

1 **H. B. 3074**

2  
3 (By Delegates Butler, Householder and Ellington)  
4 [Introduced March 22, 2013; referred to the  
5 Committee on the Judiciary then Finance.]  
6

**FISCAL  
NOTE**

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10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,  
11 1931, as amended, relating to serious traffic offenses;  
12 driving under the influence of alcohol, controlled substances  
13 or drugs; increasing the criminal penalties; and providing  
14 that the changes may be cited as "Andrea's Law".

15 *Be it enacted by the Legislature of West Virginia:*

16 That §17C-5-2 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

19 **§17C-5-2. Driving under influence of alcohol, controlled**  
20 **substances or drugs; penalties.**

21 (a) The amendments made to this section in 2013 are enacted to  
22 increase the criminal penalties for the offenses of driving under  
23 the influence of alcohol, controlled substances or drugs and may be  
24 cited as "Andrea's Law".

1       ~~(a)~~(b) Any person who:

2       (1) Drives a vehicle in this state while he or she:

3       (A) Is under the influence of alcohol;

4       (B) Is under the influence of any controlled substance;

5       (C) Is under the influence of any other drug;

6       (D) Is under the combined influence of alcohol and any

7 controlled substance or any other drug; or

8       (E) Has an alcohol concentration in his or her blood of eight

9 hundredths of one percent or more, by weight; and

10       (2) While driving does any act forbidden by law or fails to

11 perform any duty imposed by law in the driving of the vehicle,

12 which act or failure proximately causes the death or serious bodily

13 injury of any person within one year next following the act or

14 failure; and

15       (3) For a second or subsequent offense under this section the

16 person is guilty of a felony and, upon conviction thereof, shall be

17 imprisoned in a state correctional facility for not less than

18 twenty years.

19       ~~(3)~~ (4) Commits the act or failure in reckless disregard of

20 the safety of others and when the influence of alcohol, controlled

21 substances or drugs is shown to be a contributing cause to the

22 death or serious bodily injury, is guilty of a felony and, upon

23 conviction thereof, shall be imprisoned in a state correctional

24 facility for not less than ~~two~~ five years nor more than ~~ten~~ twenty

1 years and shall be fined not less than ~~\$1,000~~ \$10,000 nor more than  
2 ~~\$3,000~~ \$100,000.

3 ~~(b)~~ (c) Any person who:

4 (1) Drives a vehicle in this state while he or she:

5 (A) Is under the influence of alcohol;

6 (B) Is under the influence of any controlled substance;

7 (C) Is under the influence of any other drug;

8 (D) Is under the combined influence of alcohol and any  
9 controlled substance or any other drug;

10 (E) Has an alcohol concentration in his or her blood of eight  
11 hundredths of one percent or more, by weight; and

12 (2) While driving does any act forbidden by law or fails to  
13 perform any duty imposed by law in the driving of the vehicle,  
14 which act or failure proximately causes the death or serious bodily  
15 injury of any person within one year next following the act or  
16 failure, is guilty of a ~~misdemeanor~~ felony and, upon conviction  
17 thereof, shall be ~~confined in jail~~ imprisoned in a state  
18 correctional facility for not less than ~~ninety days~~ two nor more  
19 than ~~one year~~ ten years and shall be fined not less than ~~\$500~~  
20 \$10,000 nor more than ~~\$1,000~~ \$50,000.

21 ~~(c)~~ (d) Any person who:

22 (1) Drives a vehicle in this state while he or she:

23 (A) Is under the influence of alcohol;

24 (B) Is under the influence of any controlled substance;

1 (C) Is under the influence of any other drug;

2 (D) Is under the combined influence of alcohol and any  
3 controlled substance or any other drug; or

4 (E) Has an alcohol concentration in his or her blood of eight  
5 hundredths of one percent or more, by weight; and

6 (2) While driving does any act forbidden by law or fails to  
7 perform any duty imposed by law in the driving of the vehicle,  
8 which act or failure proximately causes bodily injury to any person  
9 other than himself or herself, is guilty of a ~~misdemeanor~~ felony  
10 and, upon conviction thereof, shall be ~~confined in jail~~ imprisoned  
11 in a state correctional facility for not less than ~~one day~~ ninety  
12 days nor more than ~~one year~~ five years, which ~~jail~~ term is to  
13 include actual ~~confinement~~ imprisonment of not less than  
14 ~~twenty-four hours~~ ninety days, and shall be fined not less than  
15 ~~\$200~~ \$1,000 nor more than ~~\$1,000~~ \$5,000.

16 ~~(d)~~ (e) Any person who:

17 (1) Drives a vehicle in this state while he or she:

18 (A) Is under the influence of alcohol;

19 (B) Is under the influence of any controlled substance;

20 (C) Is under the influence of any other drug;

21 (D) Is under the combined influence of alcohol and any  
22 controlled substance or any other drug; or

23 (E) Has an alcohol concentration in his or her blood of eight  
24 hundredths of one percent or more, by weight, but less than fifteen

1 hundredths of one percent, by weight;

2       (2) Is guilty of a misdemeanor and, upon conviction thereof,  
3 except as provided in section two-b of this article, shall be  
4 confined in jail for ~~up to six months and shall be fined not less~~  
5 ~~than \$100 nor more than \$500~~ not less than five days nor more than  
6 one year, which jail term is to include actual confinement of not  
7 less than forty-eight hours and shall be fined not less than \$500  
8 nor more than \$2,000. A person sentenced pursuant to this  
9 subdivision shall receive credit for any period of actual  
10 confinement he or she served upon arrest for the subject offense.

11       ~~(e)~~ (f) Any person who drives a vehicle in this state while he  
12 or she has an alcohol concentration in his or her blood of fifteen  
13 hundredths of one percent or more, by weight, is guilty of a  
14 misdemeanor and, upon conviction thereof, shall be confined in jail  
15 for not less than ~~two days~~ six months nor more than ~~six months~~ one  
16 year, which jail term is to include actual confinement of not less  
17 than ~~twenty-four~~ seventy-two hours, and shall be fined not less  
18 than ~~\$200~~ \$1,000 nor more than ~~\$1,000~~ \$5,000. A person sentenced  
19 pursuant to this subdivision shall receive credit for any period of  
20 actual confinement he or she served upon arrest for the subject  
21 offense.

22       ~~(f)~~ (g) Any person who, being an habitual user of narcotic  
23 drugs or amphetamine or any derivative thereof, drives a vehicle in  
24 this state is guilty of a misdemeanor and, upon conviction thereof,

1 shall be confined in jail for not less than ~~one day~~ two days nor  
2 more than six months, which jail term is to include actual  
3 confinement of not less than twenty-four hours, and shall be fined  
4 not less than ~~\$100~~ \$200 nor more than ~~\$500~~ \$1,000. A person  
5 sentenced pursuant to this subdivision shall receive credit for any  
6 period of actual confinement he or she served upon arrest for the  
7 subject offense.

8 ~~(g)~~ (h) Any person who:

9 (1) Knowingly permits his or her vehicle to be driven in this  
10 state by any other person who:

11 (A) Is under the influence of alcohol;

12 (B) Is under the influence of any controlled substance;

13 (C) Is under the influence of any other drug;

14 (D) Is under the combined influence of alcohol and any  
15 controlled substance or any other drug;

16 (E) Has an alcohol concentration in his or her blood of eight  
17 hundredths of one percent or more, by weight;

18 (2) Is guilty of a misdemeanor and, upon conviction thereof,  
19 shall be confined in jail for not ~~more than six months~~ less than

20 two days nor more than six months which jail term is to include  
21 actual confinement of not less than twenty-four hours and shall be  
22 fined not less than ~~\$100~~ \$200 nor more than ~~\$500~~ \$1,000.

23 ~~(h)~~ (i) Any person who knowingly permits his or her vehicle to  
24 be driven in this state by any other person who is an habitual user

1 of narcotic drugs or amphetamine or any derivative thereof is  
2 guilty of a misdemeanor and, upon conviction thereof, shall be  
3 confined in jail for not ~~more than six months~~ less than two days  
4 nor more than six months which jail term is to include actual  
5 confinement of not less than twenty-four hours and shall be fined  
6 not less than ~~\$100~~ \$200 nor more than ~~\$500~~ \$1,000.

7       ~~(i)~~ (j) Any person under the age of twenty-one years who  
8 drives a vehicle in this state while he or she has an alcohol  
9 concentration in his or her blood of two hundredths of one percent  
10 or more, by weight, but less than eight hundredths of one percent,  
11 by weight, for a first offense under this subsection is guilty of  
12 a misdemeanor and, upon conviction thereof, shall be confined in  
13 jail for not less than two days nor more than six months which jail  
14 term is to include actual confinement of not less than twenty-four  
15 hours and shall be fined not less than ~~\$25~~ \$200 nor more than ~~\$100~~  
16 \$1,000. For a second or subsequent offense under this subsection,  
17 the person is guilty of a misdemeanor and, upon conviction thereof,  
18 shall be confined in jail for ~~twenty-four hours~~ not less than six  
19 months nor more than one year which jail term is to include actual  
20 confinement of not less than seventy-two hours and shall be fined  
21 not less than ~~\$100~~ \$1,000 nor more than ~~\$500~~ \$5,000. A person who  
22 is charged with a first offense under the provisions of this  
23 subsection may move for a continuance of the proceedings, from time  
24 to time, to allow the person to participate in the Motor Vehicle

1 Alcohol Test and Lock Program as provided in section three-a,  
 2 article five-a of this chapter. Upon successful completion of the  
 3 program, the court shall dismiss the charge against the person and  
 4 expunge the person's record as it relates to the alleged offense.  
 5 In the event the person fails to successfully complete the program,  
 6 the court shall proceed to an adjudication of the alleged offense.  
 7 A motion for a continuance under this subsection may not be  
 8 construed as an admission or be used as evidence.

9 A person arrested and charged with an offense under the  
 10 provisions of this subsection or subsection ~~(a), (b), (c), (d),~~  
 11 ~~(e), (f), (g) or (h)~~ (b), (c), (d), (e), (f), (g), (h) or (i) of  
 12 this section may not also be charged with an offense under this  
 13 subsection arising out of the same transaction or occurrence.

14 ~~(j)~~ (k) Any person who:

15 (1) Drives a vehicle in this state while he or she:

16 (A) Is under the influence of alcohol;

17 (B) Is under the influence of any controlled substance;

18 (C) Is under the influence of any other drug;

19 (D) Is under the combined influence of alcohol and any  
 20 controlled substance or any other drug; or

21 (E) Has an alcohol concentration in his or her blood of eight  
 22 hundredths of one percent or more, by weight; and

23 (2) The person while driving has on or within the motor  
 24 vehicle one or more other persons who are unemancipated minors who

1 have not reached their sixteenth birthday is guilty of a  
 2 misdemeanor and, upon conviction thereof, shall be confined in jail  
 3 for not less than ~~two~~ thirty days nor more than ~~twelve months~~ one  
 4 year, which jail term is to include actual confinement of not less  
 5 than ~~forty-eight~~ seventy-two hours and shall be fined not less than  
 6 ~~\$200~~ \$1,000 nor more than ~~\$1,000~~ \$5,000.

7 ~~(k)~~ (l) A person violating any provision of subsection ~~(b)~~,  
 8 ~~(c), (d), (e), (f), (g) or (i)~~ (c), (d), (e), (f), (g), (h) or (j)  
 9 of this section, for the second offense under this section, is  
 10 guilty of a misdemeanor and, upon conviction thereof, shall be  
 11 confined in jail for not less than six months nor more than one  
 12 year and the court may, in its discretion, impose a fine of not  
 13 less than \$1,000 nor more than \$3,000.

14 ~~(l)~~ (m) A person violating any provision of subsection ~~(b)~~,  
 15 ~~(c), (d), (e), (f), (g) or (i)~~ (c), (d), (e), (f), (g), (h) or (j)  
 16 of this section, for the third or any subsequent offense under this  
 17 section, is guilty of a felony and, upon conviction thereof, shall  
 18 be imprisoned in a state correctional facility for not less than  
 19 ~~one~~ two nor more than ~~three~~ ten years and the court may, ~~in its~~  
 20 ~~discretion~~, impose a fine of not less than ~~\$3,000~~ \$5,000 nor more  
 21 than ~~\$5,000~~ \$15,000.

22 ~~(m)~~ (n) For purposes of subsections ~~(k) and (l)~~ (l) and (m) of  
 23 this section relating to second, third and subsequent offenses, the  
 24 following events shall be regarded as offenses under this section:

1 (1) Any conviction under the provisions of subsection ~~(a),~~  
2 ~~(b), (c), (d), (e), (f) or (g)~~ (b), (c), (d), (e), (f), (g) or (h)  
3 of this section or under a prior enactment of this section for an  
4 offense which occurred within the ten-year period immediately  
5 preceding the date of arrest in the current proceeding;

6 (2) Any conviction under a municipal ordinance of this state  
7 or any other state or a statute of the United States or of any  
8 other state of an offense which has the same elements as an offense  
9 described in subsection ~~(a), (b), (c), (d), (e), (f), (g) or (h)~~  
10 (b), (c), (d), (e), (f), (g), (h) or (i) of this section, which  
11 offense occurred within the ten-year period immediately preceding  
12 the date of arrest in the current proceeding; and,

13 (3) Any period of conditional probation imposed pursuant to  
14 section two-b of this article for violation of subsection (d) of  
15 this article, which violation occurred within the ten-year period  
16 immediately preceding the date of arrest in the current proceeding.

17 ~~(n)~~ (o) A person may be charged in a warrant or indictment or  
18 information for a second or subsequent offense under this section  
19 if the person has been previously arrested for or charged with a  
20 violation of this section which is alleged to have occurred within  
21 the applicable time period for prior offenses, notwithstanding the  
22 fact that there has not been a final adjudication of the charges  
23 for the alleged previous offense. In that case, the warrant or  
24 indictment or information must set forth the date, location and

1 particulars of the previous offense or offenses. No person may be  
2 convicted of a second or subsequent offense under this section  
3 unless the conviction for the previous offense has become final, or  
4 the person has previously had a period of conditional probation  
5 imposed pursuant to section two-b of this article.

6 ~~(o)~~ (p) The fact that any person charged with a violation of  
7 subsection ~~(a), (b), (c), (d), (e) or (f)~~ (b), (c), (d), (e), (f)  
8 or (g) of this section, or any person permitted to drive as  
9 described under subsection ~~(g) or (h)~~ (h) or (i) of this section,  
10 is or has been legally entitled to use alcohol, a controlled  
11 substance or a drug does not constitute a defense against any  
12 charge of violating subsection ~~(a), (b), (c), (d), (e), (f), (g) or~~  
13 ~~(h)~~ (b), (c), (d), (e), (f), (g), (h) or (i) of this section.

14 ~~(p)~~ (q) For purposes of this section, the term "controlled  
15 substance" has the meaning ascribed to it in chapter sixty-a of  
16 this code.

17 ~~(q)~~ (r) The sentences provided in this section upon conviction  
18 for a violation of this article are mandatory and are not subject  
19 to suspension or probation: *Provided*, That the court may apply the  
20 provisions of article eleven-a, chapter sixty-two of this code to  
21 a person sentenced or committed to a term of one year or less for  
22 a first offense under this section: *Provided*, ~~further~~, however,  
23 That the court may impose a term of conditional probation pursuant  
24 to section two-b of this article to persons adjudicated thereunder.

1 An order for home detention by the court pursuant to the provisions  
2 of article eleven-b of said chapter may be used as an alternative  
3 sentence to any period of incarceration required by this section  
4 for a first or subsequent offense: *Provided ~~however,~~ further,*  
5 That for any period of home incarceration ordered for a person  
6 convicted of second offense under this section, electronic  
7 monitoring shall be required for no fewer than five days of the  
8 total period of home confinement ordered and the offender may not  
9 leave home for those five days notwithstanding the provisions of  
10 section five, article eleven-b, chapter sixty-two of this code: And  
11 *provided further,* That for any period of home incarceration ordered  
12 for a person convicted of a third or subsequent violation of this  
13 section, electronic monitoring shall be included for no fewer than  
14 ten days of the total period of home confinement ordered and the  
15 offender may not leave home for those ten days notwithstanding  
16 section five, article eleven-b, chapter sixty-two of this code.

NOTE: The purpose of this bill is to increase the criminal penalties for the offenses of driving under the influence of alcohol, controlled substances or drugs. The bill also provides that the changes may be cited as "Andrea's Law".

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.