

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 95**

6 (By Senators Miller and Beach)

7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;  
9 reported February 19, 2013.]  
10 \_\_\_\_\_

11  
12 A BILL to amend and reenact §17C-5-2 and §17C-5-2b of the Code of  
13 West Virginia, 1931, as amended; and to amend and reenact  
14 §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code,  
15 all relating to making it a felony to drive a vehicle while  
16 under the influence of alcohol, controlled substance or other  
17 drug and cause death or serious bodily injury to another  
18 person; eliminating misdemeanor offense of driving a vehicle  
19 while under the influence of alcohol, controlled substance or  
20 other drug and causing death; amending internal code  
21 references; and establishing criminal and administrative  
22 penalties.

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

24 That §17C-5-2 and §17C-5-2b of the Code of West Virginia,  
25 1931, as amended, be amended and reenacted; and that §17C-5A-1,  
26 §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and  
27 reenacted, all to read as follows:

28 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

1 **§17C-5-2. Driving under influence of alcohol, controlled**  
2 **substances or drugs; penalties.**

3 (a) Any person who:

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

5 (A) Is under the influence of alcohol;

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

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

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

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

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

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

27 (3) For purposes of this subsection, "serious bodily injury"  
28 means bodily injury which creates a substantial risk of death,

1 which causes serious or prolonged disfigurement, prolonged  
2 impairment of health or prolonged loss or impairment of the  
3 function of any bodily organ.

4 ~~(b) Any person who:~~

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

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

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

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

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

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

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

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

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

22 (A) Is under the influence of alcohol;

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

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

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

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

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

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

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

11 (A) Is under the influence of alcohol;

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

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

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

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

19 (2) Is guilty of a misdemeanor and, upon conviction thereof,  
20 except as provided in section two-b of this article, shall be  
21 confined in jail for up to six months and shall be fined not less  
22 than \$100 nor more than \$500. A person sentenced pursuant to this  
23 subdivision shall receive credit for any period of actual  
24 confinement he or she served upon arrest for the subject offense.

25 ~~(e)~~ (d) Any person who drives a vehicle in this state while he  
26 or she has an alcohol concentration in his or her blood of fifteen  
27 hundredths of one percent or more, by weight, is guilty of a  
28 misdemeanor and, upon conviction thereof, shall be confined in jail

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

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

16 ~~(g)~~ (f) Any person who:

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

19 (A) Is under the influence of alcohol;

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

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

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

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

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

1       ~~(h)~~ (g) Any person who knowingly permits his or her vehicle to  
2 be driven in this state by any other person who is ~~an~~ a habitual  
3 user of narcotic drugs or amphetamine or any derivative thereof is  
4 guilty of a misdemeanor and, upon conviction thereof, shall be  
5 confined in jail for not more than six months and shall be fined  
6 not less than \$100 nor more than \$500.

7       ~~(i)~~ (h) Any person under the age of twenty-one years who  
8 drives a vehicle in this state while he or she has an alcohol  
9 concentration in his or her blood of two hundredths of one percent  
10 or more, by weight, but less than eight hundredths of one percent,  
11 by weight, for a first offense under this subsection is guilty of  
12 a misdemeanor and, upon conviction thereof, shall be fined not less  
13 than \$25 nor more than \$100. For a second or subsequent offense  
14 under this subsection, the person is guilty of a misdemeanor and,  
15 upon conviction thereof, shall be confined in jail for twenty-four  
16 hours and shall be fined not less than \$100 nor more than \$500. A  
17 person who is charged with a first offense under the provisions of  
18 this subsection may move for a continuance of the proceedings, from  
19 time to time, to allow the person to participate in the Motor  
20 Vehicle Alcohol Test and Lock Program as provided in section  
21 three-a, article five-a of this chapter. Upon successful  
22 completion of the program, the court shall dismiss the charge  
23 against the person and expunge the person's record as it relates to  
24 the alleged offense. In the event the person fails to successfully  
25 complete the program, the court shall proceed to an adjudication of  
26 the alleged offense. A motion for a continuance under this  
27 subsection may not be construed as an admission or be used as  
28 evidence. A person arrested and charged with an offense under the

1 provisions of this subsection or subsection (a), (b), (c), (d),  
2 (e), (f) ~~(g) or (h)~~ or (g) of this section may not also be charged  
3 with an offense under this subsection arising out of the same  
4 transaction or occurrence.

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

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

7 (A) Is under the influence of alcohol;

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

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

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

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

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

21 ~~(k)~~ (j) A person violating any provision of subsection (b),  
22 (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the  
23 second offense under this section, is guilty of a misdemeanor and,  
24 upon conviction thereof, shall be confined in jail for not less  
25 than six months nor more than one year and the court may, in its  
26 discretion, impose a fine of not less than \$1,000 nor more than  
27 \$3,000.

28 ~~(l)~~ (k) A person violating any provision of subsection (b),

1 (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the third  
2 or any subsequent offense under this section, is guilty of a felony  
3 and, upon conviction thereof, shall be imprisoned in a state  
4 correctional facility for not less than one nor more than three  
5 years and the court may, in its discretion, impose a fine of not  
6 less than \$3,000 nor more than \$5,000.

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

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

15 (2) Any conviction under a municipal ordinance of this state  
16 or any other state or a statute of the United States or of any  
17 other state of an offense which has the same elements as an offense  
18 described in subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or  
19 (g) of this section, which offense occurred within the ten-year  
20 period immediately preceding the date of arrest in the current  
21 proceeding; and

22 (3) Any period of conditional probation imposed pursuant to  
23 section two-b of this article for violation of subsection ~~(d)~~ (c)  
24 of this article, which violation occurred within the ten-year  
25 period immediately preceding the date of arrest in the current  
26 proceeding.

27 ~~(n)~~ (m) A person may be charged in a warrant or indictment or  
28 information for a second or subsequent offense under this section



1 if the person has been previously arrested for or charged with a  
2 violation of this section which is alleged to have occurred within  
3 the applicable time period for prior offenses, notwithstanding the  
4 fact that there has not been a final adjudication of the charges  
5 for the alleged previous offense. In that case, the warrant or  
6 indictment or information must set forth the date, location and  
7 particulars of the previous offense or offenses. No person may be  
8 convicted of a second or subsequent offense under this section  
9 unless the conviction for the previous offense has become final, or  
10 the person has previously had a period of conditional probation  
11 imposed pursuant to section two-b of this article.

12 ~~(e)~~ (n) The fact that any person charged with a violation of  
13 subsection (a), (b), (c), (d) ~~(e) or (f)~~ or (e) of this section, or  
14 any person permitted to drive as described under subsection ~~(g)~~ or  
15 ~~(h)~~ (f) or (g) of this section, is or has been legally entitled to  
16 use alcohol, a controlled substance or a drug does not constitute  
17 a defense against any charge of violating subsection (a), (b), (c),  
18 (d), (e), (f) ~~(g) or (h)~~ or (g) of this section.

19 ~~(p)~~ (o) For purposes of this section, the term "controlled  
20 substance" has the meaning ascribed to it in chapter sixty-a of  
21 this code.

22 ~~(q)~~ (p) The sentences provided in this section upon conviction  
23 for a violation of this article are mandatory and are not subject  
24 to suspension or probation: *Provided*, That the court may apply the  
25 provisions of article eleven-a, chapter sixty-two of this code to  
26 a person sentenced or committed to a term of one year or less for  
27 a first offense under this section: *Provided, further however,*  
28 That the court may impose a term of conditional probation pursuant

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

18 **§17C-5-2b. Deferral of further proceedings for certain first**  
19 **offenses upon condition of participation in Motor Vehicle**  
20 **Alcohol Test and Lock Program; procedure on charge of**  
21 **violation of conditions.**

22 (a) Except as provided in ~~subsections~~ subsection (g) of this  
23 section, whenever any person who has not previously been convicted  
24 of any offense under this article or under any statute of the  
25 United States or of any state relating to driving under the  
26 influence of alcohol, any controlled substance or any other drug:

27 (1) Notifies the court within thirty days of his or her arrest  
28 of his or her intention to participate in a deferral pursuant to

1 this section; and

2 (2) Pleads guilty to or is found guilty of driving under the  
3 influence of alcohol under subsection ~~(d)~~ (c), section two of this  
4 article, the court, without entering a judgment of guilt and with  
5 the consent of the accused, shall defer further proceedings and,  
6 notwithstanding any provisions of this code to the contrary, place  
7 him or her on probation, which conditions shall include that he or  
8 she successfully completes the Motor Vehicle Alcohol Test and Lock  
9 Program as provided in section three-a, article five-a of this  
10 chapter. Participation therein shall be for a period of at least  
11 one hundred ~~and~~ sixty-five days after he or she has served the  
12 fifteen days of license suspension imposed pursuant to section two,  
13 article five-a of this chapter.

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

18 (c) (1) If the prosecuting attorney files a motion alleging  
19 that the defendant during the period of the Motor Vehicle Alcohol  
20 Test and Lock program has been removed therefrom by the Division of  
21 Motor Vehicles, or has failed to successfully complete the program  
22 before making a motion for dismissal pursuant to subsection (d) of  
23 this section, the court may issue such process as is necessary to  
24 bring the defendant before the court.

25 (2) A motion alleging such violation filed pursuant to  
26 subdivision (1) of this subsection must be filed during the period  
27 of the Motor Vehicle Alcohol Test and Lock Program or, if filed  
28 thereafter, must be filed within a reasonable time after the

1 alleged violation was committed.

2 (3) When the defendant is brought before the court, the court  
3 shall afford the defendant an opportunity to be heard. If the  
4 court finds that the defendant has been rightfully removed from the  
5 Motor Vehicle Alcohol Test and Lock Program by the Division of  
6 Motor Vehicles, the court may order, when appropriate, that the  
7 deferral be terminated, and thereupon enter an adjudication of  
8 guilt and proceed as otherwise provided.

9 (4) ~~Should~~ If the defendant ~~fail~~ fails to complete or be  
10 removed from the Motor Vehicle Alcohol Test and Lock Program, the  
11 defendant waives the appropriate statute of limitations and the  
12 defendant's right to a speedy trial under any applicable federal or  
13 state constitutional provisions, statutes or rules of court during  
14 the period of enrollment in the program.

15 (d) When the defendant ~~shall have~~ has completed satisfactorily  
16 the Motor Vehicle Alcohol Test and Lock Program and complied with  
17 its conditions, the defendant may move the court for an order  
18 dismissing the charges. This motion shall be supported by  
19 affidavit of the defendant and by certification of the Division of  
20 Motor Vehicles that the defendant has successfully completed the  
21 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion  
22 shall be served on the prosecuting attorney who shall within thirty  
23 days after service advise the judge of any objections to the  
24 motion, serving a copy of such objections on the defendant or the  
25 defendant's attorney. If there are no objections filed within the  
26 thirty-day period, the court shall thereafter dismiss the charges  
27 against the defendant. If there are objections filed with regard  
28 to the dismissal of charges, the court shall proceed as set forth

1 in subsection (c) of this section.

2 (e) Except as provided herein, unless a defendant adjudicated  
3 pursuant to this subsection be convicted of a subsequent violation  
4 of this article, discharge and dismissal under this section shall  
5 be without adjudication of guilt and is not a conviction for  
6 purposes of disqualifications or disabilities imposed by law upon  
7 conviction of a crime except for those provided in article five-a  
8 of this chapter. Except as provided in ~~subsection (k), (l) and (m)~~  
9 subsections (j), (k) and (l), section two of this article regarding  
10 subsequent offenses, the effect of the dismissal and discharge  
11 shall be to restore the person in contemplation of law to the  
12 status he or she occupied prior to arrest and trial. No person as  
13 to whom a dismissal and discharge have been effected ~~shall be~~ may  
14 thereafter held to be guilty of perjury, false swearing or  
15 otherwise giving a false statement by reason of his or her failure  
16 to disclose or acknowledge his or her arrest or trial in response  
17 to any inquiry made of him or her for any purpose other than any  
18 inquiry made in connection with any subsequent offense as that term  
19 is defined in subsection ~~(m)~~ (l), section two of this article.

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

22 (g) No person ~~shall~~ may be eligible for dismissal and  
23 discharge under this section: (1) In any prosecution in which any  
24 violation of any other provision of this article has been  
25 charged; (2) if the person holds a commercial driver's license or  
26 operates commercial motor vehicle(s); or (3) the person has  
27 previously had his or her driver's license revoked under section  
28 two-a of this article or under any statute of the United States or

1 of any state relating to driving under the influence of alcohol,  
2 any controlled substance or any other drug.

3 (h) (1) After a period of not less than one year, which shall  
4 begin to run immediately upon the expiration of a term of probation  
5 imposed upon any person under this section, the person may apply to  
6 the court for an order to expunge from all official records all  
7 recordations of his or her arrest, trial and conviction, pursuant  
8 to this section except for those maintained by the Division of  
9 Motor Vehicles: *Provided*, That any person who has previously been  
10 convicted of a felony may not make a motion for expungement  
11 pursuant to this section.

12 (2) If the prosecuting attorney objects to the expungement,  
13 the objections shall be filed with the court within thirty days  
14 after service of a motion for expungement and copies of the  
15 objections shall be served on the defendant or the defendant's  
16 attorney.

17 (3) If the objections are filed, the court shall hold a  
18 hearing on the objections, affording all parties an opportunity to  
19 be heard. If the court determines after a hearing that the person  
20 during the period of his or her probation and during the period of  
21 time prior to his or her application to the court under this  
22 subsection has not been guilty of any serious or repeated violation  
23 of the conditions of his or her probation, it shall order the  
24 expungement.

25 (i) Notwithstanding any provision of this code to the  
26 contrary, any person prosecuted for a violation of subsection ~~(d)~~  
27 (c), section two, article five of this chapter whose case is  
28 disposed of pursuant to the provisions of this section shall be

1 liable for any court costs assessable against a person convicted of  
2 a violation of subsection ~~(j)~~ (i), section two, article five of  
3 this chapter. Payment of such costs may be made a condition of  
4 probation. The costs assessed pursuant to this subsection, whether  
5 as a term of probation or not, shall be distributed as other court  
6 costs in accordance with section two, article three, chapter fifty,  
7 section four, article two-a, chapter fourteen, section four,  
8 article twenty-nine, chapter thirty and sections two, seven and  
9 ten, article five, chapter sixty-two of this code.

10 **ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND**  
11 **REVOCAION OF LICENSES FOR DRIVING UNDER THE**  
12 **INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR**  
13 **DRUGS.**

14 **§17C-5A-1. Implied consent to administrative procedure; revocation**  
15 **for driving under the influence of alcohol,**  
16 **controlled substances or drugs or refusal to submit**  
17 **to secondary chemical test.**

18 (a) Any person who is licensed to operate a motor vehicle in  
19 this state and who drives a motor vehicle in this state shall be  
20 ~~deemed~~ considered to have given his or her consent by the operation  
21 thereof, subject to the provisions of this article, to the  
22 procedure set forth in this article for the determination of  
23 whether his or her license to operate a motor vehicle in this state  
24 should be revoked because he or she did drive a motor vehicle while  
25 under the influence of alcohol, controlled substances or drugs, or  
26 combined influence of alcohol or controlled substances or drugs, or  
27 did drive a motor vehicle while having an alcohol concentration in  
28 his or her blood of eight hundredths of one percent or more, by

1 weight, or did refuse to submit to any secondary chemical test  
2 required under the provisions of article five of this chapter or  
3 did drive a motor vehicle while under the age of twenty-one years  
4 with an alcohol concentration in his or her blood of two hundredths  
5 of one percent or more, by weight, but less than eight hundredths  
6 of one percent, by weight.

7 (b) Any law-enforcement officer investigating a person for an  
8 offense described in section two, article five of this chapter or  
9 for an offense described in a municipal ordinance which has the  
10 same elements as an offense described in ~~said~~ that section shall  
11 report to the Commissioner of the Division of Motor Vehicles by  
12 written statement within forty-eight hours of the conclusion of the  
13 investigation the name and address of the person believed to have  
14 committed the offense. The report shall include the specific  
15 offense with which the person is charged and, if applicable, a copy  
16 of the results of any secondary tests of blood, breath or urine.  
17 The signing of the statement required to be signed by this  
18 subsection constitutes an oath or affirmation by the person signing  
19 the statement that the statements contained in the statement are  
20 true and that any copy filed is a true copy. The statement shall  
21 contain upon its face a warning to the officer signing that to  
22 willfully sign a statement containing false information concerning  
23 any matter or thing, material or not material, is false swearing  
24 and is a misdemeanor.

25 (c) If, upon examination of the written statement of the  
26 officer and the tests results described in subsection (b) of this  
27 section, the commissioner determines that a person committed an  
28 offense described in section two, article five of this chapter or



1 an offense described in a municipal ordinance which has the same  
2 elements as an offense described in said section and that the  
3 results of any secondary test or tests indicate that at the time  
4 the test or tests were administered the person had, in his or her  
5 blood, an alcohol concentration of eight hundredths of one percent  
6 or more, by weight, or at the time the person committed the offense  
7 he or she was under the influence of alcohol, controlled substances  
8 or drugs, the commissioner shall make and enter an order revoking  
9 or suspending the person's license to operate a motor vehicle in  
10 this state. If the results of the tests indicate that at the time  
11 the test or tests were administered the person was under the age of  
12 twenty-one years and had an alcohol concentration in his or her  
13 blood of two hundredths of one percent or more, by weight, but less  
14 than eight hundredths of one percent, by weight, the commissioner  
15 shall make and enter an order suspending the person's license to  
16 operate a motor vehicle in this state. A copy of the order shall  
17 be forwarded to the person by registered or certified mail, return  
18 receipt requested, and shall contain the reasons for the revocation  
19 or suspension and describe the applicable revocation or suspension  
20 periods provided in section two of this article. A revocation or  
21 suspension ~~shall~~ is not ~~become~~ effective until ten days after  
22 receipt of a copy of the order.

23 (d) Any law-enforcement officer taking a child into custody  
24 under the provisions of section six-a, article five of this chapter  
25 who has reasonable cause to believe that the child, at the time of  
26 driving the motor vehicle, had an alcohol concentration in his or  
27 her blood of two hundredths of one percent or more, by weight, or  
28 that the act of the child in driving the motor vehicle was such

1 that it would provide grounds for arrest for an offense defined  
2 under the provisions of section two of ~~said~~ that article if the  
3 child were an adult, shall report to the Commissioner of the  
4 Division of Motor Vehicles by written statement within forty-eight  
5 hours the name and address of the child.

6 (e) If applicable, the report shall include a description of  
7 the specific offense with which the child could have been charged  
8 if the child were an adult and a copy of the results of any  
9 secondary tests of blood, breath or urine. The signing of the  
10 statement required to be signed by this subsection constitutes an  
11 oath or affirmation by the person signing the statement that the  
12 statements contained in the statement are true and that any copy  
13 filed is a true copy. The statement shall contain upon its face a  
14 warning to the officer signing that to willfully sign a statement  
15 containing false information concerning any matter or thing,  
16 material or not material, is false swearing and is a misdemeanor.

17 (f) Upon examination of the written statement of the officer  
18 and any test results described in subsection (d) of this section,  
19 if the commissioner determines that the results of the test  
20 indicate that at the time the test or tests were administered the  
21 child had, in his or her blood, an alcohol concentration of two  
22 hundredths of one percent or more, by weight, but also determines  
23 that the act of the child in driving the motor vehicle was not such  
24 that it would provide grounds for arrest for an offense defined  
25 under the provisions of subsection (a), (b), (c), (d), (e), (f) ~~(g)~~  
26 ~~or (h)~~ or (g), section two, article five of this chapter if the  
27 child were an adult, the commissioner shall make and enter an order  
28 suspending the child's license to operate a motor vehicle in this

1 state. If the commissioner determines that the act of the child in  
2 driving the motor vehicle was such that it would provide grounds  
3 for arrest for an offense defined under the provisions of  
4 subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g), section  
5 two, article five of this chapter if the child were an adult, the  
6 commissioner shall make and enter an order revoking the child's  
7 license to operate a motor vehicle in this state. A copy of the  
8 order shall be forwarded to the child by registered or certified  
9 mail, return receipt requested, and shall contain the reasons for  
10 the suspension or revocation and describe the applicable suspension  
11 or revocation periods provided ~~for~~ in section two of this article.  
12 A suspension or revocation ~~shall~~ is not ~~become~~ effective until ten  
13 days after receipt of a copy of the order.

14 **§17C-5A-2. Hearing; revocation; review.**

15 (a) Written objections to an order of revocation or suspension  
16 under the provisions of section one of this article or section  
17 seven, article five of this chapter shall be filed with the Office  
18 of Administrative Hearings. Upon the receipt of an objection, the  
19 Office of Administrative Hearings shall notify the Commissioner of  
20 the Division of Motor Vehicles, who shall stay the imposition of  
21 the period of revocation or suspension and afford the person an  
22 opportunity to be heard by the Office of Administrative Hearings.  
23 The written objection must be filed with Office of Administrative  
24 Hearings in person, by registered or certified mail, return receipt  
25 requested, or by facsimile transmission or electronic mail within  
26 thirty calendar days after receipt of a copy of the order of  
27 revocation or suspension or no hearing will be granted: *Provided,*  
28 That a successful transmittal sheet shall be necessary for proof of

1 written objection in the case of filing by fax. The hearing shall  
2 be before a hearing examiner employed by the Office of  
3 Administrative Hearings who shall rule on evidentiary issues. Upon  
4 consideration of the designated record, the hearing examiner shall,  
5 based on the determination of the facts of the case and applicable  
6 law, render a decision affirming, reversing or modifying the action  
7 protested. The decision shall contain findings of fact and  
8 conclusions of law and shall be provided to all parties by  
9 registered or certified mail, return receipt requested.

10 (b) The hearing shall be held at an office of the Division of  
11 Motor Vehicles located in or near the county in which the arrest  
12 was made in this state or at some other suitable place in the  
13 county in which the arrest was made if an office of the division is  
14 not available. The Office of Administrative Hearings shall send a  
15 notice of hearing to the person whose driving privileges are at  
16 issue and the person's legal counsel if the person is represented  
17 by legal counsel, the investigating or arresting law-enforcement  
18 officers, the Division of Motor Vehicles and the Attorney General's  
19 Office, if the Attorney General has filed a notice of appearance of  
20 counsel on behalf of the Division of Motor Vehicles.

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

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

1           (3) The Office of Administrative Hearings may issue subpoenas  
2 commanding the appearance of witnesses and subpoenas duces tecum  
3 commanding the submission of documents, items or other things.  
4 Subpoenas duces tecum shall be returnable on the date of the next  
5 scheduled hearing unless otherwise specified. The Office of  
6 Administrative hearings shall issue subpoenas and subpoenas duces  
7 tecum at the request of a party or the party's legal  
8 representative. The party requesting the subpoena shall be  
9 responsible for service of the subpoena upon the appropriate  
10 individual. Every subpoena or subpoena duces tecum shall be served  
11 at least five days before the return date thereof, either by  
12 personal service made by a person over eighteen years of age or by  
13 registered or certified mail, return receipt requested, and  
14 received by the party responsible for serving the subpoena or  
15 subpoena duces tecum: *Provided*, That the Division of Motor  
16 Vehicles may serve subpoenas to law-enforcement officers through  
17 electronic mail to the department of his or her employer. If a  
18 person does not obey the subpoena or fails to appear, the party who  
19 issued the subpoena to the person may petition the circuit court  
20 wherein the action lies for enforcement of the subpoena.

21           (d) Law-enforcement officers shall be compensated for the time  
22 expended in their travel and appearance before the Office of  
23 Administrative Hearings by the law-enforcement agency by whom they  
24 are employed at their regular rate if they are scheduled to be on  
25 duty during said time or at their regular overtime rate if they are  
26 scheduled to be off duty during said time.

27           (e) The principal question at the hearing shall be whether the  
28 person did drive a motor vehicle while under the influence of

1 alcohol, controlled substances or drugs, or did drive a motor  
2 vehicle while having an alcohol concentration in the person's blood  
3 of eight hundredths of one percent or more, by weight, or did  
4 refuse to submit to the designated secondary chemical test, or did  
5 drive a motor vehicle while under the age of twenty-one years with  
6 an alcohol concentration in his or her blood of two hundredths of  
7 one percent or more, by weight, but less than eight hundredths of  
8 one percent, by weight.

9 (f) In the case of a hearing in which a person is accused of  
10 driving a motor vehicle while under the influence of alcohol,  
11 controlled substances or drugs, or accused of driving a motor  
12 vehicle while having an alcohol concentration in the person's blood  
13 of eight hundredths of one percent or more, by weight, or accused  
14 of driving a motor vehicle while under the age of twenty-one years  
15 with an alcohol concentration in his or her blood of two hundredths  
16 of one percent or more, by weight, but less than eight hundredths  
17 of one percent, by weight, the Office of Administrative Hearings  
18 shall make specific findings as to: (1) Whether the investigating  
19 law-enforcement officer had reasonable grounds to believe the  
20 person to have been driving while under the influence of alcohol,  
21 controlled substances or drugs, or while having an alcohol  
22 concentration in the person's blood of eight hundredths of one  
23 percent or more, by weight, or to have been driving a motor vehicle  
24 while under the age of twenty-one years with an alcohol  
25 concentration in his or her blood of two hundredths of one percent  
26 or more, by weight, but less than eight hundredths of one percent,  
27 by weight; (2) whether the person was lawfully placed under arrest  
28 for an offense involving driving under the influence of alcohol,

1 controlled substances or drugs, or was lawfully taken into custody  
2 for the purpose of administering a secondary test: *Provided*, That  
3 this element shall be waived in cases where no arrest occurred due  
4 to driver incapacitation; (3) whether the person committed an  
5 offense involving driving under the influence of alcohol,  
6 controlled substances or drugs, or was lawfully taken into custody  
7 for the purpose of administering a secondary test; and (4) whether  
8 the tests, if any, were administered in accordance with the  
9 provisions of this article and article five of this chapter.

10 (g) If, in addition to a finding that the person did drive a  
11 motor vehicle while under the influence of alcohol, controlled  
12 substances or drugs, or did drive a motor vehicle while having an  
13 alcohol concentration in the person's blood of eight hundredths of  
14 one percent or more, by weight, or did drive a motor vehicle while  
15 under the age of twenty-one years with an alcohol concentration in  
16 his or her blood of two hundredths of one percent or more, by  
17 weight, but less than eight hundredths of one percent, by weight,  
18 the Office of Administrative Hearings also finds by a preponderance  
19 of the evidence that the person when driving did an act forbidden  
20 by law or failed to perform a duty imposed by law, which act or  
21 failure proximately caused the death to or serious bodily injury as  
22 that term is defined in section two, article five of this chapter  
23 ~~of a person and was committed in reckless disregard of the safety~~  
24 ~~of others and if the Office of Administrative Hearings further~~  
25 ~~finds that the influence of alcohol, controlled substances or drugs~~  
26 ~~or the alcohol concentration in the blood was a contributing cause~~  
27 ~~to the death,~~ the commissioner shall revoke the person's license  
28 for a period of ten years: *Provided*, That if the person's license

1 has previously been suspended or revoked under the provisions of  
2 this section or section one of this article within the ten years  
3 immediately preceding the date of arrest, the period of revocation  
4 shall be for the life of the person.

5 ~~(h) If, in addition to a finding that the person did drive a~~  
6 ~~motor vehicle while under the influence of alcohol, controlled~~  
7 ~~substances or drugs, or did drive a motor vehicle while having an~~  
8 ~~alcohol concentration in the person's blood of eight hundredths of~~  
9 ~~one percent or more, by weight, the Office of Administrative~~  
10 ~~Hearings also finds by a preponderance of the evidence that the~~  
11 ~~person when driving did an act forbidden by law or failed to~~  
12 ~~perform a duty imposed by law, which act or failure proximately~~  
13 ~~caused the death of a person, the commissioner shall revoke the~~  
14 ~~person's license for a period of five years: Provided, That if the~~  
15 ~~person's license has previously been suspended or revoked under the~~  
16 ~~provisions of this section or section one of this article within~~  
17 ~~the ten years immediately preceding the date of arrest, the period~~  
18 ~~of revocation shall be for the life of the person.~~

19 (i) (h) If, in addition to a finding that the person did drive  
20 a motor vehicle while under the influence of alcohol, controlled  
21 substances or drugs, or did drive a motor vehicle while having an  
22 alcohol concentration in the person's blood of eight hundredths of  
23 one percent or more, by weight, the Office of Administrative  
24 Hearings also finds by a preponderance of the evidence that the  
25 person when driving did an act forbidden by law or failed to  
26 perform a duty imposed by law, which act or failure proximately  
27 caused bodily injury to a person other than himself or herself, the  
28 commissioner shall revoke the person's license for a period of two



1 years: *Provided*, That if the license has previously been suspended  
2 or revoked under the provisions of this section or section one of  
3 this article within the ten years immediately preceding the date of  
4 arrest, the period of revocation shall be ten years: *Provided*,  
5 *however*, That if the person's license has previously been suspended  
6 or revoked more than once under the provisions of this section or  
7 section one of this article within the ten years immediately  
8 preceding the date of arrest, the period of revocation shall be for  
9 the life of the person.

10 ~~(j)~~ (i) If the Office of Administrative Hearings finds by a  
11 preponderance of the evidence that the person did drive a motor  
12 vehicle while under the influence of alcohol, controlled substances  
13 or drugs, or did drive a motor vehicle while having an alcohol  
14 concentration in the person's blood of eight hundredths of one  
15 percent or more, by weight, but less than fifteen hundredths of one  
16 percent or more, by weight, or finds that the person knowingly  
17 permitted the person's vehicle to be driven by another person who  
18 was under the influence of alcohol, controlled substances or drugs,  
19 or knowingly permitted the person's vehicle to be driven by another  
20 person who had an alcohol concentration in his or her blood of  
21 eight hundredths of one percent or more, by weight, the  
22 commissioner shall revoke the person's license for a period of six  
23 months or a period of fifteen days with an additional one hundred  
24 ~~and~~ twenty days of participation in the Motor Vehicle Alcohol Test  
25 and Lock Program in accordance with the provisions of section  
26 three-a of this article: *Provided*, That any period of  
27 participation in the Motor Vehicle Alcohol Test and Lock Program  
28 that has been imposed by a court pursuant to section two-b, article

1 five of this chapter shall be credited against any period of  
2 participation imposed by the commissioner: *Provided, however,* That  
3 a person whose license is revoked for driving while under the  
4 influence of drugs is not eligible to participate in the Motor  
5 Vehicle Alcohol Test and Lock Program: *Provided further,* That if  
6 the person's license has previously been suspended or revoked under  
7 the provisions of this section or section one of this article  
8 within the ten years immediately preceding the date of arrest, the  
9 period of revocation shall be ten years: *And provided further,*  
10 That if the person's license has previously been suspended or  
11 revoked more than once under the provisions of this section or  
12 section one of this article within the ten years immediately  
13 preceding the date of arrest, the period of revocation shall be for  
14 the life of the person.

15 ~~(k)~~ (j) (1) If in addition to finding by a preponderance of  
16 the evidence that the person did drive a motor vehicle while under  
17 the influence of alcohol, controlled substance or drugs, the Office  
18 of Administrative Hearings also finds by a preponderance of the  
19 evidence that the person did drive a motor vehicle while having an  
20 alcohol concentration in the person's blood of fifteen hundredths  
21 of one percent or more, by weight, the commissioner shall revoke  
22 the person's license for a period of forty-five days with an  
23 additional two hundred ~~and~~ seventy days of participation in the  
24 Motor Vehicle Alcohol Test and Lock Program in accordance with the  
25 provisions of section three-a, article five-a, chapter seventeen-c  
26 of this code: *Provided,* That if the person's license has  
27 previously been suspended or revoked under the provisions of this  
28 section or section one of this article within the ten years

1 immediately preceding the date of arrest, the period of revocation  
2 shall be ten years: *Provided, however,* That if the person's  
3 license has previously been suspended or revoked ~~the person's~~  
4 ~~license~~ more than once under the provisions of this section or  
5 section one of this article within the ten years immediately  
6 preceding the date of arrest, the period of revocation shall be for  
7 the life of the person.

8 (2) If a person whose license is revoked pursuant to  
9 subdivision (1) of this subsection proves by clear and convincing  
10 evidence that they do not own a motor vehicle upon which the  
11 alcohol test and lock device may be installed or is otherwise  
12 incapable of participating in the Motor Vehicle Alcohol Test and  
13 Lock Program, the period of revocation shall be one hundred eighty  
14 days: *Provided,* That if the person's license has previously been  
15 suspended or revoked under the provisions of this section or  
16 section one of this article within the ten years immediately  
17 preceding the date of arrest, the period of revocation shall be ten  
18 years: *Provided, however,* That if the person's license has  
19 previously been suspended or revoked more than once under the  
20 provisions of this section or section one of this article within  
21 the ten years immediately preceding the date of arrest, the period  
22 of revocation shall be for the life of the person.

23 ~~(l)~~ (k) If, in addition to a finding that the person did drive  
24 a motor vehicle while under the age of twenty-one years with an  
25 alcohol concentration in his or her blood of two hundredths of one  
26 percent or more, by weight, but less than eight hundredths of one  
27 percent, by weight, the Office of Administrative Hearings also  
28 finds by a preponderance of the evidence that the person when

1 driving did an act forbidden by law or failed to perform a duty  
2 imposed by law, which act or failure proximately caused the death  
3 of a person, and if the Office of Administrative Hearings further  
4 finds that the alcohol concentration in the blood was a  
5 contributing cause to the death, the commissioner shall revoke the  
6 person's license for a period of five years: *Provided*, That if the  
7 person's license has previously been suspended or revoked under the  
8 provisions of this section or section one of this article within  
9 the ten years immediately preceding the date of arrest, the period  
10 of revocation shall be for the life of the person.

11 ~~(m)~~ (l) If, in addition to a finding that the person did drive  
12 a motor vehicle while under the age of twenty-one years with an  
13 alcohol concentration in his or her blood of two hundredths of one  
14 percent or more, by weight, but less than eight hundredths of one  
15 percent, by weight, the Office of Administrative Hearings also  
16 finds by a preponderance of the evidence that the person when  
17 driving did an act forbidden by law or failed to perform a duty  
18 imposed by law, which act or failure proximately caused bodily  
19 injury to a person other than himself or herself, and if the Office  
20 of Administrative Hearings further finds that the alcohol  
21 concentration in the blood was a contributing cause to the bodily  
22 injury, the commissioner shall revoke the person's license for a  
23 period of two years: *Provided*, That if the person's license has  
24 previously been suspended or revoked under the provisions of this  
25 section or section one of this article within the ten years  
26 immediately preceding the date of arrest, the period of revocation  
27 shall be ten years: *Provided, however*, That if the person's  
28 license has previously been suspended or revoked more than once

1 under the provisions of this section or section one of this article  
2 within the ten years immediately preceding the date of arrest, the  
3 period of revocation shall be for the life of the person.

4 ~~(n)~~ (m) If the Office of Administrative Hearings finds by a  
5 preponderance of the evidence that the person did drive a motor  
6 vehicle while under the age of twenty-one years with an alcohol  
7 concentration in his or her blood of two hundredths of one percent  
8 or more, by weight, but less than eight hundredths of one percent,  
9 by weight, the commissioner shall suspend the person's license for  
10 a period of sixty days: *Provided*, That if the person's license has  
11 previously been suspended or revoked under the provisions of this  
12 section or section one of this article, the period of revocation  
13 shall be for one year, or until the person's twenty-first birthday,  
14 whichever period is longer.

15 ~~(o)~~ (n) If, in addition to a finding that the person did drive  
16 a motor vehicle while under the influence of alcohol, controlled  
17 substances or drugs, or did drive a motor vehicle while having an  
18 alcohol concentration in the person's blood of eight hundredths of  
19 one percent or more, by weight, the Office of Administrative  
20 Hearings also finds by a preponderance of the evidence that the  
21 person when driving did have on or within the motor vehicle another  
22 person who has not reached his or her sixteenth birthday, the  
23 commissioner shall revoke the person's license for a period of one  
24 year: *Provided*, That if the person's license has previously been  
25 suspended or revoked under the provisions of this section or  
26 section one of this article within the ten years immediately  
27 preceding the date of arrest, the period of revocation shall be ten  
28 years: *Provided, however*, That if the person's license has

1 previously been suspended or revoked more than once under the  
2 provisions of this section or section one of this article within  
3 the ten years immediately preceding the date of arrest, the period  
4 of revocation shall be for the life of the person.

5 ~~(p)~~ (o) For purposes of this section, where reference is made  
6 to previous suspensions or revocations under this section, the  
7 following types of criminal convictions or administrative  
8 suspensions or revocations shall also be regarded as suspensions or  
9 revocations under this section or section one of this article:

10 (1) Any administrative revocation under the provisions of the  
11 prior enactment of this section for conduct which occurred within  
12 the ten years immediately preceding the date of arrest;

13 (2) Any suspension or revocation on the basis of a conviction  
14 under a municipal ordinance of another state or a statute of the  
15 United States or of any other state of an offense which has the  
16 same elements as an offense described in section two, article five  
17 of this chapter for conduct which occurred within the ten years  
18 immediately preceding the date of arrest; or

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

22 ~~(q)~~ (p) In the case of a hearing in which a person is accused  
23 of refusing to submit to a designated secondary test, the Office of  
24 Administrative Hearings shall make specific findings as to: (1)  
25 Whether the arresting law-enforcement officer had reasonable  
26 grounds to believe the person had been driving a motor vehicle in  
27 this state while under the influence of alcohol, controlled  
28 substances or drugs; (2) whether the person was lawfully placed

1 under arrest for an offense involving driving under the influence  
2 of alcohol, controlled substances or drugs, or was lawfully taken  
3 into custody for the purpose of administering a secondary test:  
4 *Provided*, That this element shall be waived in cases where no  
5 arrest occurred due to driver incapacitation; (3) whether the  
6 person committed an offense relating to driving a motor vehicle in  
7 this state while under the influence of alcohol, controlled  
8 substances or drugs; (4) whether the person refused to submit to  
9 the secondary test finally designated in the manner provided in  
10 section four, article five of this chapter; and (5) whether the  
11 person had been given a written statement advising the person that  
12 the person's license to operate a motor vehicle in this state would  
13 be revoked for at least forty-five days and up to life if the  
14 person refused to submit to the test finally designated in the  
15 manner provided in said section.

16 ~~(r)~~ (q) If the Office of Administrative Hearings finds by a  
17 preponderance of the evidence that: (1) The investigating officer  
18 had reasonable grounds to believe the person had been driving a  
19 motor vehicle in this state while under the influence of alcohol,  
20 controlled substances or drugs; (2) whether the person was lawfully  
21 placed under arrest for an offense involving driving under the  
22 influence of alcohol, controlled substances or drugs, or was  
23 lawfully taken into custody for the purpose of administering a  
24 secondary test: *Provided*, That this element shall be waived in  
25 cases where no arrest occurred due to driver incapacitation; (3)  
26 the person committed an offense relating to driving a motor vehicle  
27 in this state while under the influence of alcohol, controlled  
28 substances or drugs; (4) the person refused to submit to the

1 secondary test finally designated in the manner provided in section  
2 four, article five of this chapter; and (5) the person had been  
3 given a written statement advising the person that the person's  
4 license to operate a motor vehicle in this state would be revoked  
5 for at least forty-five days and up to life if the person refused  
6 to submit to the test finally designated, the commissioner shall  
7 revoke the person's license to operate a motor vehicle in this  
8 state for the periods specified in section seven, article five of  
9 this chapter. The revocation period prescribed in this subsection  
10 shall run concurrently with any other revocation period ordered  
11 under this section or section one of this article arising out of  
12 the same occurrence. The revocation period prescribed in this  
13 subsection shall run concurrently with any other revocation period  
14 ordered under this section or section one of this article arising  
15 out of the same occurrence.

16       ~~(s)~~ (r) If the Office of Administrative Hearings finds to the  
17 contrary with respect to the above issues the commissioner shall  
18 rescind his or her earlier order of revocation or shall reduce the  
19 order of revocation to the appropriate period of revocation under  
20 this section or section seven, article five of this chapter. A  
21 copy of the Office of Administrative Hearings' final order  
22 containing its findings of fact and conclusions of law made and  
23 entered following the hearing shall be served upon the person whose  
24 license is at issue or upon the person's legal counsel if the  
25 person is represented by legal counsel by registered or certified  
26 mail, return receipt requested, or by electronic mail if available.  
27 The final order shall be served upon the commissioner by electronic  
28 mail. During the pendency of any hearing, the revocation of the



1 person's license to operate a motor vehicle in this state shall be  
2 stayed.

3 A person whose license is at issue and the commissioner shall  
4 be entitled to judicial review as set forth in chapter  
5 twenty-nine-a of this code. Neither the commissioner nor the  
6 Office of Administrative Hearings may stay enforcement of the  
7 order. The court may grant a stay or supersede as of the order  
8 only upon motion and hearing, and a finding by the court upon the  
9 evidence presented, that there is a substantial probability that  
10 the appellant shall prevail upon the merits and the appellant will  
11 suffer irreparable harm if the order is not stayed: *Provided*, That  
12 in no event shall the stay or supersedeas of the order exceed one  
13 hundred fifty days. Notwithstanding the provisions of section  
14 four, article five of said chapter, the Office of Administrative  
15 Hearings may not be compelled to transmit a certified copy of the  
16 file or the transcript of the hearing to the circuit court in less  
17 than sixty days.

18 ~~(t)~~ (s) In any revocation or suspension pursuant to this  
19 section, if the driver whose license is revoked or suspended had  
20 not reached the driver's eighteenth birthday at the time of the  
21 conduct for which the license is revoked or suspended, the driver's  
22 license shall be revoked or suspended until the driver's eighteenth  
23 birthday or the applicable statutory period of revocation or  
24 suspension prescribed by this section, whichever is longer.

25 ~~(u)~~ (t) Funds for this section's hearing and appeal process  
26 may be provided from the Drunk Driving Prevention Fund, as created  
27 by section forty-one, article two, chapter fifteen of this code,  
28 upon application for the funds to the Commission on Drunk Driving

1 Prevention.

2 **§17C-5A-3. Safety and treatment program; reissuance of license.**

3 (a) The Department of Health and Human Resources, Division of  
4 Alcoholism and Drug Abuse, shall administer a comprehensive safety  
5 and treatment program for persons whose licenses have been revoked  
6 under the provisions of this article or section seven, article five  
7 of this chapter or subsection (6), section five, article three,  
8 chapter seventeen-b of this code and shall also establish the  
9 minimum qualifications for mental health facilities, day report  
10 centers, community correction centers or other public agencies or  
11 private entities conducting the safety and treatment program:  
12 *Provided*, That the Department of Health and Human Resources,  
13 Division of Alcoholism and Drug Abuse, may establish standards  
14 whereby the division will accept or approve participation by  
15 violators in another treatment program which provides the same or  
16 substantially similar benefits as the safety and treatment program  
17 established pursuant to this section.

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

24 (c) The Department of Health and Human Resources, Division of  
25 Alcoholism and Drug Abuse, shall provide for the preparation of an  
26 educational and treatment program for each person whose license has  
27 been revoked under the provisions of this article or section seven,  
28 article five of this chapter or subsection (6), section five,

1 article three, chapter seventeen-b of this code which shall contain  
2 the following: (1) A listing and evaluation of the offender's prior  
3 traffic record; (2) the characteristics and history of alcohol or  
4 drug use, if any; (3) his or her amenability to rehabilitation  
5 through the alcohol safety program; and (4) a recommendation as to  
6 treatment or rehabilitation and the terms and conditions of the  
7 treatment or rehabilitation. The program shall be prepared by  
8 persons knowledgeable in the diagnosis of alcohol or drug abuse and  
9 treatment.

10 (d) There is hereby created a special revenue account within  
11 the State Treasury known as the Department of Health and Human  
12 Resources Safety and Treatment Fund. The account shall be  
13 administered by the Secretary of the Department of Health and Human  
14 Resources for the purpose of administering the comprehensive safety  
15 and treatment program established by subsection (a) of this  
16 section. The account may be invested, and all earnings and  
17 interest accruing shall be retained in the account. The Auditor  
18 shall conduct an audit of the fund at least every three fiscal  
19 years.

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

24 (e) (1) The program provider shall collect the established fee  
25 from each participant upon enrollment unless the department has  
26 determined that the participant is an indigent based upon criteria  
27 established pursuant to legislative rule authorized in this  
28 section.

1 (2) If the department determined that a participant is an  
2 indigent based upon criteria established pursuant to the  
3 legislative rule authorized by this section, the department shall  
4 provide the applicant with proof of its determination regarding  
5 indigency, which proof the applicant shall present to the interlock  
6 provider as part of the application process provided in section  
7 three-a of this article and/or the rules promulgated pursuant  
8 thereto.

9 (3) Program providers shall remit to the Department of Health  
10 and Human Resources a portion of the fee collected, which shall be  
11 deposited by the Secretary of the Department of Health and Human  
12 Resources into the Department of Health and Human Resources Safety  
13 and Treatment Fund. The Department of Health and Human Resources  
14 shall reimburse enrollment fees to program providers for each  
15 eligible indigent offender.

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

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

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

23 (3) The total number of program providers during the prior  
24 year; and

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

27 (g) The Commissioner of the Division of Motor Vehicles, after  
28 giving due consideration to the program developed for the offender,

1 shall prescribe the necessary terms and conditions for the  
2 reissuance of the license to operate a motor vehicle in this state  
3 revoked under this article or section seven, article five of this  
4 chapter or subsection (6), section five, article three, chapter  
5 seventeen-b of this code which shall include successful completion  
6 of the educational, treatment or rehabilitation program, subject to  
7 the following:

8 (1) When the period of revocation is six months, the license  
9 to operate a motor vehicle in this state may not be reissued until:

10 (A) At least ninety days have elapsed from the date of the initial  
11 revocation, during which time the revocation was actually in  
12 effect; (B) the offender has successfully completed the program; (C)  
13 all costs of the program and administration have been paid; and (D)  
14 all costs assessed as a result of a revocation hearing have been  
15 paid.

16 (2) When the period of revocation is for a period of one year  
17 or for more than a year, the license to operate a motor vehicle in  
18 this state may not be reissued until: (A) At least one half of the  
19 time period has elapsed from the date of the initial revocation,  
20 during which time the revocation was actually in effect; (B) the  
21 offender has successfully completed the program; (C) all costs of  
22 the program and administration have been paid; and (D) all costs  
23 assessed as a result of a revocation hearing have been paid.

24 Notwithstanding any provision in this code, a person whose license  
25 is revoked for refusing to take a chemical test as required by  
26 section seven, article five of this chapter for a first offense is  
27 not eligible to reduce the revocation period by completing the  
28 safety and treatment program.

1 (3) When the period of revocation is for life, the license to  
2 operate a motor vehicle in this state may not be reissued until:  
3 (A) At least ten years have elapsed from the date of the initial  
4 revocation, during which time the revocation was actually in  
5 effect; (B) the offender has successfully completed the program;  
6 (C) all costs of the program and administration have been paid; and  
7 (D) all costs assessed as a result of a revocation hearing have  
8 been paid.

9 (4) Notwithstanding any provision of this code or any rule,  
10 any mental health facilities or other public agencies or private  
11 entities conducting the safety and treatment program when  
12 certifying that a person has successfully completed a safety and  
13 treatment program shall only have to certify that the person has  
14 successfully completed the program.

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

22 (2) When a sixty-day period of suspension has been ordered,  
23 the license to operate a motor vehicle may not be reinstated until:  
24 (A) At least sixty days have elapsed from the date of the initial  
25 suspension, during which time the suspension was actually in  
26 effect; (B) the offender has successfully completed the educational  
27 program; (C) all costs of the program and administration have been  
28 paid; and (D) all costs assessed as a result of a suspension

1 hearing have been paid.

2 (i) A required component of the treatment program provided in  
3 subsection (b) of this section and the education program provided  
4 for in subsection (c) of this section shall be participation by the  
5 violator with a victim impact panel program providing a forum for  
6 victims of alcohol and drug-related offenses and offenders to share  
7 first-hand experiences on the impact of alcohol and drug-related  
8 offenses in their lives. The Department of Health and Human  
9 Resources, Division of Alcoholism and Drug Abuse shall propose and  
10 implement a plan for victim impact panels where appropriate numbers  
11 of victims are available and willing to participate and shall  
12 establish guidelines for other innovative programs which may be  
13 substituted where the victims are not available to assist persons  
14 whose licenses have been suspended or revoked for alcohol and  
15 drug-related offenses to gain a full understanding of the severity  
16 of their offenses in terms of the impact of the offenses on victims  
17 and offenders. The plan shall require, at a minimum, discussion  
18 and consideration of the following:

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

20 (B) Death or physical injuries suffered by victims or  
21 offenders;

22 (C) Psychological injuries suffered by victims or offenders;

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

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

27 The Department of Health and Human Resources, Division of  
28 Alcoholism and Drug Abuse, shall ensure that any meetings between

1 victims and offenders shall be nonconfrontational and ensure the  
2 physical safety of the persons involved.

3 (j)(1) The Secretary of the Department of Health and Human  
4 Resources shall promulgate a rule for legislative approval in  
5 accordance with article three, chapter twenty-nine-a of this code  
6 to administer the provisions of this section and establish a fee to  
7 be collected from each offender enrolled in the safety and  
8 treatment program. The rule shall include: (A) A reimbursement  
9 mechanism to program providers of required fees for the safety and  
10 treatment program for indigent offenders, criteria for determining  
11 eligibility of indigent offenders, and any necessary application  
12 forms; and (B) program standards that encompass provider criteria  
13 including minimum professional training requirements for providers,  
14 curriculum approval, minimum course length requirements and other  
15 items that may be necessary to properly implement the provisions of  
16 this section.

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

21 (k) Nothing in this section may be construed to prohibit day  
22 report or community correction programs, authorized pursuant to  
23 article eleven-c, chapter sixty-two of this code, from  
24 administering a comprehensive safety and treatment program pursuant  
25 to this section.

26 **§17C-5A-3a. Establishment of and participation in the Motor**  
27 **Vehicle Alcohol Test and Lock Program.**

28 (a)(1) The Division of Motor Vehicles shall control and



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

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

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

18 (B) The Commissioner of the Division of Motor Vehicles shall  
19 propose legislative rules for promulgation in accordance with the  
20 provisions of chapter twenty-nine-a of this code for the purpose of  
21 implementing the provisions of this section. The rules shall also  
22 prescribe those requirements which, in addition to the requirements  
23 specified by this section for eligibility to participate in the  
24 program, the commissioner determines must be met to obtain the  
25 commissioner's approval to operate a motor vehicle equipped with a  
26 motor vehicle alcohol test and lock system.

27 (C) Nothing in this section may be construed to prohibit day  
28 report or community correction programs authorized pursuant to

1 article eleven-c, chapter sixty-two of this code, or a home  
2 incarceration program authorized pursuant to article eleven-b,  
3 chapter sixty-two of this code, from being a provider of motor  
4 vehicle alcohol test and lock systems for eligible participants as  
5 authorized by this section.

6 (4) For purposes of this section, a "motor vehicle alcohol  
7 test and lock system" means a mechanical or computerized system  
8 which, in the opinion of the commissioner, prevents the operation  
9 of a motor vehicle when, through the system's assessment of the  
10 blood alcohol content of the person operating or attempting to  
11 operate the vehicle, the person is determined to be under the  
12 influence of alcohol.

13 (5) The fee for installation and removal of ignition interlock  
14 devices shall be waived for persons determined to be indigent by  
15 the Department of Health and Human Resources pursuant to section  
16 three, article five-a, chapter seventeen-c of this code. The  
17 commissioner shall establish by legislative rule, proposed pursuant  
18 to article three, chapter twenty-nine-a of this code, procedures to  
19 be followed with regard to persons determined by the Department of  
20 Health and Human Resources to be indigent. The rule shall include,  
21 but is not limited to, promulgation of application forms;  
22 establishment of procedures for the review of applications; and the  
23 establishment of a mechanism for the payment of installations for  
24 eligible offenders.

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

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

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

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

5 (D) The total cost of the program to the state during the  
6 prior year.

7 (b) (1) Any person whose license is revoked for the first time  
8 pursuant to this article or the provisions of article five of this  
9 chapter is eligible to participate in the program when the person's  
10 minimum revocation period as specified by subsection (c) of this  
11 section has expired and the person is enrolled in or has  
12 successfully completed the safety and treatment program or presents  
13 proof to the commissioner within sixty days of receiving approval  
14 to participate by the commissioner that he or she is enrolled in a  
15 safety and treatment program: *Provided*, That anyone whose license  
16 is revoked for the first time pursuant to subsection (k), section  
17 two of this article must participate in the program when the  
18 person's minimum revocation period as specified by subsection (c)  
19 of this section has expired and the person is enrolled in or has  
20 successfully completed the safety and treatment program or presents  
21 proof to the commissioner within sixty days of receiving approval  
22 to participate by the commissioner that he or she is enrolled in a  
23 safety and treatment program.

24 (2) Any person whose license has been suspended pursuant to  
25 the provisions of subsection ~~(n)~~ (m), section two of this article  
26 for driving a motor vehicle while under the age of twenty-one years  
27 with an alcohol concentration in his or her blood of two hundredths  
28 of one percent or more, by weight, but less than eight hundredths

1 of one percent, by weight, is eligible to participate in the  
2 program after thirty days have elapsed from the date of the initial  
3 suspension, during which time the suspension was actually in  
4 effect: *Provided*, That in the case of a person under the age of  
5 eighteen, the person is eligible to participate in the program  
6 after thirty days have elapsed from the date of the initial  
7 suspension, during which time the suspension was actually in  
8 effect, or after the person's eighteenth birthday, whichever is  
9 later. Before the commissioner approves a person to operate a  
10 motor vehicle equipped with a motor vehicle alcohol test and lock  
11 system, the person must agree to comply with the following  
12 conditions:

13 (A) If not already enrolled, the person shall enroll in and  
14 complete the educational program provided in subsection (d),  
15 section three of this article at the earliest time that placement  
16 in the educational program is available, unless good cause is  
17 demonstrated to the commissioner as to why placement should be  
18 postponed;

19 (B) The person shall pay all costs of the educational program,  
20 any administrative costs and all costs assessed for any suspension  
21 hearing.

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

26 (c) A person who participates in the program under subdivision  
27 (1), subsection (b) of this section is subject to a minimum  
28 revocation period and minimum period for the use of the ignition

1 interlock device as follows:

2 (1) For a person whose license has been revoked for a first  
3 offense for six months pursuant to the provisions of section one-a  
4 of this article for conviction of an offense defined in subsection  
5 ~~(d) or (g)~~ (c) or (f), section two, article five of this chapter or  
6 pursuant to subsection ~~(j)~~ (i), section two of this article, the  
7 minimum period of revocation for participation in the test and lock  
8 program is fifteen days and the minimum period for the use of the  
9 ignition interlock device is one hundred and twenty-five days;

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

15 (3) For a person whose license has been revoked for a first  
16 offense pursuant to section one-a of this article for conviction of  
17 an offense defined in subsection ~~(e)~~ (f), section two, article five  
18 of this chapter or pursuant to subsection ~~(j)~~ (i), section two of  
19 this article, the minimum period of revocation for participation in  
20 the test and lock program is forty-five days and the minimum period  
21 for the use of the ignition interlock device is two hundred seventy  
22 days;

23 (4) For a person whose license has been revoked for a first  
24 offense pursuant to the provisions of section one-a of this article  
25 for conviction of an offense defined in subsection (a), section  
26 two, article five of this chapter or pursuant to subsection ~~(f)~~  
27 (e), section two of this article, the minimum period of revocation  
28 before the person is eligible for participation in the test and

1 lock program is twelve months and the minimum period for the use of  
2 the ignition interlock device is two years;

3 (5) For a person whose license has been revoked for a first  
4 offense pursuant to the provisions of section one-a of this article  
5 for conviction of an offense ~~defined in subsection (b), section~~  
6 ~~two, article five of this chapter or pursuant to subsection (h)~~  
7 (g), section two of this article, the minimum period of revocation  
8 is six months and the minimum period for the use of the ignition  
9 interlock device is two years;

10 (6) For a person whose license has been revoked for a first  
11 offense pursuant to the provisions of section one-a of this article  
12 for conviction of an offense defined in subsection ~~(e)~~ (b), section  
13 two, article five of this chapter or pursuant to subsection ~~(h)~~  
14 (g), section two of this article, the minimum period of revocation  
15 for participation in the program is two months and the minimum  
16 period for the use of the ignition interlock device is one year;

17 (7) For a person whose license has been revoked for a first  
18 offense pursuant to the provisions of section one-a of this article  
19 for conviction of an offense defined in subsection ~~(j)~~ (i), section  
20 two, article five of this chapter or pursuant to subsection ~~(m)~~  
21 (l), section two of this article, the minimum period of revocation  
22 for participation in the program is two months and the minimum  
23 period for the use of the ignition interlock device is ten months;

24 (d) Notwithstanding any provision of the code to the contrary,  
25 a person shall participate in the program if the person is  
26 convicted under section two, article five of this chapter or the  
27 person's license is revoked under section two of this article or  
28 section seven, article five of this chapter and the person was

1 previously either convicted or his or her license was revoked under  
2 any provision cited in this subsection within the past ten years.  
3 The minimum revocation period for a person required to participate  
4 in the program under this subsection is one year and the minimum  
5 period for the use of the ignition interlock device is two years,  
6 except that the minimum revocation period for a person required to  
7 participate because of a violation of subsection ~~(n)~~ (m), section  
8 two of this article or subsection ~~(i)~~ (h), section two, article  
9 five of this chapter is two months and the minimum period of  
10 participation is one year. The division shall add an additional  
11 two months to the minimum period for the use of the ignition  
12 interlock device if the offense was committed while a minor was in  
13 the vehicle. The division shall add an additional six months to  
14 the minimum period for the use of the ignition interlock device if  
15 a person other than the driver received injuries. The division  
16 shall add an additional two years to the minimum period for the use  
17 of the ignition interlock device if a person other than the driver  
18 is injured and the injuries result in that person's death. The  
19 division shall add one year to the minimum period for the use of  
20 the ignition interlock device for each additional previous  
21 conviction or revocation within the past ten years. Any person  
22 required to participate under this subsection must have an ignition  
23 interlock device installed on every vehicle he or she owns or  
24 operates.

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

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

7 (g) Upon permitting an eligible person to participate in the  
8 program, the commissioner shall issue to the person, and the person  
9 is required to exhibit on demand, a driver's license which shall  
10 reflect that the person is restricted to the operation of a motor  
11 vehicle which is equipped with an approved motor vehicle alcohol  
12 test and lock system.

13 (h) The commissioner may extend the minimum period of  
14 revocation and the minimum period of participation in the program  
15 for a person who violates the terms and conditions of participation  
16 in the program as found in this section, or legislative rule, or  
17 any agreement or contract between the participant and the division  
18 or program service provider. If the commissioner finds that any  
19 person participating in the program pursuant to section two-b,  
20 article five of this chapter must be removed therefrom for  
21 violation(s) of the terms and conditions thereof, he or she shall  
22 notify the person, the court that imposed the term of participation  
23 in the program, and the prosecuting attorney in the county wherein  
24 the order imposing participation in the program was entered.

25 (i) A person whose license has been suspended pursuant to the  
26 provisions of subsection ~~(n)~~ (m), section two of this article who  
27 has completed the educational program and who has not violated the  
28 terms required by the commissioner of the person's participation in



1 the program is entitled to the reinstatement of his or her driver's  
2 license six months from the date the person is permitted to operate  
3 a motor vehicle by the commissioner. When a license has been  
4 reinstated pursuant to this subsection, the records ordering the  
5 suspension, records of any administrative hearing, records of any  
6 blood alcohol test results and all other records pertaining to the  
7 suspension shall be expunged by operation of law: *Provided*, That  
8 a person is entitled to expungement under the provisions of this  
9 subsection only once. The expungement shall be accomplished by  
10 physically marking the records to show that the records have been  
11 expunged and by securely sealing and filing the records.  
12 Expungement has the legal effect as if the suspension never  
13 occurred. The records may not be disclosed or made available for  
14 inspection and in response to a request for record information, the  
15 commissioner shall reply that no information is available.  
16 Information from the file may be used by the commissioner for  
17 research and statistical purposes so long as the use of the  
18 information does not divulge the identity of the person.

19 (j) In addition to any other penalty imposed by this code, any  
20 person who operates a motor vehicle not equipped with an approved  
21 motor vehicle alcohol test and lock system during that person's  
22 participation in the Motor Vehicle Alcohol Test and Lock Program is  
23 guilty of a misdemeanor and, upon conviction thereof, shall be  
24 confined in jail for a period not less than one month nor more than  
25 six months and fined not less than \$100 nor more than \$500. Any  
26 person who attempts to bypass the alcohol test and lock system is  
27 guilty of a misdemeanor and, upon conviction thereof, shall be  
28 confined in jail not more than six months and fined not less than

1 \$100 nor more than \$1,000: *Provided,* That notwithstanding any  
2 provision of this code to the contrary, a person enrolled and  
3 participating in the test and lock program may operate a motor  
4 vehicle solely at his or her job site if the operation is a  
5 condition of his or her employment. For the purpose of this  
6 section, "job site" does not include any street or highway open to  
7 the use of the public for purposes of vehicular traffic.