

1 **Senate Bill No. 281**

2 (By Senators Palumbo, Miller, Cookman, Tucker and Fitzsimmons)

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4 [Introduced January 8, 21014; referred to the Committee on
5 Transportation and Infrastructure; and then to the Committee on
6 the Judiciary.]
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11 A BILL to amend and reenact §17C-5-2 and §17C-5-2b of the Code of
12 West Virginia, 1931, as amended; and to amend and reenact
13 §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code,
14 all relating to making it a felony to drive a vehicle while
15 under the influence of alcohol, controlled substance or other
16 drug and cause serious bodily injury to another person; and
17 establishing penalties for first and subsequent violations of
18 certain provisions.

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

20 That §17C-5-2 and §17C-5-2b of the Code of West Virginia,
21 1931, as amended, be amended and reenacted; and that §17C-5A-1,
22 §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and
23 reenacted, all to read as follows:

1 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

4 (a) 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; or

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 ~~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 and shall be fined not less
23 than \$1,000 nor more than \$3,000.

1 ~~(b) Any person who:~~
2 ~~(1) Drives a vehicle in this state while he or she:~~
3 ~~(A) Is under the influence of alcohol;~~
4 ~~(B) Is under the influence of any controlled substance;~~
5 ~~(C) Is under the influence of any other drug;~~
6 ~~(D) Is under the combined influence of alcohol and any~~
7 ~~controlled substance or any other drug;~~
8 ~~(E) Has an alcohol concentration in his or her blood of eight~~
9 ~~hundredths of one percent or more, by weight; and~~
10 ~~(2) While driving does any act forbidden by law or fails to~~
11 ~~perform any duty imposed by law in the driving of the vehicle,~~
12 ~~which act or failure proximately causes the death of any person~~
13 ~~within one year next following the act or failure, is guilty of a~~
14 ~~misdemeanor and, upon conviction thereof, shall be confined in jail~~
15 ~~for not less than ninety days nor more than one year and shall be~~
16 ~~fined not less than \$500 nor more than \$1,000.~~

17 ~~(c)~~ (b) Any person who:
18 (1) Drives a vehicle in this state while he or she:
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

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

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

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

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

13 (A) Is under the influence of alcohol;

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

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

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

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

21 (2) Is guilty of a misdemeanor and, upon conviction thereof,
22 except as provided in section two-b of this article, shall be
23 confined in jail for up to six months and shall be fined not less

1 than \$100 nor more than \$500. A person sentenced pursuant to this
2 subdivision shall receive credit for any period of actual
3 confinement he or she served upon arrest for the subject offense.

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

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

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

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

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;

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

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

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

19 ~~(i)~~ (h) Any person under the age of twenty-one years who
20 drives a vehicle in this state while he or she has an alcohol
21 concentration in his or her blood of two hundredths of one percent
22 or more, by weight, but less than eight hundredths of one percent,
23 by weight, for a first offense under this subsection is guilty of

1 a misdemeanor and, upon conviction thereof, shall be fined not less
2 than \$25 nor more than \$100. For a second or subsequent offense
3 under this subsection, the person is guilty of a misdemeanor and,
4 upon conviction thereof, shall be confined in jail for twenty-four
5 hours and shall be fined not less than \$100 nor more than \$500. A
6 person who is charged with a first offense under the provisions of
7 this subsection may move for a continuance of the proceedings, from
8 time to time, to allow the person to participate in the Motor
9 Vehicle Alcohol Test and Lock Program as provided in section
10 three-a, article five-a of this chapter. Upon successful
11 completion of the program, the court shall dismiss the charge
12 against the person and expunge the person's record as it relates to
13 the alleged offense. In the event the person fails to successfully
14 complete the program, the court shall proceed to an adjudication of
15 the alleged offense. A motion for a continuance under this
16 subsection may not be construed as an admission or be used as
17 evidence. A person arrested and charged with an offense under the
18 provisions of this subsection or subsection (a), (b), (c), (d),
19 (e), (f), ~~(g) or (h)~~ or (g) of this section may not also be charged
20 with an offense under this subsection arising out of the same
21 transaction or occurrence.

22 ~~(j)~~ (I) Any person who:

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

1 (A) Is under the influence of alcohol;

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

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

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

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

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

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

22 ~~(i)~~ (k) A person violating any provision of subsection (b),
23 (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the third

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

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

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

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

21 (3) Any period of conditional probation imposed pursuant to
22 section two-b of this article for violation of subsection ~~(d)~~ (c)
23 of this article, which violation occurred within the ten-year

1 period immediately preceding the date of arrest in the current
2 proceeding.

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

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

23 ~~(p)~~ (o) For purposes of this section, the term "controlled

1 substance" has the meaning ascribed to it in chapter sixty-a of
2 this code.

3 ~~(q)~~ (p) The sentences provided in this section upon conviction
4 for a violation of this article are mandatory and are not subject
5 to suspension or probation: *Provided*, That the court may apply the
6 provisions of article eleven-a, chapter sixty-two of this code to
7 a person sentenced or committed to a term of one year or less for
8 a first offense under this section: *Provided further*, That the
9 court may impose a term of conditional probation pursuant to
10 section two-b of this article to persons adjudicated thereunder.
11 An order for home detention by the court pursuant to the provisions
12 of article eleven-b of said chapter may be used as an alternative
13 sentence to any period of incarceration required by this section
14 for a first or subsequent offense: *Provided, however*, That for any
15 period of home incarceration ordered for a person convicted of
16 second offense under this section, electronic monitoring shall be
17 required for no fewer than five days of the total period of home
18 confinement ordered and the offender may not leave home for those
19 five days notwithstanding the provisions of section five, article
20 eleven-b, chapter sixty-two of this code: *Provided further*, That
21 for any period of home incarceration ordered for a person convicted
22 of a third or subsequent violation of this section, electronic
23 monitoring shall be included for no fewer than ten days of the

1 total period of home confinement ordered and the offender may not
2 leave home for those ten days notwithstanding section five, article
3 eleven-b, chapter sixty-two of this code.

4 **§17C-5-2b. Deferral of further proceedings for certain first**
5 **offenses upon condition of participation in motor**
6 **vehicle alcohol test and lock program; procedure**
7 **on charge of violation of conditions.**

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

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

16 (2) Pleads guilty to or is found guilty of driving under the
17 influence of alcohol under subsection ~~(d)~~ (c), section two of this
18 article, the court, without entering a judgment of guilt and with
19 the consent of the accused, shall defer further proceedings and,
20 notwithstanding any provisions of this code to the contrary, place
21 him or her on probation, which conditions shall include, that he or
22 she successfully completes the Motor Vehicle Alcohol Test and Lock
23 Program as provided in section three-a, article five-a of this

1 chapter. Participation therein shall be for a period of at least
2 one hundred and sixty five days after he or she has served the
3 fifteen days of license suspension imposed pursuant to section two,
4 article five-a of this chapter.

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

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

16 (2) A motion alleging such violation filed pursuant to
17 subdivision (1) must be filed during the period of the Motor
18 Vehicle Alcohol Test and Lock Program or, if filed thereafter, must
19 be filed within a reasonable time after the alleged violation was
20 committed.

21 (3) When the defendant is brought before the court, the court
22 shall afford the defendant an opportunity to be heard. If the
23 court finds that the defendant has been rightfully removed from the

1 Motor Vehicle Alcohol Test and Lock Program by the Division of
2 Motor Vehicles, the court may order, when appropriate, that the
3 deferral be terminated, and thereupon enter an adjudication of
4 guilt and proceed as otherwise provided.

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

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

1 to the dismissal of charges, the court shall proceed as set forth
2 in subsection (c) of this section.

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

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

23 (g) No person ~~shall~~ may be eligible for dismissal and

1 discharge under this section: (1) in any prosecution in which any
2 violation of any other provision of this article has been
3 charged; (2) if the person holds a commercial driver's license or
4 operates commercial motor vehicle(s), or (3) the person has
5 previously had his or her driver's license revoked under section
6 two-a of this article or under any statute of the United States or
7 of any state relating to driving under the influence of alcohol,
8 any controlled substance or any other drug.

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

18 (2) If the prosecuting attorney objects to the expungement,
19 the objections shall be filed with the court within thirty days
20 after service of a motion for expungement and copies of the
21 objections shall be served on the defendant or the defendant's
22 attorney.

23 (3) If the objections are filed, the court shall hold a

1 hearing on the objections, affording all parties an opportunity to
 2 be heard. If the court determines after a hearing that the person
 3 during the period of his or her probation and during the period of
 4 time prior to his or her application to the court under this
 5 subsection has not been guilty of any serious or repeated violation
 6 of the conditions of his or her probation, it shall order the
 7 expungement.

8 (I) Notwithstanding any provision of this code to the
 9 contrary, any person prosecuted for a violation of subsection~~(d)~~
 10 (c), section two, article five of this chapter whose case is
 11 disposed of pursuant to the provisions of this section shall be
 12 liable for any court costs assessable against a person convicted of
 13 a violation of subsection ~~(j)~~ (I), section two, article five of
 14 this chapter. Payment of such costs may be made a condition of
 15 probation. The costs assessed pursuant to this subsection, whether
 16 as a term of probation or not, shall be distributed as other court
 17 costs in accordance with section two, article three, chapter fifty,
 18 section four, article two-a, chapter fourteen, section four,
 19 article twenty-nine, chapter thirty and sections two, seven and
 20 ten, article five, chapter sixty-two of this code.

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

1 **DRUGS.**

2 **§17C-5A-1. Implied consent to administrative procedure; revocation**
3 **for driving under the influence of alcohol,**
4 **controlled substances or drugs or refusal to submit**
5 **to secondary chemical test.**

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

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

19 (c) If, upon examination of the written statement of the
20 officer and the tests results described in subsection (b) of this
21 section, the commissioner determines that a person committed an
22 offense described in section two, article five of this chapter or
23 an offense described in a municipal ordinance which has the same

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

22 (d) Any law-enforcement officer taking a child into custody
23 under the provisions of section six-a, article five of this chapter

1 who has reasonable cause to believe that the child, at the time of
2 driving the motor vehicle, had an alcohol concentration in his or
3 her blood of two hundredths of one percent or more, by weight, or
4 that the act of the child in driving the motor vehicle was such
5 that it would provide grounds for arrest for an offense defined
6 under the provisions of section two of ~~said~~ that article if the
7 child were an adult, shall report to the Commissioner of the
8 Division of Motor Vehicles by written statement within forty-eight
9 hours the name and address of the child.

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

21 (f) Upon examination of the written statement of the officer
22 and any test results described in subsection (d) of this section,
23 if the commissioner determines that the results of the test

1 indicate that at the time the test or tests were administered the
2 child had, in his or her blood, an alcohol concentration of two
3 hundredths of one percent or more, by weight, but also determines
4 that the act of the child in driving the motor vehicle was not such
5 that it would provide grounds for arrest for an offense defined
6 under the provisions of subsection (a), (b), (c), (d), (e), (f),
7 ~~(g) or (h)~~ or (g), section two, article five of this chapter if the
8 child were an adult, the commissioner shall make and enter an order
9 suspending the child's license to operate a motor vehicle in this
10 state. If the commissioner determines that the act of the child in
11 driving the motor vehicle was such that it would provide grounds
12 for arrest for an offense defined under the provisions of
13 subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g), section
14 two, article five of this chapter if the child were an adult, the
15 commissioner shall make and enter an order revoking the child's
16 license to operate a motor vehicle in this state. A copy of the
17 order shall be forwarded to the child by registered or certified
18 mail, return receipt requested, and shall contain the reasons for
19 the suspension or revocation and describe the applicable suspension
20 or revocation periods provided ~~for~~ in section two of this article.
21 A suspension or revocation ~~shall~~ is not ~~become~~ effective until ten
22 days after receipt of a copy of the order.

23 **§17C-5A-2. Hearing; revocation; review.**

1 (a) Written objections to an order of revocation or suspension
2 under the provisions of section one of this article or section
3 seven, article five of this chapter shall be filed with the Office
4 of Administrative Hearings. Upon the receipt of an objection, the
5 Office of Administrative Hearings shall notify the Commissioner of
6 the Division of Motor Vehicles, who shall stay the imposition of
7 the period of revocation or suspension and afford the person an
8 opportunity to be heard by the Office of Administrative Hearings.
9 The written objection must be filed with Office of Administrative
10 Hearings in person, by registered or certified mail, return receipt
11 requested, or by facsimile transmission or electronic mail within
12 thirty calendar days after receipt of a copy of the order of
13 revocation or suspension or no hearing will be granted: *Provided,*
14 That a successful transmittal sheet shall be necessary for proof of
15 written objection in the case of filing by fax. The hearing shall
16 be before a hearing examiner employed by the Office of
17 Administrative Hearings who shall rule on evidentiary issues. Upon
18 consideration of the designated record, the hearing examiner shall,
19 based on the determination of the facts of the case and applicable
20 law, render a decision affirming, reversing or modifying the action
21 protested. The decision shall contain findings of fact and
22 conclusions of law and shall be provided to all parties by
23 registered or certified mail, return receipt requested, or with a

1 party's written consent, by facsimile or electronic mail.

2 (b) The hearing shall be held at an office of the Division of
3 Motor Vehicles suitable for hearing purposes located in or near the
4 county in which the arrest was made in this state or at some other
5 suitable place in the county in which the arrest was made if an
6 office of the division is not available. At the discretion of the
7 Office of Administrative Hearings, the hearing may also be held at
8 an office of the Office of Administrative Hearings located in or
9 near the county in which the arrest was made in this state. The
10 Office of Administrative Hearings shall send a notice of hearing to
11 the person whose driving privileges are at issue and the person's
12 legal counsel if the person is represented by legal counsel, by
13 regular mail, or with the written consent of the person whose
14 driving privileges are at issue or their legal counsel, by
15 facsimile or electronic mail. The Office of Administrative
16 Hearings shall also send a notice of hearing by regular mail,
17 facsimile or electronic mail to the Division of Motor Vehicles, and
18 the Attorney General's Office, if the Attorney General has filed a
19 notice of appearance of counsel on behalf of the Division of Motor
20 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

1 postponement or continuance.

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

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

1 issued the subpoena to the person may petition the circuit court
2 wherein the action lies for enforcement of the subpoena.

3 (d) Law-enforcement officers shall be compensated for the time
4 expended in their travel and appearance before the Office of
5 Administrative Hearings by the law-enforcement agency by whom they
6 are employed at their regular rate if they are scheduled to be on
7 duty during said time or at their regular overtime rate if they are
8 scheduled to be off duty during said time.

9 (e) The principal question at the hearing shall be whether the
10 person did drive a motor vehicle while under the influence of
11 alcohol, controlled substances or drugs, or did drive 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 did
14 refuse to submit to the designated secondary chemical test, or did
15 drive a motor vehicle while under the age of twenty-one years with
16 an alcohol concentration in his or her blood of two hundredths of
17 one percent or more, by weight, but less than eight hundredths of
18 one percent, by weight.

19 (f) In the case of a hearing in which a person is accused of
20 driving a motor vehicle while under the influence of alcohol,
21 controlled substances or drugs, or accused of driving a motor
22 vehicle while having an alcohol concentration in the person's blood
23 of eight hundredths of one percent or more, by weight, or accused

1 of driving a motor vehicle while under the age of twenty-one years
2 with an alcohol concentration in his or her blood of two hundredths
3 of one percent or more, by weight, but less than eight hundredths
4 of one percent, by weight, the Office of Administrative Hearings
5 shall make specific findings as to: (1) Whether the investigating
6 law-enforcement officer had reasonable grounds to believe the
7 person to have been driving while under the influence of alcohol,
8 controlled substances or drugs, or while having an alcohol
9 concentration in the person's blood of eight hundredths of one
10 percent or more, by weight, or to have been driving a motor vehicle
11 while under the age of twenty-one years with an alcohol
12 concentration in his or her blood of two hundredths of one percent
13 or more, by weight, but less than eight hundredths of one percent,
14 by weight; (2) whether the person was lawfully placed under arrest
15 for an offense involving driving under the influence of alcohol,
16 controlled substances or drugs, or was lawfully taken into custody
17 for the purpose of administering a secondary test: *Provided*, That
18 this element shall be waived in cases where no arrest occurred due
19 to driver incapacitation; (3) whether the person committed an
20 offense involving driving under the influence of alcohol,
21 controlled substances or drugs; and (4) whether the tests, if any,
22 were administered in accordance with the provisions of this article
23 and article five of this chapter.

1 (g) If, in addition to a finding that the person did drive a
2 motor vehicle while under the influence of alcohol, controlled
3 substances or drugs, or did drive a motor vehicle while having an
4 alcohol concentration in the person's blood of eight hundredths of
5 one percent or more, by weight, or did drive a motor vehicle while
6 under the age of twenty-one years with an alcohol concentration in
7 his or her blood of two hundredths of one percent or more, by
8 weight, but less than eight hundredths of one percent, by weight,
9 the Office of Administrative Hearings also finds by a preponderance
10 of the evidence that the person when driving did an act forbidden
11 by law or failed to perform a duty imposed by law, which act or
12 failure proximately caused the death of a person ~~and was committed~~
13 ~~in reckless disregard of the safety of others and if the Office of~~
14 ~~Administrative Hearings further finds that the influence of~~
15 ~~alcohol, controlled substances or drugs or the alcohol~~
16 ~~concentration in the blood was a contributing cause to the death,~~
17 the commissioner shall revoke the person's license for a period of
18 ten years: *Provided*, That if the person's license has previously
19 been suspended or revoked under the provisions of this section or
20 section one of this article within the ten years immediately
21 preceding the date of arrest, the period of revocation shall be for
22 the life of the person.

23 ~~(h) If, in addition to a finding that the person did drive a~~
24 ~~motor vehicle while under the influence of alcohol, controlled~~

~~1 substances or drugs, or did drive a motor vehicle while having an
2 alcohol concentration in the person's blood of eight hundredths of
3 one percent or more, by weight, the Office of Administrative
4 Hearings also finds by a preponderance of the evidence that the
5 person when driving did an act forbidden by law or failed to
6 perform a duty imposed by law, which act or failure proximately
7 caused the death of a person, the commissioner shall revoke the
8 person's license for a period of five years: *Provided*, That if the
9 person's license has previously been suspended or revoked under the
10 provisions of this section or section one of this article within
11 the ten years immediately preceding the date of arrest, the period
12 of revocation shall be for the life of the person.~~

13 (I) (h) If, in addition to a finding that the person did drive
14 a motor vehicle while under the influence of alcohol, controlled
15 substances or drugs, or did drive a motor vehicle while having an
16 alcohol concentration in the person's blood of eight hundredths of
17 one percent or more, by weight, the Office of Administrative
18 Hearings also finds by a preponderance of the evidence that the
19 person when driving did an act forbidden by law or failed to
20 perform a duty imposed by law, which act or failure proximately
21 caused bodily injury to a person other than himself or herself, the
22 commissioner shall revoke the person's license for a period of two
23 years: *Provided*, That if the license has previously been suspended
24 or revoked under the provisions of this section or section one of

1 this article within the ten years immediately preceding the date of
2 arrest, the period of revocation shall be ten years: *Provided,*
3 *however,* That if the person's license has previously been suspended
4 or revoked 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 ~~(j)~~ (I) If the Office of Administrative Hearings finds by a
9 preponderance of the evidence that the person did drive a motor
10 vehicle while under the influence of alcohol, controlled substances
11 or drugs, or did drive a motor vehicle while having an alcohol
12 concentration in the person's blood of eight hundredths of one
13 percent or more, by weight, but less than fifteen hundredths of one
14 percent or more, by weight, or finds that the person knowingly
15 permitted the persons vehicle to be driven by another person who
16 was under the influence of alcohol, controlled substances or drugs,
17 or knowingly permitted the person's vehicle to be driven by another
18 person who had an alcohol concentration in his or her blood of
19 eight hundredths of one percent or more, by weight the commissioner
20 shall revoke the person's license for a period of six months or a
21 period of fifteen days with an additional one hundred and twenty
22 days of participation in the Motor Vehicle Alcohol Test and Lock
23 Program in accordance with the provisions of section three-a of
24 this article: *Provided,* That any period of participation in the

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

16 ~~(k)~~ (j)(1) If in addition to finding by a preponderance of the
17 evidence that the person did drive a motor vehicle while under the
18 influence of alcohol, controlled substance or drugs, the Office of
19 Administrative Hearings also finds by a preponderance of the
20 evidence that the person did drive a motor vehicle while having an
21 alcohol concentration in the person's blood of fifteen hundredths
22 of one percent or more, by weight, the commissioner shall revoke
23 the person's license for a period of forty-five days with an
24 additional two hundred and seventy days of participation in the

1 Motor Vehicle Alcohol Test and Lock Program in accordance with the
2 provisions of section three-a, article five-a, chapter seventeen-c
3 of this code: *Provided*, That if the person's license has
4 previously been suspended or revoked under the provisions of this
5 section or section one of this article within the ten years
6 immediately preceding the date of arrest, the period of revocation
7 shall be ten years: *Provided, however*, That if the person's
8 license has previously been suspended or revoked the person's
9 license more than once under the provisions of this section or
10 section one of this article within the ten years immediately
11 preceding the date of arrest, the period of revocation shall be for
12 the life of the person.

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

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

4 ~~(l)~~ (k) If, in addition to a finding that the person did drive
5 a motor vehicle while under the age of twenty-one years with an
6 alcohol concentration in his or her blood of two hundredths of one
7 percent or more, by weight, but less than eight hundredths of one
8 percent, by weight, the Office of Administrative Hearings also
9 finds by a preponderance of the evidence that the person when
10 driving did an act forbidden by law or failed to perform a duty
11 imposed by law, which act or failure proximately caused the death
12 of a person, and if the Office of Administrative Hearings further
13 finds that the alcohol concentration in the blood was a
14 contributing cause to the death, the commissioner shall revoke the
15 person's license for a period of five years: *Provided*, That if the
16 person's license has previously been suspended or revoked under the
17 provisions of this section or section one of this article within
18 the ten years immediately preceding the date of arrest, the period
19 of revocation shall be for the life of the person.

20 ~~(m)~~ (l) If, in addition to a finding that the person did drive
21 a motor vehicle while under the age of twenty-one years with an
22 alcohol concentration in his or her blood of two hundredths of one
23 percent or more, by weight, but less than eight hundredths of one
24 percent, by weight, the Office of Administrative Hearings also

1 finds by a preponderance of the evidence that the person when
2 driving did an act forbidden by law or failed to perform a duty
3 imposed by law, which act or failure proximately caused bodily
4 injury to a person other than himself or herself, and if the Office
5 of Administrative Hearings further finds that the alcohol
6 concentration in the blood was a contributing cause to the bodily
7 injury, the commissioner shall revoke the person's license for a
8 period of two years: *Provided*, That if the person's license has
9 previously been suspended or revoked under the provisions of this
10 section or section one of this article within the ten years
11 immediately preceding the date of arrest, the period of revocation
12 shall be ten years: *Provided, however*, That if the person's
13 license has previously been suspended or revoked more than once
14 under the provisions of this section or section one of this article
15 within the ten years immediately preceding the date of arrest, the
16 period of revocation shall be for the life of the person.

17 ~~(n)~~ (m) If the Office of Administrative Hearings finds by a
18 preponderance of the evidence that the person did drive a motor
19 vehicle while under the age of twenty-one years with an alcohol
20 concentration in his or her blood of two hundredths of one percent
21 or more, by weight, but less than eight hundredths of one percent,
22 by weight, the commissioner shall suspend the person's license for
23 a period of sixty days: *Provided*, That if the person's license has
24 previously been suspended or revoked under the provisions of this

1 section or section one of this article, the period of revocation
2 shall be for one year, or until the person's twenty-first birthday,
3 whichever period is longer.

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

22 ~~(p)~~ (o) For purposes of this section, where reference is made
23 to previous suspensions or revocations under this section, the
24 following types of criminal convictions or administrative

1 suspensions or revocations shall also be regarded as suspensions or
2 revocations under this section or section one of this article:

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

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

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

15 ~~(q)~~ (p) In the case of a hearing in which a person is accused
16 of refusing to submit to a designated secondary test, the Office of
17 Administrative Hearings shall make specific findings as to: (1)
18 Whether the arresting law-enforcement officer had reasonable
19 grounds to believe the person had been driving a motor vehicle in
20 this state while under the influence of alcohol, controlled
21 substances or drugs; (2) whether the person was lawfully placed
22 under arrest for an offense involving driving under the influence
23 of alcohol, controlled substances or drugs, or was lawfully taken
24 into custody for the purpose of administering a secondary test:

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

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

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

17 ~~(s)~~ (r) If the Office of Administrative Hearings finds to the
18 contrary with respect to the above issues, it shall rescind or
19 modify the commissioner's order and, in the case of modification,
20 the commissioner shall reduce the order of revocation to the
21 appropriate period of revocation under this section or section
22 seven, article five of this chapter. A copy of the Office of
23 Administrative Hearings' final order containing its findings of
24 fact and conclusions of law made and entered following the hearing

1 shall be served upon the person whose license is at issue or upon
2 the person's legal counsel if the person is represented by legal
3 counsel by registered or certified mail, return receipt requested,
4 or by facsimile or by electronic mail if available. The final
5 order shall be served upon the commissioner by electronic mail.
6 During the pendency of any hearing, the revocation of the person's
7 license to operate a motor vehicle in this state shall be stayed.

8 A person whose license is at issue and the commissioner shall
9 be entitled to judicial review as set forth in chapter
10 twenty-nine-a of this code. Neither the commissioner nor the
11 Office of Administrative Hearings may stay enforcement of the
12 order. The court may grant a stay or supersede as of the order
13 only upon motion and hearing, and a finding by the court upon the
14 evidence presented, that there is a substantial probability that
15 the appellant shall prevail upon the merits and the appellant will
16 suffer irreparable harm if the order is not stayed: *Provided*, That
17 in no event shall the stay or supersede as of the order exceed one
18 hundred fifty days. The Office of Administrative Hearings may not
19 be made a party to an appeal. The party filing the appeal shall pay
20 the Office of Administrative Hearings for the production and
21 transmission of the certified file copy and the hearing transcript
22 to the court. Notwithstanding the provisions of section four,
23 article five of said chapter, the Office of Administrative Hearings
24 may not be compelled to transmit a certified copy of the file or

1 the transcript of the hearing to the circuit court in less than
2 sixty days. Circuit clerk shall provide a copy of the circuit
3 court's final order on the appeal to the Office of Administrative
4 Hearings by regular mail, by facsimile, or by electronic mail if
5 available.

6 ~~(t)~~ (s) In any revocation or suspension pursuant to this
7 section, if the driver whose license is revoked or suspended had
8 not reached the driver's eighteenth birthday at the time of the
9 conduct for which the license is revoked or suspended, the driver's
10 license shall be revoked or suspended until the driver's eighteenth
11 birthday or the applicable statutory period of revocation or
12 suspension prescribed by this section, whichever is longer.

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

18 **§17C-5A-3. Safety and treatment program; reissuance of license.**

19 (a) The Department of Health and Human Resources, Division of
20 Alcoholism and Drug Abuse shall administer a comprehensive safety
21 and treatment program for persons whose licenses have been revoked
22 under the provisions of this article or section seven, article five
23 of this chapter or subsection (6), section five, article three,
24 chapter seventeen-b of this code and shall also establish the

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

10 (b) The program shall include, but not be limited to,
11 treatment of alcoholism, alcohol and drug abuse, psychological
12 counseling, educational courses on the dangers of alcohol and drugs
13 as they relate to driving, defensive driving or other safety
14 driving instruction and other programs designed to properly
15 educate, train and rehabilitate the offender.

16 (c) The Department of Health and Human Resources, Division of
17 Alcoholism and Drug Abuse shall provide for the preparation of an
18 educational and treatment program for each person whose license has
19 been revoked under the provisions of this article or section seven,
20 article five of this chapter or subsection (6), section five,
21 article three, chapter seventeen-b of this code which shall contain
22 the following: (1) A listing and evaluation of the offender's prior
23 traffic record; (2) the characteristics and history of alcohol or
24 drug use, if any; (3) his or her amenability to rehabilitation

1 through the alcohol safety program; and (4) a recommendation as to
2 treatment or rehabilitation and the terms and conditions of the
3 treatment or rehabilitation. The program shall be prepared by
4 persons knowledgeable in the diagnosis of alcohol or drug abuse and
5 treatment.

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

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

20 (e) (1) The program provider shall collect the established fee
21 from each participant upon enrollment unless the department has
22 determined that the participant is an indigent based upon criteria
23 established pursuant to legislative rule authorized in this
24 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

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

3 (g) The Commissioner of the Division of Motor Vehicles, after
4 giving due consideration to the program developed for the offender,
5 shall prescribe the necessary terms and conditions for the
6 reissuance of the license to operate a motor vehicle in this state
7 revoked under this article or section seven, article five of this
8 chapter or subsection (6), section five, article three, chapter
9 seventeen-b of this code which shall include successful completion
10 of the educational, treatment or rehabilitation program, subject to
11 the following:

12 (1) When the period of revocation is six months, the license
13 to operate a motor vehicle in this state may not be reissued until:
14 (A) At least ninety days have elapsed from the date of the initial
15 revocation, during which time the revocation was actually in
16 effect; (B) the offender has successfully completed the program; (C)
17 all costs of the program and administration have been paid; and (D)
18 all costs assessed as a result of a revocation hearing have been
19 paid.

20 (2) When the period of revocation is for a period of one year
21 or for more than a year, the license to operate a motor vehicle in
22 this state may not be reissued until: (A) At least one-half of the
23 time period has elapsed from the date of the initial revocation,
24 during which time the revocation was actually in effect; (B) the

1 offender has successfully completed the program; (C) all costs of
2 the program and administration have been paid; and (D) all costs
3 assessed as a result of a revocation hearing have been paid.
4 Notwithstanding any provision in this code, a person whose license
5 is revoked for refusing to take a chemical test as required by
6 section seven, article five of this chapter for a first offense is
7 not eligible to reduce the revocation period by completing the
8 safety and treatment program.

9 (3) When the period of revocation is for life, the license to
10 operate a motor vehicle in this state may not be reissued until:

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

17 (4) Notwithstanding any provision of this code or any rule,
18 any mental health facilities or other public agencies or private
19 entities conducting the safety and treatment program when
20 certifying that a person has successfully completed a safety and
21 treatment program shall only have to certify that the person has
22 successfully completed the program.

23 (h) (1) The Department of Health and Human Resources, Division
24 of Alcoholism and Drug Abuse shall provide for the preparation of

1 an educational program for each person whose license has been
2 suspended for sixty days pursuant to the provisions of subsection
3 ~~(n)~~ (m), section two, article five-a of this chapter. The
4 educational program shall consist of not less than twelve nor more
5 than eighteen hours of actual classroom time.

6 (2) When a sixty-day period of suspension has been ordered,
7 the license to operate a motor vehicle may not be reinstated until:
8 (A) At least sixty days have elapsed from the date of the initial
9 suspension, during which time the suspension was actually in
10 effect; (B) the offender has successfully completed the educational
11 program; (C) all costs of the program and administration have been
12 paid; and (D) all costs assessed as a result of a suspension
13 hearing have been paid.

14 (I) A required component of the treatment program provided in
15 subsection (b) of this section and the education program provided
16 ~~for~~ in subsection (c) of this section shall be participation by the
17 violator with a victim impact panel program providing a forum for
18 victims of alcohol and drug-related offenses and offenders to share
19 first-hand experiences on the impact of alcohol and drug-related
20 offenses in their lives. The Department of Health and Human
21 Resources, Division of Alcoholism and Drug Abuse shall propose and
22 implement a plan for victim impact panels where appropriate numbers
23 of victims are available and willing to participate and shall
24 establish guidelines for other innovative programs which may be

1 substituted where the victims are not available to assist persons
2 whose licenses have been suspended or revoked for alcohol and
3 drug-related offenses to gain a full understanding of the severity
4 of their offenses in terms of the impact of the offenses on victims
5 and offenders. The plan shall require, at a minimum, discussion
6 and consideration of the following:

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

8 (B) Death or physical injuries suffered by victims or
9 offenders;

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

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

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

15 The Department of Health and Human Resources, Division of
16 Alcoholism and Drug Abuse shall ensure that any meetings between
17 victims and offenders shall be nonconfrontational and ensure the
18 physical safety of the persons involved.

19 (j)(1) The Secretary of the Department of Health and Human
20 Resources shall promulgate a rule for legislative approval in
21 accordance with article three, chapter twenty-nine-a of this code
22 to administer the provisions of this section and establish a fee to
23 be collected from each offender enrolled in the safety and
24 treatment program. The rule shall include: (A) A reimbursement

1 mechanism to program providers of required fees for the safety and
2 treatment program for indigent offenders, criteria for determining
3 eligibility of indigent offenders, and any necessary application
4 forms; and (B) program standards that encompass provider criteria
5 including minimum professional training requirements for providers,
6 curriculum approval, minimum course length requirements and other
7 items that may be necessary to properly implement the provisions of
8 this section.

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

13 (k) Nothing in this section may be construed to prohibit day
14 report or community correction programs, authorized pursuant to
15 article eleven-c, chapter sixty-two of this code, from
16 administering a comprehensive safety and treatment program pursuant
17 to this section.

18 **§17C-5A-3a. Establishment of and participation in the Motor**
19 **Vehicle Alcohol Test and Lock Program.**

20 (a) (1) The Division of Motor Vehicles shall control and
21 regulate a Motor Vehicle Alcohol Test and Lock Program for persons
22 whose licenses have been revoked pursuant to this article or the
23 provisions of article five of this chapter or have been convicted
24 under section two, article five of this chapter, or who are serving

1 a term of a conditional probation pursuant to section two-b,
2 article five of this chapter.

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

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

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

23 (C) Nothing in this section may be construed to prohibit day
24 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.

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

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

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

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

9 (D) The total cost of the program to the state during the
10 prior year.

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

1 proof to the commissioner within sixty days of receiving approval
2 to participate by the commissioner that he or she is enrolled in a
3 safety and treatment program.

4 (2) Any person whose license has been suspended pursuant to
5 the provisions of subsection ~~(n)~~ (m), section two of this article
6 for driving a motor vehicle while under the age of twenty-one years
7 with an alcohol concentration in his or her blood of two hundredths
8 of one percent or more, by weight, but less than eight hundredths
9 of one percent, by weight, is eligible to participate in the
10 program after thirty days have elapsed from the date of the initial
11 suspension, during which time the suspension was actually in
12 effect: *Provided*, That in the case of a person under the age of
13 eighteen, the person is eligible to participate in the program
14 after thirty days have elapsed from the date of the initial
15 suspension, during which time the suspension was actually in effect
16 or after the person's eighteenth birthday, whichever is later.
17 Before the commissioner approves a person to operate a motor
18 vehicle equipped with a motor vehicle alcohol test and lock system,
19 the person must agree to comply with the following conditions:

20 (A) If not already enrolled, the person shall enroll in and
21 complete the educational program provided in subsection (d),
22 section three of this article at the earliest time that placement
23 in the educational program is available, unless good cause is
24 demonstrated to the commissioner as to why placement should be

1 postponed;

2 (B) The person shall pay all costs of the educational program,
3 any administrative costs and all costs assessed for any suspension
4 hearing.

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

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

13 (1) For a person whose license has been revoked for a first
14 offense for six months pursuant to the provisions of section one-a
15 of this article for conviction of an offense defined in subsection
16 ~~(d) or (g)~~ (c) or (f), section two, article five of this chapter or
17 pursuant to subsection ~~(j)~~ (I), section two of this article, the
18 minimum period of revocation for participation in the test and lock
19 program is fifteen days and the minimum period for the use of the
20 ignition interlock device is one hundred and twenty-five days;

21 (2) For a person whose license has been revoked for a first
22 offense pursuant to section seven, article five of this chapter,
23 the minimum period of revocation for participation in the test and
24 lock program is forty-five days and the minimum period for the use

1 of the ignition interlock device is one year;

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

10 (4) 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 (a), section
13 two, article five of this chapter or pursuant to subsection ~~(f)~~
14 (e), section two of this article, the minimum period of revocation
15 before the person is eligible for participation in the test and
16 lock program is twelve months and the minimum period for the use of
17 the ignition interlock device is two years;

18 (5) For a person whose license has been revoked for a first
19 offense pursuant to the provisions of section one-a of this article
20 for conviction of an offense ~~defined in subsection (b), section~~
21 ~~two, article five of this chapter or~~ pursuant to subsection ~~(h)~~
22 (g), section two of this article, the minimum period of revocation
23 is six months and the minimum period for the use of the ignition
24 interlock device is two years;

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

8 (7) For a person whose license has been revoked for a first
9 offense pursuant to the provisions of section one-a of this article
10 for conviction of an offense defined in subsection ~~(j)~~ (I), section
11 two, article five of this chapter or pursuant to subsection ~~(m)~~
12 (l), section two of this article, the minimum period of revocation
13 for participation in the program is two months and the minimum
14 period for the use of the ignition interlock device is ten months;

15 (d) Notwithstanding any provision of the code to the contrary,
16 a person shall participate in the program if the person is
17 convicted under section two, article five of this chapter or the
18 person's license is revoked under section two of this article or
19 section seven, article five of this chapter and the person was
20 previously either convicted or his or her license was revoked under
21 any provision cited in this subsection within the past ten years.
22 The minimum revocation period for a person required to participate
23 in the program under this subsection is one year and the minimum
24 period for the use of the ignition interlock device is two years,

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

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

24 (f) An applicant for the test and lock program may not have

1 been convicted of any violation of section three, article four,
2 chapter seventeen-b of this code for driving while the applicant's
3 driver's license was suspended or revoked within the six-month
4 period preceding the date of application for admission to the test
5 and lock program unless such is necessary for employment purposes.

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

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

24 (I) A person whose license has been suspended pursuant to the

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

22 (j) In addition to any other penalty imposed by this code, any
23 person who operates a motor vehicle not equipped with an approved
24 motor vehicle alcohol test and lock system during that person's

1 participation in the Motor Vehicle Alcohol Test and Lock Program is
2 guilty of a misdemeanor and, upon conviction thereof, shall be
3 confined in jail for a period not less than one month nor more than
4 six months and fined not less than \$100 nor more than \$500. Any
5 person who attempts to bypass the alcohol test and lock system is
6 guilty of a misdemeanor and, upon conviction thereof, shall be
7 confined in jail not more than six months and fined not less than
8 \$100 nor more than \$1,000: *Provided*, That notwithstanding any
9 provision of this code to the contrary, a person enrolled and
10 participating in the test and lock program may operate a motor
11 vehicle solely at his or her job site if the operation is a
12 condition of his or her employment. For the purpose of this
13 section, job site does not include any street or highway open to
14 the use of the public for purposes of vehicular traffic.

NOTE: The purpose of this bill is to make it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and proximately cause the death of a person.

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