

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 71

BY SENATOR RUCKER

[Introduced February 10, 2021; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §17C-5A-3 of the Code of West Virginia, 1931, as amended, relating
 2 to the addition of grievance and appellate procedures and judicial review for individuals
 3 participating in, or who have participated in, the Division of Motor Vehicles' Safety and
 4 Treatment Program; and authorizing the Commissioner of the Division of Motor Vehicles
 5 to promulgate a rule to add such procedures and judicial review for participants of the
 6 Safety and Treatment Program.

Be it enacted by the Legislature of West Virginia:

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

§17C-5A-3. Safety and Treatment Program; reissuance of license.

1 (a) The Division of Motor Vehicles shall administer a comprehensive Safety and Treatment
 2 Program for persons whose licenses have been revoked under the provisions of this article, or
 3 §17C-5-7, or §17B-3-5(6) of this code and shall also establish the minimum qualifications for
 4 mental health facilities, day report centers, community corrections centers, or other public
 5 agencies or private entities conducting the Safety and Treatment Program: *Provided*, That the
 6 Division of Motor Vehicles may establish standards whereby the division will accept or approve
 7 participation by violators in another treatment program which provides the same or substantially
 8 similar benefits as the Safety and Treatment Program established pursuant to this section.

9 (b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and
 10 drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs
 11 as they relate to driving, defensive driving, or other safety driving instruction, and other programs
 12 designed to properly educate, train, and rehabilitate the offender: *Provided*, That successful
 13 compliance with the substance abuse and counseling program prescribed in §61-11-26a of this
 14 code is sufficient to meet the requirements of this section.

15 (c) The Division of Motor Vehicles shall provide for the preparation of an educational and
16 treatment program for each person whose license has been revoked under the provisions of this
17 article, or §17C-5-7 or §17B-3-5(6) of this code which shall contain the following: (1) A listing and
18 evaluation of the offender's prior traffic record; (2) the characteristics and history of alcohol or
19 drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety program;
20 and (4) a recommendation as to treatment or rehabilitation and the terms and conditions of the
21 treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the
22 diagnosis of alcohol or drug abuse and treatment.

23 (d) There is hereby created a special revenue account within the State Treasury known
24 as the Division of Motor Vehicles Safety and Treatment Fund. The account shall be administered
25 by the Commissioner of the Division of Motor Vehicles for the purpose of administering the
26 comprehensive Safety and Treatment Program established by subsection (a) of this section. The
27 account may be invested and all earnings and interest accruing shall be retained in the account.
28 The Auditor shall conduct an audit of the fund at least every three fiscal years.

29 Effective July 1, 2019, all moneys held in the Department of Health and Human Resources
30 Safety and Treatment Fund shall be transferred to the Division of Motor Vehicles Safety and
31 Treatment Fund.

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

35 (2) If the division determined that a participant is an indigent based upon criteria
36 established pursuant to the legislative rule authorized by this section, the department shall provide
37 the applicant with proof of its determination regarding indigency, which proof the applicant shall
38 present to the interlock provider as part of the application process provided in §17C-5A-3a of this
39 code and/or the rules promulgated pursuant thereto.

40 (3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee

41 collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into
42 the Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall
43 reimburse enrollment fees to program providers for each eligible indigent offender.

44 (f) On or before January 15 of each year, the Commissioner of the Division of Motor
45 Vehicles shall report to the Legislature on:

46 (1) The total number of offenders participating in the Safety and Treatment Program during
47 the prior year;

48 (2) The total number of indigent offenders participating in the Safety and Treatment
49 Program during the prior year;

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

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

52 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to
53 the program developed for the offender, shall prescribe the necessary terms and conditions for
54 the reissuance of the license to operate a motor vehicle in this state revoked under this article, or
55 §17C-5-7 or §17B-3-5(6) of this code which shall include successful completion of the
56 educational, treatment, or rehabilitation program, subject to the following:

57 (1) When the period of revocation is six months, the license to operate a motor vehicle in
58 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial
59 revocation, during which time the revocation was actually in effect; (B) the offender has
60 successfully completed the program; (C) all costs of the program and administration have been
61 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

62 (2) When the period of revocation is for a period of one year or for more than a year, the
63 license to operate a motor vehicle in this state may not be reissued until: (A) At least one half of
64 the time period has elapsed from the date of the initial revocation, during which time the revocation
65 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of
66 the program and administration have been paid; and (D) all costs assessed as a result of a

67 revocation hearing have been paid. Notwithstanding any provision in this code, a person whose
68 license is revoked for refusing to take a chemical test as required by §17C-5-7 of this code for a
69 first offense is not eligible to reduce the revocation period by completing the Safety and Treatment
70 Program.

71 (3) When the period of revocation is for life, the license to operate a motor vehicle in this
72 state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial
73 revocation, during which time the revocation was actually in effect; (B) the offender has
74 successfully completed the program; (C) all costs of the program and administration have been
75 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

76 (4) Notwithstanding any provision of this code or any rule, any mental health facilities or
77 other public agencies or private entities conducting the Safety and Treatment Program when
78 certifying that a person has successfully completed a Safety and Treatment Program shall only
79 have to certify that the person has successfully completed the program.

80 (h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational
81 program for each person whose license has been suspended for 60 days pursuant to the
82 provisions of §17C-5A-2(n) of this code. The educational program shall consist of not less than
83 12 nor more than 18 hours of actual classroom time.

84 (2) When a 60-day period of suspension has been ordered, the license to operate a motor
85 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial
86 suspension, during which time the suspension was in effect; (B) the offender has successfully
87 completed the educational program; (C) all costs of the program and administration have been
88 paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

89 (i) A required component of the treatment program provided in §17C-5A-3(b) of this code
90 and the education program provided for in §17C-5A-3(c) of this code shall be participation by the
91 violator with a victim impact panel program providing a forum for victims of alcohol and drug-
92 related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-

93 related offenses in their lives. The Division of Motor Vehicles shall propose and implement a plan
94 for victim impact panels where appropriate numbers of victims are available and willing to
95 participate and shall establish guidelines for other innovative programs which may be substituted
96 where the victims are not available to assist persons whose licenses have been suspended or
97 revoked for alcohol and drug-related offenses to gain a full understanding of the severity of their
98 offenses in terms of the impact of the offenses on victims and offenders. The plan shall require,
99 at a minimum, discussion and consideration of the following:

- 100 (1) Economic losses suffered by victims or offenders;
- 101 (2) Death or physical injuries suffered by victims or offenders;
- 102 (3) Psychological injuries suffered by victims or offenders;
- 103 (4) Changes in the personal welfare or familial relationships of victims or offenders; and
- 104 (5) Other information relating to the impact of alcohol and drug-related offenses upon
105 victims or offenders.

106 The Division of Motor Vehicles shall ensure that any meetings between victims and
107 offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

108 (j)(1) The Commissioner of the Division of Motor Vehicles shall promulgate a rule for
109 legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the provisions
110 of this section and establish a fee to be collected from each offender enrolled in the Safety and
111 Treatment Program. The rule shall include: (A) A reimbursement mechanism to program providers
112 of required fees for the safety and treatment program for indigent offenders, criteria for
113 determining eligibility of indigent offenders, and any necessary application forms; and (B) program
114 standards that encompass provider criteria including minimum professional training requirements
115 for providers, curriculum approval, minimum course length requirements, and other items that
116 may be necessary to properly implement the provisions of this section.

117 (2) The Legislature finds that an emergency exists and, therefore, the commissioner shall
118 file by July 1, 2019, an emergency rule to implement this section pursuant to the provisions of

119 §29A-3-15 of this code.

120 (k) Nothing in this section may be construed to prohibit day report or community
121 corrections programs, authorized pursuant to §62-11C-1 *et seq.* of this code, from administering
122 a comprehensive Safety and Treatment Program pursuant to this section.

123 (l) The Division of Motor Vehicles shall provide fair, impartial, and expeditious grievance
124 and appellate procedures for participants of the safety and treatment program who wish to
125 challenge an adverse decision by the agency or other entity conducting the program that
126 negatively affects, or unnecessarily delays, the participants' outcome in that program. After all
127 administrative remedies provided by this article or its related promulgated rules have been
128 exhausted, participants who have been deemed unsuccessful in the program, rendering them
129 ineligible for license reinstatement, or whose outcomes in the program have been unnecessarily
130 delayed, are entitled to judicial review of the adverse decision, pursuant to § 29A-5-4 of this code.
131 The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate rules
132 related to the grievance and appellate procedures referenced in this subsection under the
133 provisions of §29A-3-1 *et seq.* of this code.

NOTE: The purpose of this bill is to add grievance and appellate procedures and judicial review for participants in the Division of Motor Vehicles' Safety and Treatment Program. The bill also authorizes the Commissioner of the Division of Motor Vehicles to promulgate rules to add such procedures and review for participants of the safety and treatment program.

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