, Serum, Toxin, Antitoxin Act of March 4, 1913.

(b) A person may not sell, give away, or deliver any new drug:

(1) Unless an approved application for the drug is in effect under § 355 of the Federal Act; or

(2) Unless an application has been approved by the Secretary and is in effect under this section, if the drug is not subject to the Federal Act.

(c) To have an application approved by the Secretary, an applicant shall file with the Secretary an application that sets forth:

(1) Full reports of the investigations that have been made to show whether the drug is safe for use and whether the drug is effective in use;

(2) A full statement of the composition of the drug;

(3) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug;

(4) Any sample of the drug and of any article used as a component of the drug that the Secretary requires; and

(5) A specimen of the labeling that is proposed to be used for the drug.

(d) The Secretary may not approve an application filed under this section unless the drug has been tested and, under the conditions specified, recommended, or suggested in the proposed labeling of the drug, has been found to be safe for and effective in use.

(e) An application filed with the Secretary under this section shall be considered approved on the 180th day after it is filed, unless before that day and after giving the applicant notice and an opportunity for a hearing, the Secretary issues an order of disapproval under subsection (f) of this section on a finding that:

(1) The drug has not been tested properly, as required by subsection (d) of this section;

(2) Under the conditions specified, recommended, or suggested in the proposed labeling of the drug, it is not safe for or effective in use;

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(3) The methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to preserve its identity, strength, quality, and purity; or

(4) Based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any way.

(f) If, before the date that the application otherwise would be considered approved the Secretary makes any of the findings that are enumerated in subsection (e) of this section concerning the drug, the Secretary shall issue an order that disapproves the application.

(g) (1) The Secretary may revoke an order that disapproved an application and the application then shall be considered approved.

(2) After providing an opportunity for a public hearing and judicial appeal, the Secretary may revoke an application that was approved under this section if, based on evidence that is acquired after approval, the Secretary finds that:

(i) The drug may not be safe for or effective in its intended use; or

(ii) The facilities or controls used in the manufacture, processing, or labeling of the drug may present a hazard to the public health.

(h) In accordance with any rule or regulation that is adopted or any order that is issued by the Secretary under this section, the person who holds an application for a drug that is approved under this section shall:

(1) Keep records; and

(2) Submit reports to the Secretary.

(i) (1) The Secretary may adopt rules and regulations that apply generally to persons whose applications for drugs have been approved or, as to a particular person whose application has been approved, issue an order that requires an applicant:

(i) To keep records of information that relates to clinical experience with the drug and any other information that the applicant obtains about the drug; and

(ii) To submit reports to the Secretary concerning that information.

(2) When adopting a rule or regulation or issuing an order that requires the submission of information under this subsection, the Secretary shall consider the professional ethics of the medical profession and the interests of patients.

(3) Any rule, regulation, or order under this section shall provide that if any person to whom the rule, regulation, or order applies requests it, and if the Secretary considers it to be appropriate, the person may examine similar information that is obtained by the Secretary concerning the drug.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 21-224. New Drugs – Exemption when Intended for Investigational Use Only.**

(a) (1) A new drug is not subject to the requirements of § 21-223 of this subtitle if it is exempted by a rule or regulation adopted under this section.

(2) This section does not require any clinical investigator to submit directly to the Secretary any report on the investigational use of a drug.

(b) The Secretary shall adopt rules and regulations to exempt from the requirements of § 21-223 of this subtitle any drug that is intended only for investigational use by experts who are qualified by scientific training and experience to investigate the safety and effectiveness of the drug. In addition to any other conditions that may be imposed for the protection of the public health, the rules and regulations may require as a condition for the exemption of a drug that:

(1) Before any clinical testing of a new drug is undertaken, the manufacturer of the drug or the sponsor of the investigation of the drug submit to the Secretary reports of preclinical tests of the drug, including tests on animals, that are adequate to justify the proposed clinical testing;

(2) The manufacturer of a new drug that is proposed to be distributed to investigators for clinical testing or the sponsor of the investigation obtain a signed agreement from each investigator who is involved that:

(i) The patients to whom the drug is administered will be under that investigator's personal supervision or under the supervision of an investigator who is responsible to that investigator; and

(ii) The investigator will not supply the drug to any other investigator, or to any clinic, for administration to a human being; and

(3) The manufacturer of a new drug or the sponsor of the investigation of the drug keep records of, and make reports to the Secretary of, the information obtained from the investigational use of the drug, including analytical reports by investigators, as the Secretary finds will assist in the evaluation of the safety and effectiveness of the drug if an application for the drug is filed under § 21-223 of this subtitle.

(c) (1) When adopting a rule or regulation that requires the submission of information under this subsection, the Secretary shall consider the professional ethics of the medical profession and the interests of patients.

(2) Any rule, regulation, or order under this section shall provide that if any person to whom the rule, regulation, or order applies requests it, and if the Secretary considers it to be appropriate, the person may examine any similar information that is obtained by the Secretary concerning the drug.

(d) (1) Any rule or regulation adopted under § 355(i) of the Federal Act automatically shall be a rule or regulation of this State, as provided in § 21-241 of this subtitle.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(2) However, the Secretary may adopt a rule or regulation under this section even if it is not in accord with the rules and regulations adopted under the Federal Act.

### **Section 21-225. New Drugs – Inspection of Records.**

Any person who is required under § 21-223 or § 21-224 of this subtitle to keep records and any person who is in charge or custody of any of these records, on the request of the Secretary, shall permit the Secretary to have access to, copy, and verify the records at any reasonable time.

### **Section 21-226. Printed Information for Use of Practitioners.**

(a) The manufacturer, packer, or distributor of any prescription drug that is sold or distributed in this State shall:

(1) Keep correct copies of any printed matter that is:

(i) Required to be included in any package in which the drug is sold or distributed; or

(ii) Approved under the Federal Act; and

(2) Send copies of the printed matter to any health practitioner who is authorized to administer the drug and who makes a written request for information about the drug.

(b) This section does not exempt any person from any labeling requirement imposed under any other provision of this subtitle.

### **Section 21-227. Provision of Information on Request of Secretary.**

On a specific written request by the Secretary, the manufacturer, packer, or distributor of any prescription drug that is sold or distributed in this State shall give the Secretary:

(1) Any information that the manufacturer, packer, or distributor has about the biological availability and clinical performance of the drug; and

(2) Any comparative information that the manufacturer, packer, or distributor has about any drug, of the same established name, that is manufactured, packed, or distributed by another person.

### **Section 21-237. Drugs – Standards of Identity and Quality.**

(b) (1) For purposes of this subtitle, the standards for the quality, purity, and strength of any drug are the standards set by an official compendium.

(2) If a drug is not standardized by an official compendium, then subject to § 21-241 of this subtitle, the standards of quality, purity, and strength adopted by rule or regulation under the Federal Act are the standards of quality, purity, and strength for the drug in this State.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

### **Section 21-1110. Auction Sale of Drugs, Medicine, or Cosmetics.**

(a) A person may not sell any drug, medicine, cosmetic, pharmaceutical preparation, or medicinal preparation at any auction sale unless the person notifies the Secretary in writing of the proposed auction at least 7 days before the date of the auction.

(b) (1) The Secretary may:

(i) Inspect any drugs, medicines, cosmetics, pharmaceutical preparations, or medicinal preparations that a person proposes to sell by auction sale; and

(ii) Issue an order that prohibits the sale of any of these if, in the opinion of the Secretary, they are unfit for human use or consumption.

(2) A person may not hold an auction sale of any drug, medicine, cosmetic, pharmaceutical preparation, or medicinal preparation in violation of an order issued under this section.

### **Section 21-1111. Vending Machine Sale of Drugs or Medicine.**

(a) This section does not apply to any:

- (1) Surgical or dental instrument;
- (2) Physical therapy equipment;
- (3) X-ray apparatus; or
- (4) Component part or accessory of any of these items.

(b) A person may not sell, distribute, or otherwise dispose of any drug, medicine, pharmaceutical preparation, or medical preparation by means of a vending machine or other similar device.

(c) By rule or regulation, the Secretary may exempt any commodity from the application of this section if the Secretary finds that the commodity may be dispensed by vending machine or other similar devices without danger to the public health.

### **Section 21-1112. Medicine or Patent Medicine Shows.**

(a) This section does not apply to any:

- (1) Surgical or dental instrument;
- (2) Physical therapy equipment;
- (3) X-ray apparatus; or
- (4) Component part or accessory of any of these items.

(b) A person may not:

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(1) Sell, distribute, or otherwise dispose of any drug, medicine, pharmaceutical preparation, or medicinal preparation by means of any public exhibition, entertainment, performance, or carnival, commonly known as a "medicine show" or "patent medicine show"; or

(2) Put or cause to be put, in any way, any package, parcel, or sample of any drug or medicine:

(i) In or on any part of any house, building, or yard without the consent of the owner or occupant; or

(ii) On any street or public highway.

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

**EXECUTIVE ORDERS**

**01.01.1989.18**

Drug and Alcohol Free Workplace

(Non-State Entities)

WHEREAS, The President of the United States has presented to the nation a federal drug strategy which calls for a coordinated and united effort on the part of the federal government, the states, and the public-at-large; and

WHEREAS, Maryland has already enacted legislation to impose more severe penalties on drug kingpins, to expand the forfeiture laws to include the seizure of real property, and to establish drug-free school zones; and

WHEREAS, The Governor's commission on Alcohol and Drug Abuse has developed a comprehensive and integrated plan for reducing illegal drug related activities and drug and alcohol abuse in Maryland; and

WHEREAS, Maryland, in an effort to ensure a safe and drug-free workplace for State employees, has promulgated a Substance Abuse Policy, Executive Order 01.01.1989.05; and

WHEREAS, Drug and alcohol abuse in the workplace leads to a decrease in productivity, economy, and the maximum benefit to be derived from the purchasing power of the State, thereby decreasing and undermining public confidence in the State procurement system; and

WHEREAS, The State has an interest in assuring the public that recipients of State contracts, grants, loans or other State funds are not using these monies to maintain or foster, directly or indirectly, workplaces where drug or alcohol abuse occurs; and

WHEREAS, The States needs to take additional steps to encourage non-State entities that do business with the State or otherwise receive State funds to ban alcohol and drugs from the workplace;

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING ORDER:

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

A. General Policy. The State of Maryland is committed to encouraging all non-State entities that do business with the State or that otherwise receive funds from the State to make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from their workplaces.

B. Definitions. In this Executive Order, the following words have the meanings indicated.

(1) "Abuse" means:

(a) The use of alcohol when it may impair job performance for endanger the safety of others in the workplace;

(b) The use of any illegal drug;

(c) The use of any over-the-counter drug when the user knows or should know that it may impair job performance or endanger the safety of other in the workplace; or

(d) The use of any prescription drug in a manner or under circumstances that the user knows or should know is inconsistent with its medically prescribed, intended use.

(2) "Alcohol" means ethyl alcohol or ethanol.

(3) "Drug" means:

(a) A controlled dangerous substance as defined in Article 27, § 277 of the Annotated Code of Maryland Code; and

(b) Any substance, other than alcohol, caffeine, food or tobacco, that when taken into the body may impair one's mental faculties or change one's mood or physical performance.

(4) "Drug and alcohol free workplace" means a workplace in which every employee is expressly prohibited from:

(a) Abusing alcohol and drugs; and

(b) Manufacturing, distributing, dispensing or possessing illegal drugs.

(5) "Employee" means every employee, agent, servant, etc., of the recipient whose position is funded in whole or in part with State funds or who works on a project funded in whole or in part with State funds. "Employee" includes owners who themselves are performing any activity funded in whole or in part with State funds.

(6) "Recipient" means an individual, a sole proprietorship, a partnership, a corporation, a joint venture or any other entity that has been awarded or is a candidate or applicant for a State contract, grant, loan, or other State funds for use in the workplace. "Recipient" includes not-for-profit entities and governmental entities.

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(7) "Workplace" means any place at which work is performed in accordance with the terms of a State contract, grant, loan or other instrument that governs the receipt of State funds.

C. Responsibilities of the Board of Public Works. The Secretary to the Board of Public Works shall cause to be prepared for the Board's consideration, pursuant to its statutory authority to control State Procurement and to award or approve the disbursement of certain State Contracts, grants, loans, and other funds for the workplace, in accordance with applicable federal and State law, regulations requiring the recipients of those funds to establish a drug and alcohol free workplace program. Those regulations shall include:

(1) Provisions that require each recipient to maintain a workplace free of drug and alcohol abuse during the term of the contract, grant, loan, or other receipt of State funds;

(2) Provisions that prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in the workplace of a recipient;

(3) Provisions that prohibit employees of a recipient from working under the influence of alcohol or drugs;

(4) Provisions that prohibit the recipient from hiring or assigning to work on an activity funded in whole or in part with State funds, anyone whom the recipient or the hiring official of the recipient knows, or in the exercise of due diligence should know, currently abuse alcohol or drugs and is not actively engaged in a bona fide rehabilitation program;

(5) Provisions that require each recipient to promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if the recipient or an employee of the recipient has observed the violation or otherwise has reliable information that a violation has occurred;

(6) Provisions that require recipients to establish drug free and alcohol abuse awareness programs, to notify employees of the availability of such programs, to impose sanctions on employees who abuse drugs and alcohol in the workplace, and to institute steps to maintain a drug and alcohol free workplace;

(7) Provisions that make the receipt of State contracts, grants, loans, or other funds awarded through or approved by the Board of Public Works conditional upon compliance with the regulations adopted pursuant to this Executive Order;

(8) Provisions for the discretionary termination of a State contract, grant, loan or other award of State funds to a recipient who violated those regulations;

(9) Provisions for the discretionary suspension or debarment of a recipient who violates those regulations; and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

(10) Such other drug and alcohol free workplace requirements as the Board of Public Works, in the exercise of its lawful authority, finds necessary or desirable to protect the interests of the State in the award and administration of State contracts, grants, loans or other State funds awarded by or subject to the approval of the Board.

D. Responsibilities of Agency Heads. The head of each Executive Branch agency shall take whatever action is necessary and appropriate to impose, in accordance with applicable federal and State law, on each recipient of a State contract, grant, loan or other State funding instrument that is administered by the agency and not subject to the Board of Public Work's drug and alcohol free workplace regulations requirements that are substantially the same as those adopted by the Board.

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01.01.1991.16

### State of Maryland Substance Abuse Policy

WHEREAS, Substance abuse is a serious national crisis which has had a detrimental effect on the lives of many of our citizens, and has exerted a negative impact on the operation of business and government; and

WHEREAS, Surveys indicate that nationally, 65% of the 18-25 year-old adult working population have used illicit drugs; and

WHEREAS, It is estimated that at least 15% of the American workforce works under the influence of drugs or alcohol daily; and

WHEREAS, Every employer, including the State of Maryland, experiences a loss in productivity due to drug related absenteeism, injuries on the job, decreased work quality, and wasted dollars; and

WHEREAS, Substance abusing employees function below established standards, may make impaired decisions, may have negative effects on their co-workers, and are not as alert as non-using employees; and

WHEREAS, The illegal use of the workplace as a drug market endangers the health, safety, and welfare of State employees; and

WHEREAS, In order to serve the citizens of Maryland properly, the State must maintain a work environment which is free of drugs; and

WHEREAS, The Federal Omnibus Drug Abuse Act of 1988 requires that any State which is a recipient of Federal funds must establish a Drug-Free Workplace, including a policy on the use of substances, an employee drug awareness program, and a procedure for employees to report their own convictions; and

WHEREAS, A drug-free workplace is fundamental to efficient, effective, and responsible government;

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY RESCIND EXECUTIVE ORDER 01.01.1989.05 AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

- A. Definitions. In this Executive Order the following words have the meanings indicated.
- (1) "Substance" means alcohol or drugs.
  - (2) "Alcohol" means ethyl alcohol or ethanol.
  - (3) "Drug" means:
    - (a) A controlled dangerous substance;
    - (b) Any other substance which must be dispensed by a licensed health care professional; or
    - (c) An over-the-counter drug.
  - (4) "Abuse" means:
    - (a) The use of an illegal drug;
    - (b) The intentional misuse of an over-the-counter drug, if the misuse impairs the job performance of the State employee or could impair the job performance of an applicant for State employment;
    - (c) The intentional use of any prescription drug in a manner inconsistent with its medically prescribed intended use, or under circumstances where its used is not permitted, if it impairs the job performance of a State employee or could impair the job performance of an applicant for State employment; or
    - (d) The use of alcohol if it impairs job performance of the State employee or could impair the job performance of an applicant for State employment.
  - (5) "Workplace" means any place where an employee is performing work for the State of Maryland.
  - (6) "Employee" means:
    - (a) A classified, unclassified, contractual, key employee, or other employee or official in the Executive Branch;
    - (b) A volunteer who provides a service to or for a unit in the Executive Branch; or
    - (c) A member of a Board or Commission in the Executive Branch.

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- (7) "Sensitive Employee" means an employee whose classification or position has been designated sensitive by the employee's appointing authority or personnel system.
  - (8) "Conviction" means:
    - (a) A judgment of conviction, whether entered upon a finding of guilt or acceptance of a plea of nolo contendere, and the imposition of sentence; or
    - (b) The staying of the entry of judgment and the placing of the defendant on probation after a finding of guilty or the acceptance of a plea of nolo contendere.
  - (9) "Alcohol Driving Offense" means:
    - (a) Driving or attempting to drive while:
      - (i) Intoxicated; or
      - (ii) Under the influence of alcohol; or
    - (b) Operating or attempting to operate a vessel while:
      - (i) Intoxicated; or
      - (ii) Under the influence of alcohol.
  - (10) "Controlled Dangerous Substance Offense" means:
    - (a) A controlled dangerous substance violation, under Article 27 of the Annotated Code of Maryland;
    - (b) An offense of the law of any other jurisdiction if the prohibited conduct would be a controlled dangerous substance violation if committed in this State;
    - (c) Driving or attempting to drive while:
      - (i) Under the influence of drugs or drugs and alcohol; or
      - (ii) Under the influence of a controlled dangerous substance; or
    - (d) Operating or attempting to operate a vessel while:
      - (i) Under the influence of drugs or drugs and alcohol; or
      - (ii) Under the influence of a controlled dangerous substance.
- B. General Policy. The State of Maryland establishes and adopts the following substance abuse policy for the Executive Branch of State Government:

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

- (1) The State of Maryland is committed to making good faith efforts to insure a safe, secure, and drug-free workplace for its employees consistent with the Drug-Free Workplace Act as enacted by Congress.
- (2) All employees in the workplace must be capable of performing their duties.
- (3) Employees experiencing substance abuse problems are encouraged to seek assistance through:
  - (a) Their employer;
  - (b) Self referral to the employer's Employee Assistance Program; or
  - (c) Self referral to an alternative certified rehabilitation program.
- (4) An appointing authority may not hire anyone whom it knows currently abuses drugs or alcohol.
- (5) Employees are prohibited from:
  - (a) Abusing alcohol or drugs;
  - (b) Committing a controlled dangerous substance offense; or
  - (c) Committing an alcohol driving offense.

### C. Alcohol Abuse Policy.

- (1) Working under the influence of alcohol is a violation of this policy and shall subject the employee to disciplinary action.
- (2) An employee charged with an alcohol driving offense must report a finding of guilty, an acceptance of a plea of nolo contendere, or a probation before judgment to the employee's appointing authority within 5 work days.
- (3) A sensitive employee shall be suspended for 15 days and required to successfully participate in an alcohol treatment program designated by an employee assistance program the first time the employee is:
  - (a) Convicted of an at-the-workplace alcohol driving offense; or
  - (b) Found under the influence of alcohol while at-the-workplace.
- (4) A sensitive employee convicted of an off-the-workplace alcohol driving offense, and a non-sensitive employee convicted of any alcohol driving offense shall:
  - (a) On the first conviction be referred to an employee assistance program, and in addition, be subject to any other appropriate disciplinary actions;

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- (b) On the second conviction, at a minimum, be suspended for at least 5 days, be referred to an employee assistance program, be required to participate successfully in a treatment program, and in addition, be subject to any other appropriate disciplinary actions, up to and including termination;
- (c) On the third conviction, be terminated.

### D. Drug Abuse Policy.

- (1) Working under the inappropriate influence of prescription drugs or over-the-counter drugs is a violation of this policy and shall subject the employee to disciplinary action.
- (2) Working under the influence of a controlled dangerous substance is a violation of this policy and shall subject the employee to disciplinary action.
- (3) An employee charged with a controlled dangerous substance offense shall report a finding of guilty, an acceptance of a plea of nolo contendere, or a probation before judgment to the appointing authority within 5 work days.
- (4) A sensitive employee convicted of any controlled dangerous substance offense shall be terminated.
- (5) A sensitive employee who tests positive for a controlled dangerous substance as a result of a random drug test shall be suspended for 15 work days and be required to successfully participate in a drug treatment program designated by an employee assistance program, as provided for by the appointing authority's drug testing protocol.
- (6) A sensitive employee who abuses a legally prescribed drug or an over-the-counter drug shall, on the first offense:
  - (a) Be suspended for 5 work days; and
  - (b) Be required to participate successfully in a drug treatment program designated by an employee assistance program.

E. General Sanctions. Any employee otherwise in violation of this Executive Order shall be subject to appropriate progressive disciplinary actions up to and including termination.

### F. Law Enforcement.

- (1) When an appointing authority learns or, based on observation or reliable information suspects, that an employee has committed a controlled dangerous substance or alcohol offense at the workplace, the appointing authority shall refer the matter to an appropriate law enforcement authority for further investigation and prosecution.

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- (2) All employees shall cooperate fully with law enforcement authorities in the investigation and prosecution of suspected criminal violations.
- G. Employee Education. All appointing authorities shall educate and inform their employees about:
- (1) The dangers of drug and alcohol abuse in the workplace and the community at large;
  - (2) The State of Maryland's policy of maintaining a drug-free workplace;
  - (3) Any drug and alcohol abuse counseling, rehabilitation, and employee assistance program that is available; and
  - (4) The penalties that may be imposed upon employees for violations of this Executive Order.
- H. Implementation.
- (1) The Secretary of Personnel and the head of every other personnel system in the Executive Branch shall adopt such policies and regulations as are necessary or desirable for the implementation of this Executive Order.
  - (2) All appointing authorities are responsible for implementing and enforcing and monitoring compliance with the requirements of this Executive Order.
  - (3) All employees are required to acknowledge receipt of a copy of this Executive Order by returning an acknowledgement of receipt to their supervisor for insertion in their personnel file.

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01.01.1991.26

Governor's Prescription Drug Commission

(Amends 01.01.1990.11)

WHEREAS, The Governor's Prescription Drug Commission has issued a report which describes how the State should proceed to reduce the diversion, abuse and misuse of prescription drugs, thereby completing its first charge; and

WHEREAS, The Governor's Prescription Drug Commission will undertake efforts to develop a regional drug review program for the Mid-Atlantic states as its next assignment; and

WHEREAS, This is an appropriate time to alter the membership of the Governor's Prescription Drug Commission to provide for broader representation from the Executive Department;

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, GOVERNOR OF THE

MARYLAND DRUG AND ALCOHOL ABUSE LAWS

STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY AMEND EXECUTIVE ORDER 01.01.1990.11, AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER:

- A. General Policy. The State of Maryland is committed to developing and implementing a program to curb the diversion of prescription drugs into unlawful channels and to reduce the abuse and misuse of such drugs.
- B. There is a Governor's Prescription Drug Commission. The Commission consists of the following 19 members, appointed by the Governor.
- (1) A representative of the Attorney General's Office recommended by the Attorney General;
  - (2) A representative of the Department of Health and Mental Hygiene recommended by the Secretary;
  - (3) A representative of the Department of Personnel recommended by the Secretary;
  - (4) A representative of the Department of Public Safety and Correctional Services recommended by the Secretary;
  - (5) A representative of the State Police recommended by the Secretary of the Department of Public Safety and Correctional Services;
  - (6) A representative of the [Governor's staff] EXECUTIVE DEPARTMENT;
  - (7) A licensed Maryland physician;
  - (8) A licensed Maryland dentist;
  - (9) A licensed Maryland pharmacist;
  - (10) A licensed Maryland veterinarian;
  - (11) A licensed Maryland nurse practitioner;
  - (12) A licensed Maryland podiatrist;
  - (13) A certified Maryland nurse midwife;
  - (14) A representative of the health insurance industry; actions taken by a State or federal agency or disciplinary board, the disposition of closed cases, and other relevant statistical information that may interest or be useful to the Commission in carrying out its responsibilities.
  - (15) The Insurance Commissioner;
  - (16) A State's Attorney; and

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- (17) 3 members from the public-at-large.
- C. The Governor shall appoint a chair from among the members.
- D. Responsibilities of the Commission.
- (1) The Commission shall make recommendations to the Secretary of Health and Mental Hygiene concerning the State's efforts to reduce the diversion, abuse and misuse of prescription drugs.
  - (2) The Commission shall undertake efforts to develop a regional drug review program for the Mid-Atlantic states for the purpose of collecting and compiling relevant data in regard to patterns of improper prescribing or dispensing practices of all drugs available by prescription.
- E. Responsibilities of the Division of Drug Control.
- (1) The Division of Drug Control shall collect, review, and analyze the prescribing and dispensing patterns of persons authorized by law to prescribe or dispense prescription drugs and incidence of patient abuse and misuse.
  - (2) The Division of Drug Control shall refer credible information regarding illegal drug diversion of the abuse or misuse of prescription drugs to the appropriate law enforcement agency for investigation.
  - (3) The Division of Drug Control shall analyze on an ongoing basis information regarding prescriber, dispenser, or patient abuse or misuse. The review of prescribers shall focus on analyzing repeated patterns of prescribing prescription drugs outside the normal medical practice standards. The review of dispensers shall focus on analyzing the dispensing of prescription drugs where the rate of dispensation is higher than what is considered normal for a comparable dispenser. The review of patients shall focus on analyzing patterns of doctor or pharmacy shopping accompanied by high fill or refill rates of drugs dispensed by prescription.
  - (4) Based upon its review of such cases, the Division of Drug Control shall report any irregularities discovered to the appropriate State or federal agency or disciplinary board.
  - (5) On a monthly basis, the Division of Drug Control shall submit a report of its findings to the Commission. That report shall summarize the number and types of abuses identified. The report shall also point out actions taken by a State or federal agency or disciplinary board, the disposition of closed cases, and other relevant statistical information that may interest or be useful to the Commission in carrying out its responsibilities.

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- (6) The Division of Drug Control through the Department of Health and Mental Hygiene shall promulgate regulations to implement this Executive Order.

F. Responsibilities of State Agencies and Disciplinary Boards.

- (1) The appropriate law enforcement agency or disciplinary board shall take appropriate action on creditable information regarding illegal drug diversion, abuse or misuse of prescription drugs referred by the Division of Drug Control.
- (2) A disciplinary board that receives referrals in regard to prescriber, dispenser, or patient abuse or misuse of prescription drugs shall report, consistent with applicable law, to the Division of Drug Control within 45 days of final disposition, the manner in which the referrals were resolved.
- (3) All State agencies and disciplinary boards shall cooperate with the Commission and the Division of Drug Control to the fullest extent possible to carry out the provisions of this Executive Order.

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01.01.1991.31

The Governor's Drug and Alcohol Abuse Commission

(Amends 01.01.1991.27)

WHEREAS, The Governor's Drug and Alcohol Abuse Commission was created by Executive Order 01.01.1989.04 on February 2, 1989, to develop a comprehensive and coordinated strategy to reduce illegal drug use and alcohol and drug abuse through innovative, more effective and less duplicative prevention, education, treatment, and law enforcement at all levels of government; and

WHEREAS, The structure of the Commission was amended by Executive Order 01.01.1990.07 on May 19, 1989, and Executive Order 01.01.1990.12 on August 6, 1990, to expand the Commission membership, and rescinded by Executive Order 01.01.1991.27 on August 26, 1991, to reorganize the Commission; and

WHEREAS, The Commission has been successful in identifying and implementing strategies to prevent and control substance abuse, which feature broad-based community efforts and direct citizen involvement including prevention, education, treatment, and law enforcement activities; and

WHEREAS, While surveys indicate drug abuse is declining in Maryland, Maryland is now confronted by a rising incidence of drug-related crime and violence that threatens the safety and well-being of all Marylanders; and

WHEREAS, Strategies must be developed that include long-term approaches that focus on reducing drug-related crime and violence, and emphasize underage drinking and

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adult alcohol abuse through prevention and education activities; and

WHEREAS, Additional representation has been identified to carry out the expanded role of the Commission and certain reporting and organizational changes have been recommended to implement this reorganization; and

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY AMEND EXECUTIVE ORDER 01.01.1991.27, AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

- A. Within the Executive Office of the Governor, there is a Governor's Drug and Alcohol Abuse Commission.
- B. The Commission consists of the following individuals:
  - (1) The Attorney General;
  - (2) The Secretary of Human Resources;
  - (3) The Secretary of Natural Resources;
  - (4) The Secretary of Public Safety and Correctional Services;
  - (5) The State Superintendent of Schools;
  - (6) The Secretary of the Higher Education Commission;
  - (7) The Secretary of Transportation;
  - (8) The Secretary of Juvenile Services;
  - (9) The Secretary of Health and Mental Hygiene;
  - (10) The Secretary of Personnel;
  - (11) The Special Secretary for Children, Youth and Families;
  - (12) Members of the Governor's staff;
  - (13) The Secretary of Housing and Community Development;
  - (14) THE SECRETARY OF BUDGET AND FISCAL PLANNING;
  - (15) THE SECRETARY OF ECONOMIC AND EMPLOYMENT DEVELOPMENT;
  - [(14)](16) Two members of the Senate appointed by the President of the Senate;
  - [(15)](17) Two members of the House of Delegates appointed by the Speaker of the House;

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- [(16)](18) The Public Defender;
  - [(17)](19) One representative of the Circuit Court of Maryland, nominated by the Chief Judge of the Court of Appeals;
  - [(18)](20) One representative of the State's Attorneys' Association, nominated by the Association;
  - [(19)](21) One representative of the Chiefs of Police Association, nominated by the Association;
  - [(20)](22) One representative of the Maryland Sheriffs' Association, nominated by the Association;
  - [(21)](23) One representative of the Maryland Association of County Health Officers, nominated by the Association;
  - [(22)](24) One representative of the Maryland Prevention Coordinators Network, nominated by the organization;
  - [(23)](25) One representative of the Public School Superintendents Association of Maryland, nominated by the Association; and
  - [(24)](26) [Ten] TWENTY-FIVE public members with knowledge or experience in some aspect of drug and alcohol abuse prevention and control who shall be appointed by an serve at the pleasure of the Governor;
- C. Chairmanship of the Commission. The Governor shall appoint a Chair and [four] SIX Vice Chairs from the members.
- (1) There will be Vice Chair for Health;
  - (2) There will be Vice Chair for Prevention;
  - (3) There will be a Vice Chair for Crime Control; [and]
  - (4) There will be a Vice Chair for Administration;
  - (5) THERE WILL BE A VICE CHAIR FOR EMPLOYMENT; AND
  - (6) THERE WILL BE A VICE CHAIR FOR EDUCATION.
- D. The Commission will submit a special report to the Governor by [June 30, 1992] SEPTEMBER 30, 1992, detailing recommendations to reduce drug-related crime and violence.
- (1) The Commission shall appoint a special committee composed of appropriate State and local representatives with experience and interest in drug-related crime and violence; and

## MARYLAND DRUG AND ALCOHOL ABUSE LAWS

- (2) The Commission shall examine drug-related crime and violence data statewide and shall conduct public hearings in those jurisdictions that show significant increases in drug-related crime and violence.
- E. The Commission shall prepare and submit to the Governor an annual report on the status of reducing illegal drug-related activities and drug and alcohol abuse in Maryland.
- (1) The plan shall:
    - (a) Describe a comprehensive and coordinated strategy that emphasizes all relevant areas of prevention, education, treatment and law enforcement;
    - (b) Review existing programs and recommend the development of new programs, as necessary;
    - (c) Recommend ways to improve the coordination of the activities of all appropriate federal, State and local government agencies, private community service agencies, and the business sector; and
    - (d) Aim to assure the cost effective expenditure of State, local and federal funds.
  - (2) The Commission shall prepare and submit to the Governor a revised updated plan each September 30. Copies of the annual plan shall also be made available to the members of the General Assembly and disseminated to the general public. The annual plan shall report:
    - (a) The level of drug and alcohol abuse and drug-related crime and violence in Maryland; and
    - (b) The effectiveness of efforts to prevent, treat, and control drug and alcohol abuse and drug-related crime and violence.
- F. In the plan, the Commission shall provide for:
- (1) A centralized drug and alcohol abuse information center that will collect, store and analyze data relating to drug and alcohol abuse, and that will distribute such information to federal, State and local government agencies; and
  - (2) The prevention and control of illegal drug activities and drug and alcohol abuse to be researched, evaluated and analyzed from a policy standpoint.
- G. The Commission shall consult, on a continuous basis, with representatives of local governments and the private sector to assure the coordination of State, local and private resources in preparing its plan. To that effect, the Commission shall meet with the regional and county core groups responsible for coordination efforts.

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- H. The Commission shall consult with:
- (1) The Juvenile Justice Advisory Council;
  - (2) The Governor's Advisory Board for Justice Administration;
  - (3) The Maryland State Department of Education Drug and Alcohol Abuse Prevention and Education Program Advisory Council;
  - (4) The Governor's Executive Advisory Council;
  - (5) The State Advisory Council of Drug and Alcohol Abuse;
  - (6) The Governor's Prescription Drug Commission;
  - (7) The Governor's Youth Drug and Alcohol Abuse Commission;
  - (8) The Governor's Office of Justice Assistance;
  - (9) Governor's Sub-Cabinet on Children, Youth and Families; and
  - (10) The Governor's Advisory Council on AIDS.
- I. The Executive Director of the Commission shall be named by the Governor, and shall be assisted by no less than one member from each department and agency whose head serves on the Commission.
- J. The expenses of the Commission shall be met through the operating budgets of the Executive Office of the Governor and departments and agencies whose heads serve on the Commission, including any federal funds available for the purpose of administering federal grant programs.
- K. The Commission shall meet with State departments, agencies, boards, commissions, or other units of State government to ensure the implementation of the strategies and recommendations contained in the Maryland Drug and Alcohol Abuse Control Plan. These agencies shall cooperate to the fullest extent possible in implementing the Plan and shall provide information needed by the Commission in fulfilling its mandate under this Executive Order. The Commission may also request and receive information and assistance from any other branch of State and local government, the federal government, and the private sector.

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**01.01.1992.08**

The Governor's Youth Drug and Alcohol Abuse Commission

(Amends 01.01.1990.09)

WHEREAS, The Governor's Youth Drug and Alcohol Abuse Commission was created by Executive Order 01.01.1990.09 on May 3, 1990;

WHEREAS, The Commission addresses drug and alcohol abuse from a youth's

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perspective which may be helpful in resolving this problem;

WHEREAS, Expansion of the number of youth represented on the Commission would more adequately allow access to individuals who represent ethnic minorities; and

WHEREAS, An additional clarification is needed regarding the recommendations of the Commission;

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY AMEND EXECUTIVE ORDER 01.01.1990.09 AND PROCLAIM THE FOLLOWING ORDER EFFECTIVE IMMEDIATELY:

- A. Definitions. In this Executive Order, the following words have the meanings indicated.
- (1) "Commission" means the Governor's Drug and Alcohol Abuse Commission.
  - (2) "County" includes Baltimore City.
  - (3) "Regional" includes the following geographical distinctions:
    - (a) Northern Region consists of the counties of Harford, Cecil, Baltimore County, Carroll, and Baltimore City;
    - (b) Southern Region consists of the counties of St. Mary's, Charles, and Calvert;
    - (c) Eastern Region consists of the counties of Worcester, Somerset, Wicomico, Dorchester, Talbot, Caroline, Queen Anne's, and Kent;
    - (d) Western Region consists of the counties of Garrett, Allegany, Washington, and Frederick; and
    - (e) Central Region consists of the counties of Montgomery, Howard, Anne Arundel, and Prince George's.
  - (4) "Youth" means any person who:
    - (a) Is under the age of 21; or
    - (b) Is enrolled in the 10th or 11th grade at the secondary level.
  - (5) "Youth Commission" means the Governor's Youth Drug and Alcohol Abuse Commission.
- B. Establishment of the Youth Commission.
- (1) Within the Executive Office of the Governor, there is a Governor's Youth Drug and Alcohol Abuse Commission.

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- (2) The purpose of the Youth Commission is to actively involve Maryland youth in programs and activities that will help prevent and eliminate drug and alcohol abuse and misuse among youth.
- C. The Youth Commission consists of 54 members appointed by the Governor. The membership shall include the following:
- (1) Two high school students from each county, recommended by the Superintendent of Schools of the respective county.
  - (2) [Six] TWELVE youth with knowledge or interest in the areas of drug and alcohol abuse, misuse, or prevention, including youth who may have experimented with drugs and alcohol.
- D. Length of Terms.
- (1) The members of the Commission shall serve for 2 years.
  - (2) A member appointed to fill a vacancy in an unexpired term serves only for the remainder of that term and until a successor is appointed.
- E. The Governor shall appoint the initial Chair, and the Chair shall appoint a Vice Chair from among the members. Both shall serve for 1 year. Thereafter, the members of the Youth Commission shall elect a Chair and Vice Chair.
- F. Responsibilities of the Youth Commission.
- (1) The Youth Commission under the direction and purview of the Commission, shall identify and develop initiatives that will deter youth from experimenting with and using drugs and alcohol.
  - (2) The Youth Commission shall identify and evaluate local drug and alcohol prevention initiatives for youth and recommend to the Commission those initiatives worthy of being instituted on a statewide basis.
  - (3) The Youth Commission shall encourage the local school systems to become involved in developing ways for youth to address drug and alcohol abuse problems. The Youth Commission shall analyze any ideas developed at the local levels and shall submit the most feasible alternatives to the Commission for their review and consideration.
  - (4) The Youth Commission shall evaluate local drug and alcohol prevention programs and shall report their findings in a statewide newsletter. The newsletter shall be published periodically during the academic school year and shall be distributed to each local school system.
  - (5) The Youth Commission shall work with appropriate community and school groups to promote the establishment of drug and alcohol prevention programs throughout the State.

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- (6) The Youth Commission shall meet at least once each year. Regional Youth Commission meetings may be held, in the respective regions of the state, at least three times during the academic year.
  - (7) The Youth Commission will make recommendations for inclusion in the annual Maryland Drug and Alcohol Abuse Control Plan.
- H. Responsibilities of the Governor's Alcohol and Drug Abuse Commission.
- (1) The Commission shall give careful consideration to implementing drug and alcohol prevention initiatives suggested by the Youth Commission.
  - (2) The Commission shall solicit input from the Youth Commission when developing programs geared to preventing youth from experimenting with drugs and alcohol.
  - (3) The Commission shall cooperate with the Youth Commission to the fullest extent possible in carrying out the provisions of this Executive Order.
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**Title 06**

**DEPARTMENT OF PERSONNEL**

**Subtitle 01 DEPARTMENT OF PERSONNEL**

**Chapter 09 Testing for Illegal Use of Drugs**

Authority: State Personnel and Pensions Article, §§ 12-106 and 4-203, and Title 9, Annotated Code of Maryland

**.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Agency technical representative" means an employee designated by an appointing authority to ensure compliance with the requirements of this chapter and whose duties include, but are not limited to, the following:

(a) Scheduling the urine specimen collections;

(b) Designation of collection sites;

(c) Assurance of integrity of collection procedures and sites;

(d) Assurance of integrity of testing and specimen retention procedures;

(e) Review of data and reports; and

(f) Acting as contact person for the appointing authority's program for testing for illegal use of drugs.

(2) "Applicant" means a person who is seeking an employer-employee relationship in a position in a sensitive classification or in a sensitive position.

(3) "Applicant-employee" means an employee of the State who is an applicant for a position that is:

(a) In a sensitive classification or is a sensitive position; and

(b) Different from or in addition to the position currently held by the applicant-employee.

(4) "Appointing authority" means a person who has the power to make appointments and to terminate employment.

(4-1) "Controlled dangerous substance offense" means:

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(a) A controlled dangerous substance violation under Article 27, Annotated Code of Maryland;

(b) An offense of the law of any other jurisdiction if the prohibited conduct is a controlled dangerous substance offense if committed in this State; or

(c) Driving or attempting to drive while under the influence of:

(i) Drugs or drugs and alcohol, or

(ii) A controlled dangerous substance.

(5) "Employee" means a person with whom the State has an employer-employee relationship.

(6) "Employer-employee relationship" means a relationship in which a person is paid for services to the State and in which:

(a) All of the following conditions of employment exist:

(i) The State has the right to control and direct the performance of services not only as to results, but also as to details and means,

(ii) The State has the right to discharge the employee, and

(iii) The State furnishes necessary tools and a place to work;

(b) The status of the employee is any of the following:

(i) Classified,

(ii) Unclassified,

(iii) Temporary extra, or

(iv) Contractual; and

(c) Any of the following personnel actions resulted in employment:

(i) Open selection from an eligible list,

(ii) Promotion,

(iii) Demotion,

(iv) Horizontal change.

(v) Transfer,

(vi) Reinstatement,

(vii) Reemployment,

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- (vii) Reclassification,
- (ix) Unclassified appointment,
- (x) Temporary appointment pending examination,
- (xi) Temporary extra appointment, or
- (xii) Contractual appointment.

(7) "Secretary" means the Secretary of Personnel or the Secretary's designated representative.

(8) "Sensitive classification" means a classification in which the Secretary has determined that any of the following conditions exist:

(a) An employee in the classification has a substantially significant degree or responsibility for the safety of others and there is a potential that impaired performance of the employee could result in death of or injury to the employee or others;

(b) An employee in the classification is required to carry a firearm;

(c) An employee in the classification is directly involved in efforts to interdict the flow of narcotics; or

(d) An employee in the classification is directly involved with narcotics law enforcement.

(9) "Sensitive positive" means a position for which an appointing authority has determined that any of the conditions listed in § B(8) of this regulation exists, but which is not a sensitive classification.

**.02 List of Sensitive Classifications.**

The Secretary shall maintain a list of sensitive classifications.

**.02-1 Designation of Sensitive Positions by Appointing Authority.**

A. Each appointing authority is responsible for determining whether positions within the appointing authority are sensitive, and may designate those positions as sensitive positions.

B. Each appointing authority who designates a position as sensitive shall be responsible for all of the following:

(1) Notification to the employee in the position of the designation of the position as sensitive and of requirements for testing in accordance with Regulation .04 of this chapter;

(2) Maintenance of documentation of the reasons for the designation;

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(3) Presentation of the reasons for the designation in administrative or judicial proceedings; and

(4) Provision of reports to the Secretary, to be submitted following the end of each fiscal quarter, listing each position, as identified by position identification number, that has been designated as sensitive along with the reasons for the designation.

**03. Requirements for Applicants for Positions in Sensitive Classifications or for Sensitive Positions.**

A. In addition to applicants, §§ B-E of this regulation apply to applicant-employees.

B. Conditions for Testing. Testing for illegal use of drugs shall be required for positions in sensitive classifications or for sensitive positions if the applicant has not been eliminated from consideration at an earlier stage of the recruitment process.

C. Notification.

(1) Examination Announcements; Information Provided by Appointing Authority. Examination announcements for positions in sensitive classifications shall include a statement that testing for illegal use of drugs is part of the selection process. The appointing authority shall also inform applicants for positions in sensitive classifications or for sensitive positions that testing for illegal use of drugs is required and shall be conducted at some point in the selection process, including any time during the applicant's probationary period.

(2) Refusal to be Tested. The appointing authority shall inform an applicant for a position in a sensitive classification or for a sensitive position who refuses to be tested that refusal shall result in all of the following:

(a) Disqualification from that position;

(b) Removal from any list of eligibles for any sensitive classification;

and

(c) Removal from the list of eligibles for all sensitive positions within the classification of the sensitive position for which the applicant refused to be tested.

(3) Positive Test Results. The appointing authority shall inform an applicant who agrees to be tested of the consequences of a positive test result in accordance with § E of this regulation.

D. Testing Protocol.

(1) The appointing authority shall give an applicant for a position in a sensitive classification or for a sensitive position who has not been eliminated from consideration at an earlier stage of the recruitment process a Drug Abuse Screen-Applicant Authorization form prescribed by the Secretary to complete at the

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interview. The applicant shall appear at one of the designated collection sites with the completed authorization form at a time set by the appointing authority. When urine specimen collection as provided in Regulation .05 of this chapter is a part of the interview, the urine specimen may be collected at the time of the interview.

(2) After completion of the test, the test results shall be provided to the State Medical Director, who shall inform the appointing authority of the suitability of the applicant for further consideration.

(3) If the State Medical Director has determined that an applicant is suitable in accordance with § D(2) of this regulation, the appointing authority shall schedule an appointment for the applicant to appear for a physical examination within 8 calendar days after the date of the interview.

(4) All testing protocols shall be in accordance with Regulation .05 of this chapter.

E. Consequences of Positive Test Results.

(1) An applicant for a position in a sensitive classification or for a sensitive position who tests positive shall be disqualified from State employment for a position in a sensitive classification or for a sensitive position unless the applicant submits to the Secretary a certificate from a physician certifying on the certificate under oath that the applicant has:

(a) Successfully participated in a drug abuse rehabilitation program of at least 6 months' duration; and

(b) Been free of drugs listed in Regulation .06 of this chapter for at least 18 months immediately before reapplying for State service.

(2) An applicant who is later hired in accordance with the procedure described in § E(1) of this regulation shall be subject to periodic random testing for illegal use of drugs.

(3) Positive Test Applicant–Employee.

(a) If an applicant–employee for a position in a sensitive classification or a sensitive position tests positive for use of illegal drugs, as part of a personnel selection process involving a promotion, demotion, horizontal change, transfer, or reclassification, the State Medical Director shall notify the applicant–employee's appointing authority of the positive test result.

(b) The appointing authority shall suspend the employee in § E(3)(a) of this regulation, without pay for 15 days. As a condition of returning to work, the employee shall enroll in a drug abuse rehabilitation program of at least 6 months' duration and shall be subject to periodic testing throughout the duration of the program. At the conclusion of the rehabilitation program the employee shall submit to the

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Secretary a certification from the attending physician, or a certified chemical dependency counselor, licensed certified social worker, or licensed psychologist associated with the rehabilitation program, certifying on the certificate under oath that the employee has successfully participated in a drug abuse program of at least 6 months' duration and has not tested positive for drugs listed in Regulation .06 of this chapter at any point during the rehabilitation program. If the employee does not enroll in a drug abuse rehabilitation program for at least 6 months, the appointing authority shall begin proceedings to dismiss the employee.

(c) The employee who successfully participated in a drug abuse rehabilitation program of at least 6 months' duration and has been free of drugs listed in Regulation .06 of this chapter for at least 18 months during the 6-month period in which the employee participated in a drug abuse rehabilitation program, may reapply for a sensitive classification or a sensitive position.

(4) A person who is later hired in accordance with the procedure described in § E(3) of this regulation shall be subject to periodic random testing for illegal use of drugs.

(5) The State Medical Director may disapprove a physician's certificate as set forth in § E(1) and (3) of this regulation if the State Medical Director determines that the drug abuse rehabilitation program does not meet standards generally recognized in the field of drug abuse treatment or therapy.

(6) A person who is later hired in accordance with the procedures described in § E(4) of this regulation shall be subject to periodic random testing for illegal use of drugs.

(7) The State Medical Director may disapprove a physician's certificate as set forth in § E(1) and (4) of this regulation if the State Medical Director determines that the drug abuse rehabilitation program does not meet standards generally recognized in the field of drug abuse treatment or therapy.

#### F. Appeal Rights.

(1) This section applies to applicants only.

(2) The appointing authority shall notify the applicant in writing of any disqualification based on test results, and shall inform the applicant of the appropriate appeal route.

(3) An applicant may submit a written appeal of any positive test results to the Secretary within 5 work days after receipt of the written notice of the positive test results. The applicant shall bear the burden of proving an irregularity in the drug testing procedure used. This appeal may not be a contested case.

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(4) Upon receipt of the appeal, the Secretary shall review the documentation; and may decide to uphold the decision of the appointing authority to eliminate the applicant from consideration in accordance with § E of this regulation or:

- (a) Conduct an investigation to obtain additional information; or
- (b) Convene a conference, which may be attended by the appointing authority, the applicant, and other appropriate individuals.

(5) The Secretary shall issue a written determination within 45 calendar days after receipt of the appeal, or within 45 calendar days after an investigation or conference.

**.04 Requirements for Employees.**

A. Employee Arrest. Each employee arrested for an alleged controlled dangerous substance offense shall report the arrest to the employee's appointing authority on the employee's next scheduled work day, or within 1 week, whichever is earlier. Failure to report the arrest shall result in disciplinary action, up to and including dismissal.

B. Conditions for Testing for Illegal Use of Drugs.

(1) An appointing authority may require that an employee be tested if the appointing authority has reasonable suspicion to believe that the employee has illegally used drugs.

(2) An appointing authority may require employees in positions in sensitive classifications or in sensitive positions to be tested for the illegal use of drugs if any of the following conditions exist:

(a) Reasonable Suspicion. This condition exists when the appointing authority has reasonable and specific grounds to believe that a drug abuse test of an employee shall produce evidence of illegal use of drugs.

(b) Incident Triggered Factor. This condition exists when an injury to the employee or another person or property damage may have been caused by human error, and the employee was directly involved in the accident or incident.

(c) Participation in Drug Abuse Rehabilitation Program. This condition exists when an employee in a position in a sensitive classification or in a sensitive position has notified the employee's appointing authority that the employee is voluntarily participating in a drug abuse rehabilitation program, including any program offered under the State Employee Assistance Program, and this participation is not the result of having tested positive in accordance with this chapter. The employee's appointing authority may arrange for testing of the employee at any time during the:

- (i) Employee's participation in the rehabilitation program; and

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(ii) One-year period immediately following the employee's successful completion of the rehabilitation program.

(d) Arrest for a Controlled Dangerous Substance Offense. This condition exists when an employee in a position in a sensitive classification or in a sensitive position has notified the employee's appointing authority that the employee has been arrested for a controlled dangerous substance offense.

C. Random Testing.

(1) Each appointing authority, with the approval of the Secretary, shall assure that employees in positions in sensitive classifications or in sensitive positions within the appointing authority are subject to random testing for illegal use of drugs.

(2) Random testing requires that statistically significant samples of employees in sensitive classifications or in sensitive positions be tested on a periodic basis.

(3) All employees in sensitive classifications or in sensitive positions have an equal chance of being tested. However, only a sample of employees in each sensitive classification or a sample of all employees in sensitive positions are tested, based upon an appropriate random sampling technique.

D. Notification.

(1) An appointing authority shall give an employee who is to be tested a Controlled Dangerous Substance Test Order prescribed by the Secretary.

(2) Refusal to be Tested. The appointing authority shall inform an employee who refuses to be tested that refusal may result in disciplinary action, which may include termination from State Service.

(3) Positive Test Results. The appointing authority shall inform an employee who agrees to be tested of the consequences of a positive test result in accordance with § E of this regulation.

E. Testing Protocol.

(1) The appointing authority shall provide an employee who is ordered to take a urinalysis for the purpose of testing for illegal use of drugs with a Controlled Dangerous Substance Test Order.

(2) After completion of the test, the test results shall be provided to the State Medical Director, who shall inform the appointing authority of whether an employee has tested positive or negative.

(3) All testing protocols shall be in accordance with Regulation .05 of this chapter.

F. Consequences of Positive Test Results.

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(1) When, as a result of a random drug test in accordance with § C of this regulation, an employee in a position in a sensitive classification or in a sensitive position tests positive for use of illegal drugs, the appointing authority shall suspend the employee without pay for 15 work days. As a condition of returning to work, the employee shall enroll in a drug abuse rehabilitation program of at least 6 months duration and shall be subject to periodic testing throughout the duration of the program. At the conclusion of the rehabilitation program the employee shall submit to the Secretary a certification from the attending physician, or a certified chemical dependency counselor, licensed certified social worker, or licensed psychologist associated with the rehabilitation program, certifying on the certificate under oath that the employee has successfully participated in a drug abuse rehabilitation program of at least 6 months duration and has not tested positive for drugs listed in Regulation .06 of this chapter at any point during the rehabilitation program. If the employee does not enroll in a drug abuse rehabilitation program during the suspension period, or if the employee fails to successfully participate in a drug abuse rehabilitation program for at least 6 months, the appointing authority shall begin proceedings to dismiss the employee.

(2) When, as the result of any of the conditions described in § B(2) of this regulation, an employee in a position in a sensitive classification or in a sensitive position tests positive for use of illegal drugs, the appointing authority shall institute proceedings to dismiss the employee in accordance with the employee's status of employment.

(3) When an employee not in a position in a sensitive classification or not in a sensitive position tests positive, the appointing authority shall institute whatever disciplinary action the appointing authority considers appropriate.

(4) Drug Rehabilitation Program.

(a) The employee's continued employment or eligibility for reemployment, if terminated, may be conditioned on the employee's enrollment in and satisfactory completion of a drug rehabilitation program.

(b) If the employee is not terminated, the employee shall be required to enroll in a drug abuse rehabilitation program of at least 6 months' duration and shall be subject to periodic testing throughout the duration of the program.

(c) At the conclusion of the rehabilitation program the employee shall submit to the Secretary a certification from the attending physician, or a certified chemical dependency counselor, licensed certified social worker, or licensed psychologist associated with the rehabilitation program, certifying under oath that the employee has successfully participated in a drug abuse rehabilitation program of at least 6 months' duration and has not tested positive for drugs listed in Regulation .06 of this chapter at any point during the rehabilitation program.

(d) The employee may be tested again at any point during the year following participation in the rehabilitation program.

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(e) If the employee does not enroll in the drug abuse rehabilitation program, or does not successfully complete the rehabilitation program, or if the employee tests positive at any point during the 1 year following participation in the rehabilitation program, the employee shall be terminated.

(5) An employee who is dismissed from State service in accordance with § F(1) of this regulation shall be disqualified from State employment for positions in sensitive classifications or for sensitive positions unless the person submits to the Secretary a certificate from a physician certifying on the certificate under oath that the person has:

(a) Successfully participated in a drug abuse rehabilitation program of at least 6 months' duration; and

(b) Been free of drugs listed in Regulation .06 of this chapter for at least 18 months before the person's application for the position.

(6) An individual who is later hired in accordance with the procedure described in § F(5) of this regulation shall be subject to periodic testing for illegal use of drugs. If the individual tests positive, the individual shall be terminated.

(7) An individual who is later hired in accordance with the procedure described in § F(5) of this regulation and who tests positive for illegal use of a controlled dangerous substance shall be dismissed from State service. The individual's eligibility for future State employment shall be conditioned on whatever terms the Secretary considers appropriate.

(8) The State Medical Director may disapprove a certificate as set forth in § F(1) and (5) of this regulation if the State Medical Director determines that the drug abuse rehabilitation program does not meet standards generally recognized in the field of drug abuse treatment or therapy.

(9) Nothing in this section shall be interpreted to prevent an appointing authority from taking appropriate disciplinary action, which may include termination, against an employee when the employee's conduct provides independent grounds for disciplinary action.

G. Appeal Rights. An employee or an applicant-employee may submit a written appeal in accordance with COMAR 06.01.01.55-.57, .60, or .61. The adverse party in an appeal shall be the appointing authority.

**.05 Urine Specimen Collection; Chain of Custody; Retention of Specimen and Test Results.**

A. The appointing authority shall assure that all aspects of urine specimen collection are controlled to ensure integrity of the specimen. This includes either observation as the specimen is provided or methods to preclude adulteration.

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B. The appointing authority shall assure that a chain of custody is established consistent with forensic protocol standards. This means that the specimen is to be sealed in a special container and envelope which is signed by the individual being tested and by every other person who has custody until the specimen is delivered to the testing laboratory technician. All aspects of specimen receipt, identification, and testing shall be documented.

C. The laboratory that tests that specimen shall retain all confirmed positive test:

- (1) Specimens for 1 year or longer as may be required by the State; and
- (2) Results for at least 3 years or longer as may be required by the State.

**.06 Drugs to be Screened.**

A. The drugs that shall be screened include, but are not limited to, the following:

- (1) Marijuana/Cannabinoids;
- (2) Cocaine;
- (3) Opiates;
- (4) Phencyclidine (PCP); and
- (5) Amphetamines.

B. An appointing authority may submit to the Secretary a written request for approval to screen for a drug or controlled substance other than those listed in § A of this regulation. If the Secretary approves the request, the Secretary shall notify all appointing authorities who require testing for illegal use of drugs of the addition of that drug to the list.

**.07 Testing Methodologies.**

A. The initial screening test shall use an immunoassay.

B. The confirmatory test shall be Gas Chromatography–Mass Spectroscopy (GC–MS).

**.08 Testing Cutoff Levels.**

An initial screening test result shall be determined to be positive based upon the following cutoff levels:

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Initial Test Level (nanograms per milliliter)

A. Marijuana metabolites .....	50;
B. Cocaine metabolites .....	300;
C. Opiate metabolites .....	300;
D. Phencyclidine .....	25;
E. Amphetamines .....	1,000.

**.09 Confirmatory Test.**

A. A confirmatory test which uses the chromatography technology specified in Regulation .07 of this chapter shall be required subsequent to each test that produces positive results for any of the drugs listed in Regulation .06 of this chapter or any drug which has been added to the list.

B. Protocols that double-screen are permitted only if test results which are positive on both screens are confirmed positive with GC-MS before reporting a positive test.

C. Protocols that result in one negative screening test shall be reported as a negative test.

**.10 Testing Laboratory.**

A. An appointing authority may arrange for collection of urine specimens by a contractor selected by the Secretary.

B. Selection of a Laboratory by Appointing Authority. An appointing authority shall arrange for testing for illegal use of drugs to be conducted by a laboratory whose services have been contracted by the Secretary, and which is certified under National Institute of Drug Abuse Mandatory Guidelines for Federal Workplace Drug Testing Programs.

**.11 Approval of Testing Procedures; Statistics.**

A. Each appointing authority shall establish a procedure for testing for illegal use of drugs, provided that the procedure is in accordance with this chapter. Before implementing that procedure, the appointing authority shall submit the following to the Secretary for approval:

- (1) A list of sensitive classifications for which random testing will be required;
- (2) A description of the testing procedure to be used; and
- (3) The name of the laboratory that will conduct the testing.

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B. Each appointing authority shall designate an agency technical representative, and shall notify the Secretary in writing of the agency technical representative's name and position.

C. Each appointing authority shall submit to the Secretary periodic reports, including statistical information, in a format and according to a schedule determined by the Secretary.

**.12 Annual Review.**

The Secretary shall conduct an annual review of the program for testing for illegal use of drugs to:

A. Allow for incorporation of modifications made in the field of testing for illegal use of drugs;

B. Allow for addition or deletion of specific substances listed in Regulation .06 of this chapter; and

C. Ensure compliance with this chapter.

**.13 Training.**

A. Each appointing authority shall assure that training is provided to all of the appointing authority's employees who are involved in the implementation of this chapter. All training programs shall be subject to prior approval of the Secretary.

B. Training shall include, but is not limited to, all of the following:

(1) Conditions for testing for illegal use of drugs;

(2) Identification of sensitive classifications or sensitive positions, which require random testing for illegal use of drugs;

(3) Notification procedures;

(4) Testing protocols, including specimen collection and chain of custody;

(5) Impact of positive test results upon applicants, employees, and the appointing authority;

(6) Appeal rights; and

(7) Confidentiality requirements.

**.14 Confidentiality.**

A. Notwithstanding any regulation to the contrary, and to the extent permissible under applicable statutes, all test results shall be handled as confidential information.

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B. Test results shall be considered part of the employee's personnel record and subject to the confidentiality protections of State Government Article, § 10-616(h), Annotated Code of Maryland, and COMAR 06.01.04.

C. Except for those persons identified elsewhere in these regulations as having a right of access to test results, only those members of management who have a need to know of test results shall be made aware of any test results.

#### **.15 Notice of Regulations in this Chapter.**

Each appointing authority shall assure that the appointing authority's employees are notified of the following:

A. The existence of these regulations;

B. The circumstances under which employees may be subject to these regulations; and

C. The employees' rights to appeal any adverse action which results from the implementation of these regulations.

#### **Administrative History**

Effective date: January 9, 1989 (15:27 Md. R. 3126)

Regulations .01, .03—, .11, .13, and .14 amended effective August 6, 1990 (17:15 Md. R. 1854)

Regulation .01B amended effective October 24, 1994 (21:21 Md. R. 1812)

Regulation .02-1 adopted effective August 6, 1990 (17:15 Md. R. 1854)

Regulations .03E, .04E, .10A, B, and .14B amended, and .04F and .14C adopted as an emergency provision effective November 20, 1990 (17:26 Md. R. 2972); adopted permanently May 13, 1991 (18:9 Md. R. 1007)

Regulation .03E amended as an emergency provision effective May 24, 1993 (20:12 Md. R. 994); emergency status expired November 30, 1993; adopted permanently effective March 28, 1994 (21:6 Md. R. 465)

Regulation .04 amended effective October 24, 1994 (21:21 Md. R. 1812)

Regulation .08A amended effective October 24, 1994 (21:21 Md. R. 1812)