

Senate Bill No. 617

(By Senator Carmichael)

[Introduced March 22, 2013; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,
11 1931, as amended, relating to serious traffic offenses;
12 driving under the influence of alcohol, controlled substances
13 or drugs; increasing the criminal penalties; and providing
14 that the changes may be cited as Andrea’s Law.

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

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

18 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

19 **§17C-5-2. Driving under influence of alcohol, controlled**
20 **substances or drugs; penalties.**

21 (a) The amendments made to this section in 2013 are enacted to
22 increase the criminal penalties for the offenses of driving under

1 the influence of alcohol, controlled substances or drugs and may be
2 cited as "Andrea's Law".

3 ~~(a)~~ (b) Any person who:

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

5 (A) Is under the influence of alcohol;

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

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

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

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

12 (2) While driving does any act forbidden by law or fails to
13 perform any duty imposed by law in the driving of the vehicle,
14 which act or failure proximately causes the death or serious bodily
15 injury of any person within one year next following the act or
16 failure; and

17 (3) For a second or subsequent offense under this section the
18 person is guilty of a felony and, upon conviction thereof, shall be
19 imprisoned in a state correctional facility for not less than
20 twenty years.

21 ~~(3)~~ (4) Commits the act or failure in reckless disregard of
22 the safety of others and when the influence of alcohol, controlled
23 substances or drugs is shown to be a contributing cause to the

1 death or serious bodily injury, is guilty of a felony and, upon
2 conviction thereof, shall be imprisoned in a state correctional
3 facility for not less than ~~two~~ five years nor more than ~~ten~~ twenty
4 years and shall be fined not less than ~~\$1,000~~ \$10,000 nor more than
5 ~~\$3,000~~ \$100,000.

6 ~~(b)~~ (c) 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;

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) While driving does any act forbidden by law or fails to
16 perform any duty imposed by law in the driving of the vehicle,
17 which act or failure proximately causes the death or serious bodily
18 injury of any person within one year next following the act or
19 failure, is guilty of a ~~misdemeanor~~ felony and, upon conviction
20 thereof, shall be ~~confined in jail~~ imprisoned in a state
21 correctional facility for not less than ~~ninety days~~ two nor more
22 than ~~one year~~ ten years and shall be fined not less than ~~\$500~~
23 \$10,000 nor more than ~~\$1,000~~ \$50,000.

1 ~~(c)~~ (d) Any person who:

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

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;

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

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

10 (2) While driving does any act forbidden by law or fails to
11 perform any duty imposed by law in the driving of the vehicle,
12 which act or failure proximately causes bodily injury to any person
13 other than himself or herself, is guilty of a ~~misdemeanor~~ felony
14 and, upon conviction thereof, shall be ~~confined in jail~~ imprisoned
15 in a state correctional facility for not less than ~~one day~~ ninety
16 days nor more than ~~one year~~ five years, which ~~jail~~ term is to
17 include actual ~~confinement~~ imprisonment of not less than
18 ~~twenty-four hours~~ ninety days, and shall be fined not less than
19 ~~\$200~~ \$1,000 nor more than ~~\$1,000~~ \$5,000.

20 ~~(d)~~ (e) Any person who:

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

22 (A) Is under the influence of alcohol;

23 (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, but less than fifteen
6 hundredths of one percent, by weight;

7 (2) Is guilty of a misdemeanor and, upon conviction thereof,
8 except as provided in section two-b of this article, shall be
9 confined in jail for ~~up to six months and shall be fined not less~~
10 ~~than \$100 nor more than \$500~~ not less than five days nor more than
11 one year, which jail term is to include actual confinement of not
12 less than forty-eight hours and shall be fined not less than \$500
13 nor more than \$2,000. 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)~~ (f) Any person who drives a vehicle in this state while he
17 or 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~~ six months nor more than ~~six months~~ one
21 year, which jail term is to include actual confinement of not less
22 than ~~twenty-four~~ seventy-two hours, and shall be fined not less
23 than ~~\$200~~ \$1,000 nor more than ~~\$1,000~~ \$5,000. A person sentenced

1 pursuant to this subdivision shall receive credit for any period of
2 actual confinement he or she served upon arrest for the subject
3 offense.

4 ~~(f)~~ (g) Any person who, being an habitual user of narcotic
5 drugs or amphetamine or any derivative thereof, drives a vehicle in
6 this state is guilty of a misdemeanor and, upon conviction thereof,
7 shall be confined in jail for not less than ~~one day~~ two days nor
8 more than six months, which jail term is to include actual
9 confinement of not less than twenty-four hours, and shall be fined
10 not less than ~~\$100~~ \$200 nor more than ~~\$500~~ \$1,000. A person
11 sentenced pursuant to this subdivision shall receive credit for any
12 period of actual confinement he or she served upon arrest for the
13 subject offense.

14 ~~(g)~~ (h) Any person who:

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

17 (A) Is under the influence of alcohol;

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

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

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

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

1 (2) Is guilty of a misdemeanor and, upon conviction thereof,
2 shall be confined in jail for not ~~more than six months~~ less than
3 two days nor more than six months which jail term is to include
4 actual confinement of not less than twenty-four hours and shall be
5 fined not less than ~~\$100~~ \$200 nor more than ~~\$500~~ \$1,000.

6 ~~(h)~~ (i) Any person who knowingly permits his or her vehicle to
7 be driven in this state by any other person who is an habitual user
8 of narcotic drugs or amphetamine or any derivative thereof is
9 guilty of a misdemeanor and, upon conviction thereof, shall be
10 confined in jail for not ~~more than six months~~ less than two days
11 nor more than six months which jail term is to include actual
12 confinement of not less than twenty-four hours and shall be fined
13 not less than ~~\$100~~ \$200 nor more than ~~\$500~~ \$1,000.

14 ~~(i)~~ (j) Any person under the age of twenty-one years who
15 drives a vehicle in this state while he or she has an alcohol
16 concentration in his or her blood of two hundredths of one percent
17 or more, by weight, but less than eight hundredths of one percent,
18 by weight, for a first offense under this subsection is guilty of
19 a misdemeanor and, upon conviction thereof, shall be confined in
20 jail 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 \$25 \$200 nor more than ~~\$100~~
23 \$1,000. For a second or subsequent offense under this subsection,

1 the person is guilty of a misdemeanor and, upon conviction thereof,
2 shall be confined in jail for ~~twenty-four hours~~ not less than six
3 months nor more than one year which jail term is to include actual
4 confinement of not less than seventy-two hours and shall be fined
5 not less than ~~\$100~~ \$1,000 nor more than ~~\$500~~ \$5,000. A person who
6 is charged with a first offense under the provisions of this
7 subsection may move for a continuance of the proceedings, from time
8 to time, to allow the person to participate in the Motor Vehicle
9 Alcohol Test and Lock Program as provided in section three-a,
10 article five-a of this chapter. Upon successful completion of the
11 program, the court shall dismiss the charge against the person and
12 expunge the person's record as it relates to the alleged offense.
13 In the event the person fails to successfully complete the program,
14 the court shall proceed to an adjudication of the alleged offense.
15 A motion for a continuance under this subsection may not be
16 construed as an admission or be used as evidence.

17 A person arrested and charged with an offense under the
18 provisions of this subsection or subsection ~~(a), (b), (c), (d),~~
19 ~~(e), (f), (g) or (h)~~ (b), (c), (d), (e), (f), (g), (h) or (i) of
20 this section may not also be charged with an offense under this
21 subsection arising out of the same transaction or occurrence.

22 ~~(j)~~ (k) Any person who:

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

1 (A) Is under the influence of alcohol;

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

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

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

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

8 (2) The person while driving has on or within the motor
9 vehicle one or more other persons who are unemancipated minors who
10 have not reached their sixteenth birthday is guilty of a
11 misdemeanor and, upon conviction thereof, shall be confined in jail
12 for not less than ~~two~~ thirty days nor more than ~~twelve months~~ one
13 year, which jail term is to include actual confinement of not less
14 than ~~forty-eight~~ seventy-two hours and shall be fined not less than
15 ~~\$200~~ \$1,000 nor more than ~~\$1,000~~ \$5,000.

16 ~~(k)~~ (l) A person violating any provision of subsection ~~(b)~~,
17 ~~(c), (d), (e), (f), (g) or (i)~~ (c), (d), (e), (f), (g), (h) or (j)
18 of this section, for the second offense under this section, is
19 guilty of a misdemeanor and, upon conviction thereof, shall be
20 confined in jail for not less than six months nor more than one
21 year and the court may, in its discretion, impose a fine of not
22 less than \$1,000 nor more than \$3,000.

23 ~~(l)~~ (m) A person violating any provision of subsection ~~(b)~~,

1 ~~(c), (d), (e), (f), (g) or (i)~~ (c), (d), (e), (f), (g), (h) or (j)
 2 of this section, for the third or any subsequent offense under this
 3 section, is guilty of a felony and, upon conviction thereof, shall
 4 be imprisoned in a state correctional facility for not less than
 5 ~~one~~ two nor more than ~~three~~ ten years and the court may, ~~in its~~
 6 ~~discretion,~~ impose a fine of not less than ~~\$3,000~~ \$5,000 nor more
 7 than ~~\$5,000~~ \$15,000.

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

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

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

23 (3) Any period of conditional probation imposed pursuant to

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

1 ~~(h)~~ (b), (c), (d), (e), (f), (g), (h) or (i) of this section.

2 ~~(p)~~ (q) For purposes of this section, the term "controlled
3 substance" has the meaning ascribed to it in chapter sixty-a of
4 this code.

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

1 convicted of a third or subsequent violation of this section,
2 electronic monitoring shall be included for no fewer than ten days
3 of the total period of home confinement ordered and the offender
4 may not leave home for those ten days notwithstanding section five,
5 article eleven-b, chapter sixty-two of this code.

NOTE: The purpose of this bill is to increase the criminal penalties for the offenses of driving under the influence of alcohol, controlled substances or drugs. The bill also provides that the changes may be cited as "Andrea's Law".

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