

COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 90**

(By Senators Miller, Jenkins, Yost, Unger,  
Fitzsimmons and Beach)

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[Originating in the Committee on the Judiciary;  
reported April 1, 2013.]

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A BILL to amend and reenact §17C-5-2 and §17C-5-2b of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code, all relating to making it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and cause death or serious bodily injury to another person; eliminating misdemeanor offense of driving a vehicle while under the influence of alcohol, controlled substance or other

drug and causing death; amending internal code references; and  
establishing criminal and administrative penalties.

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

That §17C-5-2 and §17C-5-2b of the Code of West Virginia,  
1931, as amended, be amended and reenacted; and that §17C-5A-1,  
§17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended  
and reenacted, all to read as follows:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

- 1 (a) 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
- 9 eight hundredths of one percent or more, by weight; and

10           (2) While driving does any act forbidden by law or fails  
11   to perform any duty imposed by law in the driving of the  
12   vehicle, which act or failure proximately causes the death of  
13   or serious bodily injury to any another person within one year  
14   next following the act or failure ~~and~~

15           ~~(3) Commits the act or failure in reckless disregard of~~  
16   ~~the safety of others and when the influence of alcohol,~~  
17   ~~controlled substances or drugs is shown to be a contributing~~  
18   ~~cause to the death,~~ is guilty of a felony and, upon conviction  
19   thereof, shall be imprisoned in a state correctional facility for  
20   not less than ~~two years~~ one year nor more than ten years for  
21   an act or failure under this section that causes the death of  
22   another person, and not more than three years for an act or  
23   failure under this section that causes serious bodily injury to  
24   another person, and shall be fined not less than \$1,000 nor  
25   more than \$3,000.

26           (3) For purposes of this subsection, “serious bodily  
27   injury” means bodily injury which creates a substantial risk  
28   of death, which causes serious or prolonged disfigurement,

29 prolonged impairment of health or prolonged loss or  
30 impairment of the function of any bodily organ.

31 (b) Any person who:

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

33 ~~(A) Is under the influence of alcohol;~~

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

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

36 ~~(D) Is under the combined influence of alcohol and any~~  
37 ~~controlled substance or any other drug;~~

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

40 ~~(2) While driving does any act forbidden by law or fails~~  
41 ~~to perform any duty imposed by law in the driving of the~~  
42 ~~vehicle, which act or failure proximately causes the death of~~  
43 ~~any person within one year next following the act or failure;~~  
44 ~~is guilty of a misdemeanor and, upon conviction thereof,~~  
45 ~~shall be confined in jail for not less than ninety days nor~~  
46 ~~more than one year and shall be fined not less than \$500 nor~~  
47 ~~more than \$1,000.~~

48        ~~(c)~~ (b) Any person who:

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

50        (A) Is under the influence of alcohol;

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

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

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

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

57        (2) While driving does any act forbidden by law or fails  
58 to perform any duty imposed by law in the driving of the  
59 vehicle, which act or failure proximately causes bodily injury  
60 to any person other than himself or herself, is guilty of a  
61 misdemeanor and, upon conviction thereof, shall be confined  
62 in jail for not less than one day nor more than one year,  
63 which jail term is to include actual confinement of not less  
64 than twenty-four hours, and shall be fined not less than \$200  
65 nor more than \$1,000.

66        ~~(d)~~ (c) Any person who:

- 67       (1) Drives a vehicle in this state while he or she:
- 68       (A) Is under the influence of alcohol;
- 69       (B) Is under the influence of any controlled substance;
- 70       (C) Is under the influence of any other drug;
- 71       (D) Is under the combined influence of alcohol and any
- 72 controlled substance or any other drug; or
- 73       (E) Has an alcohol concentration in his or her blood of
- 74 eight hundredths of one percent or more, by weight, but less
- 75 than fifteen hundredths of one percent, by weight;
- 76       (2) Is guilty of a misdemeanor and, upon conviction
- 77 thereof, except as provided in section two-b of this article,
- 78 shall be confined in jail for up to six months and shall be
- 79 fined not less than \$100 nor more than \$500. A person
- 80 sentenced pursuant to this subdivision shall receive credit for
- 81 any period of actual confinement he or she served upon arrest
- 82 for the subject offense.
- 83       ~~(c)~~ (d) Any person who drives a vehicle in this state
- 84 while he or she has an alcohol concentration in his or her
- 85 blood of fifteen hundredths of one percent or more, by

86 weight, is guilty of a misdemeanor and, upon conviction  
87 thereof, shall be confined in jail for not less than two days  
88 nor more than six months, which jail term is to include actual  
89 confinement of not less than twenty-four hours, and shall be  
90 fined not less than \$200 nor more than \$1,000. A person  
91 sentenced pursuant to this subdivision shall receive credit for  
92 any period of actual confinement he or she served upon arrest  
93 for the subject offense.

94       ~~(f)~~ (e) Any person who, being an habitual user of  
95 narcotic drugs or amphetamine or any derivative thereof,  
96 drives a vehicle in this state is guilty of a misdemeanor and,  
97 upon conviction thereof, shall be confined in jail for not less  
98 than one day nor more than six months, which jail term is to  
99 include actual confinement of not less than twenty-four  
100 hours, and shall be fined not less than \$100 nor more than  
101 \$500. A person sentenced pursuant to this subdivision shall  
102 receive credit for any period of actual confinement he or she  
103 served upon arrest for the subject offense.

104       ~~(g)~~ (f) Any person who:

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

107       (A) Is under the influence of alcohol;

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

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

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

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

114       (2) Is guilty of a misdemeanor and, upon conviction  
115 thereof, shall be confined in jail for not more than six months  
116 and shall be fined not less than \$100 nor more than \$500.

117       ~~(f)~~ (g) Any person who knowingly permits his or her  
118 vehicle to be driven in this state by any other person who is  
119 an habitual user of narcotic drugs or amphetamine or any  
120 derivative thereof is guilty of a misdemeanor and, upon  
121 conviction thereof, shall be confined in jail for not more than  
122 six months and shall be fined not less than \$100 nor more  
123 than \$500.

124        (†) (h) Any person under the age of twenty-one years  
125        who drives a vehicle in this state while he or she has an  
126        alcohol concentration in his or her blood of two hundredths  
127        of one percent or more, by weight, but less than eight  
128        hundredths of one percent, by weight, for a first offense  
129        under this subsection is guilty of a misdemeanor and, upon  
130        conviction thereof, shall be fined not less than \$25 nor more  
131        than \$100. For a second or subsequent offense under this  
132        subsection, the person is guilty of a misdemeanor and, upon  
133        conviction thereof, shall be confined in jail for twenty-four  
134        hours and shall be fined not less than \$100 nor more than  
135        \$500. A person who is charged with a first offense under the  
136        provisions of this subsection may move for a continuance of  
137        the proceedings, from time to time, to allow the person to  
138        participate in the Motor Vehicle Alcohol Test and Lock  
139        Program as provided in section three-a, article five-a of this  
140        chapter. Upon successful completion of the program, the  
141        court shall dismiss the charge against the person and expunge  
142        the person's record as it relates to the alleged offense. In the

143 event the person fails to successfully complete the program,  
144 the court shall proceed to an adjudication of the alleged  
145 offense. A motion for a continuance under this subsection  
146 may not be construed as an admission or be used as evidence.  
147 A person arrested and charged with an offense under the  
148 provisions of this subsection or subsection (a), (b), (c), (d),  
149 (e), (f), ~~(g) or (h)~~ or (g) of this section may not also be  
150 charged with an offense under this subsection arising out of  
151 the same transaction or occurrence.

152        ~~(j)~~ (i) Any person who:

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

154        (A) Is under the influence of alcohol;

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

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

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

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

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161       (2) The person while driving has on or within the motor  
162 vehicle one or more other persons who are unemancipated  
163 minors who have not reached their sixteenth birthday is  
164 guilty of a misdemeanor and, upon conviction thereof, shall  
165 be confined in jail for not less than two days nor more than  
166 twelve months, which jail term is to include actual  
167 confinement of not less than forty-eight hours and shall be  
168 fined not less than \$200 nor more than \$1,000.

169       ~~(k)~~ (j) A person violating any provision of subsection  
170 (b), (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the  
171 second offense under this section, is guilty of a misdemeanor  
172 and, upon conviction thereof, shall be confined in jail for not  
173 less than six months nor more than one year and the court  
174 may, in its discretion, impose a fine of not less than \$1,000  
175 nor more than \$3,000.

176       ~~(j)~~ (k) A person violating any provision of subsection  
177 (b), (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the  
178 third or any subsequent offense under this section, is guilty  
179 of a felony and, upon conviction thereof, shall be imprisoned

180 in a state correctional facility for not less than one nor more  
181 than three years and the court may, in its discretion, impose  
182 a fine of not less than \$3,000 nor more than \$5,000.

183 ~~(m)~~ (l) For purposes of subsections ~~(k)~~ and ~~(l)~~ (j) and (k)  
184 of this section relating to second, third and subsequent  
185 offenses, the following events shall be regarded as offenses  
186 under this section:

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

192 (2) Any conviction under a municipal ordinance of this  
193 state or any other state or a statute of the United States or of  
194 any other state of an offense which has the same elements as  
195 an offense described in subsection (a), (b), (c), (d), (e), (f) ~~(g)~~  
196 or ~~(h)~~ or (g) of this section, which offense occurred within  
197 the ten-year period immediately preceding the date of arrest  
198 in the current proceeding; and,

199       (3) Any period of conditional probation imposed  
200 pursuant to section two-b of this article for violation of  
201 subsection ~~(d)~~ (c) of this article, which violation occurred  
202 within the ten-year period immediately preceding the date of  
203 arrest in the current proceeding.

204       ~~(n)~~ (m) A person may be charged in a warrant or  
205 indictment or information for a second or subsequent offense  
206 under this section if the person has been previously arrested  
207 for or charged with a violation of this section which is  
208 alleged to have occurred within the applicable time period for  
209 prior offenses, notwithstanding the fact that there has not  
210 been a final adjudication of the charges for the alleged  
211 previous offense. In that case, the warrant or indictment or  
212 information must set forth the date, location and particulars  
213 of the previous offense or offenses. No person may be  
214 convicted of a second or subsequent offense under this  
215 section unless the conviction for the previous offense has  
216 become final, or the person has previously had a period of  
217 conditional probation imposed pursuant to section two-b of  
218 this article.

219        ~~(o)~~ (n) The fact that any person charged with a violation  
220        of subsection (a), (b), (c), (d) ~~(e) or (f)~~ or (e) of this section,  
221        or any person permitted to drive as described under  
222        subsection ~~(g) or (h)~~ (f) or (g) of this section, is or has been  
223        legally entitled to use alcohol, a controlled substance or a  
224        drug does not constitute a defense against any charge of  
225        violating subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g)  
226        of this section.

227        ~~(p)~~ (o) For purposes of this section, the term “controlled  
228        substance” has the meaning ascribed to it in chapter sixty-a  
229        of this code.

230        ~~(q)~~ (p) The sentences provided in this section upon  
231        conviction for a violation of this article are mandatory and  
232        are not subject to suspension or probation: *Provided*, That  
233        the court may apply the provisions of article eleven-a,  
234        chapter sixty-two of this code to a person sentenced or  
235        committed to a term of one year or less for a first offense  
236        under this section: *Provided further*, That the court may  
237        impose a term of conditional probation pursuant to section

238 two-b of this article to persons adjudicated thereunder. An  
239 order for home detention by the court pursuant to the  
240 provisions of article eleven-b of said chapter may be used as  
241 an alternative sentence to any period of incarceration  
242 required by this section for a first or subsequent offense:  
243 *Provided, however,* That for any period of home  
244 incarceration ordered for a person convicted of second  
245 offense under this section, electronic monitoring shall be  
246 required for no fewer than five days of the total period of  
247 home confinement ordered and the offender may not leave  
248 home for those five days notwithstanding the provisions of  
249 section five, article eleven-b, chapter sixty-two of this code:  
250 *Provided further,* That for any period of home incarceration  
251 ordered for a person convicted of a third or subsequent  
252 violation of this section, electronic monitoring shall be  
253 included for no fewer than ten days of the total period of  
254 home confinement ordered and the offender may not leave  
255 home for those ten days notwithstanding section five, article  
256 eleven-b, chapter sixty-two of this code.

**§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.**

1 (a) Except as provided in ~~subsections~~ subsection (g) of  
2 this section, whenever any person who has not previously  
3 been convicted of any offense under this article or under any  
4 statute of the United States or of any state relating to driving  
5 under the influence of alcohol, any controlled substance or  
6 any other drug:

7 (1) Notifies the court within thirty days of his or her  
8 arrest of his or her intention to participate in a deferral  
9 pursuant to this section; and

10 (2) Pleads guilty to or is found guilty of driving under the  
11 influence of alcohol under subsection ~~(d)~~ (c), section two of  
12 this article, the court, without entering a judgment of guilt  
13 and with the consent of the accused, shall defer further  
14 proceedings and, notwithstanding any provisions of this code  
15 to the contrary, place him or her on probation, which

16 conditions shall include, that he or she successfully  
17 completes the Motor Vehicle Alcohol Test and Lock Program  
18 as provided in section three-a, article five-a of this chapter.  
19 Participation therein shall be for a period of at least one  
20 hundred and sixty five days after he or she has served the  
21 fifteen days of license suspension imposed pursuant to  
22 section two, article five-a of this chapter.

23 (b) A defendant's election to participate in deferral under  
24 this section shall constitute a waiver of his or her right to an  
25 administrative hearing as provided in section two, article  
26 five-a of this chapter.

27 (c) (1) If the prosecuting attorney files a motion alleging  
28 that the defendant during the period of the Motor Vehicle  
29 Alcohol Test and Lock program has been removed therefrom  
30 by the Division of Motor Vehicles, or has failed to  
31 successfully complete the program before making a motion  
32 for dismissal pursuant to subsection (d) of this section, the  
33 court may issue such process as is necessary to bring the  
34 defendant before the court.

35       (2) A motion alleging such violation filed pursuant to  
36 subdivision (1) must be filed during the period of the Motor  
37 Vehicle Alcohol Test and Lock Program or, if filed  
38 thereafter, must be filed within a reasonable time after the  
39 alleged violation was committed.

40       (3) When the defendant is brought before the court, the  
41 court shall afford the defendant an opportunity to be heard.  
42 If the court finds that the defendant has been rightfully  
43 removed from the Motor Vehicle Alcohol Test and Lock  
44 Program by the Division of Motor Vehicles, the court may  
45 order, when appropriate, that the deferral be terminated, and  
46 thereupon enter an adjudication of guilt and proceed as  
47 otherwise provided.

48       (4) ~~Should~~ If the defendant ~~fail~~ fails to complete or be  
49 removed from the Motor Vehicle Alcohol Test and Lock  
50 Program, the defendant waives the appropriate statute of  
51 limitations and the defendant's right to a speedy trial under  
52 any applicable Federal or State constitutional provisions,  
53 statutes or rules of court during the period of enrollment in  
54 the program.

55       (d) When the defendant ~~shall have~~ has completed  
56       satisfactorily the Motor Vehicle Alcohol Test and Lock  
57       Program and complied with its conditions, the defendant may  
58       move the court for an order dismissing the charges. This  
59       motion shall be supported by affidavit of the defendant and  
60       by certification of the Division of Motor Vehicles that the  
61       defendant has successfully completed the Motor Vehicle  
62       Alcohol Test and Lock Program. A copy of the motion shall  
63       be served on the prosecuting attorney who shall within thirty  
64       days after service advise the judge of any objections to the  
65       motion, serving a copy of such objections on the defendant  
66       or the defendant's attorney. If there are no objections filed  
67       within the thirty-day period, the court shall thereafter dismiss  
68       the charges against the defendant. If there are objections  
69       filed with regard to the dismissal of charges, the court shall  
70       proceed as set forth in subsection (c) of this section.

71       (e) Except as provided herein, unless a defendant  
72       adjudicated pursuant to this subsection be convicted of a  
73       subsequent violation of this article, discharge and dismissal

74 under this section shall be without adjudication of guilt and  
75 is not a conviction for purposes of disqualifications or  
76 disabilities imposed by law upon conviction of a crime  
77 except for those provided in article five-a of this chapter.  
78 Except as provided in ~~subsection~~ subsections (k), (l) and (m),  
79 (j), (k) and (l), section two of this article regarding  
80 subsequent offenses, the effect of the dismissal and discharge  
81 shall be to restore the person in contemplation of law to the  
82 status he or she occupied prior to arrest and trial. No person  
83 as to whom a dismissal and discharge have been effected  
84 ~~shall be~~ may thereafter held to be guilty of perjury, false  
85 swearing, or otherwise giving a false statement by reason of  
86 his or her failure to disclose or acknowledge his or her arrest  
87 or trial in response to any inquiry made of him or her for any  
88 purpose other than any inquiry made in connection with any  
89 subsequent offense as that term is defined in subsection ~~(m)~~  
90 (l), section two of this article.

91 (f) There may be only one discharge and dismissal under  
92 this section with respect to any person.

93 (g) No person ~~shall~~ may be eligible for dismissal and  
94 discharge under this section: (1) in any prosecution in which  
95 any violation of any other provision of this article has been  
96 charged;(2) if the person holds a commercial driver's license  
97 or operates commercial motor vehicle(s), or (3) the person  
98 has previously had his or her driver's license revoked under  
99 section two-a of this article or under any statute of the United  
100 States or of any state relating to driving under the influence  
101 of alcohol, any controlled substance or any other drug.

102 (h) (1) After a period of not less than one year which  
103 shall begin to run immediately upon the expiration of a term  
104 of probation imposed upon any person under this section, the  
105 person may apply to the court for an order to expunge from  
106 all official records all recordations of his or her arrest, trial,  
107 and conviction, pursuant to this section except for those  
108 maintained by the Division of Motor Vehicles: *Provided*,  
109 That any person who has previously been convicted of a  
110 felony may not make a motion for expungement pursuant to  
111 this section.

112       (2) If the prosecuting attorney objects to the  
113 expungement, the objections shall be filed with the court  
114 within thirty days after service of a motion for expungement  
115 and copies of the objections shall be served on the defendant  
116 or the defendant's attorney.

117       (3) If the objections are filed, the court shall hold a  
118 hearing on the objections, affording all parties an opportunity  
119 to be heard. If the court determines after a hearing that the  
120 person during the period of his or her probation and during  
121 the period of time prior to his or her application to the court  
122 under this subsection has not been guilty of any serious or  
123 repeated violation of the conditions of his or her probation,  
124 it shall order the expungement.

125       (i) Notwithstanding any provision of this code to the  
126 contrary, any person prosecuted for a violation of  
127 subsection~~(d)~~ (c), section two, article five of this chapter  
128 whose case is disposed of pursuant to the provisions of this  
129 section shall be liable for any court costs assessable against  
130 a person convicted of a violation of subsection ~~(j)~~ (i), section

131 two, article five of this chapter. Payment of such costs may  
132 be made a condition of probation. The costs assessed  
133 pursuant to this subsection, whether as a term of probation or  
134 not, shall be distributed as other court costs in accordance  
135 with section two, article three, chapter fifty, section four,  
136 article two-a, chapter fourteen, section four, article  
137 twenty-nine, chapter thirty and sections two, seven and ten,  
138 article five, chapter sixty-two of this code.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR  
SUSPENSION AND REVOCATION OF  
LICENSES FOR DRIVING UNDER THE  
INFLUENCE OF ALCOHOL,  
CONTROLLED SUBSTANCES OR  
DRUGS.**

**§17C-5A-1. Implied consent to administrative procedure;  
revocation for driving under the influence of  
alcohol, controlled substances or drugs or  
refusal to submit to secondary chemical test.**

- 1 (a) Any person who is licensed to operate a motor vehicle  
2 in this state and who drives a motor vehicle in this state shall

3 be ~~deemed~~ considered to have given his or her consent by the  
4 operation thereof, subject to the provisions of this article, to  
5 the procedure set forth in this article for the determination of  
6 whether his or her license to operate a motor vehicle in this  
7 state should be revoked because he or she did drive a motor  
8 vehicle while under the influence of alcohol, controlled  
9 substances or drugs, or combined influence of alcohol or  
10 controlled substances or drugs, or did drive a motor vehicle  
11 while having an alcohol concentration in his or her blood of  
12 eight hundredths of one percent or more, by weight, or did  
13 refuse to submit to any secondary chemical test required  
14 under the provisions of article five of this chapter or did drive  
15 a motor vehicle while under the age of twenty-one years with  
16 an alcohol concentration in his or her blood of two  
17 hundredths of one percent or more, by weight, but less than  
18 eight hundredths of one percent, by weight.

19 (b) Any law-enforcement officer investigating a person  
20 for an offense described in section two, article five of this

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21 chapter or for an offense described in a municipal ordinance  
22 which has the same elements as an offense described in ~~said~~  
23 that section shall report to the Commissioner of the Division  
24 of Motor Vehicles by written statement within forty-eight  
25 hours of the conclusion of the investigation the name and  
26 address of the person believed to have committed the offense.  
27 The report shall include the specific offense with which the  
28 person is charged and, if applicable, a copy of the results of  
29 any secondary tests of blood, breath or urine. The signing of  
30 the statement required to be signed by this subsection  
31 constitutes an oath or affirmation by the person signing the  
32 statement that the statements contained in the statement are  
33 true and that any copy filed is a true copy. The statement  
34 shall contain upon its face a warning to the officer signing  
35 that to willfully sign a statement containing false information  
36 concerning any matter or thing, material or not material, is  
37 false swearing and is a misdemeanor.

38 (c) If, upon examination of the written statement of the  
39 officer and the tests results described in subsection (b) of this

40 section, the commissioner determines that a person  
41 committed an offense described in section two, article five of  
42 this chapter or an offense described in a municipal ordinance  
43 which has the same elements as an offense described in said  
44 section and that the results of any secondary test or tests  
45 indicate that at the time the test or tests were administered the  
46 person had, in his or her blood, an alcohol concentration of  
47 eight hundredths of one percent or more, by weight, or at the  
48 time the person committed the offense he or she was under  
49 the influence of alcohol, controlled substances or drugs, the  
50 commissioner shall make and enter an order revoking or  
51 suspending the person's license to operate a motor vehicle in  
52 this state. If the results of the tests indicate that at the time  
53 the test or tests were administered the person was under the  
54 age of twenty-one years and had an alcohol concentration in  
55 his or her blood of two hundredths of one percent or more, by  
56 weight, but less than eight hundredths of one percent, by  
57 weight, the commissioner shall make and enter an order  
58 suspending the person's license to operate a motor vehicle in

59 this state. A copy of the order shall be forwarded to the  
60 person by registered or certified mail, return receipt  
61 requested, and shall contain the reasons for the revocation or  
62 suspension and describe the applicable revocation or  
63 suspension periods provided in section two of this article. A  
64 revocation or suspension ~~shall~~ is not ~~become~~ effective until  
65 ten days after receipt of a copy of the order.

66 (d) Any law-enforcement officer taking a child into  
67 custody under the provisions of section six-a, article five of  
68 this chapter who has reasonable cause to believe that the  
69 child, at the time of driving the motor vehicle, had an alcohol  
70 concentration in his or her blood of two hundredths of one  
71 percent or more, by weight, or that the act of the child in  
72 driving the motor vehicle was such that it would provide  
73 grounds for arrest for an offense defined under the provisions  
74 of section two of ~~said~~ that article if the child were an adult,  
75 shall report to the Commissioner of the Division of Motor  
76 Vehicles by written statement within forty-eight hours the  
77 name and address of the child.

78       (e) If applicable, the report shall include a description of  
79 the specific offense with which the child could have been  
80 charged if the child were an adult and a copy of the results of  
81 any secondary tests of blood, breath or urine. The signing of  
82 the statement required to be signed by this subsection  
83 constitutes an oath or affirmation by the person signing the  
84 statement that the statements contained in the statement are  
85 true and that any copy filed is a true copy. The statement  
86 shall contain upon its face a warning to the officer signing  
87 that to willfully sign a statement containing false information  
88 concerning any matter or thing, material or not material, is  
89 false swearing and is a misdemeanor.

90       (f) Upon examination of the written statement of the  
91 officer and any test results described in subsection (d) of this  
92 section, if the commissioner determines that the results of the  
93 test indicate that at the time the test or tests were  
94 administered the child had, in his or her blood, an alcohol  
95 concentration of two hundredths of one percent or more, by  
96 weight, but also determines that the act of the child in driving

97 the motor vehicle was not such that it would provide grounds  
98 for arrest for an offense defined under the provisions of  
99 subsection (a), (b), (c), (d), (e), (f), ~~(g) or (h)~~ or (g), section  
100 two, article five of this chapter if the child were an adult, the  
101 commissioner shall make and enter an order suspending the  
102 child's license to operate a motor vehicle in this state. If the  
103 commissioner determines that the act of the child in driving  
104 the motor vehicle was such that it would provide grounds for  
105 arrest for an offense defined under the provisions of  
106 subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g), section  
107 two, article five of this chapter if the child were an adult, the  
108 commissioner shall make and enter an order revoking the  
109 child's license to operate a motor vehicle in this state. A  
110 copy of the order shall be forwarded to the child by  
111 registered or certified mail, return receipt requested, and shall  
112 contain the reasons for the suspension or revocation and  
113 describe the applicable suspension or revocation periods  
114 provided for in section two of this article. A suspension or  
115 revocation ~~shall~~ is not ~~become~~ effective until ten days after  
116 receipt of a copy of the order.

**§17C-5A-2. Hearing; revocation; review.**

1       (a) Written objections to an order of revocation or  
2       suspension under the provisions of section one of this article  
3       or section seven, article five of this chapter shall be filed with  
4       the Office of Administrative Hearings. Upon the receipt of  
5       an objection, the Office of Administrative Hearings shall  
6       notify the Commissioner of the Division of Motor Vehicles,  
7       who shall stay the imposition of the period of revocation or  
8       suspension and afford the person an opportunity to be heard  
9       by the Office of Administrative Hearings. The written  
10      objection must be filed with Office of Administrative  
11      Hearings in person, by registered or certified mail, return  
12      receipt requested, or by facsimile transmission or electronic  
13      mail within thirty calendar days after receipt of a copy of the  
14      order of revocation or suspension or no hearing will be  
15      granted: *Provided*, That a successful transmittal sheet shall  
16      be necessary for proof of written objection in the case of  
17      filing by fax. The hearing shall be before a hearing examiner  
18      employed by the Office of Administrative Hearings who shall

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19 rule on evidentiary issues. Upon consideration of the  
20 designated record, the hearing examiner shall, based on the  
21 determination of the facts of the case and applicable law,  
22 render a decision affirming, reversing or modifying the action  
23 protested. The decision shall contain findings of fact and  
24 conclusions of law and shall be provided to all parties by  
25 registered or certified mail, return receipt requested.

26 (b) The hearing shall be held at an office of the Division  
27 of Motor Vehicles located in or near the county in which the  
28 arrest was made in this state or at some other suitable place  
29 in the county in which the arrest was made if an office of the  
30 division is not available. The Office of Administrative  
31 Hearings shall send a notice of hearing to the person whose  
32 driving privileges are at issue and the person's legal counsel  
33 if the person is represented by legal counsel, the investigating  
34 or arresting law-enforcement officers, the Division of Motor  
35 Vehicles, and the Attorney General's Office, if the Attorney  
36 General has filed a notice of appearance of counsel on behalf  
37 of the Division of Motor Vehicles.

38       (c) (1) Any hearing shall be held within one hundred  
39 eighty days after the date upon which the Office of  
40 Administrative Hearings received the timely written  
41 objection unless there is a postponement or continuance.

42       (2) The Office of Administrative Hearings may postpone  
43 or continue any hearing on its own motion or upon  
44 application by the party whose license is at issue in that  
45 hearing or by the commissioner for good cause shown.

46       (3) The Office of Administrative Hearings may issue  
47 subpoenas commanding the appearance of witnesses and  
48 subpoenas duces tecum commanding the submission of  
49 documents, items or other things. Subpoenas duces tecum  
50 shall be returnable on the date of the next scheduled hearing  
51 unless otherwise specified. The Office of Administrative  
52 hearings shall issue subpoenas and subpoenas duces tecum at  
53 the request of a party or the party's legal representative. The  
54 party requesting the subpoena shall be responsible for service  
55 of the subpoena upon the appropriate individual. Every  
56 subpoena or subpoena duces tecum shall be served at least

57 five days before the return date thereof, either by personal  
58 service made by a person over eighteen years of age or by  
59 registered or certified mail, return receipt requested, and  
60 received by the party responsible for serving the subpoena or  
61 subpoena duces tecum: *Provided*, That the Division of  
62 Motor Vehicles may serve subpoenas to law-enforcement  
63 officers through electronic mail to the department of his or  
64 her employer. If a person does not obey the subpoena or fails  
65 to appear, the party who issued the subpoena to the person  
66 may petition the circuit court wherein the action lies for  
67 enforcement of the subpoena.

68 (d) Law-enforcement officers shall be compensated for  
69 the time expended in their travel and appearance before the  
70 Office of Administrative Hearings by the law-enforcement  
71 agency by whom they are employed at their regular rate if  
72 they are scheduled to be on duty during said time or at their  
73 regular overtime rate if they are scheduled to be off duty  
74 during said time.

75       (e) The principal question at the hearing shall be whether  
76 the person did drive a motor vehicle while under the  
77 influence of alcohol, controlled substances or drugs, or did  
78 drive a motor vehicle while having an alcohol concentration  
79 in the person's blood of eight hundredths of one percent or  
80 more, by weight, or did refuse to submit to the designated  
81 secondary chemical test, or did drive a motor vehicle while  
82 under the age of twenty-one years with an alcohol  
83 concentration in his or her blood of two hundredths of one  
84 percent or more, by weight, but less than eight hundredths of  
85 one percent, by weight.

86       (f) In the case of a hearing in which a person is accused  
87 of driving a motor vehicle while under the influence of  
88 alcohol, controlled substances or drugs, or accused of driving  
89 a motor vehicle while having an alcohol concentration in the  
90 person's blood of eight hundredths of one percent or more,  
91 by weight, or accused of driving a motor vehicle while under  
92 the age of twenty-one years with an alcohol concentration in  
93 his or her blood of two hundredths of one percent or more, by

94 weight, but less than eight hundredths of one percent, by  
95 weight, the Office of Administrative Hearings shall make  
96 specific findings as to: (1) Whether the investigating  
97 law-enforcement officer had reasonable grounds to believe  
98 the person to have been driving while under the influence of  
99 alcohol, controlled substances or drugs, or while having an  
100 alcohol concentration in the person's blood of eight  
101 hundredths of one percent or more, by weight, or to have  
102 been driving a motor vehicle while under the age of  
103 twenty-one years with an alcohol concentration in his or her  
104 blood of two hundredths of one percent or more, by weight,  
105 but less than eight hundredths of one percent, by weight; (2)  
106 whether the person was lawfully placed under arrest for an  
107 offense involving driving under the influence of alcohol,  
108 controlled substances or drugs, or was lawfully taken into  
109 custody for the purpose of administering a secondary test:  
110 *Provided*, That this element shall be waived in cases where  
111 no arrest occurred due to driver incapacitation; (3) whether  
112 the person committed an offense involving driving under the

113 influence of alcohol, controlled substances or drugs, or was  
114 lawfully taken into custody for the purpose of administering  
115 a secondary test; and (4) whether the tests, if any, were  
116 administered in accordance with the provisions of this article  
117 and article five of this chapter.

118 (g) If, in addition to a finding that the person did drive a  
119 motor vehicle while under the influence of alcohol,  
120 controlled substances or drugs, or did drive a motor vehicle  
121 while having an alcohol concentration in the person's blood  
122 of eight hundredths of one percent or more, by weight, or did  
123 drive a motor vehicle while under the age of twenty-one  
124 years with an alcohol concentration in his or her blood of two  
125 hundredths of one percent or more, by weight, but less than  
126 eight hundredths of one percent, by weight, the Office of  
127 Administrative Hearings also finds by a preponderance of the  
128 evidence that the person when driving did an act forbidden  
129 by law or failed to perform a duty imposed by law, which act  
130 or failure proximately caused the death to or serious bodily  
131 injury as that term is defined in section two, article five of

132 this chapter of a person ~~and was committed in reckless~~  
133 ~~disregard of the safety of others and if the Office of~~  
134 ~~Administrative Hearings further finds that the influence of~~  
135 ~~alcohol, controlled substances or drugs or the alcohol~~  
136 ~~concentration in the blood was a contributing cause to the~~  
137 ~~death,~~ the commissioner shall revoke the person's license for  
138 a period of ten years: *Provided*, That if the person's license  
139 has previously been suspended or revoked under the  
140 provisions of this section or section one of this article within  
141 the ten years immediately preceding the date of arrest, the  
142 period of revocation shall be for the life of the person.

143 (h) If, ~~in addition to a finding that the person did drive a~~  
144 ~~motor vehicle while under the influence of alcohol,~~  
145 ~~controlled substances or drugs, or did drive a motor vehicle~~  
146 ~~while having an alcohol concentration in the person's blood~~  
147 ~~of eight hundredths of one percent or more, by weight, the~~  
148 ~~Office of Administrative Hearings also finds by a~~  
149 ~~preponderance of the evidence that the person when driving~~  
150 ~~did an act forbidden by law or failed to perform a duty~~

151 ~~imposed by law, which act or failure proximately caused the~~  
152 ~~death of a person, the commissioner shall revoke the person's~~  
153 ~~license for a period of five years: *Provided*, That if the~~  
154 ~~person's license has previously been suspended or revoked~~  
155 ~~under the provisions of this section or section one of this~~  
156 ~~article within the ten years immediately preceding the date of~~  
157 ~~arrest, the period of revocation shall be for the life of the~~  
158 ~~person.~~

159       (i) (h) If, in addition to a finding that the person did drive  
160 a motor vehicle while under the influence of alcohol,  
161 controlled substances or drugs, or did drive a motor vehicle  
162 while having an alcohol concentration in the person's blood  
163 of eight hundredths of one percent or more, by weight, the  
164 Office of Administrative Hearings also finds by a  
165 preponderance of the evidence that the person when driving  
166 did an act forbidden by law or failed to perform a duty  
167 imposed by law, which act or failure proximately caused  
168 bodily injury to a person other than himself or herself, the  
169 commissioner shall revoke the person's license for a period

170 of two years: *Provided*, That if the license has previously  
171 been suspended or revoked under the provisions of this  
172 section or section one of this article within the ten years  
173 immediately preceding the date of arrest, the period of  
174 revocation shall be ten years: *Provided, however*, That if the  
175 person's license has previously been suspended or revoked  
176 more than once under the provisions of this section or section  
177 one of this article within the ten years immediately preceding  
178 the date of arrest, the period of revocation shall be for the life  
179 of the person.

180       (j) (i) If the Office of Administrative Hearings finds by a  
181 preponderance of the evidence that the person did drive a  
182 motor vehicle while under the influence of alcohol,  
183 controlled substances or drugs, or did drive a motor vehicle  
184 while having an alcohol concentration in the person's blood  
185 of eight hundredths of one percent or more, by weight, but  
186 less than fifteen hundredths of one percent or more, by  
187 weight, or finds that the person knowingly permitted the  
188 person's vehicle to be driven by another person who was

189 under the influence of alcohol, controlled substances or  
190 drugs, or knowingly permitted the person's vehicle to be  
191 driven by another person who had an alcohol concentration  
192 in his or her blood of eight hundredths of one percent or  
193 more, by weight the commissioner shall revoke the person's  
194 license for a period of six months or a period of fifteen days  
195 with an additional one hundred and twenty days of  
196 participation in the Motor Vehicle Alcohol Test and Lock  
197 Program in accordance with the provisions of section three-a  
198 of this article: *Provided*, That any period of participation in  
199 the Motor Vehicle Alcohol Test and Lock Program that has  
200 been imposed by a court pursuant to section two-b, article  
201 five of this chapter shall be credited against any period of  
202 participation imposed by the commissioner: *Provided*,  
203 *however*, That a person whose license is revoked for driving  
204 while under the influence of drugs is not eligible to  
205 participate in the Motor Vehicle Alcohol Test and Lock  
206 Program: *Provided further*, That if the person's license has  
207 previously been suspended or revoked under the provisions

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208 of this section or section one of this article within the ten  
209 years immediately preceding the date of arrest, the period of  
210 revocation shall be ten years: *And provided further*, That if  
211 the person's license has previously been suspended or  
212 revoked more than once under the provisions of this section  
213 or section one of this article within the ten years immediately  
214 preceding the date of arrest, the period of revocation shall be  
215 for the life of the person.

216     ~~(k)~~ (j) (1) If in addition to finding by a preponderance of  
217 the evidence that the person did drive a motor vehicle while  
218 under the influence of alcohol, controlled substance or drugs,  
219 the Office of Administrative Hearings also finds by a  
220 preponderance of the evidence that the person did drive a  
221 motor vehicle while having an alcohol concentration in the  
222 person's blood of fifteen hundredths of one percent or more,  
223 by weight, the commissioner shall revoke the person's  
224 license for a period of forty-five days with an additional two  
225 hundred and seventy days of participation in the Motor  
226 Vehicle Alcohol Test and Lock Program in accordance with

227 the provisions of section three-a, article five-a, chapter  
228 seventeen-c of this code: *Provided*, That if the person's  
229 license has previously been suspended or revoked under the  
230 provisions of this section or section one of this article within  
231 the ten years immediately preceding the date of arrest, the  
232 period of revocation shall be ten years: *Provided, however*,  
233 That if the person's license has previously been suspended or  
234 revoked the person's license more than once under the  
235 provisions of this section or section one of this article within  
236 the ten years immediately preceding the date of arrest, the  
237 period of revocation shall be for the life of the person.

238 (2) If a person whose license is revoked pursuant to  
239 subdivision (1) of this subsection proves by clear and  
240 convincing evidence that they do not own a motor vehicle  
241 upon which the alcohol test and lock device may be installed  
242 or is otherwise incapable of participating in the Motor  
243 Vehicle Alcohol Test and Lock Program, the period of  
244 revocation shall be one hundred eighty days: *Provided*, That  
245 if the person's license has previously been suspended or

246 revoked under the provisions of this section or section one of  
247 this article within the ten years immediately preceding the  
248 date of arrest, the period of revocation shall be ten years:  
249 *Provided, however,* That if the person's license has  
250 previously been suspended or revoked more than once under  
251 the provisions of this section or section one of this article  
252 within the ten years immediately preceding the date of arrest,  
253 the period of revocation shall be for the life of the person.

254       ~~(f)~~ (k) If, in addition to a finding that the person did drive  
255 a motor vehicle while under the age of twenty-one years with  
256 an alcohol concentration in his or her blood of two  
257 hundredths of one percent or more, by weight, but less than  
258 eight hundredths of one percent, by weight, the Office of  
259 Administrative Hearings also finds by a preponderance of the  
260 evidence that the person when driving did an act forbidden  
261 by law or failed to perform a duty imposed by law, which act  
262 or failure proximately caused the death of a person, and if the  
263 Office of Administrative Hearings further finds that the  
264 alcohol concentration in the blood was a contributing cause

265 to the death, the commissioner shall revoke the person's  
266 license for a period of five years: *Provided*, That if the  
267 person's license has previously been suspended or revoked  
268 under the provisions of this section or section one of this  
269 article within the ten years immediately preceding the date of  
270 arrest, the period of revocation shall be for the life of the  
271 person.

272       ~~(m)~~ (l) If, in addition to a finding that the person did drive  
273 a motor vehicle while under the age of twenty-one years with  
274 an alcohol concentration in his or her blood of two  
275 hundredths of one percent or more, by weight, but less than  
276 eight hundredths of one percent, by weight, the Office of  
277 Administrative Hearings also finds by a preponderance of the  
278 evidence that the person when driving did an act forbidden  
279 by law or failed to perform a duty imposed by law, which act  
280 or failure proximately caused bodily injury to a person other  
281 than himself or herself, and if the Office of Administrative  
282 Hearings further finds that the alcohol concentration in the  
283 blood was a contributing cause to the bodily injury, the

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284 commissioner shall revoke the person's license for a period  
285 of two years: *Provided*, That if the person's license has  
286 previously been suspended or revoked under the provisions  
287 of this section or section one of this article within the ten  
288 years immediately preceding the date of arrest, the period of  
289 revocation shall be ten years: *Provided, however*, That if the  
290 person's license has previously been suspended or revoked  
291 more than once under the provisions of this section or section  
292 one of this article within the ten years immediately preceding  
293 the date of arrest, the period of revocation shall be for the life  
294 of the person.

295     ~~(n)~~ (m) If the Office of Administrative Hearings finds by  
296 a preponderance of the evidence that the person did drive a  
297 motor vehicle while under the age of twenty-one years with  
298 an alcohol concentration in his or her blood of two  
299 hundredths of one percent or more, by weight, but less than  
300 eight hundredths of one percent, by weight, the commissioner  
301 shall suspend the person's license for a period of sixty days:  
302 *Provided*, That if the person's license has previously been

303 suspended or revoked under the provisions of this section or  
304 section one of this article, the period of revocation shall be  
305 for one year, or until the person's twenty-first birthday,  
306 whichever period is longer.

307       ~~(o)~~ (n) If, in addition to a finding that the person did drive  
308 a motor vehicle while under the influence of alcohol,  
309 controlled substances or drugs, or did drive a motor vehicle  
310 while having an alcohol concentration in the person's blood  
311 of eight hundredths of one percent or more, by weight, the  
312 Office of Administrative Hearings also finds by a  
313 preponderance of the evidence that the person when driving  
314 did have on or within the Motor vehicle another person who  
315 has not reached his or her sixteenth birthday, the  
316 commissioner shall revoke the person's license for a period  
317 of one year: *Provided*, That if the person's license has  
318 previously been suspended or revoked under the provisions  
319 of this section or section one of this article within the ten  
320 years immediately preceding the date of arrest, the period of  
321 revocation shall be ten years: *Provided, however*, That if the

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322 person's license has previously been suspended or revoked  
323 more than once under the provisions of this section or section  
324 one of this article within the ten years immediately preceding  
325 the date of arrest, the period of revocation shall be for the life  
326 of the person.

327     ~~(p)~~ (o) For purposes of this section, where reference is  
328 made to previous suspensions or revocations under this  
329 section, the following types of criminal convictions or  
330 administrative suspensions or revocations shall also be  
331 regarded as suspensions or revocations under this section or  
332 section one of this article:

333     (1) Any administrative revocation under the provisions of  
334 the prior enactment of this section for conduct which  
335 occurred within the ten years immediately preceding the date  
336 of arrest;

337     (2) Any suspension or revocation on the basis of a  
338 conviction under a municipal ordinance of another state or a  
339 statute of the United States or of any other state of an offense  
340 which has the same elements as an offense described in

341 section two, article five of this chapter for conduct which  
342 occurred within the ten years immediately preceding the date  
343 of arrest; or

344 (3) Any revocation under the provisions of section seven,  
345 article five of this chapter for conduct which occurred within  
346 the ten years immediately preceding the date of arrest.

347 ~~(q)~~ (p) In the case of a hearing in which a person is  
348 accused of refusing to submit to a designated secondary test,  
349 the Office of Administrative Hearings shall make specific  
350 findings as to: (1) Whether the arresting law-enforcement  
351 officer had reasonable grounds to believe the person had  
352 been driving a motor vehicle in this state while under the  
353 influence of alcohol, controlled substances or drugs; (2)  
354 whether the person was lawfully placed under arrest for an  
355 offense involving driving under the influence of alcohol,  
356 controlled substances or drugs, or was lawfully taken into  
357 custody for the purpose of administering a secondary test:  
358 *Provided*, That this element shall be waived in cases where  
359 no arrest occurred due to driver incapacitation; (3) whether

360 the person committed an offense relating to driving a motor  
361 vehicle in this state while under the influence of alcohol,  
362 controlled substances or drugs; (4) whether the person  
363 refused to submit to the secondary test finally designated in  
364 the manner provided in section four, article five of this  
365 chapter; and (5) whether the person had been given a written  
366 statement advising the person that the person's license to  
367 operate a motor vehicle in this state would be revoked for at  
368 least forty-five days and up to life if the person refused to  
369 submit to the test finally designated in the manner provided  
370 in said section.

371       ~~(r)~~ (q) If the Office of Administrative Hearings finds by  
372 a preponderance of the evidence that: (1) The investigating  
373 officer had reasonable grounds to believe the person had  
374 been driving a motor vehicle in this state while under the  
375 influence of alcohol, controlled substances or drugs; (2)  
376 whether the person was lawfully placed under arrest for an  
377 offense involving driving under the influence of alcohol,  
378 controlled substances or drugs, or was lawfully taken into

379 custody for the purpose of administering a secondary test:  
380 *Provided*, That this element shall be waived in cases where  
381 no arrest occurred due to driver incapacitation; (3) the person  
382 committed an offense relating to driving a motor vehicle in  
383 this state while under the influence of alcohol, controlled  
384 substances or drugs; (4) the person refused to submit to the  
385 secondary test finally designated in the manner provided in  
386 section four, article five of this chapter; and (5) the person  
387 had been given a written statement advising the person that  
388 the person's license to operate a motor vehicle in this state  
389 would be revoked for at least forty-five days and up to life if  
390 the person refused to submit to the test finally designated, the  
391 commissioner shall revoke the person's license to operate a  
392 motor vehicle in this state for the periods specified in section  
393 seven, article five of this chapter. The revocation period  
394 prescribed in this subsection shall run concurrently with any  
395 other revocation period ordered under this section or section  
396 one of this article arising out of the same occurrence. The  
397 revocation period prescribed in this subsection shall run

398 concurrently with any other revocation period ordered under  
399 this section or section one of this article arising out of the  
400 same occurrence.

401     ~~(s)~~ (r) If the Office of Administrative Hearings finds to  
402 the contrary with respect to the above issues the  
403 commissioner shall rescind his or her earlier order of  
404 revocation or shall reduce the order of revocation to the  
405 appropriate period of revocation under this section or section  
406 seven, article five of this chapter. A copy of the Office of  
407 Administrative Hearings' final order containing its findings  
408 of fact and conclusions of law made and entered following  
409 the hearing shall be served upon the person whose license is  
410 at issue or upon the person's legal counsel if the person is  
411 represented by legal counsel by registered or certified mail,  
412 return receipt requested or by electronic mail if available.  
413 The final order shall be served upon the commissioner by  
414 electronic mail. During the pendency of any hearing, the  
415 revocation of the person's license to operate a motor vehicle  
416 in this state shall be stayed.

417       A person whose license is at issue and the commissioner  
418 shall be entitled to judicial review as set forth in chapter  
419 twenty-nine-a of this code. Neither the commissioner nor the  
420 Office of Administrative Hearings may stay enforcement of  
421 the order. The court may grant a stay or supersede as of the  
422 order only upon motion and hearing, and a finding by the  
423 court upon the evidence presented, that there is a substantial  
424 probability that the appellant shall prevail upon the merits  
425 and the appellant will suffer irreparable harm if the order is  
426 not stayed: *Provided*, That in no event shall the stay or  
427 supersedeas of the order exceed one hundred fifty days.  
428 Notwithstanding the provisions of section four, article five of  
429 said chapter, the Office of Administrative Hearings may not  
430 be compelled to transmit a certified copy of the file or the  
431 transcript of the hearing to the circuit court in less than sixty  
432 days.

433       ~~(t)~~ (s) In any revocation or suspension pursuant to this  
434 section, if the driver whose license is revoked or suspended

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435 had not reached the driver's eighteenth birthday at the time  
436 of the conduct for which the license is revoked or suspended,  
437 the driver's license shall be revoked or suspended until the  
438 driver's eighteenth birthday or the applicable statutory period  
439 of revocation or suspension prescribed by this section,  
440 whichever is longer.

441 ~~(u)~~ (t) Funds for this section's hearing and appeal process  
442 may be provided from the Drunk Driving Prevention Fund,  
443 as created by section forty-one, article two, chapter fifteen of  
444 this code, upon application for the funds to the commission  
445 on Drunk Driving Prevention.

**§17C-5A-3. Safety and treatment program; reissuance of license.**

1 (a) The Department of Health and Human Resources,  
2 Division of Alcoholism and Drug Abuse shall administer a  
3 comprehensive safety and treatment program for persons  
4 whose licenses have been revoked under the provisions of  
5 this article or section seven, article five of this chapter or  
6 subsection (6), section five, article three, chapter seventeen-b  
7 of this code and shall also establish the minimum

8 qualifications for mental health facilities, day report centers,  
9 community correction centers or other public agencies or  
10 private entities conducting the safety and treatment program:  
11 *Provided*, That the Department of Health and Human  
12 Resources, Division of Alcoholism and Drug Abuse may  
13 establish standards whereby the division will accept or  
14 approve participation by violators in another treatment  
15 program which provides the same or substantially similar  
16 benefits as the safety and treatment program established  
17 pursuant to this section.

18 (b) The program shall include, but not be limited to,  
19 treatment of alcoholism, alcohol and drug abuse,  
20 psychological counseling, educational courses on the dangers  
21 of alcohol and drugs as they relate to driving, defensive  
22 driving or other safety driving instruction and other programs  
23 designed to properly educate, train and rehabilitate the  
24 offender.

25 (c) The Department of Health and Human Resources,  
26 Division of Alcoholism and Drug Abuse shall provide for the

27 preparation of an educational and treatment program for each  
28 person whose license has been revoked under the provisions  
29 of this article or section seven, article five of this chapter or  
30 subsection (6), section five, article three, chapter seventeen-b  
31 of this code which shall contain the following: (1) A listing  
32 and evaluation of the offender's prior traffic record; (2) the  
33 characteristics and history of alcohol or drug use, if any; (3)  
34 his or her amenability to rehabilitation through the alcohol  
35 safety program; and (4) a recommendation as to treatment or  
36 rehabilitation and the terms and conditions of the treatment  
37 or rehabilitation. The program shall be prepared by persons  
38 knowledgeable in the diagnosis of alcohol or drug abuse and  
39 treatment.

40 (d) There is hereby created a special revenue account  
41 within the State Treasury known as the Department of Health  
42 and Human Resources Safety and Treatment Fund. The  
43 account shall be administered by the Secretary of the  
44 Department of Health and Human Resources for the purpose  
45 of administering the comprehensive safety and treatment

46 program established by subsection (a) of this section. The  
47 account may be invested, and all earnings and interest  
48 accruing shall be retained in the account. The Auditor shall  
49 conduct an audit of the fund at least every three fiscal years.

50 Effective July 1, 2010, the State Treasurer shall make a  
51 one-time transfer of \$250,000 from the Motor Vehicle Fees  
52 Fund into the Department of Health and Human Resources  
53 Safety and Treatment Fund.

54 (e) (1) The program provider shall collect the established  
55 fee from each participant upon enrollment unless the  
56 department has determined that the participant is an indigent  
57 based upon criteria established pursuant to legislative rule  
58 authorized in this section.

59 (2) If the department determined that a participant is an  
60 indigent based upon criteria established pursuant to the  
61 legislative rule authorized by this section, the department  
62 shall provide the applicant with proof of its determination  
63 regarding indigency, which proof the applicant shall present  
64 to the interlock provider as part of the application process

65 provided in section three-a of this article and/or the rules  
66 promulgated pursuant thereto.

67 (3) Program providers shall remit to the Department of  
68 Health and Human Resources a portion of the fee collected,  
69 which shall be deposited by the Secretary of the Department  
70 of Health and Human Resources into the Department of  
71 Health and Human Resources Safety and Treatment Fund.  
72 The Department of Health and Human Resources shall  
73 reimburse enrollment fees to program providers for each  
74 eligible indigent offender.

75 (f) On or before January 15 of each year, the Secretary of  
76 the Department of Health and Human Resources shall report  
77 to the Legislature on:

78 (1) The total number of offenders participating in the  
79 safety and treatment program during the prior year;

80 (2) The total number of indigent offenders participating  
81 in the safety and treatment program during the prior year;

82 (3) The total number of program providers during the  
83 prior year; and

84       (4) The total amount of reimbursements paid to program  
85   provider during the prior year.

86       (g) The Commissioner of the Division of Motor Vehicles,  
87   after giving due consideration to the program developed for  
88   the offender, shall prescribe the necessary terms and  
89   conditions for the reissuance of the license to operate a motor  
90   vehicle in this state revoked under this article or section  
91   seven, article five of this chapter or subsection (6), section  
92   five, article three, chapter seventeen-b of this code which  
93   shall include successful completion of the educational,  
94   treatment or rehabilitation program, subject to the following:

95       (1) When the period of revocation is six months, the  
96   license to operate a motor vehicle in this state may not be  
97   reissued until: (A) At least ninety days have elapsed from the  
98   date of the initial revocation, during which time the  
99   revocation was actually in effect; (B) the offender has  
100   successfully completed the program; (C) all costs of the  
101   program and administration have been paid; and (D) all costs  
102   assessed as a result of a revocation hearing have been paid.

103       (2) When the period of revocation is for a period of one  
104 year or for more than a year, the license to operate a motor  
105 vehicle in this state may not be reissued until: (A) At least  
106 one-half of the time period has elapsed from the date of the  
107 initial revocation, during which time the revocation was  
108 actually in effect; (B) the offender has successfully  
109 completed the program; (C) all costs of the program and  
110 administration have been paid; and (D) all costs assessed as  
111 a result of a revocation hearing have been paid.  
112 Notwithstanding any provision in this code, a person whose  
113 license is revoked for refusing to take a chemical test as  
114 required by section seven, article five of this chapter for a  
115 first offense is not eligible to reduce the revocation period by  
116 completing the safety and treatment program.

117       (3) When the period of revocation is for life, the license  
118 to operate a motor vehicle in this state may not be reissued  
119 until: (A) At least ten years have elapsed from the date of the  
120 initial revocation, during which time the revocation was  
121 actually in effect; (B) the offender has successfully

122 completed the program; (C) all costs of the program and  
123 administration have been paid; and (D) all costs assessed as  
124 a result of a revocation hearing have been paid.

125 (4) Notwithstanding any provision of this code or any  
126 rule, any mental health facilities or other public agencies or  
127 private entities conducting the safety and treatment program  
128 when certifying that a person has successfully completed a  
129 safety and treatment program shall only have to certify that  
130 the person has successfully completed the program.

131 (h) (1) The Department of Health and Human Resources,  
132 Division of Alcoholism and Drug Abuse shall provide for the  
133 preparation of an educational program for each person whose  
134 license has been suspended for sixty days pursuant to the  
135 provisions of subsection ~~(n)~~ (m), section two, article five-a of  
136 this chapter. The educational program shall consist of not  
137 less than twelve nor more than eighteen hours of actual  
138 classroom time.

139 (2) When a sixty-day period of suspension has been  
140 ordered, the license to operate a motor vehicle may not be

141 reinstated until: (A) At least sixty days have elapsed from the  
142 date of the initial suspension, during which time the  
143 suspension was actually in effect; (B) the offender has  
144 successfully completed the educational program; (C) all costs  
145 of the program and administration have been paid; and (D)  
146 all costs assessed as a result of a suspension hearing have  
147 been paid.

148 (i) A required component of the treatment program  
149 provided in subsection (b) of this section and the education  
150 program provided for in subsection (c) of this section shall be  
151 participation by the violator with a victim impact panel  
152 program providing a forum for victims of alcohol and  
153 drug-related offenses and offenders to share first-hand  
154 experiences on the impact of alcohol and drug-related  
155 offenses in their lives. The Department of Health and Human  
156 Resources, Division of Alcoholism and Drug Abuse  
157 shall propose and implement a plan for victim impact panels  
158 where appropriate numbers of victims are available and  
159 willing to participate and shall establish guidelines for other

160 innovative programs which may be substituted where the  
161 victims are not available to assist persons whose licenses  
162 have been suspended or revoked for alcohol and drug-related  
163 offenses to gain a full understanding of the severity of their  
164 offenses in terms of the impact of the offenses on victims and  
165 offenders. The plan shall require, at a minimum, discussion  
166 and consideration of the following:

167 (A) Economic losses suffered by victims or offenders;

168 (B) Death or physical injuries suffered by victims or  
169 offenders;

170 (C) Psychological injuries suffered by victims or  
171 offenders;

172 (D) Changes in the personal welfare or familial  
173 relationships of victims or offenders; and

174 (E) Other information relating to the impact of alcohol  
175 and drug-related offenses upon victims or offenders.

176 The Department of Health and Human Resources,  
177 Division of Alcoholism and Drug Abuse shall ensure that any

178 meetings between victims and offenders shall be  
179 nonconfrontational and ensure the physical safety of the  
180 persons involved.

181 (j)(1) The Secretary of the Department of Health and  
182 Human Resources shall promulgate a rule for legislative  
183 approval in accordance with article three, chapter  
184 twenty-nine-a of this code to administer the provisions of this  
185 section and establish a fee to be collected from each offender  
186 enrolled in the safety and treatment program. The rule shall  
187 include: (A) A reimbursement mechanism to program  
188 providers of required fees for the safety and treatment  
189 program for indigent offenders, criteria for determining  
190 eligibility of indigent offenders, and any necessary  
191 application forms; and (B) program standards that encompass  
192 provider criteria including minimum professional training  
193 requirements for providers, curriculum approval, minimum  
194 course length requirements and other items that may be  
195 necessary to properly implement the provisions of this  
196 section.

197       (2) The Legislature finds that an emergency exists and,  
198 therefore, the Secretary shall file by July 1, 2010, an  
199 emergency rule to implement this section pursuant to the  
200 provisions of section fifteen, article three, chapter  
201 twenty-nine-a of this code.

202       (k) Nothing in this section may be construed to prohibit  
203 day report or community correction programs, authorized  
204 pursuant to article eleven-c, chapter sixty-two of this code,  
205 from administering a comprehensive safety and treatment  
206 program pursuant to this section.

**§17C-5A-3a. Establishment of and participation in the Motor  
Vehicle Alcohol Test and Lock Program.**

1       (a)(1) The Division of Motor Vehicles shall control and  
2 regulate a Motor Vehicle Alcohol Test and Lock Program for  
3 persons whose licenses have been revoked pursuant to this  
4 article or the provisions of article five of this chapter or have  
5 been convicted under section two, article five of this chapter,  
6 or who are serving a term of a conditional probation pursuant  
7 to section two-b, article five of this chapter.

8       (2) The program shall include the establishment of a users  
9 fee for persons participating in the program which shall be  
10 paid in advance and deposited into the Driver's  
11 Rehabilitation Fund: *Provided*, That on and after July 1,  
12 2007, any unexpended balance remaining in the Driver's  
13 Rehabilitation Fund shall be transferred to the Motor Vehicle  
14 Fees Fund created under the provisions of section  
15 twenty-one, article two, chapter seventeen-a of this code and  
16 all further fees collected shall be deposited in that fund.

17       (3) (A) Except where specified otherwise, the use of the  
18 term "program" in this section refers to the Motor Vehicle  
19 Alcohol Test and Lock Program.

20       (B) The Commissioner of the Division of Motor Vehicles  
21 shall propose legislative rules for promulgation in accordance  
22 with the provisions of chapter twenty-nine-a of this code for  
23 the purpose of implementing the provisions of this section.  
24 The rules shall also prescribe those requirements which, in  
25 addition to the requirements specified by this section for  
26 eligibility to participate in the program, the commissioner

27 determines must be met to obtain the commissioner's  
28 approval to operate a motor vehicle equipped with a motor  
29 vehicle alcohol test and lock system.

30 (C) Nothing in this section may be construed to prohibit  
31 day report or community correction programs authorized  
32 pursuant to article eleven-c, chapter sixty-two of this code, or  
33 a home incarceration program authorized pursuant to article  
34 eleven-b, chapter sixty-two of this code, from being a  
35 provider of motor vehicle alcohol test and lock systems for  
36 eligible participants as authorized by this section.

37 (4) For purposes of this section, a "motor vehicle alcohol  
38 test and lock system" means a mechanical or computerized  
39 system which, in the opinion of the commissioner, prevents  
40 the operation of a motor vehicle when, through the system's  
41 assessment of the blood alcohol content of the person  
42 operating or attempting to operate the vehicle, the person is  
43 determined to be under the influence of alcohol.

44 (5) The fee for installation and removal of ignition  
45 interlock devices shall be waived for persons determined to

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46 be indigent by the Department of Health and Human  
47 Resources pursuant to section three, article five-a, chapter  
48 seventeen-c of this code. The commissioner shall establish  
49 by legislative rule, proposed pursuant to article three, chapter  
50 twenty-nine-a of this code, procedures to be followed with  
51 regard to persons determined by the Department of Health  
52 and Human Resources to be indigent. The rule shall include,  
53 but is not limited to, promulgation of application forms;  
54 establishment of procedures for the review of applications;  
55 and the establishment of a mechanism for the payment of  
56 installations for eligible offenders.

57 (6) On or before January 15 of each year, the  
58 Commissioner of the Division of Motor Vehicles shall report  
59 to the Legislature on:

60 (A) The total number of offenders participating in the  
61 program during the prior year;

62 (B) The total number of indigent offenders participating  
63 in the program during the prior year;

64       (C) The terms of any contracts with the providers of  
65   ignition interlock devices; and

66       (D) The total cost of the program to the state during the  
67   prior year.

68       (b)(1) Any person whose license is revoked for the first  
69   time pursuant to this article or the provisions of article five of  
70   this chapter is eligible to participate in the program when the  
71   person's minimum revocation period as specified by  
72   subsection (c) of this section has expired and the person is  
73   enrolled in or has successfully completed the safety and  
74   treatment program or presents proof to the commissioner  
75   within sixty days of receiving approval to participate by the  
76   commissioner that he or she is enrolled in a safety and  
77   treatment program: *Provided*, That anyone whose license is  
78   revoked for the first time pursuant to subsection (k), section  
79   two of this article must participate in the program when the  
80   person's minimum revocation period as specified by  
81   subsection (c) of this section has expired and the person is  
82   enrolled in or has successfully completed the safety and

83 treatment program or presents proof to the commissioner  
84 within sixty days of receiving approval to participate by the  
85 commissioner that he or she is enrolled in a safety and  
86 treatment program.

87 (2) Any person whose license has been suspended  
88 pursuant to the provisions of subsection ~~(n)~~ (m), section two  
89 of this article for driving a motor vehicle while under the age  
90 of twenty-one years with an alcohol concentration in his or  
91 her blood of two hundredths of one percent or more, by  
92 weight, but less than eight hundredths of one percent, by  
93 weight, is eligible to participate in the program after thirty  
94 days have elapsed from the date of the initial suspension,  
95 during which time the suspension was actually in effect:  
96 *Provided*, That in the case of a person under the age of  
97 eighteen, the person is eligible to participate in the program  
98 after thirty days have elapsed from the date of the initial  
99 suspension, during which time the suspension was actually in  
100 effect or after the person's eighteenth birthday, whichever is  
101 later. Before the commissioner approves a person to operate

102 a motor vehicle equipped with a motor vehicle alcohol test  
103 and lock system, the person must agree to comply with the  
104 following conditions:

105 (A) If not already enrolled, the person shall enroll in and  
106 complete the educational program provided in subsection (d),  
107 section three of this article at the earliest time that placement  
108 in the educational program is available, unless good cause is  
109 demonstrated to the commissioner as to why placement  
110 should be postponed;

111 (B) The person shall pay all costs of the educational  
112 program, any administrative costs and all costs assessed for  
113 any suspension hearing.

114 (3) Notwithstanding the provisions of this section to the  
115 contrary, a person eligible to participate in the program under  
116 this subsection may not operate a motor vehicle unless  
117 approved to do so by the commissioner.

118 (c) A person who participates in the program under  
119 subdivision (1), subsection (b) of this section is subject to a  
120 minimum revocation period and minimum period for the use  
121 of the ignition interlock device as follows:

122       (1) For a person whose license has been revoked for a  
123 first offense for six months pursuant to the provisions of  
124 section one-a of this article for conviction of an offense  
125 defined in subsection ~~(d) or (g)~~ (c) or (f), section two, article  
126 five of this chapter or pursuant to subsection ~~(j)~~ (i), section  
127 two of this article, the minimum period of revocation for  
128 participation in the test and lock program is fifteen days and  
129 the minimum period for the use of the ignition interlock  
130 device is one hundred and twenty-five days;

131       (2) For a person whose license has been revoked for a  
132 first offense pursuant to section seven, article five of this  
133 chapter, the minimum period of revocation for participation  
134 in the test and lock program is forty-five days and the  
135 minimum period for the use of the ignition interlock device  
136 is one year;

137       (3) For a person whose license has been revoked for a  
138 first offense pursuant to section one-a of this article for  
139 conviction of an offense defined in subsection ~~(e)~~ (f), section  
140 two, article five of this chapter or pursuant to subsection ~~(j)~~

141 (i), section two of this article, the minimum period of  
142 revocation for participation in the test and lock program is  
143 forty-five days and the minimum period for the use of the  
144 ignition interlock device is two hundred seventy days;

145 (4) For a person whose license has been revoked for a  
146 first offense pursuant to the provisions of section one-a of  
147 this article for conviction of an offense defined in subsection  
148 (a), section two, article five of this chapter or pursuant to  
149 subsection ~~(f)~~ (e), section two of this article, the minimum  
150 period of revocation before the person is eligible for  
151 participation in the test and lock program is twelve months  
152 and the minimum period for the use of the ignition interlock  
153 device is two years;

154 (5) For a person whose license has been revoked for a  
155 first offense pursuant to the provisions of section one-a of  
156 this article for conviction of an offense ~~defined in subsection~~  
157 ~~(b), section two, article five of this chapter or pursuant to~~  
158 subsection ~~(f)~~ (g), section two of this article, the minimum  
159 period of revocation is six months and the minimum period  
160 for the use of the ignition interlock device is two years;

161       (6) For a person whose license has been revoked for a  
162 first offense pursuant to the provisions of section one-a of  
163 this article for conviction of an offense defined in subsection  
164 ~~(c)~~ (b), section two, article five of this chapter or pursuant to  
165 subsection ~~(h)~~ (g), section two of this article, the minimum  
166 period of revocation for participation in the program is two  
167 months and the minimum period for the use of the ignition  
168 interlock device is one year;

169       (7) For a person whose license has been revoked for a  
170 first offense pursuant to the provisions of section one-a of  
171 this article for conviction of an offense defined in subsection  
172 ~~(j)~~ (i), section two, article five of this chapter or pursuant to  
173 subsection ~~(m)~~ (l), section two of this article, the minimum  
174 period of revocation for participation in the program is two  
175 months and the minimum period for the use of the ignition  
176 interlock device is ten months;

177       (d) Notwithstanding any provision of the code to the  
178 contrary, a person shall participate in the program if the  
179 person is convicted under section two, article five of this

180 chapter or the person's license is revoked under section two  
181 of this article or section seven, article five of this chapter and  
182 the person was previously either convicted or his or her  
183 license was revoked under any provision cited in this  
184 subsection within the past ten years. The minimum  
185 revocation period for a person required to participate in the  
186 program under this subsection is one year and the minimum  
187 period for the use of the ignition interlock device is two  
188 years, except that the minimum revocation period for a  
189 person required to participate because of a violation of  
190 subsection ~~(n)~~ (m), section two of this article or subsection ~~(i)~~  
191 (h), section two, article five of this chapter is two months and  
192 the minimum period of participation is one year. The  
193 division shall add an additional two months to the minimum  
194 period for the use of the ignition interlock device if the  
195 offense was committed while a minor was in the vehicle.  
196 The division shall add an additional six months to the  
197 minimum period for the use of the ignition interlock device  
198 if a person other than the driver received injuries. The  
199 division shall add an additional two years to the minimum

200 period for the use of the ignition interlock device if a person  
201 other than the driver is injured and the injuries result in that  
202 person's death. The division shall add one year to the  
203 minimum period for the use of the ignition interlock device  
204 for each additional previous conviction or revocation within  
205 the past ten years. Any person required to participate under  
206 this subsection must have an ignition interlock device  
207 installed on every vehicle he or she owns or operates.

208 (e) Notwithstanding any other provision in this code, a  
209 person whose license is revoked for driving under the  
210 influence of drugs is not eligible to participate in the Motor  
211 Vehicle Alcohol Test and Lock Program.

212 (f) An applicant for the test and lock program may not  
213 have been convicted of any violation of section three, article  
214 four, chapter seventeen-b of this code for driving while the  
215 applicant's driver's license was suspended or revoked within  
216 the six-month period preceding the date of application for  
217 admission to the test and lock program unless such is  
218 necessary for employment purposes.

219       (g) Upon permitting an eligible person to participate in  
220 the program, the commissioner shall issue to the person, and  
221 the person is required to exhibit on demand, a driver's license  
222 which shall reflect that the person is restricted to the  
223 operation of a motor vehicle which is equipped with an  
224 approved motor vehicle alcohol test and lock system.

225       (h) The commissioner may extend the minimum period  
226 of revocation and the minimum period of participation in the  
227 program for a person who violates the terms and conditions  
228 of participation in the program as found in this section, or  
229 legislative rule, or any agreement or contract between the  
230 participant and the division or program service provider. If  
231 the commissioner finds that any person participating in the  
232 program pursuant to section two-b, article five of this chapter  
233 must be removed therefrom for violation(s) of the terms and  
234 conditions thereof, he or she shall notify the person, the court  
235 that imposed the term of participation in the program, and the  
236 prosecuting attorney in the county wherein the order  
237 imposing participation in the program was entered.

238 (i) A person whose license has been suspended pursuant  
239 to the provisions of subsection ~~(n)~~ (m), section two of this  
240 article who has completed the educational program and who  
241 has not violated the terms required by the commissioner of  
242 the person's participation in the program is entitled to the  
243 reinstatement of his or her driver's license six months from  
244 the date the person is permitted to operate a motor vehicle by  
245 the commissioner. When a license has been reinstated  
246 pursuant to this subsection, the records ordering the  
247 suspension, records of any administrative hearing, records of  
248 any blood alcohol test results and all other records pertaining  
249 to the suspension shall be expunged by operation of law:  
250 *Provided*, That a person is entitled to expungement under the  
251 provisions of this subsection only once. The expungement  
252 shall be accomplished by physically marking the records to  
253 show that the records have been expunged and by securely  
254 sealing and filing the records. Expungement has the legal  
255 effect as if the suspension never occurred. The records may  
256 not be disclosed or made available for inspection and in

257 response to a request for record information, the  
258 commissioner shall reply that no information is available.  
259 Information from the file may be used by the commissioner  
260 for research and statistical purposes so long as the use of the  
261 information does not divulge the identity of the person.

262 (j) In addition to any other penalty imposed by this code,  
263 any person who operates a motor vehicle not equipped with  
264 an approved motor vehicle alcohol test and lock system  
265 during that person's participation in the Motor Vehicle  
266 Alcohol Test and Lock Program is guilty of a misdemeanor  
267 and, upon conviction thereof, shall be confined in jail for a  
268 period not less than one month nor more than six months and  
269 fined not less than \$100 nor more than \$500. Any person  
270 who attempts to bypass the alcohol test and lock system is  
271 guilty of a misdemeanor and, upon conviction thereof, shall  
272 be confined in jail not more than six months and fined not  
273 less than \$100 nor more than \$1,000: *Provided, That*  
274 notwithstanding any provision of this code to the contrary, a  
275 person enrolled and participating in the test and lock program

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276 may operate a motor vehicle solely at his or her job site if the  
277 operation is a condition of his or her employment. For the  
278 purpose of this section, job site does not include any street or  
279 highway open to the use of the public for purposes of  
280 vehicular traffic.