



1982

Legislation: Maryland's Drunk Driving Laws: An Overview

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Recommended Citation

Nicholson, Christopher W. (1982) "Legislation: Maryland's Drunk Driving Laws: An Overview," *University of Baltimore Law Review*: Vol. 11: Iss. 2, Article 8.

Available at: <http://scholarworks.law.ubalt.edu/ubl/vol11/iss2/8>

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LEGISLATION

MARYLAND'S DRUNK DRIVING LAWS: AN OVERVIEW

*"All the king's horses and all the king's men cannot change the position of road curves, telephone poles, fences and railway crossings often or quickly enough to meet the changing intentions of the driver who is under the influence of alcohol."*¹

I. INTRODUCTION

Approximately seven hundred people are killed in traffic accidents on Maryland highways each year.² In ninety percent of those accidents, the drivers at fault have been drinking.³ Despite these statistics, Maryland has remained among the minority of jurisdictions that require a blood alcohol content (BAC)⁴ of .15% to prove intoxication.⁵ Recent legislation has modified this and other enforcement provisions of Maryland's drunk driving laws.

This article provides an overview of the current drunk driving laws in Maryland with an emphasis on changes implemented in the 1981 and 1982 legislative sessions.⁶ Because the recent changes to the drunk driving laws are principally related to enforcement measures, these laws are presented in a chronological fashion, beginning with the officer's initial stop of a suspected drunk driver, proceeding through the arrest of a suspected drunk driver, and concluding with the imposition of administrative sanctions. Possible problems with the new laws are also noted.

1. Porter, *The Problem as Viewed by the Judge in Alcohol and the Automobile Driver: A Symposium*, 44 ARCHIVES OF NEUROLOGY & PSYCHIATRY 212, 213 (1940), cited in Cameron, *The Impact of Drinking-Driving Countermeasures: A Review and Evaluation*, 8 CONTEMP. DRUG PROBS. 495, 497 (1979).

2. MD. DEP'T OF TRANSPORTATION, REPORT OF THE TASK FORCE ON THE DRINKING DRIVER 3 (1980) [hereinafter cited as REPORT OF THE TASK FORCE].

3. *Id.* The problem of drunk drivers existed nationally as early as 1938, and by 1940, it was becoming the number one traffic safety problem. Cameron, *The Impact of Drinking-Driving Countermeasures: A Review and Evaluation*, 8 CONTEMP. DRUG PROBS. 495, 496, 502-03 (1979). Alcoholics, although a small minority of the population, accounted for a large part of the overall highway safety problem.

Legislation has been enacted by the United States Congress to establish a program that provides mandatory minimum standards to assure tougher drunk driving laws, more stringent enforcement of these laws, and on-going effective public information regarding drunk driving. States implementing this program would be entitled to receive additional federal funding. Alcohol Traffic Safety and National Driver Registration Acts, Pub. L. No. 97-364 (Oct. 25, 1982).

4. Blood alcohol content is the percentage, by weight, of the amount of alcohol in the blood. 1 R. ERWIN, DEFENSE OF DRUNK DRIVING CASES § 15.04 (3d ed. 1980).

5. MD. CTS. & JUD. PROC. CODE ANN. § 10-307(e) (1980) (amended 1981).

6. This article will not address motor vehicle homicide, MD. ANN. CODE art. 27, §§ 388, 388A (1976 & Supp. 1981), nor will it address the criminal penalties for a drunk driving conviction.

II. THE STOP OF A SUSPECTED DRUNK DRIVER

In order to lawfully stop or detain the operator of a motor vehicle for the offense of driving while intoxicated (DWI),⁷ an officer must have reasonable grounds to believe the individual is or has been driving a motor vehicle while intoxicated or while under the influence of alcohol.⁸ The 1981 legislature has authorized the use of a preliminary breath test to assist police in detecting motorists who have been drinking.⁹ This test may be administered following the lawful stop of a motorist.¹⁰ An officer may, without making an arrest and prior to issuing a traffic citation,¹¹ request the motorist to submit to a preliminary breath test. The officer must advise the motorist that neither refusing the test nor taking the test will prevent or require a subsequent chemical test.¹²

A refusal by the motorist to submit to the preliminary test does not

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7. The authority of a police officer to stop a motorist for drunk driving is statutorily provided in MD. TRANSP. CODE ANN. § 16-205.1(c) (Supp. 1981). However, this is not the only source of authority for an officer to stop or detain a motorist. Montgomery County Police have recently implemented a safety checkpoint procedure to detect drunk drivers. All oncoming traffic is stopped by an officer for a period of thirty seconds or less. If during the brief stop the officer concludes the motorist has been drinking, the motorist is requested to drive to the side of the road and the officer proceeds with the inquiry. Telephone interview with Bruce P. Sherman, Assistant Montgomery County Attorney (Jan. 22, 1981). In *Delaware v. Prouse*, 440 U.S. 648 (1979), the Supreme Court noted with approval spot checks of all oncoming traffic at roadblock-type stops. See also *United States v. Prichard*, 645 F.2d 854 (10th Cir. 1981); *Gode v. State*, 41 Md. App. 623, 398 A.2d 801 (1979).
 8. MD. CTS. & JUD. PROC. CODE ANN. § 10-307(d) & (e) (Supp. 1981). The expression "driving while under the influence of alcohol" has been substituted for and has the same meaning as "driving while ability impaired by alcohol." Law of May 3, 1982, ch. 95, 1982 Md. Laws 1223.
 "Driving" is defined as "to drive, operate, move, or be in actual physical control of a vehicle, including the exercise of control over or the steering of a vehicle being towed by a motor vehicle." MD. TRANSP. CODE ANN. § 11-114 (1977). In *Thomas v. State*, 277 Md. 314, 353 A.2d 256 (1976), the court held that "drive" had a narrower meaning than either operating or being in actual physical control of the vehicle and required movement in some direction plus steering and controlling the vehicle. *Id.* at 319, 353 A.2d at 259.
 "Motor vehicle" is defined as a vehicle that is "self-propelled or propelled by electric power obtained from overhead electrical wires" and is "not operated on rails." MD. TRANSP. CODE ANN. § 11-135(a) (1977).
 9. MD. TRANSP. CODE ANN. § 16-205.2 (Supp. 1981).
 10. *Id.* Maryland State Police use the "Alco-Sensor" by Intoximeter, Inc. to administer the preliminary breath test. The "Alco-Sensor," like the chemical breath test, detects the presence of alcohol in the breath and gives a percentage reading. Telephone interview with Lt. David Yoder of the Maryland State Police (Aug. 7, 1981) [hereinafter cited as Yoder Interview]. The preliminary breath test can be administered by any police officer in the field, without a need for special training or certification. *Id.*
 11. A traffic citation is a charging document upon which the State may proceed to trial, notwithstanding that the officer did not support the citation by oath. *State v. Dodd*, 17 Md. App. 693, 304 A.2d 846 (1973).
 12. MD. TRANSP. CODE ANN. § 16-205.2(d) (Supp. 1981).

result in the imposition of administrative penalties.¹³ The preliminary breath test results will only be used as a guide for the officer in deciding whether to arrest the motorist.¹⁴ Although the defendant is free to introduce into evidence at trial the results of the preliminary breath test, the State is not permitted to introduce such evidence for purposes of proving its case in chief.¹⁵

Because of the restrictions placed upon the use of the preliminary breath test results, the defendant should submit to the preliminary test in most instances. If alcohol is detected, the individual would still be free to refuse the chemical test; however, if no alcohol or an insufficient amount of alcohol is detected, the motorist can then use these results to his advantage in any subsequent proceeding. Thus, while the purpose of the preliminary breath test is to aid the police, it is the motorist who benefits from its use.

III. THE ARREST OF A SUSPECTED DRUNK DRIVER

A. *Refusal to Submit to Chemical Testing*

Implied consent laws were passed in many states during the 1950's to encourage drivers to submit to chemical testing.¹⁶ These statutes were based upon the rationale that a condition precedent for the privilege¹⁷ of driving upon the highways of a state was a driver's consent to permit chemical testing whenever properly requested.¹⁸ If the driver refused the test, he was deemed to have withdrawn his consent, which resulted in a failure of the condition precedent to a license; hence, the

13. *Id.*

14. *Id.* § 16-205.2(c).

15. *Id.* The state could, however, use such evidence for impeachment purposes. See *United States v. Havens*, 444 U.S. 962 (1980). Neither party can use any evidence pertaining to the preliminary breath test in a civil action. MD. TRANSP. CODE ANN. § 16-205.2(c) (Supp. 1981). Since the evidentiary limitations relate solely to court action, it would appear that either the State or the defendant could use evidence pertaining to the preliminary breath test at a hearing before the Motor Vehicle Administration.

16. The first state to pass an implied consent statute was New York. Now all fifty states have some type of implied consent statute. Note, *Driving While Intoxicated and the Right to Counsel: The Case Against Implied Consent*, 58 TEX. L. REV. 935, 938 (1980) [hereinafter cited as *Right to Counsel*].

17. Driving is a privilege, not a right. MD. TRANSP. CODE ANN. § 11-128(2)(ii) (1977).

18. See *Right to Counsel*, *supra* note 16, at 938. Prior to chemical testing, a conviction for drunk driving usually depended upon the arresting officer's testimony regarding the defendant's condition at the time of the incident. His condition as manifested by his actions, appearance, speech, and odor was determined by general observation and the use of nonscientific tests. These tests included requiring the defendant to walk a straight line, touch the tip of his nose with a finger, or recite the alphabet. Comment, *The Theory and Practice of Implied Consent in Colorado*, 47 U. COLO. L. REV. 723, 724 (1976). The chemical testing of BAC produced new evidence which, because of its scientific basis, provided greater reliability. However, drivers were reluctant to submit to the testing. 53 N.D. L. REV. 607, 608 (1977).

state revoked the conditional privilege of driving.¹⁹

Maryland's current implied consent statute provides that any person who drives or attempts to drive a motor vehicle on a highway or any private property used by the public in general has consented to taking a chemical test when properly requested.²⁰ An arrestee must choose between submitting to chemical testing or refusing and incurring the administrative penalties that shall be imposed.²¹

In *Schmerber v. California*,²² the United States Supreme Court held that a blood test was a "search" and thus required a warrant in the absence of any exigent circumstances.²³ However, because alcohol in the bloodstream dissipates quickly after an individual stops drinking, the Court found that such exigent circumstances exist any time an officer makes a lawful stop of a suspected drunk driver.²⁴ The officer must have probable cause to believe he will find evidence of the offense, and the search must be conducted in a reasonable manner.²⁵

In light of *Schmerber*, the Maryland implied consent statute cre-

19. See *Right to Counsel*, *supra* note 16, at 938. Maryland currently has one of the highest refusal rates in the nation, with approximately 28% of those persons charged refusing to take the chemical test. REPORT OF THE TASK FORCE, *supra* note 2, at 8.

20. MD. TRANSP. CODE ANN. § 16-205.1(a) (Supp. 1981). The new statute eliminates the condition precedent of consent upon issuance or renewal of a license and implies consent whenever an individual drives. Compare *id.* with MD. TRANSP. CODE ANN. § 16-205.1(a) (1977). By using the terminology "any person," all residents, non-residents, licensed and non-licensed drivers are within the purview of the statute. See MD. TRANSP. CODE ANN. §§ 11-139, -149 (Supp. 1981). "Private property used by the public in general" is not defined by statute. It would appear that private property need not be designated for use as a roadway. For example, parks, beaches, and shopping center parking lots would all be within the purview of the implied consent statute.

Subsection (d) of section 16-205.1 further provides that a police officer may order a chemical test for alcohol to be taken from one who is unconscious or otherwise incapable to refuse the testing. If an individual becomes capable of refusing before the test is administered, the police officer must follow the procedures in section 16-205.1(c). Laws of May 3, 1982, ch. 91, 1982 Md. Laws 1214 (to be codified at MD. TRANSP. CODE ANN. § 16-205.1(d)).

21. See MD. TRANSP. CODE ANN. § 16-205.1(a) (Supp. 1981).

22. 384 U.S. 757 (1966).

23. *Id.* at 770.

24. *Id.* at 770-71. The Court analogized the oxygenization of alcohol in the body to the destruction of evidence, which creates an emergency situation in which obtaining a warrant would be unfeasible. *Id.*

25. *Id.* Maryland has statutorily limited the methods by which a motorist may be searched for evidence of alcohol to (1) breath tests administered by qualified persons, MD. CTS. & JUD. PROC. CODE ANN. § 10-304(a)(3) (Supp. 1980), and (2) the withdrawal of blood by a qualified medical person. *Id.* § 10-304(a)(2). "Qualified persons" is defined as a person who has received training in the use of the breath-testing equipment in a program approved by the toxicologist of the Office of the Chief Medical Examiner of the Department of Postmortem Examiners and who is either a police officer, a police employee, or an employee of the Office of the Chief Medical Examiner. *Id.* § 10-304(a)(3). A "qualified medical person" is defined as any person permitted by law to withdraw blood from humans. *Id.* § 10-304(a)(2).

ates a paradox. While the statute is designed to encourage drivers to submit to chemical testing, it actually creates the option for the driver to refuse chemical testing. As a result of *Schmerber*, a driver could be compelled to submit to BAC testing, absent an implied consent statute.²⁶ The statute, therefore, appears to defeat the purpose for which it was enacted.²⁷

After arresting a motorist for drunk driving, the officer may request that the individual submit to a chemical test of his blood or breath to determine his BAC.²⁸ In the event that the arrestee refuses to permit such testing, a fact that cannot be introduced at trial,²⁹ the officer must advise the individual of the administrative penalties that shall be imposed.³⁰ Within forty-eight hours after detaining the individual, the officer must file a sworn report with the Motor Vehicle Administration (hereinafter referred to as the Administration), stating that the motorist has been drinking and driving and had refused to permit

26. Maryland's implied consent statute has imposed greater restrictions on police activity than those required by the Supreme Court under the Federal Constitution. See *Oregon v. Hass*, 420 U.S. 714, 719 (1975).

27. See *Right to Counsel*, *supra* note 16, at 947.

The 1982 legislature has provided that when a motor vehicle accident results in the death of another person and a police officer has reasonable grounds to believe one was driving or attempting to drive while intoxicated or under the influence, the person shall be required to submit to chemical testing. Law of May 3, 1982, ch. 100, 1982 Md. Laws 1250 (to be codified at MD. TRANSP. CODE ANN. § 16-205.1(c)).

28. MD. TRANSP. CODE ANN. § 16-205.1(c)(2) (Supp. 1981). The accused must affirmatively consent to the administration of a chemical test. *State v. Loscomb*, 291 Md. 424, 437, 435 A.2d 764, 770-71 (1981).

It is unclear whether one has a right to counsel when deciding whether to refuse or permit BAC testing. Compare *Leopold v. Tofany*, 68 Misc. 2d 3, 325 N.Y.S.2d 24 (holding there is a right to counsel), *aff'd*, 38 A.D.2d 550, 327 N.Y.S.2d 999 (1971) with *Right to Counsel*, *supra* note 16, at 945 (if the right to counsel exists in this situation, it should be eliminated by compelling chemical testing of all drivers suspected of driving while intoxicated).

The Supreme Court of Oregon has held that a defendant was not in "custody" and thus *Miranda* warnings were not mandated, when following several field sobriety tests the police officer determined to arrest the defendant but did not communicate that determination to him or utter any words of arrest before questioning the defendant on the degree of his intoxication. *State v. Roberti*, 293 Or. 59, 644 P.2d 1104, *cert. filed*, [Current Docket] S. Ct. Bull. (CCH) 7083 (U.S. Aug. 20, 1982) (No. 82-315).

29. MD. CTS. & JUD. PROC. CODE ANN. § 10-309 (1977). An inquiry regarding the defendant's refusal would constitute plain error. *Major v. State*, 31 Md. App. 590, 603, 358 A.2d 609, 617, *cert. denied*, 278 Md. 722 (1976). On the other hand, if the defendant requested a BAC test and the officer refused, the defendant could offer that fact into evidence. *Id.* There is a split among the jurisdictions as to whether the motorist's refusal to permit the testing is constitutionally admissible at trial. See *Right to Counsel*, *supra* note 16, at 946. The Supreme Court of South Dakota has held that a defendant's exercise of his statutory right to refuse to submit to blood testing cannot constitutionally be used against him by the prosecution to prove its case in chief. *State v. Neville*, 312 N.W.2d 723 (S.D. 1981), *cert. granted*, [Current Docket] S. Ct. Bull. (CCH) 7022 (U.S. May 17, 1982) (No. 81-1453).

30. MD. TRANSP. CODE ANN. § 16-205.1(c)(3) (Supp. 1981).

chemical testing after being informed of the administrative penalties that would be imposed upon his refusal.³¹

Upon receipt of the officer's report, the Administration shall notify the motorist to attend a hearing and show cause why his license should not be suspended.³² At the hearing, the driver may present evidence concerning his refusal to take the test.³³ Failure of the arrestee to attend the administrative hearing is *prima facie* evidence of his inability to answer the officer's statements and the Administration will summarily suspend his license.³⁴

If the Administration determines that the driver refused to permit the testing as alleged, it shall suspend the arrestee's license for a period not less than sixty days nor more than six months.³⁵ The suspension, however, may be modified or a restricted license issued if (1) the licensee is required to drive in the course of his employment, (2) a driver's license is required so that the licensee may attend an alcoholic prevention or treatment program, or (3) the licensee has no other means of transportation available and his ability to earn a living would be severely impaired without his license.³⁶

One commentator notes that it is in the arrestee's best interest to refuse the BAC test.³⁷ The penalty for refusal is civil in nature, usually involving license suspension, whereas, if the arrestee permits BAC testing, he subjects himself to criminal liability, including fines and/or imprisonment, as well as revocation or suspension of his license.³⁸ Therefore, it may benefit the arrestee to refuse the chemical test unless he is certain the results of the testing will be favorable to him.³⁹

31. *Id.* § 16-205.1(c)(4).

32. *Id.* § 16-205.1(e). *Cf.* *Bell v. Burson*, 402 U.S. 535 (1971) (an issued driver's license may not be suspended without compliance with the procedural due process requirements of the fourteenth amendment). Notice shall be given in accordance with MD. TRANSP. CODE ANN. § 12-202 (1977) and the hearing must occur within thirty days from the officer's stop of the driver. *Id.* § 16-205.1(e)(2) (Supp. 1981).

33. MD. TRANSP. CODE ANN. § 16-205.1(e)(3) (Supp. 1981). At the hearing, the motorist may be represented by counsel. *Id.*

34. *Id.* § 16-205.1(e)(4).

35. *Id.* If the Administration finds that an individual was properly charged but refused to permit chemical testing, his license shall be suspended unless the officer lacked probable cause to make the stop or the individual has a medical problem which caused his erratic driving. Telephone interview with William T.S. Bricker, Director, Motor Vehicle Administration for the State of Maryland (Jan. 17, 1982) [hereinafter cited as Bricker Interview]. The order of suspension by the Administration is appealable. MD. TRANSP. CODE ANN. § 16-205.1(f) (Supp. 1981).

36. MD. TRANSP. CODE ANN. § 16-205.1(e)(5)(i)-(iii) (Supp. 1981). It is within the discretion of the administrative hearing officer to modify the suspension or issue a restricted license. The burden is upon the individual to prove, by strict proof, that he falls within one of the exceptions. Bricker Interview, *supra* note 35.

37. *Right to Counsel*, *supra* note 16, at 947.

38. *Id.*

39. A motorist's refusal to permit BAC testing does not prohibit the police from proceeding with criminal charges. In fact, it is a standard procedure of the Maryland State Police to seek a conviction for drunk driving regardless of whether the mo-

B. Submission to Chemical Testing

Maryland permits two types of chemical testing: breath and blood.⁴⁰ The arrestee, not the police officer, is given the choice of which method will be used.⁴¹ If the method chosen is one which cannot be administered within two hours, then no test may be given and the officer's inability to administer the test is not admissible at trial.⁴² Furthermore, the inability of the officer to administer a test may not be considered a refusal to submit nor may any presumption of guilt be deduced from it.⁴³ If the arrestee initially selects a test which is capable of being administered within the legal time limit, but subsequently chooses a test which cannot be administered within the legal time limit, the officer may choose the testing method.⁴⁴ A denial by the arrestee to

torist consents to BAC testing. Yoder Interview, *supra* note 10. In the absence of chemical evidence, the State may meet its burden of proof by having the arresting officer testify as to the defendant's demeanor at the time of the arrest.

40. MD. CTS. & JUD. PROC. CODE ANN. § 10-302 (Supp. 1981). Maryland, by implication, has excluded BAC testing by means of gas chromatography, urine, and saliva. *See id.* For an explanation of how the breath test works, see 1 R. ERWIN, DEFENSE OF DRUNK DRIVING CASES § 15.01 (3d ed. 1980); Bellotti, *The Preparation and Trial of a Drunken Driving Case Involving a Breathalyzer*, 1 NAT'L J. CRIM. DEF. 131 (1975).

After the chemical testing of an individual is completed, the test ampoule, that is, the residue remaining after the chemical testing, is discarded. This procedure has recently come under attack. California has held that a case may be dismissed "unless the prosecution can show that the governmental agencies involved have established, enforced and attempted in good faith to adhere to vigorous and systematic procedures designed to preserve" such evidence. *People v. Hitch*, 527 P.2d 361, 369, 117 Cal. Rptr. 9, 17 (1974). Missouri requires that the test ampoule be preserved. *State v. Baker*, 490 S.W.2d 263 (Mo. 1973) (affirmed defendant's conviction because he failed to show he was prejudiced by disposal of the ampoule).

Section 10-306 of Maryland's Courts and Judicial Proceedings Code Annotated, which provides that if the state intends to offer the chemical test results into evidence without the testimony of the technician who administered the test, a copy of the test results must be supplied to the defendant at least fifteen days before trial, does not address the issue regarding the ampoule. *See* MD. CTS. & JUD. PROC. CODE ANN. § 10-306 (1980).

41. MD. CTS. & JUD. PROC. CODE ANN. § 10-305(a) (Supp. 1981). The specimen of blood or breath shall be taken within two hours after the person is apprehended. *Id.* § 10-303. If the specimen is taken more than two hours after the apprehension, the evidence may be excluded at a criminal trial. *Major v. State*, 31 Md. App. 590, 595, 358 A.2d 609, 612 (construing MD. CTS. & JUD. PROC. CODE ANN. § 10-309(a) (Supp. 1979)), *cert. denied*, 278 Md. 722 (1976). Since § 10-303 relates to the time limitations imposed upon obtaining the specimen, it would appear that testing which followed the withdrawal of the specimen could occur after the two-hour limit. It is the actual testing of the specimen that is crucial, not when the results are reduced to writing. *See State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981). It is unclear, however, if this rationale would apply when testing of the specimen occurred several days following its withdrawal.
42. MD. CTS. & JUD. PROC. CODE ANN. § 16-305(a) (Supp. 1981).
43. *Id.*
44. *Id.* § 10-303 (1980). Since Maryland recognizes only two types of chemical testing, the officer can only choose the test first requested by the arrestee.

permit the test chosen by the officer will be treated as a refusal.⁴⁵

If an individual selects a test and submits to it, statutory presumptions may arise depending upon the test results.⁴⁶ The recent statutory amendments left unchanged the presumption that an individual with a BAC of .05% or less is presumed not to be intoxicated;⁴⁷ however, there were three important changes regarding other statutory presumptions. First, there is no statutory presumption of either intoxication or sobriety with a BAC of .05 — .08%.⁴⁸ This is a reduction from the previous range of .05 — .10%.⁴⁹ Second, a BAC of .08% is now prima facie evidence that the defendant was driving while under the influence of alcohol rather than the .10% previously required.⁵⁰ Finally, the BAC level that establishes prima facie evidence that the defendant was driving while intoxicated has been reduced from .15% to .13%.⁵¹ Although the admission of chemical evidence at trial may give rise to a presumption of intoxication, it is not a prerequisite to obtaining a conviction.⁵² Other evidence, such as the defendant's lack of normal psychomotor skills, may be sufficient.⁵³

If an individual demonstrates poor motor skills but has a low blood alcohol content, it may indicate the use of drugs. Driving while one's ability is impaired by drugs, or the combination of drugs and alcohol, or while under the influence of any controlled dangerous substance are all violations of the law in Maryland.⁵⁴ The chemical test is

45. *Id.* § 10-305(b) (Supp. 1981).

46. It has been alleged that blood-alcohol presumption statutes are a violation of the due process clause of the fourteenth amendment. One author advocates that such statutes eliminate the constitutionally mandated presumption of innocence. The defendant is guilty until proven innocent, saddled with the burden of proving his innocence. Taylor, *Blood-Alcohol Presumptions: Guilty Until Proven Innocent*, 53 CAL. ST. B.J. 170 (1978). This author also alleges that blood-alcohol presumption statutes operate as a bill of attainder. *Id.*

These statutory presumptions may not be used in civil proceedings unless there is a full explanation to the jury regarding the meaning of the presumptions. *Fouche v. Masters*, 47 Md. App. 11, 20, 420 A.2d 1279, 1284 (1980).

47. MD. CTS. & JUD. PROC. CODE ANN. § 10-307(b) (1980).

48. *Id.* § 10-307(c) (Supp. 1981).

49. *Id.* (1980).

50. Compare MD. CTS. & JUD. PROC. CODE ANN. § 10-307(d) (1980) with MD. CTS. & JUD. PROC. CODE ANN. § 10-307(d) (Supp. 1981). Failure of § 21-902 of the Transportation Code Annotated to provide specific definitions for the expressions "under the influence" and "intoxicated" does not render subsections (a) and (b) unconstitutional on grounds of vagueness. *United States v. Channel*, 423 F. Supp. 1017, 1027 (D. Md. 1976); *Brooks v. State*, 41 Md. App. 123, 127-29, 395 A.2d 1224, 1227-28 (1979).

51. Compare MD. CTS. & JUD. PROC. CODE ANN. § 10-307(e) (1980) with MD. CTS. & JUD. PROC. CODE ANN. § 10-307(e) (Supp. 1981).

52. *Major v. State*, 31 Md. App. 590, 595, 358 A.2d 609, 613, cert. denied, 278 Md. 722 (1976).

53. *Id.* The introduction of chemical evidence, however, does not limit the introduction of other evidence. MD. CTS. & JUD. PROC. CODE ANN. § 10-308 (1981).

54. MD. TRANSP. CODE ANN. § 21-902 (1977). It is not a valid defense that the person was entitled under the laws of the state to use the drugs, unless the person was

unable to detect the presence of either drugs or controlled dangerous substances,⁵⁵ therefore, an infraction can only be proven by circumstantial evidence.

IV. IMPOSITION OF ADMINISTRATIVE SANCTIONS

A. *The Point System*

The Administration maintains a point system whereby points are assessed against an individual's license for a violation of the motor vehicle laws.⁵⁶ Upon assessment of an enumerated amount of points, an individual's license may be suspended or revoked. In most instances suspension occurs when eight points are accumulated⁵⁷ and revocation occurs when twelve points are assessed.⁵⁸ The offense of driving while under the influence of alcohol constitutes a six-point infraction⁵⁹ and driving while intoxicated is a twelve-point infraction.⁶⁰ Consequently, driving while under the influence does not represent a "suspendable" offense, yet driving while intoxicated represents a "revocable" offense.⁶¹

B. *Suspension*

Notwithstanding the point system, a license may be suspended for

unaware that the drugs or combination of drugs and alcohol would make him incapable of driving a vehicle safely. *Id.*

55. Yoder Interview, *supra* note 10. The presence of amphetamines, barbituates, dilantin, librium, methadone, opium alkaloids, salicylates, and valium are some of the substances that may be detected by a drug screening test. *State v. Moon*, 291 Md. 463, 466, 436 A.2d 420, 421 (1981).

56. MD. TRANSP. CODE ANN. § 16-402 (Supp. 1981).

57. *Id.* § 16-404(3)(i). "Suspend," as used in reference to any license to drive a vehicle, means to withdraw temporarily, by formal action of the Administration an individual's license to drive a motor vehicle on highways in this state, but only for a period specifically designated by the Administration. *Id.* § 11-164 (1977).

58. *Id.* § 16-404(3)(ii) (Supp. 1981). "Revoke," as used in reference to any license to drive a vehicle, means to terminate, by formal action of the Administration, an individual's license to drive a motor vehicle on highways in this state. *Id.* § 11-150 (1977).

59. *Id.* § 16-402(a)(14) (Supp. 1981).

60. *Id.* § 16-402(a)(22).

61. Special provisions, however, allow an individual who is required to drive in the regular course of business to accumulate sixteen points before suspension occurs and nineteen points before revocation. *Id.* § 16-405(c).

The Transportation Code Annotated does not define one "who drives in the regular course of business." Therefore, it is a factual issue within the discretion of the administrative hearing officer. A letter from the motorist's employer is usually necessary to prove he is required to drive in the regular course of his business. Bricker Interview, *supra* note 35. An individual forfeits these provisions, however, if his current accumulation of points includes points received as a result of a conviction for an alcohol-related offense. MD. TRANSP. CODE ANN. § 16-405(c) (Supp. 1981). If suspension or revocation would adversely affect the employment or opportunity of employment, the Administration may decline, cancel or modify the order of suspension or revocation. *Id.* § 16-405(a).

either of two alcohol-related offenses. First, an individual's license may be suspended for refusing to submit to chemical testing.⁶² Second, a license may be suspended for a violation of driving while under the influence of alcohol, drugs, or a combination of alcohol and drugs.⁶³

C. Revocation

In addition to the point system, the Administration may revoke the license of any person convicted of driving while intoxicated or while under the influence of a controlled dangerous substance.⁶⁴ Furthermore, the Administration may revoke an individual's license if, within a three-year period, he is convicted of three or more violations of driving while under the influence of alcohol, drugs, or a combination of alcohol and drugs.⁶⁵

D. Probation Before Judgment

Whenever a person pleads guilty, is found guilty, or pleads *nolo contendere* to an alcohol offense, a court of criminal jurisdiction may stay the entering of the judgment, defer further proceedings, and place the individual on probation if the accused consents and it is in the best interests of the accused and the state.⁶⁶ If the offense for which judgment is being stayed is a violation of either driving while intoxicated or driving while under the influence of alcohol, the court may require that the accused participate in an alcohol treatment or education program as a condition of probation.⁶⁷

Maryland now records probation before judgment dispositions on an individual's driving record.⁶⁸ This recordation requirement, how-

62. MD. TRANSP. CODE ANN. § 16-205.1(b) (Supp. 1981); see text accompanying note 35 *supra*.

63. MD. TRANSP. CODE ANN. § 16-205.1(b) (Supp. 1981). For a single offense the Administration may not suspend the license of the individual for more than 60 days. *Id.* If the individual is convicted twice within a three-year period, the individual's license may not be suspended for more than 120 days. *Id.* § 16-205.1(c).

In *Pieri v. Director of Motor Vehicles*, 192 A.2d 807 (D.C. 1963), the District of Columbia Court of Appeals held the defendant's acquittal on charges of driving while intoxicated did not prevent the Director of Motor Vehicles from revoking his driving permit on that ground. *Id.* at 808. The validity of *Pieri* in Maryland seems doubtful because the suspension statute requires a conviction before the Administration can act. MD. TRANSP. CODE ANN. § 11-110(a) (1977).

If an individual drives a motor vehicle while his license is suspended or revoked, the Administration may suspend, for not more than 120 days, the registration of any motor vehicle owned by that person. Law of May 3, 1982, ch. 94, Md. Laws 1221 (to be codified at MD. TRANSP. CODE ANN. § 13-705.1).

64. MD. TRANSP. CODE ANN. § 16-205(a)(1) (Supp. 1981).

65. *Id.* § 16-205(a)(2).

66. MD. ANN. CODE art. 27, § 641(a) (Supp. 1981).

67. *Id.*

68. MD. TRANSP. CODE ANN. § 16-117(b)(2) (Supp. 1981). Probation before judgment dispositions may be expunged from one's driving record, Bricker Interview,

ever, is only applicable to alcohol-related offenses.⁶⁹ Furthermore, these records must be segregated by the Administration, the courts, the criminal justice system, and the defendant.⁷⁰ These records may not be received or considered by a court until after a plea of guilty or nolo contendere by the defendant or a finding of guilt.⁷¹ These records are also available to the Administration when considering any license revocation or at any other suitable time.⁷²

E. Reinstatement

If a license has been suspended for an alcohol-related offense, the Administration will immediately return the license or reinstate the privilege to drive upon the expiration of the suspension, unless the license has been refused, revoked, or cancelled under any other provision of the Maryland vehicle laws.⁷³ With respect to a license that has been revoked for a DWI offense, the Administration may reinstate the license six months after receipt of the revoked license.⁷⁴ Reinstatement may only occur, however, after the Administration has investigated the character, habits, and driving ability of the individual and is satisfied

supra note 35, subject to the provisions of Law of May 3, 1982, ch. 99, 1982 Md. Laws 1248 (to be codified at MD. TRANSP. CODE ANN. § 16-117.1).

Under the prior law, probation before judgment dispositions were not recorded. *See* MD. TRANSP. CODE ANN. § 16-117(b) (1977). Thus, an individual could have been arrested several times on charges of drunk driving but if he received probation before judgment on each offense, there would be no method of ascertaining his previous record. An individual with a history of previous drunk driving charges could, therefore, proceed through the system undetected.

A court may not enter probation before judgment for a second or subsequent finding of guilt under section 21-902(a) or (b) of the Transportation Code. Law of May 31, 1982, ch. 98, 1982 Md. Laws 1246 (to be codified at MD. ANN. CODE art. 27, § 641(a)(2)).

69. MD. TRANSP. CODE ANN. § 16-117(b)(2) (Supp. 1981).

70. *Id.* The statute further provides that employees of the Administration may not disclose any information regarding probation before judgment dispositions. *Id.* It should be noted, however, that segregation of records is contrary to the usual policy that all records of the Administration are public records and open to inspection. *Id.* § 12-111(b) (1977).

71. *Id.*

72. *Id.* § 16-117(b)(3). The Administration currently considers probation before judgment dispositions when determining whether one is unfit to have a driver's license. Bricker interview, *supra* note 35. An insurer of an automobile insurance policy may not consider a probation before judgment disposition which is recorded with the Administration for purposes of reclassifying an individual and requiring a higher premium. MD. ANN. CODE art. 48A, § 242(c)(7)(iv) (Supp. 1981).

73. MD. TRANSP. CODE ANN. § 16-205(d) (Supp. 1981).

74. Law of May 3, 1982, ch. 97, 1982 Md. Laws 1244 (to be codified at MD. TRANSP. CODE ANN. § 16-208(b)). A license that has been revoked for a violation of the point system under either § 16-402 or § 16-405 may not be reinstated unless the holder of the license passes a new examination per § 16-110. MD. TRANSP. CODE ANN. § 16-404(d) (1977).

An aggrieved party to a hearing may appeal from a decision or order of the Administration to the circuit court. *Id.* § 12-209.

that it will be safe to grant the privilege to drive.⁷⁵

V. COMMENTARY

The changes in Maryland's law will facilitate the detection and punishment of drunk drivers but will not deter them. It is the problem drinker, not the social drinker, who presents the major threat on the highways.⁷⁶ Traditional enforcement methods of fines, suspensions, and revocations do not keep the problem drinker off the road.⁷⁷ Problem drinkers have the highest number of arrests for driving without a license; therefore, removing their license does not prevent them from driving.⁷⁸

In an effort to ameliorate this problem the Administration recently adopted a program whereby the social drinker would attend an alcohol education class, and the problem drinker would be required to enter and complete an alcohol rehabilitation program.⁷⁹ Deterrence by rehabilitation has demonstrated some success in a number of jurisdictions; however, it has not eliminated the problem.⁸⁰

75. MD. TRANSP. CODE ANN. § 16-208(b)(4) (1977).

76. *Deterring the Drinking Driver: Treatment vs. Punishment*, 7 UCLA-ALASKA L. REV. 244, 253 (1978).

77. Wagner, *Problem Drinking v. Public Safety*, TRIAL, May-June 1971, at 26, 30. In addition, studies have shown that mandatory jail sentences do not deter the driver who drinks. Robertson, *Jail Sentences for Driving While Intoxicated in Chicago: A Judicial Policy that Failed*, 8 LAW & SOC'Y REV. 55 (1973).

78. Strimbeck, *Driving While Intoxicated Should Not be Treated As a Criminal Matter*, 16 N.H.B.J. 214 (1974).

79. See The Evening Sun (Baltimore), Aug. 7, 1981, at A1, col. 5. The Administration will also be instituting a program whereby all drivers charged with an alcohol-related offense will be clinically evaluated to separate the problem drinker from the social drinker. Bricker Interview, *supra* note 35.

80. For example, under the Phoenix Plan, which was developed in Arizona, a driver's treatment consisted of four steps:

- (1) the driver is educated concerning the effects of alcohol consumption;
- (2) the driver is helped to understand the causes of excessive alcohol use;
- (3) the driver is encouraged to recognize the nature and extent of his personal drinking problem; and
- (4) the driver is encouraged to seek help and is assisted in contacting existing rehabilitation services in his community, such as Alcoholics Anonymous.

Kuttler & Farrell, *D.W.I. - Jail or Rehabilitation?*, 47 FLA. B.J. 232 (1973). When the Phoenix Plan was implemented in Florida, the recidivism rate for DWI offenders dropped from twenty percent to one percent. *Id.*

The Homer Alternative Work Program, which was developed in Alaska, was based upon deterrence through rehabilitation. Under the Homer plan, drivers were under the personal supervision of program personnel and were required to attend counseling sessions. In addition to obtaining alcoholism treatment, drivers were required to donate time to community projects. *Deterring the Drinking Driver: Treatment vs. Punishment*, 7 UCLA-ALASKA L. REV. 244, 260-63 (1978). For an article discussing additional treatment plans, see Cameron, *The Impact of Drinking-Driving Countermeasures: A Review and Evaluation*, 8 CONTEMP. DRUG PROBS. 495 (1979).

VI. CONCLUSION

Detection and punishment of the drunk driver will be enhanced as a result of the new laws. These new laws, in cooperation with the Administration's program, will help remove the problem drinker from the highway. Their ultimate effectiveness, however, remains to be seen.

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