

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 212**

BY SENATORS TRUMP, BLAIR AND MARONEY

[Originating in the Committee on the Judiciary;

reported on March 9, 2017]

1 A BILL to amend and reenact §17C-5-2, §17C-5-2b, §17C-5-4, §17C-5-7 and §17C-5-12 of the  
2 Code of West Virginia, 1931, as amended; to amend and reenact §17C-5A-1, §17C-5A-  
3 1a and §17C-5A-3 of said code; to amend said code by adding thereto two new sections,  
4 designated §17C-5A-1b and §17C-5A-1c; to amend said code by adding thereto a new  
5 section, designated §17C-5C-6; and to amend and reenact §17C-19-3 of said code, all  
6 relating generally to the procedures for drivers' license suspensions and revocations for  
7 driving under the influence of alcohol, controlled substances or drugs; transferring  
8 authority for hearing matters related to suspensions or revocations of drivers' license for  
9 operating a motor vehicle while under the influence of alcohol, controlled substances or  
10 drugs from the Office of Administrative Hearings to courts; establishing mandatory  
11 revocation periods for individuals convicted of driving under the influence; authorizing  
12 alternate revocation period involving participation in Motor Vehicle Alcohol Test and Lock  
13 Program for certain first offenses; establishing mandatory revocation periods for  
14 individuals upon subsequent convictions for driving under the influence; directing  
15 Commissioner of Division of Motor Vehicles to revoke driver's license upon conviction for  
16 driving under the influence; requiring individuals whose driver's licenses have been  
17 revoked upon conviction for driving under the influence to complete comprehensive safety  
18 and treatment program before driver's license can be reinstated; prohibiting persons  
19 convicted of certain felonies from participating in Motor Vehicle Alcohol Test and Lock  
20 Program; permitting persons convicted of certain misdemeanors to participate in Motor  
21 Vehicle Alcohol Test and Lock Program; requiring driver consent to requiring participation  
22 in Motor Vehicle Alcohol Test and Lock Program; requiring any period of revocation  
23 imposed pursuant to a conviction begin once any period of incarceration has been served;  
24 making individuals who are found guilty of driving under the influence ineligible for deferral  
25 of further proceedings upon condition of participation in Motor Vehicle Alcohol Test and  
26 Lock Program; requiring deferral program to be completed within one year; prohibiting

27 secondary test of blood without issuance of warrant signed by a magistrate or circuit judge;  
28 authorizing secondary test of blood with written consent; requiring that individual arrested  
29 for driving under the influence be advised verbally of certain consequences for refusal to  
30 submit to secondary chemical test; requiring that individual arrested for driving under the  
31 influence be given written statement informing the individual of legal consequences of  
32 taking or refusing to submit to secondary chemical test and informing the individual of right  
33 to receive secondary blood test; requiring arresting officer to wait fifteen minutes before  
34 refusal considered final; requiring that, following an individual's refusal to submit to  
35 secondary chemical test, an arresting officer execute a signed statement that the officer  
36 administered all required warnings; directing officer to submit copy of written statement to  
37 Commissioner of Division of Motor Vehicles and court having jurisdiction over charges  
38 filed against the individual; eliminating all statutory provisions authorizing or requiring the  
39 Commissioner of the Division of Motor Vehicles to take administrative action upon an  
40 individual's driver's license on the basis of a driving under the influence arrest absent  
41 direction from court; directing Bureau for Public Health to prepare report for Joint  
42 Committee on Government and Finance related to minimum levels of drugs and controlled  
43 substances to be admitted as prima facie evidence of driving under the influence and  
44 minimum levels that laboratories can reliably identify and measure in blood; limiting  
45 administrative jurisdiction of Division of Motor Vehicles and Office of Administrative  
46 Hearings to offenses occurring on or before June 30, 2017; providing that administrative  
47 hearings relating to refusal to undergo a secondary chemical test does not apply to  
48 offenses occurring on or after July 1, 2017; eliminating requirement for an order entered  
49 by the Division of Motor Vehicles revoking a driver's license to advise of procedures for  
50 requesting administrative hearing when the offense is driving under the influence; limiting  
51 the right of individuals to challenge suspension or revocation of driver's licenses to the  
52 issue of mistaken identity; requiring the commissioner to take corrective action if a driver's

53 license is incorrectly suspended or revoked based on mistaken identity; providing that plea  
54 of no contest constitutes a conviction; requiring pretrial suspension of driver's license if  
55 individual refuses to submit to secondary chemical test; permitting pretrial suspension of  
56 driver's license by court under certain circumstances; establishing right to request and  
57 receive hearing of suspension orders pending criminal proceedings in court where case  
58 is pending; setting time limits for defendant to request hearing and for hearing to be held;  
59 requiring the clerk of a court to transmit a copy of an order suspending or revoking a  
60 driver's license and any surrendered license to the Division of Motor Vehicles; providing  
61 terms and length of pretrial license suspension; giving persons convicted of driving under  
62 the influence credit for pretrial suspension time against period of revocation imposed;  
63 authorizing court to modify pretrial suspension of driver's license; providing that any period  
64 of modified pretrial driver's license suspension is not credited against future period of  
65 revocation imposed; establishing the scope of review for judicial review of pretrial driver's  
66 license suspension for refusal to submit to secondary chemical test; directing clerk of court  
67 to forward orders on refusal hearings to Division of Motor Vehicles; providing that finding  
68 of driver refusal is final if no hearing requested; prescribing periods of revocation for  
69 Commissioner of Division of Motor Vehicles to impose upon receipt of court order on  
70 refusal; directing copy of revocation order to be sent to person by certified mail; specifying  
71 contents of order; providing that revocation for refusal run concurrently with other  
72 revocation imposed as a result of same incident that led to refusal; making persons  
73 convicted of driving under the influence eligible for participation in comprehensive safety  
74 and treatment program and related reductions in length of revocation for successful  
75 completion thereof; establishing procedures and timeline for the Office of Administrative  
76 Hearings to transfer jurisdiction of certain driver's license suspension and revocation  
77 matters to the courts; establishing timeline for OAH to transfer jurisdiction of certain  
78 driver's license suspension and revocation matters to Division of Motor Vehicles; directing

79           arresting officer to request, and driver to surrender, driver’s license upon arrest for driving  
80           under the influence; eliminating obsolete language; and making technical corrections.

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

1           That §17C-5-2, §17C-5-2b, §17C-5-4, §17C-5-7 and §17C-5-12 of the Code of West  
2 Virginia, 1931, as amended, be amended and reenacted; that §17C-5A-1, §17C-5A-1a and §17C-  
3 5A-3 of said code be amended and reenacted; that said code be amended by adding thereto two  
4 new sections, designated §17C-5A-1b and §17C-5A-1c; that said code be amended by adding  
5 thereto a new section, designated §17C-5C-6; and that §17C-19-3 be amended and reenacted,  
6 all to read as follows:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

1           (a) *Definitions.* —

2           (1) “Impaired state” means a person:

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 or inhalant substance;

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

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

10          (2) “Bodily injury” means injury that causes substantial physical pain, illness or any  
11 impairment of physical condition.

12          (3) “Serious bodily injury” means bodily injury that creates a substantial risk of death, that  
13 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or  
14 impairment of the function of any bodily organ.

15          (b) Any person who drives a vehicle in this state while he or she is in an impaired state

16 and such impaired state proximately causes the death of any person is guilty of a felony and,  
17 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three  
18 nor more than fifteen years, ~~and~~ shall be fined not less than \$1,000 nor more than \$3,000, and  
19 shall have his or her driver's license revoked by the Commissioner of the Division of Motor  
20 Vehicles for a period of ten years: *Provided*, That any death charged under this subsection must  
21 occur within one year of the offense: *Provided, however*, That if the person has previously been  
22 convicted under the provisions of this subsection or subsection (c) or (d) of this section, then the  
23 person shall have his or her driver's license revoked by the Commissioner of the Division of Motor  
24 Vehicles for life.

25 (c) Any person who drives a vehicle in this state while he or she is in an impaired state  
26 and such impaired state proximately causes serious bodily injury to any person other than himself  
27 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
28 correctional facility for not less than two nor more than ten years, ~~and~~ shall be fined not less than  
29 \$1,000 nor more than \$3,000, and shall have his or her driver's license revoked by the  
30 Commissioner of the Division of Motor Vehicles for a period of five years: *Provided*, That if the  
31 person has previously been convicted under the provisions of this section or subsection (b) or (d)  
32 of this section, then the person shall have his or her driver's license revoked by the Commissioner  
33 of the Division of Motor Vehicles for life.

34 (d) Any person who drives a vehicle in this state while he or she is in an impaired state  
35 and such impaired state proximately causes a bodily injury to any person other than himself or  
36 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not  
37 less than one day nor more than one year, ~~and~~ shall be fined not less than \$200 nor more than  
38 \$1,000, and shall have his or her driver's license revoked by the Commissioner of the Division of  
39 Motor Vehicles for a period of two years: *Provided*, That such jail term shall include actual  
40 confinement of not less than twenty-four hours: *Provided, however*, That a person sentenced  
41 pursuant to this subsection shall receive credit for any period of actual confinement he or she

42 served upon arrest for the subject offense: Provided further, That if the person has previously  
43 been convicted under the provisions of this section or subsection (b) or (c) of this section, then  
44 the person shall have his or her driver's license revoked by the Commissioner of the Division of  
45 Motor Vehicles for life.

46 (e) Any person who drives a vehicle in this state: (i) While he or she is in an impaired state;  
47 or (ii) while he or she ~~is in an impaired state but~~ has an alcohol concentration in his or her blood  
48 of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon  
49 conviction thereof, shall be confined in jail for up to six months, ~~and~~ shall be fined not less than  
50 \$100 nor more than \$500, and shall have his or her driver's license revoked by the Commissioner  
51 of the Division of Motor Vehicles for a period of six months or a period of fifteen days with an  
52 additional one hundred twenty days of participation in the Motor Vehicle Alcohol Test and Lock  
53 Program in accordance with the provisions of section three-a, article five-a of this chapter:  
54 *Provided, That a person sentenced pursuant to this subsection shall receive credit for any period*  
55 *of actual confinement he or she served upon arrest for the subject offense.*

56 (f) Any person who drives a vehicle in this state while he or she has an alcohol  
57 concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty  
58 of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days  
59 nor more than six months, which jail term is to include actual confinement of not less than twenty-  
60 four hours, ~~and~~ shall be fined not less than \$200 nor more than \$1,000, and shall have his or her  
61 driver's license revoked by the Commissioner of the Division of Motor Vehicles for a period of one  
62 year or for a period of forty-five days with an additional two hundred seventy days of participation  
63 in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section  
64 three-a, article five-a of this chapter. A person sentenced pursuant to this ~~subdivision~~ subsection  
65 shall receive credit for any period of actual confinement he or she served upon arrest for the  
66 subject offense.

67 (g) Any person who, being a habitual user of narcotic drugs or amphetamine or any

68 derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction  
69 thereof, shall be confined in jail for not less than one day nor more than six months, which jail  
70 term is to include actual confinement of not less than twenty-four hours, ~~and~~ shall be fined not  
71 less than \$100 nor more than \$500, and shall have his or her driver's license revoked by the  
72 Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced  
73 pursuant to this ~~subdivision~~ subsection shall receive credit for any period of actual confinement  
74 he or she served upon arrest for the subject offense.

75 (h) Any person who knowingly permits his or her vehicle to be driven in this state by any  
76 other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof,  
77 shall be confined in jail for not more than six months, ~~and~~ shall be fined not less than \$100 nor  
78 more than \$500, and shall have his or her driver's license revoked by the Commissioner of the  
79 Division of Motor Vehicles for a period of six months or a period of fifteen days with an additional  
80 one hundred twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in  
81 accordance with the provisions of section three-a, article five-a of this chapter.

82 (i) Any person who knowingly permits his or her vehicle to be driven in this state by any  
83 other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is  
84 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than  
85 six months, ~~and~~ shall be fined not less than \$100 nor more than \$500, and shall have his or her  
86 driver's license revoked by the Commissioner of the Division of Motor Vehicles for a period of six  
87 months.

88 (j) Any person under the age of twenty-one years who drives a vehicle in this state while  
89 he or she has an alcohol concentration in his or her blood of two hundredths of one percent or  
90 more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under  
91 this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less  
92 than \$25 nor more than \$100 and have his or her driver's license suspended by the Commissioner  
93 of the Division of Motor Vehicles for a period of sixty days. For a second or subsequent offense



94 under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall  
95 be confined in jail for twenty-four hours, ~~and~~ shall be fined not less than \$100 nor more than \$500,  
96 and shall have his or her driver's license revoked by the Commissioner of the Division of Motor  
97 Vehicles for a period of one year or until the person's twenty-first birthday, whichever period is  
98 longer. A person who is charged with a first offense under the provisions of this subsection may  
99 move for a continuance of the proceedings, from time to time, to allow the person to participate in  
100 the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of  
101 this chapter. Upon successful completion of the program, the court shall dismiss the charge  
102 against the person and expunge the person's record as it relates to the alleged offense. In the  
103 event the person fails to successfully complete the program, the court shall proceed to an  
104 adjudication of the alleged offense. A motion for a continuance under this subsection may not be  
105 construed as an admission or be used as evidence.

106 A person arrested and charged with an offense under the provisions of this subsection or  
107 subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section may not also be charged with an offense  
108 under this subsection arising out of the same transaction or occurrence.

109 (k) Any person who drives a vehicle in this state while he or she is in an impaired state  
110 and has within the vehicle one or more other persons who are unemancipated minors who have  
111 not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof,  
112 shall be confined in jail for not less than two days nor more than twelve months, ~~and~~ shall be fined  
113 not less than \$200 nor more than \$1,000, and shall have his or her driver's license revoked by  
114 the Commissioner of the Division of Motor Vehicles for a period of one year: *Provided*, That such  
115 jail term shall include actual confinement of not less than forty-eight hours: *Provided, however*,  
116 That a person sentenced pursuant to this subsection shall receive credit for any period of actual  
117 confinement he or she served upon arrest for the subject offense: *Provided further, That if the*  
118 person has previously been convicted under the provisions of this section, then the person shall  
119 have his or her driver's license revoked by the Commissioner of the Division of Motor Vehicles for

120 a period of ten years: *And provided further*, That if the person has previously been convicted  
121 under the provisions of this section on two or more occasions, then the person shall have his or  
122 her driver's license revoked by the Commissioner of the Division of Motor Vehicles for life.

123 (l) A person violating any provision of subsection ~~(d)~~, (e), (f), (g), (h) or ~~(j)~~ (i) of this section,  
124 for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof,  
125 shall be confined in jail for not less than six months nor more than one year, shall have his or her  
126 driver's license revoked by the Commissioner of the Division of Motor Vehicles for a period of ten  
127 years, and the court may, in its discretion, impose a fine of not less than \$1,000 nor more than  
128 \$3,000.

129 (m) A person violating any provision of subsection ~~(d)~~, (e), (f), (g), (h) or ~~(j)~~ (i) of this  
130 section, for the third or any subsequent offense under this section, is guilty of a felony and, upon  
131 conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more  
132 than five years, shall have his or her driver's license revoked by the Commissioner of the Division  
133 of Motor Vehicles for life, and the court may, in its discretion, impose a fine of not less than \$3,000  
134 nor more than \$5,000.

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

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

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

144 (3) Any period of conditional probation imposed pursuant section two-b of this article for  
145 violation of subsection (e) of this section, which violation occurred within the ten-year period

146 immediately preceding the date of arrest in the current proceeding.

147 (o) A person may be charged in a warrant or indictment or information for a second or  
148 subsequent offense under this section if the person has been previously arrested for or charged  
149 with a violation of this section which is alleged to have occurred within the applicable time period  
150 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the  
151 charges for the alleged previous offense. In that case, the warrant or indictment or information  
152 must set forth the date, location and particulars of the previous offense or offenses. No person  
153 may be convicted of a second or subsequent offense under this section unless the conviction for  
154 the previous offense has become final, or the person has previously had a period of conditional  
155 probation imposed pursuant to section two-b of this article.

156 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or  
157 (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this  
158 section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not  
159 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i)  
160 of this section.

161 (q) For purposes of this section, the term "controlled substance" has the meaning ascribed  
162 to it in chapter sixty-a of this code.

163 (r) The sentences provided in this section upon conviction for a violation of this article are  
164 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply  
165 the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or  
166 committed to a term of one year or less for a first offense under this section: *Provided, however*,  
167 That the court may impose a term of conditional probation pursuant to section two-b of this article  
168 to persons adjudicated thereunder. An order for home detention by the court pursuant to the  
169 provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative  
170 sentence to any period of incarceration required by this section for a first or subsequent offense:  
171 *Provided, further*, That for any period of home incarceration ordered for a person convicted of

172 second offense under this section, electronic monitoring shall be required for no fewer than five  
173 days of the total period of home confinement ordered and the offender may not leave home for  
174 those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two  
175 of this code: *And provided further*, That for any period of home incarceration ordered for a person  
176 convicted of a third or subsequent violation of this section, electronic monitoring shall be included  
177 for no fewer than ten days of the total period of home confinement ordered and the offender may  
178 not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two  
179 of this code.

180 (s) A person whose driver's license has been revoked by the Commissioner of the Division  
181 of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment  
182 program as set forth in section three, article five-a of this chapter before his or her driver's license  
183 can be reinstated.

184 (t) No person convicted of a felony offense under this section shall be eligible for  
185 participation in the Motor Vehicle Alcohol Test and Lock Program as described in section three-  
186 a, article five-a of this chapter. Any person who is convicted of a misdemeanor offense is eligible  
187 for participation in the Motor Vehicle Alcohol Test and Lock Program as described in section three-  
188 a, article five-a of this chapter.

189 (u) For any offense for which an alternative revocation period is permitted conditioned  
190 upon participation in the Motor Vehicle Alcohol Test and Lock Program, no such alternative  
191 sentence may be imposed without the consent of the driver.

192 (v) Any period of revocation imposed by the Commissioner of the Division of Motor  
193 Vehicles pursuant to the provisions of this section shall begin only after any period of incarceration  
194 has been completed.

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

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

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

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

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

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

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

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

32           (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol  
33 Test and Lock Program, the defendant waives the appropriate statute of limitations and the  
34 defendant's right to a speedy trial under any applicable federal or state constitutional provisions,  
35 statutes or rules of court during the period of enrollment in the program.

36           ~~(d)~~ (c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol  
37 Test and Lock Program and complied with its conditions, the defendant may move the court for  
38 an order dismissing the charges. This motion shall be supported by affidavit of the defendant and  
39 by certification of the Division of Motor Vehicles that the defendant has successfully completed  
40 the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the  
41 prosecuting attorney who shall within thirty days after service advise the judge of any objections  
42 to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If  
43 there are no objections filed within the thirty-day period, the court shall thereafter dismiss the  
44 charges against the defendant. If there are objections filed with regard to the dismissal of charges,  
45 the court shall proceed as set forth in subsection (c) of this section.

46           ~~(e)~~ (d) Except as provided herein, unless a defendant adjudicated pursuant to this  
47 subsection be convicted of a subsequent violation of this article, discharge and dismissal under  
48 this section shall be without adjudication of guilt and is not a conviction for purposes of  
49 disqualifications or disabilities imposed by law upon conviction of a crime except for those  
50 provided in article five-a of this chapter. Except as provided in subsections (k), (l), (m) and (n),  
51 section two of this article regarding subsequent offenses, the effect of the dismissal and discharge  
52 shall be to restore the person in contemplation of law to the status he or she occupied prior to

53 arrest and trial. No person as to whom a dismissal and discharge have been effected shall be  
54 thereafter held to be guilty of perjury, false swearing or otherwise giving a false statement by  
55 reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any  
56 inquiry made of him or her for any purpose other than any inquiry made in connection with any  
57 subsequent offense as that term is defined in subsection (n), section two of this article.

58 ~~(f)~~ (e) There may be only one discharge and dismissal under this section with respect to  
59 any person.

60 ~~(g)~~ (f) No person shall be eligible for dismissal and discharge under this section: (1) In any  
61 prosecution in which any violation of any other provision of this article has been charged; (2) if  
62 the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the  
63 person has previously had his or her driver's license revoked under section two-a of this article or  
64 under any statute of the United States or of any state relating to driving under the influence of  
65 alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary  
66 chemical test pursuant to section seven of this article.

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

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

76 (3) If the objections are filed, the court shall hold a hearing on the objections, affording all  
77 parties an opportunity to be heard. If the court determines after a hearing that the person during  
78 the period of his or her probation and during the period of time prior to his or her application to

79 the court under this subsection has not been guilty of any serious or repeated violation of the  
80 conditions of his or her probation, it shall order the expungement.

81       ~~(f)~~ (h) Notwithstanding any provision of this code to the contrary, any person prosecuted  
82 for a violation of subsection (e), section two of this article whose case is disposed of pursuant to  
83 the provisions of this section shall be liable for any court costs assessable against a person  
84 convicted of a violation of subsection (k), section two of this article. Payment of such costs may  
85 be made a condition of probation. The costs assessed pursuant to this subsection, whether as a  
86 term of probation or not, shall be distributed as other court costs in accordance with section two,  
87 article three, chapter fifty; section four, article two-a, chapter fourteen; section four, article twenty-  
88 nine, chapter thirty; and sections two, seven and ten, article five, chapter sixty-two of this code.

**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer;  
designations of type of test; definition of law-enforcement officer.**

1       (a) Any person who drives a motor vehicle in this state is considered to have given his or  
2 her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary  
3 chemical test of either his or her blood or breath to determine the alcohol concentration in his or  
4 her blood, or the concentration in the person's body of a controlled substance, drug or any  
5 combination thereof.

6       (b) A preliminary breath analysis may be administered in accordance with the provisions  
7 of section five of this article whenever a law-enforcement officer has reasonable cause to believe  
8 a person has committed an offense prohibited by section two of this article or by an ordinance of  
9 a municipality of this state which has the same elements as an offense described in section two  
10 of this article.

11       (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be  
12 administered at the direction of the arresting law-enforcement officer having probable cause to  
13 believe the person has committed an offense prohibited by section two of this article or by an  
14 ordinance of a municipality of this state which has the same elements as an offense described in



15 said section: Provided, That absent written consent of the person, no secondary test of blood may  
16 be performed without issuance of a warrant signed by a magistrate or a circuit judge.

17 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall  
18 designate the secondary tests to be administered. Notwithstanding the provisions of section  
19 seven of this article, the refusal to submit to a blood test only may not result in the revocation of  
20 the arrested person's license to operate a motor vehicle in this state.

21 (e) Any person to whom a preliminary breath test is administered who is arrested shall be  
22 advised verbally that his or her refusal to submit to a secondary chemical test will result in  
23 suspension of his or her license to operate a motor vehicle while any criminal charges are pending  
24 brought pursuant to section two of this article or an ordinance of a municipality of this state which  
25 has the same elements as an offense described in said section, and given a written statement  
26 advising him or her that his or her refusal to submit to the secondary chemical test pursuant to  
27 subsection (d) of this section will result in the revocation of his or her license to operate a motor  
28 vehicle in this state for a period of at least forty-five days and up to life of the following:

29 (1) That a person's refusal to submit to a secondary chemical test pursuant to subsection  
30 (d) of this section will result in the suspension of his or her license to operate a motor vehicle  
31 during the pendency of any criminal charges brought alleging a violation of section two of this  
32 article or an ordinance of a municipality of this state which has the same elements as an offense  
33 described in said section;

34 (2) That a person's refusal to submit to the secondary chemical test pursuant to subsection  
35 (d) of this section will result in the revocation of his or her license to operate a motor vehicle for a  
36 period of at least forty-five days and up to life;

37 (3) That, if a test is taken, the results of the test may be used against him or her in court  
38 as evidence of violating section two of this article or an ordinance of a municipality of this state  
39 which has the same elements as an offense described in said section; and

40 (4) That, if the person first submits to the requested secondary chemical test, the person

41 has the right to have a test or tests of his or her blood performed as provided in section nine of  
42 this article.

43 (f) Any law-enforcement officer who has been properly trained in the administration of any  
44 secondary chemical test authorized by this article, including, but not limited to, certification by the  
45 Bureau for Public Health in the operation of any equipment required for the collection and analysis  
46 of a breath sample, may conduct the test at any location in the county wherein the arrest is made:  
47 *Provided, That the law-enforcement officer may conduct the test at the nearest available properly*  
48 *functioning secondary chemical testing device located outside the county in which the arrest was*  
49 *made, if: (i) There is no properly functioning secondary chemical testing device located within the*  
50 *county the arrest was made; or (ii) there is no magistrate available within the county the arrest*  
51 *was made for the arraignment of the person arrested. A law-enforcement officer who is directing*  
52 *that a secondary chemical test be conducted has the authority to transport the person arrested to*  
53 *where the secondary chemical testing device is located.*

54 (g) If the arresting officer lacks proper training in the administration of a secondary  
55 chemical test, then any other law-enforcement officer who has received training in the  
56 administration of the secondary chemical test to be administered may, upon the request of the  
57 arresting law-enforcement officer and in his or her presence, conduct the secondary test. The  
58 results of a test conducted pursuant to this subsection may be used in evidence to the same  
59 extent and in the same manner as if the test had been conducted by the arresting law-enforcement  
60 officer.

61 (h) Only the person actually administering or conducting a test conducted pursuant to this  
62 article is competent to testify as to the results and the veracity of the test.

63 (†) (i) (1) For the purpose of this article, the term “law-enforcement officer” or “police officer”  
64 means: (A) Any member of the West Virginia State Police; (B) any sheriff and any deputy sheriff  
65 of any county; (C) any member of a police department in any municipality as defined in section  
66 two, article one, chapter eight of this code; (D) any natural resources police officer of the Division

67 of Natural Resources; and (E) any special police officer appointed by the Governor pursuant to  
68 the provisions of section forty-one, article three, chapter sixty-one of this code who has completed  
69 the course of instruction at a law-enforcement training academy as provided for under the  
70 provisions of section nine, article twenty-nine, chapter thirty of this code.

71 (2) In addition to standards promulgated by the Governor's Committee on Crime,  
72 Delinquency and Correction, pursuant to section three, article twenty-nine, chapter thirty of this  
73 code, governing the qualification of law-enforcement officers and the entry-level law-enforcement  
74 training curricula, the Governor's Committee on Crime, Delinquency and Correction shall require  
75 the satisfactory completion of a minimum of not less than six hours of training in the recognition  
76 of impairment in drivers who are under the influence of controlled substances or drugs other than  
77 alcohol.

78 (3) In addition to standards promulgated by the Governor's Committee on Crime,  
79 Delinquency and Correction, pursuant to section three, article twenty-nine, chapter thirty of this  
80 code, establishing standards governing in-service law-enforcement officer training curricula and  
81 in-service supervisory level training curricula, the Governor's Committee on Crime, Delinquency  
82 and Correction shall require the satisfactory completion of a minimum of not less than six hours  
83 of training in the recognition of impairment in drivers who are under the influence of controlled  
84 substances or drugs other than alcohol.

85 (4) ~~That after December 31, 2014~~ A law-enforcement officer who has not satisfactorily  
86 completed the minimum number of hours of training in the recognition of impairment in drivers  
87 who are under the influence of controlled substances or drugs other than alcohol, required by  
88 subdivision (2) or (3), may no longer require any person to submit to secondary chemical test of  
89 his or her blood for the purposes of determining the concentration in the person's body of a  
90 controlled substance, drug or any combination thereof.

91 (j) A law-enforcement officer who has reasonable cause to believe that a person has  
92 committed an offense prohibited by section eighteen, article seven, chapter twenty of this code,

93 relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the  
94 provisions of this section in administering, or causing to be administered, a preliminary breath  
95 analysis and incidental to a lawful arrest, a secondary chemical test of the accused person's blood  
96 or breath to determine the alcohol concentration in his or her blood, or the concentration in the  
97 person's body of a controlled substance, drug or any combination thereof.

**§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not  
withdrawn if person arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in section four of this article refuses to submit  
2 to any secondary chemical test, the tests shall not be given: *Provided*, That prior to the refusal,  
3 the person is given ~~an oral warning and a written statement advising him or her that~~ containing  
4 the warnings contained in subsection (e), section four of this article, and a verbal warning that his  
5 or her refusal to submit to the secondary test finally designated will result in the revocation  
6 suspension of his or her license to operate a motor vehicle in this state ~~for a period of at least~~  
7 ~~forty-five days and up to life~~ during the pendency of any criminal charge brought pursuant to  
8 section two of this article or an ordinance of a municipality of this state which has the same  
9 elements as an offense described in said section. ~~and that after~~ After fifteen minutes following the  
10 receipt of these warnings by the person under arrest, the refusal is considered final. The arresting  
11 officer after that period of time expires has no further duty to provide the person with an  
12 opportunity to take the secondary test.

13 (b) The officer shall, within forty-eight hours of the refusal, sign and submit to the  
14 Commissioner of the Division of Motor Vehicles and the court having jurisdiction over the charge  
15 filed against the person pursuant to section two of this article a written statement of the officer  
16 that: (1) He or she had probable cause to believe the person had been driving a motor vehicle in  
17 this state while under the influence of alcohol, controlled substances or drugs; (2) the person was  
18 lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while  
19 under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit

20 to the secondary chemical test finally designated in the manner provided in section four of this  
21 article; and (4) the person was given a written statement ~~advising him or her that~~ containing the  
22 warnings contained in subsection (e), section four of this article, and a verbal warning that his or  
23 her refusal to submit to the secondary test finally designated will result in the suspension of his or  
24 her license to operate a motor vehicle in this state ~~would be revoked for a period of at least forty-~~  
25 ~~five days and up to life if he or she refused to submit to the secondary test finally designated in~~  
26 ~~the manner provided in section four of this article~~ during the pendency of any criminal charge  
27 brought pursuant to section two of this article or an ordinance of a municipality of this state which  
28 has the same elements as an offense described in said section. The signing of the statement  
29 required to be signed by this section constitutes an oath or affirmation by the person signing the  
30 statement that the statements contained in the statement are true and that any copy filed is a true  
31 copy. The statement shall contain upon its face a warning to the officer signing that to willfully  
32 sign a statement containing false information concerning any matter or thing, material or not  
33 material, is false swearing and is a misdemeanor. ~~Upon receiving the statement the commissioner~~  
34 ~~shall make and enter an order revoking the person's license to operate a motor vehicle in this~~  
35 ~~state for the period prescribed by this section~~

36 For the first refusal to submit to the designated secondary chemical test, the commissioner  
37 shall ~~make and enter an order revoking the person's license to operate a motor vehicle in this~~  
38 ~~state for a period of one year or forty-five days, with an additional one year of participation in the~~  
39 ~~Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-~~  
40 ~~a, article five-a of this chapter: *Provided*, That a person revoked for driving while under the~~  
41 ~~influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The~~  
42 ~~application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be~~  
43 ~~considered to be a waiver of the hearing provided in section two of said article. If the person's~~  
44 ~~license has previously been revoked under the provisions of this section, the commissioner shall,~~  
45 ~~for the refusal to submit to the designated secondary chemical test, make and enter an order~~

46 ~~revoking the person's license to operate a motor vehicle in this state for a period of ten years:~~  
47 ~~Provided, however, That the license may be reissued in five years in accordance with the~~  
48 ~~provisions of section three, article five-a of this chapter. If the person's license has previously~~  
49 ~~been revoked more than once under the provisions of this section, the commissioner shall, for the~~  
50 ~~refusal to submit to the designated secondary chemical test, make and enter an order revoking~~  
51 ~~the person's license to operate a motor vehicle in this state for a period of life. A copy of each~~  
52 ~~order shall be forwarded to the person by registered or certified mail, return receipt requested,~~  
53 ~~and shall contain the reasons for the revocation and shall specify the revocation period imposed~~  
54 ~~pursuant to this section. A revocation shall not become effective until ten days after receipt of the~~  
55 ~~copy of the order.~~

56 ~~(c) Any person who is unconscious or who is otherwise in a condition rendering him or her~~  
57 ~~incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his~~  
58 ~~or her blood or breath as provided in section four of this article and the test may be administered~~  
59 ~~although the person is not informed that his or her failure to submit to the test will result in the~~  
60 ~~revocation of his or her license to operate a motor vehicle in this state for the period provided for~~  
61 ~~in this section. A revocation under this section shall run concurrently with the period of any~~  
62 ~~suspension or revocation imposed in accordance with other provisions of this code and growing~~  
63 ~~out of the same incident which gave rise to the arrest for driving a motor vehicle while under the~~  
64 ~~influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the~~  
65 ~~test finally designated in accordance with the provisions of section four of this article.~~

66 ~~(b) For the purposes of this section, where reference is made to previous suspensions or~~  
67 ~~revocations under this section, the following types of suspensions or revocations shall also be~~  
68 ~~regarded as suspensions or revocations under this section:~~

69 ~~(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance~~  
70 ~~of another state or a statute of the United States or of any other state of an offense which has the~~  
71 ~~same elements as an offense described in section two of this article for conduct which occurred~~

72 ~~on or after June 10, 1983; and~~

73 ~~(2) Any revocation under the provisions of section one or two, article five-a of this chapter~~  
74 ~~for conduct which occurred on or after June 10, 1983.~~

75 ~~(c) A person whose license to operate a motor vehicle in this state has been revoked shall~~  
76 ~~be afforded an opportunity to be heard, in accordance with the provisions of section two, article~~  
77 ~~five-a of this chapter.~~

78 ~~(d) The refusal to submit to a blood test may be admissible at the courts discretion in a~~  
79 ~~trial for the offense of driving a motor vehicle in this state while under the influence of alcohol a~~  
80 ~~controlled substance or drug or the combination of alcohol and drugs.~~

**§17C-5-12. Report to the Legislature.**

1 On or before December 31, ~~2013~~ 2017, the Bureau for Public Health shall submit to the  
2 Joint Committee on Government and Finance a report that includes the following:

3 (1) Recommendations for the minimum levels of those drugs or controlled substances  
4 contained in subsection (d), section eight of this article, that must be present in a person's blood  
5 in order for the test to be admitted as prima facie evidence that the person was under the influence  
6 of a controlled substance or drug in a prosecution for the offense of driving a motor vehicle in this  
7 state; and

8 (2) Recommendations for the minimum levels of those drugs or controlled substances  
9 contained in subsection (d), section eight of this article, that laboratories approved to test blood  
10 for drug or controlled substance content can reliably identify and measure for the concentrations  
11 of drugs, controlled substances and their metabolites, in blood.

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

**§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the**

**influence of alcohol, controlled substances or drugs or refusal to submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor vehicle in this state and who drives a  
2 motor vehicle in this state shall be deemed to have given his or her consent by the operation  
3 thereof, subject to the provisions of this article, to the procedure set forth in this article for the  
4 determination of whether his or her license to operate a motor vehicle in this state should be  
5 revoked because he or she did drive a motor vehicle while under the influence of alcohol,  
6 controlled substances or drugs, or combined influence of alcohol or controlled substances or  
7 drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of  
8 eight hundredths of one percent or more, by weight, or did refuse to submit to any secondary  
9 chemical test required under the provisions of article five of this chapter or did drive a motor  
10 vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood  
11 of two hundredths of one percent or more, by weight, but less than eight hundredths of one  
12 percent, by weight: Provided, That the provisions of this subsection do not apply to offenses  
13 occurring on or after July 1, 2017.

14 (b) Any law-enforcement officer investigating a person for an offense described in section  
15 two, article five of this chapter occurring on or before June 30, 2017, or for an offense described  
16 in a municipal ordinance which has the same elements as an offense described in said section  
17 occurring on or before June 30, 2017, shall report to the Commissioner of the Division of Motor  
18 Vehicles by written statement within forty-eight hours of the conclusion of the investigation the  
19 name and address of the person believed to have committed the offense. The report shall include  
20 the specific offense with which the person is charged and, if applicable, a copy of the results of  
21 any secondary tests of blood, breath or urine. The signing of the statement required to be signed  
22 by this subsection constitutes an oath or affirmation by the person signing the statement that the  
23 statements contained in the statement are true and that any copy filed is a true copy. The  
24 statement shall contain upon its face a warning to the officer signing that to willfully sign a



25 statement containing false information concerning any matter or thing, material or not material, is  
26 false swearing and is a misdemeanor.

27 (c) If, upon examination of the written statement of the officer and the tests' results  
28 described in subsection (b) of this section, the commissioner determines that a person committed  
29 an offense described in section two, article five of this chapter or an offense described in a  
30 municipal ordinance which has the same elements as an offense described in said section and  
31 that the results of any secondary test or tests indicate that at the time the test or tests were  
32 administered the person had, in his or her blood, an alcohol concentration of eight hundredths of  
33 one percent or more, by weight, or at the time the person committed the offense he or she was  
34 under the influence of alcohol, controlled substances or drugs, the commissioner shall make and  
35 enter an order revoking or suspending the person's license to operate a motor vehicle in this state.  
36 If the results of the tests indicate that at the time the test or tests were administered the person  
37 was under the age of twenty-one years and had an alcohol concentration in his or her blood of  
38 two hundredths of one percent or more, by weight, but less than eight hundredths of one percent,  
39 by weight, the commissioner shall make and enter an order suspending the person's license to  
40 operate a motor vehicle in this state. A copy of the order shall be forwarded to the person by  
41 registered or certified mail, return receipt requested, and shall contain the reasons for the  
42 revocation or suspension and describe the applicable revocation or suspension periods provided  
43 in section two of this article. A revocation or suspension shall not become effective until ten days  
44 after receipt of a copy of the order.

45 (d) Any law-enforcement officer taking a child into custody under the provisions of section  
46 six-a, article five of this chapter on or before June 30, 2017, who has reasonable cause to believe  
47 that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her  
48 blood of two hundredths of one percent or more, by weight, or that the act of the child in driving  
49 the motor vehicle was such that it would provide grounds for arrest for an offense defined under  
50 the provisions of section two of said article if the child were an adult, shall report to the

51 Commissioner of the Division of Motor Vehicles by written statement within forty-eight hours the  
52 name and address of the child.

53 (e) If applicable, the report described in subsection (d) of this section shall include a  
54 description of the specific offense with which the child could have been charged if the child were  
55 an adult and a copy of the results of any secondary tests of blood, breath or urine. The signing of  
56 the statement required to be signed by this subsection constitutes an oath or affirmation by the  
57 person signing the statement that the statements contained in the statement are true and that any  
58 copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing  
59 that to willfully sign a statement containing false information concerning any matter or thing,  
60 material or not material, is false swearing and is a misdemeanor.

61 (f) Upon examination of the written statement of the officer and any test results described  
62 in subsection (d) of this section, if the commissioner determines that the results of the test indicate  
63 that at the time the test or tests were administered the child had, in his or her blood, an alcohol  
64 concentration of two hundredths of one percent or more, by weight, but also determines that the  
65 act of the child in driving the motor vehicle was not such that it would provide grounds for arrest  
66 for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (h), section  
67 two, article five of this chapter if the child were an adult, the commissioner shall make and enter  
68 an order suspending the child's license to operate a motor vehicle in this state. If the commissioner  
69 determines that the act of the child in driving the motor vehicle was such that it would provide  
70 grounds for arrest for an offense defined under the provisions of said subsections if the child were  
71 an adult, the commissioner shall make and enter an order revoking the child's license to operate  
72 a motor vehicle in this state. A copy of the order shall be forwarded to the child by registered or  
73 certified mail, return receipt requested, and shall contain the reasons for the suspension or  
74 revocation and describe the applicable suspension or revocation periods provided for in section  
75 two of this article. A suspension or revocation shall not become effective until ten days after receipt  
76 of a copy of the order.

**§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.**

1 (a) If a person has a term of conditional probation imposed pursuant to section two-b,  
2 article five of this chapter, or is convicted for an offense defined in section two of said article or  
3 for an offense described in a municipal ordinance which has the same elements as an offense  
4 described in said section because the person did drive a motor vehicle while under the influence  
5 of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled  
6 substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or  
7 her blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while  
8 under the age of twenty-one years with an alcohol concentration in his or her blood of two  
9 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by  
10 weight, and if the person does not act to appeal the conviction within the time periods described  
11 in subsection (b) of this section, the person's license to operate a motor vehicle in this state shall  
12 be revoked or suspended in accordance with the provisions of this section.

13 (b) The clerk of the court in which a person has had a term of conditional probation  
14 imposed pursuant to section two-b, article five of this chapter, or is convicted for an offense  
15 described in section two of said article or for an offense described in a municipal ordinance which  
16 has the same elements as an offense described in said section shall forward to the Commissioner  
17 of the Division of Motor Vehicles a transcript of the judgment of conviction. If the conviction is the  
18 judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the  
19 person convicted has not requested an appeal within twenty days of the sentencing for such  
20 conviction. If the term of conditional probation is the act of a magistrate court, the magistrate court  
21 clerk shall forward the transcript when the order imposing the term of conditional probation is  
22 entered. If the conviction is the judgment of a mayor or police court judge or municipal court judge,  
23 the clerk or recorder shall forward the transcript when the person convicted has not perfected an  
24 appeal within ten days from and after the date upon which the sentence is imposed. If the

25 conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the  
26 person convicted has not filed a notice of intent to file a petition for appeal or writ of error within  
27 thirty days after the judgment was entered.

28 (c) If, upon examination of the transcript of the judgment of conviction, or imposition of a  
29 term of conditional probation pursuant to section two-b, article five of this chapter, the  
30 Commissioner of the Division of Motor Vehicles determines that the person was convicted for an  
31 offense described in section two of said article or an ordinance of a municipality of this state which  
32 has the same elements as an offense described in section two of this article, or had a period of  
33 conditional probation imposed pursuant to section two-b, article five of this chapter, ~~or for an~~  
34 ~~offense described in a municipal ordinance which has the same elements as an offense described~~  
35 ~~in said section~~ because the person did drive a motor vehicle while under the influence of alcohol,  
36 controlled substances or drugs, or the combined influence of alcohol or controlled substances or  
37 drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of  
38 eight hundredths of one percent or more, by weight, the commissioner shall make and enter an  
39 order revoking the person's license to operate a motor vehicle in this state. If the commissioner  
40 determines that the person was convicted of driving a motor vehicle while under the age of twenty-  
41 one years with an alcohol concentration in his or her blood of two hundredths of one percent or  
42 more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall  
43 make and enter an order suspending the person's license to operate a motor vehicle in this state.  
44 The order shall contain the reasons for the revocation or suspension and the revocation or  
45 suspension periods provided for in section two, article five of this article chapter. ~~Further, the order~~  
46 ~~shall give the procedures for requesting a hearing which is to be held in accordance with the~~  
47 ~~provisions of said section. The person shall be advised in the order that because of the receipt of~~  
48 ~~a transcript of the judgment of conviction by the commissioner a presumption exists that the~~  
49 ~~person named in the transcript of the judgment of conviction is the person named in the~~  
50 ~~commissioner's order and such constitutes sufficient evidence to support revocation or~~

51 ~~suspension and that the sole purpose for the hearing held under this section is for the person~~  
52 ~~requesting the hearing to present evidence that he or she is not the person named in the transcript~~  
53 ~~of the judgment of conviction. A copy of the order shall be forwarded to the person by registered~~  
54 ~~or certified mail, return receipt requested. No revocation or suspension shall become effective~~  
55 ~~until ten days after receipt of a copy of the order.~~

56 ~~(d) The provisions of this section shall not apply if an order reinstating the operator's~~  
57 ~~license of the person has been entered by the commissioner prior to the receipt of the transcript~~  
58 ~~of the judgment of conviction.~~

59 (d) If a person receives an order advising that his or her license has been suspended or  
60 revoked following receipt by the commissioner of a transcript of a judgment of conviction, and the  
61 person believes that he or she is not the person named in the commissioner's order, the person  
62 may notify the commissioner in writing. Upon receipt of this notification, the commissioner shall  
63 immediately review the contents of the judgment of conviction and the information provided by  
64 the person in question and determine if an error has been made. If such an error is discovered,  
65 the commissioner shall immediately reverse the suspension or revocation of the person's license  
66 and take steps to correctly identify the individual against whom the judgment of conviction has  
67 been entered and immediately suspend his or her license pursuant to subsection (c) of this  
68 section.

69 ~~(e) For the purposes of this section, a person is convicted when the person enters a plea~~  
70 ~~of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction~~  
71 ~~for purposes of this section except where the person holds a commercial drivers license or~~  
72 ~~operates a commercial vehicle.~~

**§17C-5A-1b. Pretrial suspension of driver's license.**

1 (a) The court shall, at the first appearance or arraignment, or as soon as such relevant  
2 information becomes available, suspend the driver's license and driving privileges of any person  
3 charged with a violation of section two, article five of this chapter who refused to submit to a

4 secondary chemical test as required by section four of said article.

5 (b) Upon motion by the prosecutor, the court may, at the arraignment or as soon as such  
6 relevant information becomes available, suspend the driver's license and driving privileges of any  
7 person charged with a violation of section two, article five of this chapter if the court finds that  
8 allowing the person to maintain a license would pose a substantial risk of harming others during  
9 the pendency of the action.

10 (c) A person whose license has been suspended pursuant to this section may file a motion  
11 for a hearing of the suspension in the court in which the charges are pending within ten days, and  
12 the court shall conduct the review in accordance with this article within thirty days after the filing  
13 of the motion. The court shall, at the time of the suspension, advise the defendant of his or her  
14 right to a hearing.

15 (d) Upon notice that the court has ordered the suspension of a person's license, the clerk  
16 of the court in which the charges are pending shall forthwith transmit to the Commissioner of the  
17 Division of Motor Vehicles a copy of the order suspending the person's license, along with any  
18 license surrendered by the person, and the commissioner shall promptly update the division's  
19 records to indicate that the person's license is suspended.

20 (e) Licenses suspended under this section shall remain suspended until a judgment of  
21 conviction or acquittal is entered in the case or until the court enters an order directing the  
22 Commissioner of the Division of Motor Vehicles to terminate the suspension, but in no event for  
23 a period longer than the maximum license suspension period applicable to the person under  
24 section two, article five of this chapter.

25 (f) Any person whose driver's license has been suspended pursuant to this section shall  
26 be given credit for all pretrial suspension time against the period of revocation imposed.

27 (g) The court may, in its discretion or upon motion by a party, impose a modified pretrial  
28 suspension of the driver's license and driving privileges for any person whose license is  
29 suspended pursuant to the provisions of this section. No person shall be given credit for any such

30 period of modified pretrial suspension against any future period of revocation imposed.

**§17C-5A-1c. License suspension and registration for test refusal.**

1 (a) If a person files a motion for a hearing upon a pretrial suspension of his or her license  
2 under subsection (a), section one-b of this article, the scope of the hearing is limited to determining  
3 whether one or more of the following conditions have not been met:

4 (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the  
5 arrested person had committed a violation of section two, article five of this chapter;

6 (2) Whether the law-enforcement officer requested the arrested person to submit to the  
7 chemical test or tests designated pursuant to section four, article five of this chapter;

8 (3) Whether, at the time the test was requested, the law-enforcement officer administered  
9 the required written and verbal warnings pursuant to section seven, article five of this chapter;  
10 and

11 (4) Whether the arrested person refused to submit to the chemical test or tests requested  
12 by the law-enforcement officer.

13 (b) Following a hearing held pursuant to subsection (a) of this section, the clerk of the  
14 court in which the charges are pending shall forthwith transmit to the Commissioner of the Division  
15 of Motor Vehicles a copy of the order entered.

16 (c) If a person whose license is suspended under subsection (a), section one-b of this  
17 article fails to file a timely request for a hearing, the determination that the individual refused to  
18 submit to the requested secondary chemical test shall be determined to be final. At the expiration  
19 of this time, the court shall make and enter an order to that effect. The clerk of the court in which  
20 the charges are pending shall forthwith transmit to the Commissioner of the Division of Motor  
21 Vehicles a copy of the order.

22 (d) Upon receipt of an order provided pursuant to subsection (b) or (c) of this section  
23 finding that a person did not refuse the secondary chemical test, the Commissioner of the Division  
24 of Motor Vehicles shall reinstate the person's driver's license from any pretrial suspension

25 imposed for refusal to submit to the secondary chemical test.

26 (e) Upon receipt of an order provided pursuant to subsection (b) or (c) of this section  
27 finding that a person refused the secondary chemical test, the Commissioner of the Division of  
28 Motor Vehicles shall make and enter an order revoking the person's driver's license as follows:

29 (1) For the first refusal to submit to the designated secondary chemical test, the  
30 commissioner shall make and enter an order revoking the person's license to operate a motor  
31 vehicle in this state for a period of one year or forty-five days, with an additional one year of  
32 participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the  
33 provisions of section three-a, article five-a of this chapter: *Provided*, That a person revoked for  
34 driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Test  
35 and Lock Program.

36 (2) If the person's license has previously been revoked under the provisions of this section,  
37 the commissioner shall, for the refusal to submit to the designated secondary chemical test, make  
38 and enter an order revoking the person's license to operate a motor vehicle in this state for a  
39 period of ten years: *Provided*, That the license may be reissued in five years in accordance with  
40 the provisions of section three of this article.

41 (3) If the person's license has previously been revoked more than once under the  
42 provisions of this section, the commissioner shall, for the refusal to submit to the designated  
43 secondary chemical test, make and enter an order revoking the person's license to operate a  
44 motor vehicle in this state for a period of life.

45 (f) A copy of each order entered pursuant to subsection (d) of this section shall be  
46 forwarded to the person by registered or certified mail, return receipt requested, and shall contain  
47 the reasons for the revocation and shall specify the revocation period imposed pursuant to this  
48 section.

49 (g) A revocation under this section shall run concurrently with the period of any suspension  
50 or revocation imposed in accordance with other provisions of this code and growing out of the



51 same incident which gave rise to the arrest for driving a motor vehicle while under the influence  
52 of alcohol, controlled substances or drugs and the subsequent refusal to undergo the test finally  
53 designated in accordance with the provisions of section four of this article.

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

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

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

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

23 and (4) a recommendation as to treatment or rehabilitation and the terms and conditions of the  
24 treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the  
25 diagnosis of alcohol or drug abuse and treatment.

26 (d) There is hereby created a special revenue account within the State Treasury known  
27 as the Department of Health and Human Resources Safety and Treatment Fund. The account  
28 shall be administered by the Secretary of the Department of Health and Human Resources for  
29 the purpose of administering the comprehensive safety and treatment program established by  
30 subsection (a) of this section. The account may be invested, and all earnings and interest accruing  
31 shall be retained in the account. The Auditor shall conduct an audit of the fund at least every three  
32 fiscal years.

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

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

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

44 (3) Program providers shall remit to the Department of Health and Human Resources a  
45 portion of the fee collected, which shall be deposited by the Secretary of the Department of Health  
46 and Human Resources into the Department of Health and Human Resources Safety and  
47 Treatment Fund. The Department of Health and Human Resources shall reimburse enrollment  
48 fees to program providers for each eligible indigent offender.

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

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

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

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

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

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

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

68 (2) When the period of revocation is for a period of one year or for more than a year, the  
69 license to operate a motor vehicle in this state may not be reissued until: (A) At least one-half of  
70 the time period has elapsed from the date of the initial revocation, during which time the revocation  
71 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of  
72 the program and administration have been paid; and (D) all costs assessed as a result of a  
73 revocation hearing have been paid. Notwithstanding any provision in this code, a person whose  
74 license is revoked for refusing to take a chemical test as required by section seven, article five of

75 this chapter for a first offense is not eligible to reduce the revocation period by completing the  
76 safety and treatment program.

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

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

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

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

97 (i) A required component of the treatment program provided in subsection (b) of this  
98 section and the education program provided for in subsection (c) of this section shall be  
99 participation by the violator with a victim impact panel program providing a forum for victims of  
100 alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of

101 alcohol and drug-related offenses in their lives. The Department of Health and Human Resources,  
102 Division of Alcoholism and Drug Abuse shall propose and implement a plan for victim impact  
103 panels where appropriate numbers of victims are available and willing to participate and shall  
104 establish guidelines for other innovative programs which may be substituted where the victims  
105 are not available to assist persons whose licenses have been suspended or revoked for alcohol  
106 and drug-related offenses to gain a full understanding of the severity of their offenses in terms of  
107 the impact of the offenses on victims and offenders. The plan shall require, at a minimum,  
108 discussion and consideration of the following:

- 109 (A) Economic losses suffered by victims or offenders;
- 110 (B) Death or physical injuries suffered by victims or offenders;
- 111 (C) Psychological injuries suffered by victims or offenders;
- 112 (D) Changes in the personal welfare or familial relationships of victims or offenders; and
- 113 (E) Other information relating to the impact of alcohol and drug-related offenses upon  
114 victims or offenders.

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

118 (j)(1) The Secretary of the Department of Health and Human Resources shall promulgate  
119 a rule for legislative approval in accordance with article three, chapter twenty-nine-a of this code  
120 to administer the provisions of this section and establish a fee to be collected from each offender  
121 enrolled in the safety and treatment program. The rule shall include: (A) A reimbursement  
122 mechanism to program providers of required fees for the safety and treatment program for  
123 indigent offenders, criteria for determining eligibility of indigent offenders, and any necessary  
124 application forms; and (B) program standards that encompass provider criteria including minimum  
125 professional training requirements for providers, curriculum approval, minimum course length  
126 requirements and other items that may be necessary to properly implement the provisions of this

127 section.

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

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

## **ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.**

### **§17C-5C-6. Phase out and termination of Office of Administrative Hearings.**

1 (a) The Office of Administrative Hearings shall retain jurisdiction over proceedings  
2 described in subdivision (3), section three of this article arising from offenses occurring on or  
3 before June 30, 2017. The Office of Administrative Hearings shall have no jurisdiction over  
4 proceedings described in said subdivision arising from offenses occurring on or after July 1, 2017.

5 (b) With respect to all other proceedings described in section three of this article, the Office  
6 of Administrative Hearings shall retain jurisdiction until June 30, 2018. Beginning on July 1, 2018,  
7 jurisdiction over all matters then pending or thereafter filed shall be returned to the Commissioner  
8 of the Division of Motor Vehicles.

9 (c) The Office of Administrative Hearings shall, in an orderly and efficient manner, bring  
10 disposition to all such matters pending before it.

11 (d) Upon resolution of all such matters, the Office of Administrative Hearings shall be  
12 terminated: *Provided*, That the Office of Administrative Hearings shall terminate no later than July  
13 1, 2020.

14 (e) The Secretary of the Department of Transportation may establish interim policies and  
15 procedures to aid in the orderly and efficient process during the disposition of remaining cases  
16 before the Office of Administrative Hearings during the phase-out period until termination,  
17 including the transfer of employees from the Office of Administrative Hearings, if feasible, to other

18 divisions under the Department of Transportation.

19 (f) The Office of Administrative Hearings may apply to the Purchasing Division to purchase  
20 in the open market services pursuant to the provisions of section fifteen, article three, chapter  
21 five-a of this code if the Secretary of the Department of Transportation determines that doing so  
22 is necessary for the orderly and efficient disposition of those matters pending before it, as required  
23 by subsection (b) of this section.

24 (g) If, by the deadline set forth in subsection (c) of this section, the Office of Administrative  
25 Hearings has been unable to finally dispose of and resolve all matters pending before it, the  
26 Secretary of the Department of Transportation is directed to appoint additional hearing examiners  
27 on a temporary basis and other support personnel to bring to a resolution all remaining matters.

## **ARTICLE 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL CASES.**

### **§17C-19-3. When person arrested must be taken immediately before a magistrate or court.**

1 (a) Whenever any person is arrested for any violation of this chapter punishable as a  
2 misdemeanor, the arrested person shall be immediately taken before a magistrate or court within  
3 the county in which the offense charged is alleged to have been committed and who has  
4 jurisdiction of the offense and is nearest or most accessible with reference to the place where the  
5 arrest is made, in any of the following cases:

6 (1) When a person arrested demands an immediate appearance before a magistrate or  
7 court;

8 (2) When the person is arrested upon a charge of negligent homicide;

9 (3) When the person is arrested upon a charge of driving while under the influence of  
10 alcohol, or under the influence of any controlled substance, or under the influence of any other  
11 drug, or under the combined influence of alcohol and any controlled substance or any other drug;

12 (4) When the person is arrested upon a charge of failure to stop in the event of an accident

13 causing death, personal injury or damage to property;

14 (5) When the person is arrested upon a charge of violating section fourteen, article  
15 seventeen of this chapter relating to weight violations, except as otherwise provided in that  
16 section;

17 (6) When the person arrested is a resident of a state that has not entered into a  
18 nonresident violator compact with this state;

19 (7) In any other event when the person arrested refuses to accept the written notice to  
20 appear in court as his or her promise to appear in court or to comply with the terms of the written  
21 notice to appear in court as provided in section four of this article; and

22 (8) When a person is arrested for driving with a suspended or revoked driver's license for  
23 miscellaneous reasons: *Provided*, That when a person is arrested for driving with a suspended or  
24 revoked driver's license for miscellaneous reasons, the arresting officer may issue a charge by  
25 citation if a magistrate or judge is not on duty or reasonably available.

26 (b) When the person arrested is a resident of a state that has entered into a nonresident  
27 violator compact with this state, the arresting officer shall issue the person a written notice as  
28 provided for in section four of this article and may not take the person immediately before a  
29 magistrate or court, except under the terms of the compact or under the circumstances set forth  
30 in subsection (a) of this section.

31 (c) Whenever a person is arrested for any violation of section two, article five of this  
32 chapter, the arresting officer shall request, and the person shall immediately surrender, his or her  
33 driver's license. The arresting officer shall submit the person's driver's license to the court before  
34 which the person is taken to appear pursuant to subsection (a) of this section.

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