

1 **H. B. 2495**

2  
3 (By Delegates Caputo, Fragale, Iaquina,  
4 Manchin and Cann)

5  
6 [Introduced January 14, 2011; referred to the  
7 Committee on the Judiciary.]

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9  
10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,  
11 1931, as amended, relating generally to driving under the  
12 influence; requiring mandatory community service for persons  
13 convicted of driving under the influence of alcohol,  
14 controlled substances or drugs; setting forth a registry of  
15 persons convicted to be maintained by the West Virginia State  
16 Police.

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

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

20 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

21 **§17C-5-2. Driving under influence of alcohol, controlled**  
22 **substances or drugs; penalties.**

23 (a) Any person who:

24 (1) Drives a vehicle in this state while he or she:

25 (A) Is under the influence of alcohol;

26 (B) Is under the influence of any controlled substance;

1 (C) Is under the influence of any other drug;

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

4 (E) Has an alcohol concentration in his or her blood of eight  
5 hundredths of one percent or more, by weight; and

6 (2) While driving does any act forbidden by law or fails to  
7 perform any duty imposed by law in the driving of the vehicle,  
8 which act or failure proximately causes the death of any person  
9 within one year next following the act or failure; and

10 (3) Commits the act or failure in reckless disregard of the  
11 safety of others and when the influence of alcohol, controlled  
12 substances or drugs is shown to be a contributing cause to the  
13 death, is guilty of a felony and, upon conviction thereof, shall be  
14 imprisoned in a state correctional facility for not less than two  
15 years nor more than ten years and shall be fined not less than  
16 \$1,000 nor more than \$3,000.

17 (b) Any person who:

18 (1) Drives a vehicle in this state while he or she:

19 (A) Is under the influence of alcohol;

20 (B) Is under the influence of any controlled substance;

21 (C) Is under the influence of any other drug;

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

24 (E) Has an alcohol concentration in his or her blood of eight  
25 hundredths of one percent or more, by weight; and

1           (2) While driving does any act forbidden by law or fails to  
2 perform any duty imposed by law in the driving of the vehicle,  
3 which act or failure proximately causes the death of any person  
4 within one year next following the act or failure, is guilty of a  
5 misdemeanor and, upon conviction thereof, shall be confined in jail  
6 for not less than ninety days nor more than one year and shall be  
7 fined not less than \$500 nor more than \$1,000.

8           (c) Any person who:

9           (1) Drives a vehicle in this state while he or she:

10          (A) Is under the influence of alcohol;

11          (B) Is under the influence of any controlled substance;

12          (C) Is under the influence of any other drug;

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

15          (E) Has an alcohol concentration in his or her blood of eight  
16 hundredths of one percent or more, by weight; and

17           (2) While driving does any act forbidden by law or fails to  
18 perform any duty imposed by law in the driving of the vehicle,  
19 which act or failure proximately causes bodily injury to any person  
20 other than himself or herself, is guilty of a misdemeanor and, upon  
21 conviction thereof, shall be confined in jail for not less than one  
22 day nor more than one year, which jail term is to include actual  
23 confinement of not less than twenty-four hours, and shall be fined  
24 not less than \$200 nor more than \$1,000.

25           (d) Any person who:

1 (1) Drives a vehicle in this state while he or she:

2 (A) Is under the influence of alcohol;

3 (B) Is under the influence of any controlled substance;

4 (C) Is under the influence of any other drug;

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

7 (E) Has an alcohol concentration in his or her blood of eight  
8 hundredths of one percent or more, by weight, but less than fifteen  
9 hundredths of one percent, by weight;

10 (2) Is guilty of a misdemeanor and, upon conviction thereof,  
11 except as provided in section two-b of this article, shall be  
12 confined in jail for up to six months and shall be fined not less  
13 than \$100 nor more than \$500. A person sentenced pursuant to this  
14 subdivision shall receive credit for any period of actual  
15 confinement he or she served upon arrest for the subject offense.

16 (e) Any person who drives a vehicle in this state while he or  
17 she has an alcohol concentration in his or her blood of fifteen  
18 hundredths of one percent or more, by weight, is guilty of a  
19 misdemeanor and, upon conviction thereof, shall be confined in jail  
20 for not less than two days nor more than six months, which jail  
21 term is to include actual confinement of not less than twenty-four  
22 hours, and shall be fined not less than \$200 nor more than \$1,000.  
23 A person sentenced pursuant to this subdivision shall receive  
24 credit for any period of actual confinement he or she served upon  
25 arrest for the subject offense.

1           (f) Any person who, being an habitual user of narcotic drugs  
2 or amphetamine or any derivative thereof, drives a vehicle in this  
3 state is guilty of a misdemeanor and, upon conviction thereof,  
4 shall be confined in jail for not less than one day nor more than  
5 six months, which jail term is to include actual confinement of not  
6 less than twenty-four hours, and shall be fined not less than \$100  
7 nor more than \$500. A person sentenced pursuant to this  
8 subdivision shall receive credit for any period of actual  
9 confinement he or she served upon arrest for the subject offense.

10          (g) Any person who:

11          (1) Knowingly permits his or her vehicle to be driven in this  
12 state by any other person who:

13           (A) Is under the influence of alcohol;

14           (B) Is under the influence of any controlled substance;

15           (C) Is under the influence of any other drug;

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

18           (E) Has an alcohol concentration in his or her blood of eight  
19 hundredths of one percent or more, by weight;

20          (2) Is guilty of a misdemeanor and, upon conviction thereof,  
21 shall be confined in jail for not more than six months and shall be  
22 fined not less than \$100 nor more than \$500.

23          (h) Any person who knowingly permits his or her vehicle to be  
24 driven in this state by any other person who is an habitual user of  
25 narcotic drugs or amphetamine or any derivative thereof is guilty

1 of a misdemeanor and, upon conviction thereof, shall be confined in  
2 jail for not more than six months and shall be fined not less than  
3 \$100 nor more than \$500.

4       (i) Any person under the age of twenty-one years who drives a  
5 vehicle in this state while he or she has an alcohol concentration  
6 in his or her blood of two hundredths of one percent or more, by  
7 weight, but less than eight hundredths of one percent, by weight,  
8 for a first offense under this subsection is guilty of a  
9 misdemeanor and, upon conviction thereof, shall be fined not less  
10 than \$25 nor more than \$100. For a second or subsequent offense  
11 under this subsection, the person is guilty of a misdemeanor and,  
12 upon conviction thereof, shall be confined in jail for twenty-four  
13 hours and shall be fined not less than \$100 nor more than \$500. A  
14 person who is charged with a first offense under the provisions of  
15 this subsection may move for a continuance of the proceedings, from  
16 time to time, to allow the person to participate in the Motor  
17 Vehicle Alcohol Test and Lock Program as provided in section  
18 three-a, article five-a of this chapter. Upon successful  
19 completion of the program, the court shall dismiss the charge  
20 against the person and expunge the person's record as it relates to  
21 the alleged offense. In the event the person fails to successfully  
22 complete the program, the court shall proceed to an adjudication of  
23 the alleged offense. A motion for a continuance under this  
24 subsection may not be construed as an admission or be used as  
25 evidence.

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

6 (j) Any person who:

7 (1) Drives a vehicle in this state while he or she:

8 (A) Is under the influence of alcohol;

9 (B) Is under the influence of any controlled substance;

10 (C) Is under the influence of any other drug;

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

13 (E) Has an alcohol concentration in his or her blood of eight  
14 hundredths of one percent or more, by weight; and

15 (2) The person while driving has on or within the motor  
16 vehicle one or more other persons who are unemancipated minors who  
17 have not reached their sixteenth birthday is guilty of a  
18 misdemeanor and, upon conviction thereof, shall be confined in jail  
19 for not less than two days nor more than twelve months, which jail  
20 term is to include actual confinement of not less than forty-eight  
21 hours and shall be fined not less than \$200 nor more than \$1,000.

22 (k) A person violating any provision of subsection (b), (c),  
23 (d), (e), (f), (g) or (I) of this section, for the second offense  
24 under this section, is guilty of a misdemeanor and, upon conviction  
25 thereof, shall be confined in jail for not less than six months nor

1 more than one year and the court may, in its discretion, impose a  
2 fine of not less than \$1,000 nor more than \$3,000.

3 (l) A person violating any provision of subsection (b), (c),  
4 (d), (e), (f), (g) or (I) of this section, for the third or any  
5 subsequent offense under this section, is guilty of a felony and,  
6 upon conviction thereof, shall be imprisoned in a state  
7 correctional facility for not less than one nor more than three  
8 years and the court may, in its discretion, impose a fine of not  
9 less than \$3,000 nor more than \$5,000.

10 (m) For purposes of subsections (k) and (l) of this section  
11 relating to second, third and subsequent offenses, the following  
12 events shall be regarded as offenses under this section:

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

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

25 (3) Any period of conditional probation imposed pursuant



1 section two-b of this article for violation of subsection (d) of  
2 this article, which violation occurred within the ten-year period  
3 immediately preceding the date of arrest in the current proceeding.

4       (n) A person may be charged in a warrant or indictment or  
5 information for a second or subsequent offense under this section  
6 if the person has been previously arrested for or charged with a  
7 violation of this section which is alleged to have occurred within  
8 the applicable time period for prior offenses, notwithstanding the  
9 fact that there has not been a final adjudication of the charges  
10 for the alleged previous offense. In that case, the warrant or  
11 indictment or information must set forth the date, location and  
12 particulars of the previous offense or offenses. No person may be  
13 convicted of a second or subsequent offense under this section  
14 unless the conviction for the previous offense has become final, or  
15 the person has previously had a period of conditional probation  
16 imposed pursuant to section two-b of this article.

17       (o) The fact that any person charged with a violation of  
18 subsection (a), (b), (c), (d), (e) or (f) of this section, or any  
19 person permitted to drive as described under subsection (g) or (h)  
20 of this section, is or has been legally entitled to use alcohol, a  
21 controlled substance or a drug does not constitute a defense  
22 against any charge of violating subsection (a), (b), (c), (d), (e),  
23 (f), (g) or (h) of this section.

24       (p) For purposes of this section, the term "controlled  
25 substance" has the meaning ascribed to it in chapter sixty-a of

1 this code.

2       (q) The sentences provided in this section upon conviction for  
3 a violation of this article are mandatory and are not subject to  
4 suspension or probation: *Provided*, That the court may apply the  
5 provisions of article eleven-a, chapter sixty-two of this code to  
6 a person sentenced or committed to a term of one year or less for  
7 a first offense under this section: *Provided, however, That* the  
8 court may impose a term of conditional probation pursuant to  
9 section two-b of this article to persons adjudicated thereunder.  
10 An order for home detention by the court pursuant to the provisions  
11 of article eleven-b of said chapter may be used as an alternative  
12 sentence to any period of incarceration required by this section  
13 for a first or subsequent offense: *Provided further, That* for any  
14 period of home incarceration ordered for a person convicted of  
15 second offense under this section, electronic monitoring shall be  
16 required for no fewer than five days of the total period of home  
17 confinement ordered and the offender may not leave home for those  
18 five days notwithstanding the provisions of section five, article  
19 eleven-b, chapter sixty-two of this code: *And provided further,*  
20 *That* for any period of home incarceration ordered for a person  
21 convicted of a third or subsequent violation of this section,  
22 electronic monitoring shall be included for no fewer than ten days  
23 of the total period of home confinement ordered and the offender  
24 may not leave home for those ten days notwithstanding section five,  
25 article eleven-b, chapter sixty-two of this code.

1 (r) Any person found guilty of a misdemeanor pursuant to  
2 subsections (c), (d), (e), (f), (g), (h), (i) and (j) of this  
3 section shall upon conviction thereof:

4 (1) For a first offense be required to serve fifty hours of  
5 community service within a period of six months from the date of  
6 conviction or release from confinement;

7 (2) For a second or subsequent offense under this section, be  
8 required to serve seventy-five hours of community service within  
9 six months of the date of conviction or release from confinement;

10 (3) For a third and each subsequent violation shall be  
11 required to serve one hundred hours of community service within six  
12 months of the date of conviction;

13 (s) For purposes of this section, eight hours of community  
14 service shall be credited as one day of the sentence imposed.  
15 Persons sentenced under this program shall be required to provide  
16 their own transportation to and from the work site and any and all  
17 other items necessary to the completion community service.  
18 "Community service" includes services provided at no charge  
19 whatsoever, of:

20 (1) Providing any type of health, personal finance,  
21 psychological or behavioral, religious, legal, marital, educational  
22 or housing counseling and advice to economically disadvantaged  
23 citizens or a specifically designated group of economically  
24 disadvantaged citizens or in an economically disadvantaged area;

25 (2) Providing emergency assistance or medical care to

1 economically disadvantaged citizens or to a specifically designated  
2 group of economically disadvantaged citizens or in an economically  
3 disadvantaged area;

4 (3) Establishing, maintaining or operating recreational  
5 facilities, or housing facilities for economically disadvantaged  
6 citizens or a specifically designated group of economically  
7 disadvantaged citizens or in an economically disadvantaged area;

8 (4) Providing economic development assistance to economically  
9 disadvantaged citizens or a specifically designated group of  
10 economically disadvantaged citizens; without regard to whether they  
11 are located in an economically disadvantaged area, or to  
12 individuals, groups or neighborhood or community organizations, in  
13 an economically disadvantaged area; or

14 (5) Providing community technical assistance and capacity  
15 building to economically disadvantaged citizens or a specifically  
16 designated group of economically disadvantaged citizens, or to  
17 individuals, groups or neighborhood or community organizations in  
18 an economically disadvantaged area.

19 (t) Persons sentenced under the provisions of this section  
20 remain under the jurisdiction of the court. The court may withdraw  
21 any alternative sentence at any time by order entered with or  
22 without notice and require that the remainder of the sentence be  
23 served in the county jail, regional jail or a state correctional  
24 facility: *Provided*, That no alternative sentence directed by the  
25 sentencing judge or magistrate or administered under the

1 supervision of the sheriff, his or her deputies, a jailer or a  
2 guard, may require the convicted person to perform duties which  
3 would be considered detrimental to the convicted person's health as  
4 attested by a physician.

5 (u) (1) The Criminal Identification Division of the State  
6 Police shall maintain a registry containing the names of persons  
7 convicted under the provisions of this section. The registry shall  
8 be maintained by the Criminal Identification Division and made  
9 available for public inquiry on the Internet. The registry shall  
10 consist of:

11 (i) The individual's full name,

12 (ii) Sufficient information to identify the individual  
13 including the date of birth and fingerprints if available;

14 (iii) The offenses for which the individual was convicted the  
15 precipitated their inclusion on the registry;

16 (iv) A photograph;

17 (v) Any statement by the individual disputing the conviction,  
18 if he or she chooses to make and file one; and

19 (vi) Any other identifying information considered necessary to  
20 properly identify the person: *Provided*, That in no event may the  
21 information include a person's social security number.

22 (2) The circuit clerks of each county shall forward certified  
23 copies of abstracts of judgement containing any criminal  
24 convictions had under the provisions of this section to the  
25 Criminal Identification Division of the State Police within

1 forty-five days of entry of the order of conviction.

2       (3) Upon conviction in the criminal courts of this state of  
3 any offense in this section, the individual so convicted shall be  
4 placed on this registry.

NOTE: The purpose of this bill is to require mandatory community service upon conviction of a misdemeanor offense of driving under the influence and creation of a central registry of persons convicted of driving under the influence.

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