

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2335

BY DELEGATE FOSTER

[Introduced February 12, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5-1 and §17C-5-2 of the Code of West Virginia, 1931, as
2 amended, relating to increasing the penalty for DUI causing death when a child is present
3 in the vehicle at the time of the accident and relating to increasing the minimum criminal
4 penalty for a driver who, in an impaired state, causes the death of a minor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-1. Negligent homicide; penalties.

1 (a) When the death of any person ensues within one year as a proximate result of injury
2 received by the driving of any vehicle anywhere in this state in reckless disregard of the safety of
3 others, the person so operating such vehicle shall be guilty of negligent homicide.

4 (b) Any person convicted of negligent homicide shall be punished by imprisonment for not
5 more than one year or by fine of not less than \$100 nor more than \$1,000, or by both such fine
6 and imprisonment: Provided, That if a child is present in the vehicle at the time of the accident
7 and the driver was convicted of driving under the influence of alcohol, controlled substance or
8 drugs pursuant to §17C-5-2 of this code, the person convicted of negligent homicide shall be
9 guilty of a felony punished by imprisonment for a determinate term of up to five years and by a
10 fine of not less than \$500 nor more than \$5,000.

11 (c) The commissioner shall revoke the license or permit to drive and any nonresident
12 operating privilege of any person convicted of negligent homicide.

§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) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

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

16 (5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established
17 in §17C-5A-3a and administered by the Division of Motor Vehicles.

18 (b) Any person who drives a vehicle in this state while he or she is in an impaired state,
19 and such impaired state proximately causes the death of any person, is guilty of a felony and,
20 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three
21 nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall
22 have his or her license to operate a motor vehicle revoked by the Commissioner of the Division
23 of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in
24 the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That any death
25 charged under this subsection must occur within one year of the offense: *Provided, however*, That
26 if the person has previously been convicted under this section, the person shall have his or her
27 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
28 for life or for a period of time conditioned on participation in the test and lock program in
29 accordance with §17C-5A-3a of this code: *Provided further, That when the death is that of a minor,*
30 *the driver, upon conviction, shall be imprisoned in a state correctional facility for an indeterminate*
31 *sentence of not less than five nor more than fifteen years and a fine of up to \$5,000.*

32 (c) Any person who drives a vehicle in this state while he or she is in an impaired state,
33 and such impaired state proximately causes serious bodily injury to any person other than himself
34 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
35 correctional facility for not less than two nor more than 10 years and shall be fined not less than
36 \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked
37 by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of
38 time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of
39 this code: *Provided*, That if the person has previously been convicted under this section, the
40 person shall have his or her license to operate a motor vehicle revoked by the Commissioner of
41 the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test
42 and lock program in accordance with §17C-5A-3a of this code.

43 (d) Any person who drives a vehicle in this state while he or she is in an impaired state,
44 and such impaired state proximately causes a bodily injury to any person other than himself or
45 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
46 less than one day nor more than one year and shall be fined not less than \$200 nor more than
47 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
48 of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on
49 participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*,
50 That if the person has previously been convicted under this section, the person shall have his or
51 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
52 Vehicles for life or for a period of time conditioned on participation in the test and lock program in
53 accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall
54 include actual confinement of not less than 24 hours: *Provided, however*, That a person
55 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
56 or she served upon arrest for the subject offense.

57 (e) Any person who drives a vehicle on any public highway or private road in this state:
58 (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has
59 an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by
60 weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to
61 six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her
62 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
63 for a period of six months or for a period of time conditioned on participation in the test and lock
64 program in accordance with §17C-5A-3a of this code: *Provided*, That a person sentenced
65 pursuant to this subsection shall receive credit for any period of actual confinement he or she
66 served upon arrest for the subject offense.

67 (f) Any person who drives a vehicle on any public highway or private road in this state
68 while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one
69 percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be
70 confined in jail for not less than two days nor more than six months, which jail term is to include
71 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than
72 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
73 of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on
74 participation in the test and lock program in accordance with §17C-5A-3a of this code. A person
75 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
76 or she served upon arrest for the subject offense.

77 (g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any
78 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of
79 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day
80 nor more than six months, which jail term is to include actual confinement of not less than 24
81 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license
82 to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a

83 period of six months. A person sentenced pursuant to this subsection shall receive credit for any
84 period of actual confinement he or she served upon arrest for the subject offense.

85 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway
86 or private road in this state by any other person who is in an impaired state is guilty of a
87 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months
88 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to
89 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
90 period of six months or for a period of time conditioned on participation in the test and lock
91 program in accordance with §17C-5A-3a of this code.

92 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway
93 or private road in this state by any other person who is a habitual user of narcotic drugs or
94 amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof,
95 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor
96 more than \$500, and shall have his or her license to operate a motor vehicle revoked by the
97 Commissioner of the Division of Motor Vehicles for a period of six months.

98 (j) (1) Any person under the age of 21 years who drives a vehicle on any public highway
99 or private road in this state while he or she has an alcohol concentration in his or her blood of two
100 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
101 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction
102 thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate
103 a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of
104 60 days or for a period of time conditioned on participation in the test and lock program in
105 accordance with §17C-5A-3a of this code. For a second or subsequent offense under this
106 subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined
107 in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his
108 or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor

109 Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer,
110 or for a period of time conditioned on participation in the test and lock program in accordance with
111 §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this
112 subsection may move for a continuance of the proceedings, from time to time, to allow the person
113 to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon
114 successful completion of the program, the court shall dismiss the charge against the person and
115 expunge the person's record as it relates to the alleged offense. In the event the person fails to
116 successfully complete the program, the court shall proceed to an adjudication of the alleged
117 offense. A motion for a continuance under this subsection may not be construed as an admission
118 or be used as evidence.

119 (2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her
120 license to operate a motor vehicle suspended or revoked for a minimum period of one year or for
121 a period of time conditioned on participation in the test and lock program in accordance with
122 §17C-5A-3a of this code, if the person:

123 (i) Has previously been convicted under this subsection and is subsequently convicted of
124 an offense under another subsection of this section; or

125 (ii) Is convicted under this subsection and has previously been convicted of an offense
126 under another subsection of this section.

127 (B) Nothing in this subdivision permits a shorter period of license revocation, license
128 suspension, or participation in the test and lock program than is mandatory for the specific offense
129 for which the person is convicted.

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

133 (k) Any person who drives a vehicle on any public highway or private road in this state
134 while he or she is in an impaired state and has within the vehicle one or more other persons who

135 are unemancipated minors who have not yet reached their 16th birthday is guilty of a
136 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
137 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have
138 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
139 Vehicles for a period of one year or for a period of time conditioned on participation in the test and
140 lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall
141 include actual confinement of not less than 48 hours: *Provided, however*, That a person
142 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
143 or she served upon arrest for the subject offense.

144 (l) A person convicted of an offense under this section, who has previously been convicted
145 of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction
146 thereof, shall be confined in jail for not less than six months nor more than one year, may be fined
147 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor
148 vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period
149 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a
150 of this code: *Provided*, That if the second conviction is for an offense as described in subsections
151 (b), (c), or (d) of this section and the subsection creating the offense requires a period of
152 incarceration, period of license revocation, or fine that is greater than what is required for a
153 conviction under this subsection, the greater period of incarceration, period of revocation, or fine
154 shall be imposed: *Provided, however*, That this section does not apply to a second conviction that
155 is subject to a period of license revocation under subsection (j) of this section.

156 (m) A person convicted of an offense under this section, who has previously been
157 convicted of any offense under this section on two or more occasions, is guilty of a felony and,
158 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two
159 nor more than five years, shall have his or her license to operate a motor vehicle revoked by the
160 Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on

161 participation in the test and lock program in accordance with §17C-5A-3a of this code, and the
162 court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided*,
163 That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or
164 (d) of this section and the subsection creating the offense requires a period of incarceration, period
165 of license revocation, or fine that is greater than what is required for a conviction under this
166 subsection, the greater period of incarceration, period of revocation, and fine shall be imposed:
167 *Provided, however*, That this section does not apply to a third or subsequent conviction that is
168 subject to a period of license revocation under subsection (j) of this section.

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

172 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of
173 this section, or under a prior enactment of this section, for an offense which occurred within the
174 10-year period immediately preceding the date of arrest in the current proceeding;

175 (2) Any conviction under a municipal ordinance of this state or any other state or a statute
176 of the United States or of any other state of an offense which has the same elements as an offense
177 described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred
178 within the 10-year period immediately preceding the date of arrest in the current proceeding; and

179 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for
180 violation of subsection (e) of this section, which violation occurred within the 10-year period
181 immediately preceding the date of arrest in the current proceeding.

182 (o) A person may be charged in a warrant, indictment, or information for a second or
183 subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has
184 been previously arrested for, or charged with, a violation of this section which is alleged to have
185 occurred within the applicable time period for prior offenses, notwithstanding the fact that there
186 has not been a final adjudication of the charges for the alleged previous offense. In that case, the

187 warrant or indictment or information must set forth the date, location, and particulars of the
188 previous offense or offenses. No person may be convicted of a second or subsequent offense
189 under this section unless the conviction for the previous offense has become final, or the person
190 has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

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

196 (q) The sentences provided in this section upon conviction for a violation of this article are
197 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
198 the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of
199 one year or less for a first offense under this section: *Provided, however*, That the court may
200 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated
201 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*
202 *seq.* of this code may be used as an alternative sentence to any period of incarceration required
203 by this section for a first or subsequent offense: *Provided further*, That for any period of home
204 incarceration ordered for a person convicted of a second offense under this section, electronic
205 monitoring shall be required for no fewer than five days of the total period of home confinement
206 ordered and the offender may not leave home for those five days notwithstanding the provisions
207 of §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered
208 for a person convicted of a third or subsequent violation of this section, electronic monitoring shall
209 be included for no fewer than 10 days of the total period of home confinement ordered and the
210 offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

211 (r) A person whose license to operate a motor vehicle has been revoked or suspended
212 by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a

213 comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or
214 her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

215 (s) For any offense for which an alternative revocation period is permitted conditioned
216 upon participation in the test and lock program, an alternative sentence may not be imposed
217 without the consent of the driver.

218 (t) Upon entering the order of conviction for an offense under this section, or the imposition
219 of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall
220 immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

221 (u) The amendments made to this section during the 2020 regular session of the
222 Legislature shall become effective on July 1, 2020.

NOTE: The purpose of this bill is to increase the criminal penalty for DUI causing death when a child was present in the car when the accident occurred. This bill also increases the minimum, criminal penalty for a driver who, in an impaired state, causes the death of a minor. The penalty is an indeterminate sentence of five to fifteen years.

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