

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 212

BY SENATORS TRUMP, BLAIR AND MARONEY

[Introduced February 9, 2017; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5-2, §17C-5-2b, §17C-5-4 and §17C-5-7 of the Code of West
2 Virginia, 1931, as amended; to amend and reenact §17C-5A-1, §17C-5A-1a and §17C-
3 5A-3 of said code; to amend said code by adding thereto two new sections, designated
4 §17C-5A-1b and §17C-5A-1c; and to amend said code by adding thereto a new section,
5 designated §17C-5C-6, all relating generally to the procedures for drivers' license
6 suspensions and revocations for driving under the influence of alcohol, controlled
7 substances or drugs; transferring authority for hearing matters related to suspensions or
8 revocations of drivers' license for operating a motor vehicle while under the influence of
9 alcohol, controlled substances or drugs from the Office of Administrative Hearings to
10 magistrate courts; granting authority to magistrate courts to suspend or revoke driver's
11 licenses in such cases; establishing mandatory revocation periods for individuals
12 convicted of driving under the influence; authorizing alternate revocation period involving
13 participation in motor vehicle alcohol test and lock period for certain first offenses;
14 establishing mandatory revocation periods for individuals upon subsequent convictions for
15 driving under the influence; requiring individuals whose driver's licenses have been
16 revoked upon conviction for driving under the influence to complete comprehensive safety
17 and treatment program; making individuals who are found guilty of driving under the
18 influence ineligible for deferral of further proceedings upon condition of participation in
19 Motor Vehicle Alcohol Test and Lock Program; making individuals who refuse to submit
20 to a secondary chemical test ineligible for deferral of further proceedings upon condition
21 of participation in Motor Vehicle Alcohol Test and Lock Program; prohibiting secondary
22 test of blood without issuance of warrant signed by a magistrate or circuit judge; requiring
23 that individual arrested for driving under the influence be advised orally of certain
24 consequences for refusal to submit to secondary chemical test; requiring that individual
25 arrested for driving under the influence be given written statement informing the individuals
26 of legal consequences of taking or refusing to take a preliminary breath test and informing

27 the individual of right to receive secondary blood test; requiring that officer give second
28 oral warning fifteen minutes after first warning given and before refusal is considered final;
29 requiring that, following an individual's refusal to take a preliminary breath test, an
30 arresting officer execute a signed statement that the officer administered all required
31 warnings; directing officer to submit copy of written statement to court having jurisdiction
32 over charges filed against the individual; eliminating all statutory provisions authorizing or
33 requiring the Commissioner of the Division of Motor Vehicles to take administrative action
34 upon an individual's driver's license on the basis of a driving under the influence arrest;
35 limiting administrative jurisdiction of Division of Motor Vehicles and Office of Administrative
36 Hearings to offenses occurring on or before June 30, 2017; providing that administrative
37 hearings relating to refusal to undergo a secondary chemical test does not apply to
38 offenses occurring on or after July 1, 2017; eliminating requirement for an order entered
39 by the Division of Motor Vehicles revoking a driver's license to advise of procedures for
40 requesting administrative hearing when the offense is driving under the influence; limiting
41 the right of individuals to challenge suspension or revocation of driver's licenses to the
42 issue of mistaken identity; requiring the commissioner to take corrective action if a driver's
43 license is incorrectly suspended or revoked based on mistaken identity; providing that plea
44 of no contest constitutes a conviction; requiring pretrial suspension of driver's licenses if
45 individual refuses to submit to secondary chemical test; permitting pretrial suspension of
46 driver's license by court under certain circumstances; establishing right to request and
47 receive judicial review of suspension orders pending criminal proceedings; establishing
48 the scope of review for judicial review of pretrial driver's license suspension for refusal to
49 submit to secondary chemical test; requiring the clerk of a court to transmit a copy of an
50 order suspending or revoking a driver's license to the Division of Motor Vehicles; providing
51 terms and length of pretrial license suspension; giving person's convicted of driving under
52 the influence credit for pretrial suspension time against period of revocation imposed;

53 making persons convicted of driving under the influence eligible for participation in
 54 comprehensive safety and treatment program and related reductions in length of
 55 revocation for successful competition thereof; establishing procedures and timeline for the
 56 Division of Motor Vehicles to transfer jurisdiction of driver's license suspension and
 57 revocation to the courts; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

1 That §17C-5-2, §17C-5-2b, §17C-5-4 and §17C-5-7 of the Code of West Virginia, 1931,
 2 as amended, be amended and reenacted; that §17C-5A-1, §17C-5A-1a and §17C-5A-3 of said
 3 code be amended and reenacted; that said code be amended by adding thereto two new sections,
 4 designated §17C-5A-1b and §17C-5A-1c; and that said code be amended by adding thereto a
 5 new section, designated §17C-5C-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 for a period of ten years: *Provided,* That any death
20 charged under this subsection must occur within one year of the offense: *Provided, however,* That
21 if the person has previously been convicted under the provisions of this section, then the person
22 shall have his or her driver's license revoked for life.

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

30 (d) Any person who drives a vehicle in this state while he or she is in an impaired state
31 and such impaired state proximately causes a bodily injury to any person other than himself or
32 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
33 less than one day more than one year, ~~and~~ shall be fined not less than \$200 nor more than \$1,000,
34 and shall have his or her driver's license revoked for a period of two years: *Provided,* That such
35 jail term shall include actual confinement of not less than twenty-four hours: *Provided, however,*
36 That a person sentenced pursuant to this subsection shall receive credit for any period of actual
37 confinement he or she served upon arrest for the subject offense: *Provided further,* That if the
38 person has previously been convicted under the provisions of this section, then the person shall
39 have his or her driver's license revoked for life.

40 (e) Any person who drives a vehicle in this state: (i) while he or she is in an impaired state
41 or (ii) while he or she is in an impaired state but has an alcohol concentration in his or her blood
42 of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon
43 conviction thereof, shall be confined in jail for up to six months, ~~and~~ shall be fined not less than
44 \$100 nor more than \$500, and shall have his or her driver's license revoked for a period of six
45 months or a period of fifteen days with an additional one hundred and twenty days of participation
46 in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section
47 three-a, article five-a of this chapter; *Provided*, That a person sentenced pursuant to this
48 subsection shall receive credit for any period of actual confinement he or she served upon arrest
49 for the subject offense.

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

60 (g) Any person who, being a habitual user of narcotic drugs or amphetamine or any
61 derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction
62 thereof, shall be confined in jail for not less than one day nor more than six months, which jail
63 term is to include actual confinement of not less than twenty-four hours, ~~and~~ shall be fined not
64 less than \$100 nor more than \$500, and shall have his or her driver's license revoked for a period
65 of six months. A person sentenced pursuant to this ~~subdivision~~ subsection shall receive credit for

66 any period of actual confinement he or she served upon arrest for the subject offense.

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

74 (i) Any person who knowingly permits his or her vehicle to be driven in this state by any
75 other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is
76 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than
77 six months, ~~and~~ shall be fined not less than \$100 nor more than \$500, and shall have his or her
78 driver's license revoked for a period of six months.

79 (j) Any person under the age of twenty-one years who drives a vehicle in this state while
80 he or she has an alcohol concentration in his or her blood of two hundredths of one percent or
81 more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under
82 this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
83 than \$25 nor more than \$100 and have his or her driver's license suspended for a period of sixty
84 days. For a second or subsequent offense under this subsection, the person is guilty of a
85 misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours, ~~and~~
86 shall be fined not less than \$100 nor more than \$500, and shall have his or her driver's license
87 suspended or revoked for a period of one year, or until the person's twenty-first birthday,
88 whichever period is longer. A person who is charged with a first offense under the provisions of
89 this subsection may move for a continuance of the proceedings, from time to time, to allow the
90 person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in section
91 three-a, article five-a of this chapter. Upon successful completion of the program, the court shall

92 dismiss the charge against the person and expunge the person's record as it relates to the alleged
93 offense. In the event the person fails to successfully complete the program, the court shall proceed
94 to an adjudication of the alleged offense. A motion for a continuance under this subsection may
95 not be construed as an admission or be used as evidence.

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

99 (k) Any person who drives a vehicle in this state while he or she is in an impaired state
100 and has within the vehicle one or more other persons who are unemancipated minors who have
101 not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof,
102 shall be confined in jail for not less than two days nor more than twelve months, ~~and~~ shall be fined
103 not less than \$200 nor more than \$1,000, and shall have his or her driver's license revoked for a
104 period of one year: *Provided*, That such jail term shall include actual confinement of not less than
105 forty-eight hours: *Provided, however*, That a person sentenced pursuant to this subdivision shall
106 receive credit for any period of actual confinement he or she served upon arrest for the subject
107 offense: *Provided further*, That if the person has previously been convicted under the provisions
108 of this section, then the person shall have his or her driver's license revoked for a period of ten
109 years: *And provided further*, That if the person has previously been convicted under the provisions
110 of this section, then the person shall have his or her driver's license revoked for life.

111 (l) A person violating any provision of subsection (d), (e), (f), (g), (h) or ~~(j)~~ (i) of this section,
112 for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof,
113 shall be confined in jail for not less than six months nor more than one year, shall have his or her
114 driver's license revoked for a period of ten years, and the court may, in its discretion, impose a
115 fine of not less than \$1,000 nor more than \$3,000: *Provided*, That a person violating subsection
116 (d) for the second offense shall have his or her driver's license revoked for life.

117 (m) A person violating any provision of subsection (d), (e), (f), (g), (h) or ~~(j)~~ (i) of this

118 section, for the third or any subsequent offense under this section, is guilty of a felony and, upon
119 conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more
120 than five years, shall have his or her driver's license revoked for life, and the court may, in its
121 discretion, impose a fine of not less than \$3,000 nor more than \$5,000.

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

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

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

131 (3) Any period of conditional probation imposed pursuant section two-b of this article for
132 violation of subsection (e) of this section, which violation occurred within the ten-year period
133 immediately preceding the date of arrest in the current proceeding.

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

143 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or

144 (g) of this section, or any person permitted to drive as described under subsection(h) or (i) of this
145 section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not
146 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i)
147 of this section.

148 (q) For purposes of this section, the term “controlled substance” has the meaning ascribed
149 to it in chapter sixty-a of this code.

150 (r) The sentences provided in this section upon conviction for a violation of this article are
151 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
152 the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or
153 committed to a term of one year or less for a first offense under this section: *Provided, however*,
154 That the court may impose a term of conditional probation pursuant to section two-b of this article
155 to persons adjudicated thereunder. An order for home detention by the court pursuant to the
156 provisions of article eleven-b of said chapter may be used as an alternative sentence to any period
157 of incarceration required by this section for a first or subsequent offense: *Provided, further*, That
158 for any period of home incarceration ordered for a person convicted of second offense under this
159 section, electronic monitoring shall be required for no fewer than five days of the total period of
160 home confinement ordered and the offender may not leave home for those five days
161 notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of this code: *And*
162 *provided further*, That for any period of home incarceration ordered for a person convicted of a
163 third or subsequent violation of this section, electronic monitoring shall be included for no fewer
164 than ten days of the total period of home confinement ordered and the offender may not leave
165 home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this
166 code.

167 (s) A person whose driver’s license has been revoked pursuant to this section must
168 complete a comprehensive safety and treatment program as set forth in section three, article five-
169 a of this chapter before his or her driver’s license can be reinstated.

170 (t) No person convicted of a felony offense under this section shall be eligible for
171 participation in the Motor Vehicle Alcohol Test and Lock Program as described in section three-
172 a, article five-a of this chapter. Unless otherwise ordered by the court, any person who is convicted
173 of a misdemeanor offense is eligible for participation in the Motor Vehicle Alcohol Test and Lock
174 Program as described in section three-a, article five-a of this chapter.

§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.

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

18 (c) (1) If the prosecuting attorney files a motion alleging that the defendant during the

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

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

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

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

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

45 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection
46 be convicted of a subsequent violation of this article, discharge and dismissal under this section
47 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or
48 disabilities imposed by law upon conviction of a crime except for those provided in article five-a
49 of this chapter. Except as provided in subsections (l), (m) and (n), section two of this article
50 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the
51 person in contemplation of law to the status he or she occupied prior to arrest and trial. No person
52 as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of
53 perjury, false swearing or otherwise giving a false statement by reason of his or her failure to
54 disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for
55 any purpose other than any inquiry made in connection with any subsequent offense as that term
56 is defined in subsection (n), section two of this article.

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

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

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

71 not make a motion for expungement pursuant to this section.

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

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

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

**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer;
designation 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 section two of this article: Provided, That no secondary test of blood may be performed without
16 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 orally that his or her refusal to submit to a secondary chemical test will result in revocation
23 of his or her license to operate a motor vehicle while any criminal charges are pending brought
24 pursuant to section two of this article or an ordinance of a municipality of this state which has the
25 same elements as an offense described in section two of this article, 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 revocation of his or her license to operate a motor vehicle during
31 the pendency of any criminal charges brought alleging a violation of section two of this article or
32 an ordinance of a municipality of this state which has the same elements as an offense described

33 in section two of this article;

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

37 (3) That, if the person first submits to the requested alcohol and/or substance tests, the
38 person has the right to have a test or tests of his or her blood performed as provided in section
39 nine of this article.

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

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

58 (h) Only the person actually administering or conducting a test conducted pursuant to this

59 article is competent to testify as to the results and the veracity of the test.

60 (4) (i) (1) For the purpose of this article, the term “law-enforcement officer” or “police officer”
61 means: (1) Any member of the West Virginia State Police; (2) any sheriff and any deputy sheriff
62 of any county; (3) any member of a police department in any municipality as defined in section
63 two, article one, chapter eight of this code; (4) any natural resources police officer of the Division
64 of Natural Resources; and (5) any special police officer appointed by the Governor pursuant to
65 the provisions of section forty-one, article three, chapter sixty-one of this code who has completed
66 the course of instruction at a law-enforcement training academy as provided for under the
67 provisions of section nine, article twenty-nine, chapter thirty of this code.

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

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

82 (4) ~~That after December 31, 2014~~ A law-enforcement officer who has not satisfactorily
83 completed the minimum number of hours of training in the recognition of impairment in drivers
84 who are under the influence of controlled substances or drugs other than alcohol, required by

85 subdivisions (2) or (3), may no longer require any person to submit to secondary chemical test of
86 his or her blood for the purposes of determining the concentration in the person's body of a
87 controlled substance, drug, or any combination thereof.

88 (j) A law-enforcement officer who has reasonable cause to believe that person has
89 committed an offense prohibited by section eighteen, article seven, chapter twenty of this code,
90 relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the
91 provisions of this section in administering, or causing to be administered, a preliminary breath
92 analysis and incidental to a lawful arrest, a secondary chemical test of the accused person's blood
93 or breath to determine the alcohol concentration in his or her blood, or the concentration in the
94 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 an oral 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 section two of this article. ~~and that after~~ After fifteen minutes
10 following the receipt of these warnings by the person under arrest, then the officer shall again
11 issue an oral warning to the person under arrest. If the person still refuses to consent, the refusal
12 is considered final. The arresting officer after that period of time expires has no further duty to
13 provide the person with an opportunity to take the secondary test.

14 (b) The officer shall, within forty-eight hours of the refusal, sign and submit to the

15 Commissioner of Motor Vehicles and the court having jurisdiction over the charge filed against
16 the person pursuant to section two of this article a written statement of the officer that: (1) He or
17 she had probable cause to believe the person had been driving a motor vehicle in this state while
18 under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed
19 under arrest for an offense relating to driving a motor vehicle in this state while under the influence
20 of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary
21 chemical test finally designated in the manner provided in section four of this article; and (4) the
22 person was given a written statement ~~advising him or her that~~ containing the warnings contained
23 in subsection (e), section four of this article, and an oral warning that his or her refusal to submit
24 to the secondary test finally designated will result in the suspension of his or her license to operate
25 a motor vehicle in this state ~~would be revoked for a period of at least forty-five days and up to life~~
26 ~~if he or she refused to submit to the secondary test finally designated in the manner provided in~~
27 ~~section four of this article~~ during the pendency of any criminal charge brought pursuant to section
28 two of this article or an ordinance of a municipality of this state which has the same elements as
29 an offense described in section two of this article. The signing of the statement required to be
30 signed by this section constitutes an oath or affirmation by the person signing the statement that
31 the statements contained in the statement are true and that any copy filed is a true copy. The
32 statement shall contain upon its face a warning to the officer signing that to willfully sign a
33 statement containing false information concerning any matter or thing, material or not material, is
34 false swearing and is a misdemeanor. ~~Upon receiving the statement the commissioner shall make~~
35 ~~and enter an order revoking the person's license to operate a motor vehicle in this state for the~~
36 ~~period prescribed by this section~~

37 ~~For the first refusal to submit to the designated secondary chemical test, the commissioner~~
38 ~~shall make and enter an order revoking the person's license to operate a motor vehicle in this~~
39 ~~state for a period of one year or forty-five days, with an additional one year of participation in the~~
40 ~~Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-~~

41 ~~a, article five-a of this chapter: *Provided*, That a person revoked for driving while under the~~
42 ~~influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The~~
43 ~~application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be~~
44 ~~considered to be a waiver of the hearing provided in section two of said article. If the person's~~
45 ~~license has previously been revoked under the provisions of this section, the commissioner shall,~~
46 ~~for the refusal to submit to the designated secondary chemical test, make and enter an order~~
47 ~~revoking the person's license to operate a motor vehicle in this state for a period of ten years:~~
48 ~~*Provided, however*, That the license may be reissued in five years in accordance with the~~
49 ~~provisions of section three, article five-a of this chapter. If the person's license has previously~~
50 ~~been revoked more than once under the provisions of this section, the commissioner shall, for the~~
51 ~~refusal to submit to the designated secondary chemical test, make and enter an order revoking~~
52 ~~the person's license to operate a motor vehicle in this state for a period of life. A copy of each~~
53 ~~order shall be forwarded to the person by registered or certified mail, return receipt requested,~~
54 ~~and shall contain the reasons for the revocation and shall specify the revocation period imposed~~
55 ~~pursuant to this section. A revocation shall not become effective until ten days after receipt of the~~
56 ~~copy of the order. Any person who is unconscious or who is otherwise in a condition rendering~~
57 ~~him or her incapable of refusal shall be considered not to have withdrawn his or her consent for~~
58 ~~a test of his or her blood or breath as provided in section four of this article and the test may be~~
59 ~~administered although the person is not informed that his or her failure to submit to the test will~~
60 ~~result in the revocation of his or her license to operate a motor vehicle in this state for the period~~
61 ~~provided for in this section. A revocation under this section shall run concurrently with the period~~
62 ~~of any suspension or revocation imposed in accordance with other provisions of this code and~~
63 ~~growing out of the same incident which gave rise to the arrest for driving a motor vehicle while~~
64 ~~under the influence of alcohol, controlled substances or drugs and the subsequent refusal to~~
65 ~~undergo the 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.~~

**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.**

81 (a) Any person who is licensed to operate a motor vehicle in this state and who drives a
82 motor vehicle in this state shall be deemed to have given his or her consent by the operation
83 thereof, subject to the provisions of this article, to the procedure set forth in this article for the
84 determination of whether his or her license to operate a motor vehicle in this state should be
85 revoked because he or she did drive a motor vehicle while under the influence of alcohol,

86 controlled substances or drugs, or combined influence of alcohol or controlled substances or
87 drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of
88 eight hundredths of one percent or more, by weight, or did refuse to submit to any secondary
89 chemical test required under the provisions of article five of this chapter or did drive a motor
90 vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood
91 of two hundredths of one percent or more, by weight, but less than eight hundredths of one
92 percent, by weight: Provided, That the provisions of this subsection do not apply to offenses
93 occurring on or after July 1, 2017.

94 (b) Any law-enforcement officer investigating a person for an offense described in section
95 two, article five of this chapter occurring on or before June 30, 2017, or for an offense described
96 in a municipal ordinance which has the same elements as an offense described in said section
97 occurring on or before June 30, 2017, shall report to the Commissioner of the Division of Motor
98 Vehicles by written statement within forty-eight hours of the conclusion of the investigation the
99 name and address of the person believed to have committed the offense. The report shall include
100 the specific offense with which the person is charged and, if applicable, a copy of the results of
101 any secondary tests of blood, breath or urine. The signing of the statement required to be signed
102 by this subsection constitutes an oath or affirmation by the person signing the statement that the
103 statements contained in the statement are true and that any copy filed is a true copy. The
104 statement shall contain upon its face a warning to the officer signing that to willfully sign a
105 statement containing false information concerning any matter or thing, material or not material, is
106 false swearing and is a misdemeanor.

107 (c) If, upon examination of the written statement of the officer and the tests results
108 described in subsection (b) of this section, the commissioner determines that a person committed
109 an offense described in section two, article five of this chapter or an offense described in a
110 municipal ordinance which has the same elements as an offense described in said section and
111 that the results of any secondary test or tests indicate that at the time the test or tests were

112 administered the person had, in his or her blood, an alcohol concentration of eight hundredths of
113 one percent or more, by weight, or at the time the person committed the offense he or she was
114 under the influence of alcohol, controlled substances or drugs, the commissioner shall make and
115 enter an order revoking or suspending the person's license to operate a motor vehicle in this state.
116 If the results of the tests indicate that at the time the test or tests were administered the person
117 was under the age of twenty-one years and had an alcohol concentration in his or her blood of
118 two hundredths of one percent or more, by weight, but less than eight hundredths of one percent,
119 by weight, the commissioner shall make and enter an order suspending the person's license to
120 operate a motor vehicle in this state. A copy of the order shall be forwarded to the person by
121 registered or certified mail, return receipt requested, and shall contain the reasons for the
122 revocation or suspension and describe the applicable revocation or suspension periods provided
123 in section two of this article. A revocation or suspension shall not become effective until ten days
124 after receipt of a copy of the order.

125 (d) Any law-enforcement officer taking a child into custody under the provisions of section
126 six-a, article five of this chapter on or before June 30, 2017, who has reasonable cause to believe
127 that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her
128 blood of two hundredths of one percent or more, by weight, or that the act of the child in driving
129 the motor vehicle was such that it would provide grounds for arrest for an offense defined under
130 the provisions of section two of said article if the child were an adult, shall report to the
131 Commissioner of the Division of Motor Vehicles by written statement within forty-eight hours the
132 name and address of the child.

133 (e) If applicable, the report shall include a description of the specific offense with which
134 the child could have been charged if the child were an adult and a copy of the results of any
135 secondary tests of blood, breath or urine. The signing of the statement required to be signed by
136 this subsection constitutes an oath or affirmation by the person signing the statement that the
137 statements contained in the statement are true and that any copy filed is a true copy. The

138 statement shall contain upon its face a warning to the officer signing that to willfully sign a
139 statement containing false information concerning any matter or thing, material or not material, is
140 false swearing and is a misdemeanor.

141 (f) Upon examination of the written statement of the officer and any test results described
142 in subsection (d) of this section, if the commissioner determines that the results of the test indicate
143 that at the time the test or tests were administered the child had, in his or her blood, an alcohol
144 concentration of two hundredths of one percent or more, by weight, but also determines that the
145 act of the child in driving the motor vehicle was not such that it would provide grounds for arrest
146 for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (h), section
147 two, article five of this chapter if the child were an adult, the commissioner shall make and enter
148 an order suspending the child's license to operate a motor vehicle in this state. If the commissioner
149 determines that the act of the child in driving the motor vehicle was such that it would provide
150 grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e),
151 (f), (g) or (h), section two, article five of this chapter if the child were an adult, the commissioner
152 shall make and enter an order revoking the child's license to operate a motor vehicle in this state.
153 A copy of the order shall be forwarded to the child by registered or certified mail, return receipt
154 requested, and shall contain the reasons for the suspension or revocation and describe the
155 applicable suspension or revocation periods provided for in section two of this article. A
156 suspension or revocation shall not become effective until ten days after receipt of a copy of the
157 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, article five of this
3 chapter or for an offense described in a municipal ordinance which has the same elements as an
4 offense described in said section because the person did drive a motor vehicle while under the

5 influence of alcohol, controlled substances or drugs, or the combined influence of alcohol or
6 controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration
7 in his or her blood of eight hundredths of one percent or more, by weight, or did drive a motor
8 vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood
9 of two hundredths of one percent or more, by weight, but less than eight-hundredths of one
10 percent, by weight, and if the person does not act to appeal the conviction within the time periods
11 described in subsection (b) of this section, the person's license to operate a motor vehicle in this
12 state shall 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, article five of this chapter or for an offense described in a municipal
16 ordinance which has the same elements as an offense described in said section shall forward to
17 the Commissioner of the Division of Motor Vehicles a transcript of the judgment of conviction. If
18 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
19 transcript when the person convicted has not requested an appeal within twenty days of the
20 sentencing for such conviction. If the term of conditional probation is the act of a magistrate court,
21 the magistrate court clerk shall forward the transcript when the order imposing the term of
22 conditional probation is entered. If the conviction is the judgment of a mayor or police court judge
23 or municipal court judge, the clerk or recorder shall forward the transcript when the person
24 convicted has not perfected an appeal within ten days from and after the date upon which the
25 sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall
26 forward the transcript when the person convicted has not filed a notice of intent to file a petition
27 for appeal or writ of error within 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, article five of this chapter or an ordinance of a municipality of
32 this state which has the same elements as an offense described in section two of this article, or
33 had a period of conditional probation imposed pursuant to section two-b, article five of this chapter,
34 ~~or for an offense described in a municipal ordinance which has the same elements as an offense~~
35 ~~described in said section~~ because the person did drive a motor vehicle while under the influence
36 of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled
37 substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or
38 her blood of eight-hundredths of one percent or more, by weight, the commissioner shall make
39 and enter an order revoking the person's license to operate a motor vehicle in this state. If the
40 commissioner determines that the person was convicted of driving a motor vehicle while under
41 the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths
42 of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the
43 commissioner shall make and enter an order suspending the person's license to operate a motor
44 vehicle in this state. The order shall contain the reasons for the revocation or suspension and the
45 revocation or suspension periods provided for in section two of this article. ~~Further, the order shall~~
46 ~~give the procedures for requesting a hearing which is to be held in accordance with the provisions~~
47 ~~of said section. The person shall be advised in the order that because of the receipt of a transcript~~
48 ~~of the judgment of conviction by the commissioner a presumption exists that the person named~~
49 ~~in the transcript of the judgment of conviction is the person named in the commissioner's order~~
50 ~~and such constitutes sufficient evidence to support revocation or suspension and that the sole~~
51 ~~purpose for the hearing held under this section is for the person requesting the hearing to present~~
52 ~~evidence that he or she is not the person named in the transcript of the judgment of conviction. A~~
53 ~~copy of the order shall be forwarded to the person by registered or certified mail, return receipt~~
54 ~~requested. No revocation or suspension shall become effective until ten days after receipt of a~~
55 ~~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. 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 arraignment or as soon as such relevant information becomes
2 available, suspend the driver's license and driving privileges of any person charged with a
3 violation of section two, article five of this chapter who refused to submit to a secondary chemical
4 test as required by section four, article five of this chapter.

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 high risk of harming others during the
9 pendency of the action.

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

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

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

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

§17C-5A-1c. Judicial review of pretrial license suspension for test refusal.

1 If a person appeals a pretrial suspension of his or her license under section one-b of this
2 article, the scope of the appeal is limited to determining whether one or more of the following
3 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;

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.

§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 subdivision (3), section three of this article arising from offenses
5 occurring on or after July 1, 2017.

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

8 (c) Upon resolution of all such matters, the Office of Administrative Hearings shall be
9 terminated: *Provided*, That the Office of Administrative Hearings shall terminate no later than July
10 1, 2020.

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

16 (e) The Office of Administrative Hearings may apply to the Purchasing Division to
17 purchase in the open market services pursuant to the provisions of section fifteen, article three,
18 chapter five-a of this code if the Secretary of the Department of Transportation determines that

- 19 doing so is necessary for the orderly and efficient disposition of those matters pending before it,
20 as required by subsection (b) of this section.
- 21 (f) If, by the deadline set forth in subsection (c) of this section, the Office of Administrative
22 Hearings has been unable to finally dispose of and resolve all matters pending before it, the
23 Secretary of the Department of Transportation is directed to appoint additional hearing examiners
24 on a temporary basis and other support personnel to bring to a resolution all remaining matters.

NOTE: The purpose of this bill is to remove the Division of Motor Vehicles from the administration of license suspension and revocation in cases where an individual is charged with driving under the influence. Broadly, the bill transfers all decision-making concerning the suspension, revocation and/or reinstatement of an individual's driver's license to the courts. The courts then make determinations concerning a driver's license in accordance with certain procedures, and all within the context of the criminal action.

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