

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4529

BY DELEGATE GEARHEART

[BY REQUEST OF THE DIVISION OF MOTOR VEHICLES]

[Introduced February 12, 2016; Referred
to the Committee on Roads and Transportation then
the Judiciary.]

1 A BILL to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended, relating
 2 to providing that the Division of Motor Vehicles may not stay a revocation for D.U.I. if the
 3 driver had a stay in place for a pending contested revocation for D.U.I. and the Division of
 4 Motor Vehicles receives a statement from a law-enforcement officer that the driver has
 5 been charged with a subsequent D.U.I. or if the division receives notice from a court that
 6 the same driver has been convicted of an additional offense for DUI; requiring that a
 7 person intending to contest a D.U.I. revocation order state “sufficient grounds” in the
 8 written objection upon which to contest the order; providing that the exclusionary rule
 9 applicable in criminal cases does not apply in administrative hearings involving contested
 10 D.U.I. cases before the Office of Administrative Hearings; deleting the requirement that
 11 the Office of Administrative Hearings make a finding that a person was lawfully arrested
 12 as a prerequisite to deciding a case and issuing a final order; and, deleting the requirement
 13 that the Office of Administrative Hearings must find whether a person was lawfully placed
 14 under arrest when the person is alleged to have refused to submit to the secondary
 15 chemical test while substituting language that the person was “lawfully directed” to submit
 16 to the test.

Be it enacted by the Legislature of West Virginia:

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

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

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

1 (a) Written objections to an order of revocation or suspension under the provisions of
 2 section one of this article or section seven, article five of this chapter shall be filed with the Office

3 of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings
4 shall notify the Commissioner of the Division of Motor Vehicles, ~~who shall stay the imposition of~~
5 ~~the period of revocation or suspension~~ and afford the person an opportunity to be heard by the
6 ~~Office of Administrative Hearings.~~ Upon receipt of notification of the written objection from the
7 Office of Administrative Hearings, the Commissioner of the Division of Motor Vehicles shall stay
8 the imposition of the period of revocation or suspension unless the person's license is revoked or
9 suspended for a separate offense or unless the Commissioner receives a subsequent statement
10 from a law-enforcement officer or a court conviction indicating that the person committed an
11 additional offense while the matter is pending before the Office of Administrative Hearings in
12 which event any stay entered shall be vacated and no further stays shall be imposed. The written
13 objection asserting sufficient grounds upon which the order of revocation or suspension could be
14 reversed or modified, must be filed with Office of Administrative Hearings in person, by registered
15 or certified mail, return receipt requested, or by facsimile transmission or electronic mail within
16 thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing
17 will be granted: *Provided,* That a successful transmittal sheet shall be necessary for proof of
18 written objection in the case of filing by fax. The hearing shall be before a hearing examiner
19 employed by the Office of Administrative Hearings who shall rule on evidentiary issues. The West
20 Virginia Rules of Evidence shall apply to all proceedings before the hearing examiner. Upon
21 consideration of the designated record, the hearing examiner shall, based on the determination
22 of the facts of the case and applicable law, render a decision affirming, reversing or modifying the
23 action protested. The decision shall contain findings of fact and conclusions of law and shall be
24 provided to all parties by registered or certified mail, return receipt requested, or with a party's
25 written consent, by facsimile or electronic mail.

26 (b) The hearing shall be held at an office of the Division of Motor Vehicles suitable for
27 hearing purposes located in or near the county in which the arrest was made in this state or at
28 some other suitable place in the county in which the arrest was made if an office of the division is

29 not available. At the discretion of the Office of Administrative Hearings, the hearing may also be
30 held at an office of the Office of Administrative Hearings located in or near the county in which
31 the arrest was made in this state. The Office of Administrative Hearings shall send a notice of
32 hearing to the person whose driving privileges are at issue and the person's legal counsel if the
33 person is represented by legal counsel, by regular mail, or with the written consent of the person
34 whose driving privileges are at issue or their legal counsel, by facsimile or electronic mail. The
35 Office of Administrative Hearings shall also send a notice of hearing by regular mail, facsimile or
36 electronic mail to the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney
37 General has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.

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

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

44 (3) The Office of Administrative Hearings may issue subpoenas commanding the
45 appearance of witnesses and subpoenas duces tecum commanding the submission of
46 documents, items or other things. Subpoenas duces tecum shall be returnable on the date of the
47 next scheduled hearing unless otherwise specified. The Office of Administrative hearings shall
48 issue subpoenas and subpoenas duces tecum at the request of a party or the party's legal
49 representative. The party requesting the subpoena shall be responsible for service of the
50 subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be
51 served at least five days before the return date thereof, either by personal service made by a
52 person over eighteen years of age or by registered or certified mail, return receipt requested, and
53 received by the party responsible for serving the subpoena or subpoena duces tecum: *Provided,*
54 That the Division of Motor Vehicles may serve subpoenas to law-enforcement officers through

55 electronic mail to the department of his or her employer. If a person does not obey the subpoena
56 or fails to appear, the party who issued the subpoena to the person may petition the circuit court
57 wherein the action lies for enforcement of the subpoena.

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

62 (e) The principal question at the hearing shall be whether the person did drive a motor
63 vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor
64 vehicle while having an alcohol concentration in the person's blood of eight hundredths of one
65 percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or
66 did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration
67 in his or her blood of two hundredths of one percent or more, by weight, but less than eight
68 hundredths of one percent, by weight. The exclusionary rule as applied in criminal prosecution
69 proceedings does not apply to civil administrative as driver license revocation proceedings are
70 civil proceedings.

71 (f) In the case of a hearing in which a person is accused of driving a motor vehicle while
72 under the influence of alcohol, controlled substances or drugs, or accused of driving a motor
73 vehicle while having an alcohol concentration in the person's blood of eight hundredths of one
74 percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-
75 one years with an alcohol concentration in his or her blood of two hundredths of one percent or
76 more, by weight, but less than eight hundredths of one percent, by weight, the Office of
77 Administrative Hearings shall make specific findings as to: (1) Whether the investigating law-
78 enforcement officer had reasonable grounds to believe the person to have been driving while
79 under the influence of alcohol, controlled substances or drugs, or while having an alcohol
80 concentration in the person's blood of eight hundredths of one percent or more, by weight, or to

81 have been driving a motor vehicle while under the age of twenty-one years with an alcohol
82 concentration in his or her blood of two hundredths of one percent or more, by weight, but less
83 than eight hundredths of one percent, by weight; (2) ~~whether the person was lawfully placed under~~
84 ~~arrest~~ in the event a secondary chemical test was administered, whether the officer lawfully
85 directed the person to take the secondary chemical test for an offense involving driving under the
86 influence of alcohol, controlled substances or drugs; ~~or was lawfully taken into custody for the~~
87 ~~purpose of administering a secondary test: *Provided*, That this element shall be waived in cases~~
88 ~~where no arrest occurred due to driver incapacitation~~ (3) whether the person committed an
89 offense involving driving under the influence of alcohol, controlled substances or drugs; and (4)
90 whether the tests, if any, were administered in accordance with the provisions of this article and
91 article five of this chapter.

92 (g) If, in addition to a finding that the person did drive a motor vehicle while under the
93 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
94 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
95 or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration
96 in his or her blood of two hundredths of one percent or more, by weight, but less than eight
97 hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a
98 preponderance of the evidence that the person when driving did an act forbidden by law or failed
99 to perform a duty imposed by law, which act or failure proximately caused the death of a person
100 and was committed in reckless disregard of the safety of others and if the Office of Administrative
101 Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol
102 concentration in the blood was a contributing cause to the death, the commissioner shall revoke
103 the person's license for a period of ten years: *Provided*, That if the person's license has previously
104 been suspended or revoked under the provisions of this section or section one of this article within
105 the ten years immediately preceding the date of arrest, the period of revocation shall be for the
106 life of the person.

107 (h) If, in addition to a finding that the person did drive a motor vehicle while under the
108 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
109 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
110 the Office of Administrative Hearings also finds by a preponderance of the evidence that the
111 person when driving did an act forbidden by law or failed to perform a duty imposed by law, which
112 act or failure proximately caused the death of a person, the commissioner shall revoke the
113 person's license for a period of five years: *Provided*, That if the person's license has previously
114 been suspended or revoked under the provisions of this section or section one of this article within
115 the ten years immediately preceding the date of arrest, the period of revocation shall be for the
116 life of the person.

117 (i) If, in addition to a finding that the person did drive a motor vehicle while under the
118 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
119 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
120 the Office of Administrative Hearings also finds by a preponderance of the evidence that the
121 person when driving did an act forbidden by law or failed to perform a duty imposed by law, which
122 act or failure proximately caused bodily injury to a person other than himself or herself, the
123 commissioner shall revoke the person's license for a period of two years: *Provided*, That if the
124 license has previously been suspended or revoked under the provisions of this section or section
125 one of this article within the ten years immediately preceding the date of arrest, the period of
126 revocation shall be ten years: *Provided, however*, That if the person's license has previously been
127 suspended or revoked more than once under the provisions of this section or section one of this
128 article within the ten years immediately preceding the date of arrest, the period of revocation shall
129 be for the life of the person.

130 (j) If the Office of Administrative Hearings finds by a preponderance of the evidence that
131 the person did drive a motor vehicle while under the influence of alcohol, controlled substances
132 or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood

133 of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one
134 percent or more, by weight, or finds that the person knowingly permitted the persons vehicle to
135 be driven by another person who was under the influence of alcohol, controlled substances or
136 drugs, or knowingly permitted the person's vehicle to be driven by another person who had an
137 alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight
138 the commissioner shall revoke the person's license for a period of six months or a period of fifteen
139 days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol
140 Test and Lock Program in accordance with the provisions of section three-a of this article:
141 *Provided*, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program
142 that has been imposed by a court pursuant to section two-b, article five of this chapter shall be
143 credited against any period of participation imposed by the commissioner: *Provided*, however,
144 That a person whose license is revoked for driving while under the influence of drugs is not eligible
145 to participate in the Motor Vehicle Alcohol Test and Lock Program: *Provided* further, That if the
146 person's license has previously been suspended or revoked under the provisions of this section
147 or section one of this article within the ten years immediately preceding the date of arrest, the
148 period of revocation shall be ten years: *And provided further*, That if the person's license has
149 previously been suspended or revoked more than once under the provisions of this section or
150 section one of this article within the ten years immediately preceding the date of arrest, the period
151 of revocation shall be for the life of the person.

152 (k) (1) If in addition to finding by a preponderance of the evidence that the person did drive
153 a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of
154 Administrative Hearings also finds by a preponderance of the evidence that the person did drive
155 a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths
156 of one percent or more, by weight, the commissioner shall revoke the person's license for a period
157 of forty-five days with an additional two hundred and seventy days of participation in the Motor
158 Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a,

159 article five-a, chapter seventeen-c of this code: *Provided*, That if the person's license has
160 previously been suspended or revoked under the provisions of this section or section one of this
161 article within the ten years immediately preceding the date of arrest, the period of revocation shall
162 be ten years: *Provided, however*, That if the person's license has previously been suspended or
163 revoked the person's license more than once under the provisions of this section or section one
164 of this article within the ten years immediately preceding the date of arrest, the period of revocation
165 shall be for the life of the person.

166 (2) If a person whose license is revoked pursuant to subdivision (1) of this subsection
167 proves by clear and convincing evidence that they do not own a motor vehicle upon which the
168 alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor
169 Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty
170 days: *Provided*, That if the person's license has previously been suspended or revoked under the
171 provisions of this section or section one of this article within the ten years immediately preceding
172 the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the
173 person's license has previously been suspended or revoked more than once under the provisions
174 of this section or section one of this article within the ten years immediately preceding the date of
175 arrest, the period of revocation shall be for the life of the person.

176 (l) If, in addition to a finding that the person did drive a motor vehicle while under the age
177 of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one
178 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office
179 of Administrative Hearings also finds by a preponderance of the evidence that the person when
180 driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure
181 proximately caused the death of a person, and if the Office of Administrative Hearings further
182 finds that the alcohol concentration in the blood was a contributing cause to the death, the
183 commissioner shall revoke the person's license for a period of five years: *Provided*, That if the
184 person's license has previously been suspended or revoked under the provisions of this section

185 or section one of this article within the ten years immediately preceding the date of arrest, the
186 period of revocation shall be for the life of the person.

187 (m) If, in addition to a finding that the person did drive a motor vehicle while under the age
188 of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one
189 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office
190 of Administrative Hearings also finds by a preponderance of the evidence that the person when
191 driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure
192 proximately caused bodily injury to a person other than himself or herself, and if the Office of
193 Administrative Hearings further finds that the alcohol concentration in the blood was a contributing
194 cause to the bodily injury, the commissioner shall revoke the person's license for a period of two
195 years: *Provided*, That if the person's license has previously been suspended or revoked under
196 the provisions of this section or section one of this article within the ten years immediately
197 preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That
198 if the person's license has previously been suspended or revoked more than once under the
199 provisions of this section or section one of this article within the ten years immediately preceding
200 the date of arrest, the period of revocation shall be for the life of the person.

201 (n) If the Office of Administrative Hearings finds by a preponderance of the evidence that
202 the person did drive a motor vehicle while under the age of twenty-one years with an alcohol
203 concentration in his or her blood of two hundredths of one percent or more, by weight, but less
204 than eight hundredths of one percent, by weight, the commissioner shall suspend the person's
205 license for a period of sixty days: *Provided*, That if the person's license has previously been
206 suspended or revoked under the provisions of this section or section one of this article, the period
207 of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is
208 longer.

209 (o) If, in addition to a finding that the person did drive a motor vehicle while under the
210 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an

211 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
212 the Office of Administrative Hearings also finds by a preponderance of the evidence that the
213 person when driving did have on or within the Motor vehicle another person who has not reached
214 his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of
215 one year: *Provided*, That if the person's license has previously been suspended or revoked under
216 the provisions of this section or section one of this article within the ten years immediately
217 preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That
218 if the person's license has previously been suspended or revoked more than once under the
219 provisions of this section or section one of this article within the ten years immediately preceding
220 the date of arrest, the period of revocation shall be for the life of the person.

221 (p) For purposes of this section, where reference is made to previous suspensions or
222 revocations under this section, the following types of criminal convictions or administrative
223 suspensions or revocations shall also be regarded as suspensions or revocations under this
224 section or section one of this article:

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

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

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

233 (q) In the case of a hearing in which a person is accused of refusing to submit to a
234 designated secondary test, the Office of Administrative Hearings shall make specific findings as
235 to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the
236 person had been driving a motor vehicle in this state while under the influence of alcohol,

237 controlled substances or drugs; (2) in the event the officer asked the person to submit to a
238 secondary chemical test, whether the ~~person was lawfully placed under arrest for an offense~~
239 ~~involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully~~
240 ~~taken into custody for the purpose of administering a secondary test: *Provided*, That this element~~
241 ~~shall be waived in cases where no arrest occurred due to driver incapacitation~~ officer lawfully
242 directed the person to take the secondary chemical test; (3) whether the person committed an
243 offense relating to driving a motor vehicle in this state while under the influence of alcohol,
244 controlled substances or drugs; (4) whether the person refused to submit to the secondary test
245 finally designated in the manner provided in section four, article five of this chapter; and (5)
246 whether the person had been given a written statement advising the person that the person's
247 license to operate a motor vehicle in this state would be revoked for at least forty-five days and
248 up to life if the person refused to submit to the test finally designated in the manner provided in
249 said section.

250 (r) If the Office of Administrative Hearings finds by a preponderance of the evidence that:
251 (1) The investigating officer had reasonable grounds to believe the person had been driving a
252 motor vehicle in this state while under the influence of alcohol, controlled substances or drugs;
253 (2) ~~whether the person was lawfully placed under arrest~~ in the event the officer asked the person
254 to submit to a secondary chemical test, whether the officer lawfully directed the person to take
255 the secondary chemical test for an offense involving driving under the influence of alcohol,
256 ~~controlled substances or drugs; or was lawfully taken into custody for the purpose of administering~~
257 ~~a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred~~
258 ~~due to driver incapacitation~~ (3) the person committed an offense relating to driving a motor vehicle
259 in this state while under the influence of alcohol, controlled substances or drugs; (4) the person
260 refused to submit to the secondary test finally designated in the manner provided in section four,
261 article five of this chapter; and (5) the person had been given a written statement advising the
262 person that the person's license to operate a motor vehicle in this state would be revoked for at

263 least forty-five days and up to life if the person refused to submit to the test finally designated, the
264 commissioner shall revoke the person's license to operate a motor vehicle in this state for the
265 periods specified in section seven, article five of this chapter. The revocation period prescribed in
266 this subsection shall run concurrently with any other revocation period ordered under this section
267 or section one of this article arising out of the same occurrence. The revocation period prescribed
268 in this subsection shall run concurrently with any other revocation period ordered under this
269 section or section one of this article arising out of the same occurrence.

270 (s) If the Office of Administrative Hearings finds to the contrary with respect to the above
271 issues, it shall rescind or modify the commissioner's order and, in the case of modification, the
272 commissioner shall reduce the order of revocation to the appropriate period of revocation under
273 this section or section seven, article five of this chapter. A copy of the Office of Administrative
274 Hearings' final order containing its findings of fact and conclusions of law made and entered
275 following the hearing shall be served upon the person whose license is at issue or upon the
276 person's legal counsel if the person is represented by legal counsel by registered or certified mail,
277 return receipt requested, or by facsimile or by electronic mail if available. The final order shall be
278 served upon the commissioner by electronic mail. During the pendency of any hearing, the
279 revocation of the person's license to operate a motor vehicle in this state shall be stayed.

280 A person whose license is at issue and the commissioner shall be entitled to judicial review
281 as set forth in chapter twenty-nine-a of this code. Neither the commissioner nor the Office of
282 Administrative Hearings may stay enforcement of the order. The court may grant a stay or
283 supersede as of the order only upon motion and hearing, and a finding by the court upon the
284 evidence presented, that there is a substantial probability that the appellant shall prevail upon the
285 merits and the appellant will suffer irreparable harm if the order is not stayed: *Provided*, That in
286 no event shall the stay or supersede as of the order exceed one hundred fifty days. The Office of
287 Administrative Hearings may not be made a party to an appeal. The party filing the appeal shall
288 pay the Office of Administrative Hearings for the production and transmission of the certified file

289 copy and the hearing transcript to the court. Notwithstanding the provisions of section four, article
290 five of said chapter, the Office of Administrative Hearings may not be compelled to transmit a
291 certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days.
292 Circuit clerk shall provide a copy of the circuit court's final order on the appeal to the Office of
293 Administrative Hearings by regular mail, by facsimile, or by electronic mail if available.

294 (t) In any revocation or suspension pursuant to this section, if the driver whose license is
295 revoked or suspended had not reached the driver's eighteenth birthday at the time of the conduct
296 for which the license is revoked or suspended, the driver's license shall be revoked or suspended
297 until the driver's eighteenth birthday or the applicable statutory period of revocation or suspension
298 prescribed by this section, whichever is longer.

299 (u) Funds for this section's hearing and appeal process may be provided from the Drunk
300 Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code,
301 upon application for the funds to the Commission on Drunk Driving Prevention.

NOTE: The purposes of this bill are as follows: (1) To provide that the DMV may not stay a revocation for DUI if the driver has a stay of a previous revocation for DUI or if DMV receives notice of a conviction from a court for an additional offense while the case is pending for hearing before the Office of Administrative Hearings; (2) to require that a person wishing to contest a DUI must assert "sufficient grounds" in his or her hearing request upon which the case may be contested. (The current statute only requires that a person must submit a written objection to the revocation within 30 days from receipt of the revocation order); (3) to provide that the exclusionary rule applicable in criminal cases does not apply in administrative revocation proceedings due to such proceedings being civil in nature; (4) to delete the requirement that the Office of Administrative Hearings make a finding that a person was lawfully arrested for DUI as a prerequisite to deciding a case and issuing a final order and, (5) to delete the requirement that the Office of Administrative Hearings must find whether a person was lawfully placed under arrest when the person is alleged to have refused to submit to the secondary chemical test while substituting language that the person was "lawfully directed" to submit to the test.

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