

1 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

4 (a) Any person who:

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

6 (A) Is under the influence of alcohol;

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

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

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

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

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

17 ~~(3) Commits the act or failure in reckless disregard of the~~
18 ~~safety of others and when the influence of alcohol, controlled~~
19 ~~substances or drugs is shown to be a contributing cause to the~~
20 ~~death,~~ is guilty of a felony and, upon conviction thereof, shall be
21 imprisoned in a state correctional facility for not less than ~~two~~
22 ~~years~~ one year nor more than ten years and shall be fined not less
23 than \$1,000 nor more than \$3,000.

24 ~~(b) 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;~~
- 7 ~~(E) Has an alcohol concentration in his or her blood of eight~~
- 8 ~~hundredths of one percent or more, by weight; and~~
- 9 ~~(2) While driving does any act forbidden by law or fails to~~
- 10 ~~perform any duty imposed by law in the driving of the vehicle,~~
- 11 ~~which act or failure proximately causes the death of any person~~
- 12 ~~within one year next following the act or failure, is guilty of a~~
- 13 ~~misdemeanor and, upon conviction thereof, shall be confined in jail~~
- 14 ~~for not less than ninety days nor more than one year and shall be~~
- 15 ~~fined not less than \$500 nor more than \$1,000.~~
- 16 ~~(c)~~ (b) Any person who:
- 17 (1) Drives a vehicle in this state while he or she:
- 18 (A) Is under the influence of alcohol;
- 19 (B) Is under the influence of any controlled substance;
- 20 (C) Is under the influence of any other drug;
- 21 (D) Is under the combined influence of alcohol and any
- 22 controlled substance or any other drug; or
- 23 (E) Has an alcohol concentration in his or her blood of eight
- 24 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 bodily injury to any person
4 other than himself or herself, is guilty of a misdemeanor and, upon
5 conviction thereof, shall be confined in jail for not less than one
6 day nor more than one year, which jail term is to include actual
7 confinement of not less than twenty-four hours, and shall be fined
8 not less than \$200 nor more than \$1,000.

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

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

11 (A) Is under the influence of alcohol;

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

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

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

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

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

1 ~~(e)~~ (d) Any person who drives a vehicle in this state while he
2 or she has an alcohol concentration in his or her blood of fifteen
3 hundredths of one percent or more, by weight, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be confined in jail
5 for not less than two days nor more than six months, which jail
6 term is to include actual confinement of not less than twenty-four
7 hours, and shall be fined not less than \$200 nor more than \$1,000.
8 A person sentenced pursuant to this subdivision shall receive
9 credit for any period of actual confinement he or she served upon
10 arrest for the subject offense.

11 ~~(f)~~ (e) Any person who, being an habitual user of narcotic
12 drugs or amphetamine or any derivative thereof, drives a vehicle in
13 this state is guilty of a misdemeanor and, upon conviction thereof,
14 shall be confined in jail for not less than one day nor more than
15 six months, which jail term is to include actual confinement of not
16 less than twenty-four hours, and shall be fined not less than \$100
17 nor more than \$500. A person sentenced pursuant to this
18 subdivision shall receive credit for any period of actual
19 confinement he or she served upon arrest for the subject offense.

20 ~~(g)~~ (f) Any person who:

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

23 (A) Is under the influence of alcohol;

24 (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;

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

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

9 ~~(h)~~ (g) Any person who knowingly permits his or her vehicle to
10 be driven in this state by any other person who is an habitual user
11 of narcotic drugs or amphetamine or any derivative thereof is
12 guilty of a misdemeanor and, upon conviction thereof, shall be
13 confined in jail for not more than six months and shall be fined
14 not less than \$100 nor more than \$500.

15 ~~(i)~~ (h) Any person under the age of twenty-one years who
16 drives a vehicle in this state while he or she has an alcohol
17 concentration in his or her blood of two hundredths of one percent
18 or more, by weight, but less than eight hundredths of one percent,
19 by weight, for a first offense under this subsection is guilty of
20 a misdemeanor and, upon conviction thereof, shall be fined not less
21 than \$25 nor more than \$100. For a second or subsequent offense
22 under this subsection, the person is guilty of a misdemeanor and,
23 upon conviction thereof, shall be confined in jail for twenty-four
24 hours and shall be fined not less than \$100 nor more than \$500. A

1 person who is charged with a first offense under the provisions of
2 this subsection may move for a continuance of the proceedings, from
3 time to time, to allow the person to participate in the Motor
4 Vehicle Alcohol Test and Lock Program as provided in section
5 three-a, article five-a of this chapter. Upon successful
6 completion of the program, the court shall dismiss the charge
7 against the person and expunge the person's record as it relates to
8 the alleged offense. In the event the person fails to successfully
9 complete the program, the court shall proceed to an adjudication of
10 the alleged offense. A motion for a continuance under this
11 subsection may not be construed as an admission or be used as
12 evidence. A person arrested and charged with an offense under the
13 provisions of this subsection or subsection (a), (b), (c), (d),
14 (e), (f), ~~(g) or (h)~~ or (g) of this section may not also be charged
15 with an offense under this subsection arising out of the same
16 transaction or occurrence.

17 ~~(j)~~ (i) 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; or

24 (E) Has an alcohol concentration in his or her blood of eight

1 hundredths of one percent or more, by weight; and

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

9 ~~(k)~~ (j) A person violating any provision of subsection (b),
10 (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the
11 second offense under this section, is guilty of a misdemeanor and,
12 upon conviction thereof, shall be confined in jail for not less
13 than six months nor more than one year and the court may, in its
14 discretion, impose a fine of not less than \$1,000 nor more than
15 \$3,000.

16 ~~(i)~~ (k) A person violating any provision of subsection (b),
17 (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the third
18 or any subsequent offense under this section, is guilty of a felony
19 and, upon conviction thereof, shall be imprisoned in a state
20 correctional facility for not less than one nor more than three
21 years and the court may, in its discretion, impose a fine of not
22 less than \$3,000 nor more than \$5,000.

23 ~~(m)~~ (l) For purposes of subsections ~~(k) and (i)~~ (j) and (k) of
24 this section relating to second, third and subsequent offenses, the

1 following events shall be regarded as offenses under this section:

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

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

14 (3) Any period of conditional probation imposed pursuant to
15 section two-b of this article for violation of subsection ~~(d)~~ (c)
16 of this article, which violation occurred within the ten-year
17 period immediately preceding the date of arrest in the current
18 proceeding.

19 ~~(n)~~ (m) A person may be charged in a warrant or indictment or
20 information for a second or subsequent offense under this section
21 if the person has been previously arrested for or charged with a
22 violation of this section which is alleged to have occurred within
23 the applicable time period for prior offenses, notwithstanding the
24 fact that there has not been a final adjudication of the charges

1 for the alleged previous offense. In that case, the warrant or
2 indictment or information must set forth the date, location and
3 particulars of the previous offense or offenses. No person may be
4 convicted of a second or subsequent offense under this section
5 unless the conviction for the previous offense has become final, or
6 the person has previously had a period of conditional probation
7 imposed pursuant to section two-b of this article.

8 ~~(o)~~ (n) The fact that any person charged with a violation of
9 subsection (a), (b), (c), (d) ~~(e) or (f)~~ or (e) of this section, or
10 any person permitted to drive as described under subsection ~~(g)~~ or
11 ~~(h)~~ (f) or (g) of this section, is or has been legally entitled to
12 use alcohol, a controlled substance or a drug does not constitute
13 a defense against any charge of violating subsection (a), (b), (c),
14 (d), (e), (f) ~~(g) or (h)~~ or (g) of this section.

15 ~~(p)~~ (o) For purposes of this section, the term "controlled
16 substance" has the meaning ascribed to it in chapter sixty-a of
17 this code.

18 ~~(q)~~ (p) The sentences provided in this section upon conviction
19 for a violation of this article are mandatory and are not subject
20 to suspension or probation: *Provided*, That the court may apply the
21 provisions of article eleven-a, chapter sixty-two of this code to
22 a person sentenced or committed to a term of one year or less for
23 a first offense under this section: *Provided further*, That the
24 court may impose a term of conditional probation pursuant to

1 section two-b of this article to persons adjudicated thereunder.
 2 An order for home detention by the court pursuant to the provisions
 3 of article eleven-b of said chapter may be used as an alternative
 4 sentence to any period of incarceration required by this section
 5 for a first or subsequent offense: *Provided, however,* That for any
 6 period of home incarceration ordered for a person convicted of
 7 second offense under this section, electronic monitoring shall be
 8 required for no fewer than five days of the total period of home
 9 confinement ordered and the offender may not leave home for those
 10 five days notwithstanding the provisions of section five, article
 11 eleven-b, chapter sixty-two of this code: *Provided further,* That
 12 for any period of home incarceration ordered for a person convicted
 13 of a third or subsequent violation of this section, electronic
 14 monitoring shall be included for no fewer than ten days of the
 15 total period of home confinement ordered and the offender may not
 16 leave home for those ten days notwithstanding section five, article
 17 eleven-b, chapter sixty-two of this code.

18 **§17C-5-2b. Deferral of further proceedings for certain first**
 19 **offenses upon condition of participation in motor**
 20 **vehicle alcohol test and lock program; procedure**
 21 **on charge of violation of conditions.**

22 (a) Except as provided in ~~subsections~~ subsection (g) of this
 23 section, whenever any person who has not previously been convicted

1 of any offense under this article or under any statute of the
2 United States or of any state relating to driving under the
3 influence alcohol, any controlled substance or any other drug:

4 (1) Notifies the court within thirty days of his or her arrest
5 of his or her intention to participate in a deferral pursuant to
6 this section; and

7 (2) Pleads guilty to or is found guilty of driving under the
8 influence of alcohol under subsection ~~(d)~~ (c), section two of this
9 article, the court, without entering a judgment of guilt and with
10 the consent of the accused, shall defer further proceedings and,
11 notwithstanding any provisions of this code to the contrary, place
12 him or her on probation, which conditions shall include, that he or
13 she successfully completes the Motor Vehicle Alcohol Test and Lock
14 Program as provided in section three-a, article five-a of this
15 chapter. Participation therein shall be for a period of at least
16 one hundred and sixty five days after he or she has served the
17 fifteen days of license suspension imposed pursuant to section two,
18 article five-a of this chapter.

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

23 (c) (1) If the prosecuting attorney files a motion alleging
24 that the defendant during the period of the Motor Vehicle Alcohol

1 Test and Lock program has been removed therefrom by the Division of
2 Motor Vehicles, or has failed to successfully complete the program
3 before making a motion for dismissal pursuant to subsection (d) of
4 this section, the court may issue such process as is necessary to
5 bring the defendant before the court.

6 (2) A motion alleging such violation filed pursuant to
7 subdivision (1) must be filed during the period of the Motor
8 Vehicle Alcohol Test and Lock Program or, if filed thereafter, must
9 be filed within a reasonable time after the alleged violation was
10 committed.

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

18 (4) ~~Should~~ If the defendant ~~fail~~ fails to complete or be
19 removed from the Motor Vehicle Alcohol Test and Lock Program, the
20 defendant waives the appropriate statute of limitations and the
21 defendant's right to a speedy trial under any applicable Federal or
22 State constitutional provisions, statutes or rules of court during
23 the period of enrollment in the program.

24 (d) When the defendant ~~shall have~~ has completed satisfactorily

1 the Motor Vehicle Alcohol Test and Lock Program and complied with
2 its conditions, the defendant may move the court for an order
3 dismissing the charges. This motion shall be supported by
4 affidavit of the defendant and by certification of the Division of
5 Motor Vehicles that the defendant has successfully completed the
6 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion
7 shall be served on the prosecuting attorney who shall within thirty
8 days after service advise the judge of any objections to the
9 motion, serving a copy of such objections on the defendant or the
10 defendant's attorney. If there are no objections filed within the
11 thirty-day period, the court shall thereafter dismiss the charges
12 against the defendant. If there are objections filed with regard
13 to the dismissal of charges, the court shall proceed as set forth
14 in subsection (c) of this section.

15 (e) Except as provided herein, unless a defendant adjudicated
16 pursuant to this subsection be convicted of a subsequent violation
17 of this article, discharge and dismissal under this section shall
18 be without adjudication of guilt and is not a conviction for
19 purposes of disqualifications or disabilities imposed by law upon
20 conviction of a crime except for those provided in article five-a
21 of this chapter. Except as provided in ~~subsection~~ subsections (k),
22 ~~(l) and (m),~~ (j), (k) and (l), section two of this article
23 regarding subsequent offenses, the effect of the dismissal and
24 discharge shall be to restore the person in contemplation of law to

1 the status he or she occupied prior to arrest and trial. No person
2 as to whom a dismissal and discharge have been effected ~~shall be~~
3 may thereafter held to be guilty of perjury, false swearing, or
4 otherwise giving a false statement by reason of his or her failure
5 to disclose or acknowledge his or her arrest or trial in response
6 to any inquiry made of him or her for any purpose other than any
7 inquiry made in connection with any subsequent offense as that term
8 is defined in subsection ~~(m)~~ (l), section two of this article.

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

11 (g) No person ~~shall~~ may be eligible for dismissal and
12 discharge under this section: (1) in any prosecution in which any
13 violation of any other provision of this article has been
14 charged; (2) if the person holds a commercial driver's license or
15 operates commercial motor vehicle(s), or (3) the person has
16 previously had his or her driver's license revoked under section
17 two-a of this article or under any statute of the United States or
18 of any state relating to driving under the influence of alcohol,
19 any controlled substance or any other drug.

20 (h) (1) After a period of not less than one year which shall
21 begin to run immediately upon the expiration of a term of probation
22 imposed upon any person under this section, the person may apply to
23 the court for an order to expunge from all official records all
24 recordations of his or her arrest, trial, and conviction, pursuant

1 to this section except for those maintained by the Division of
2 Motor Vehicles: *Provided*, That any person who has previously been
3 convicted of a felony may not make a motion for expungement
4 pursuant to this section.

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

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

18 (i) Notwithstanding any provision of this code to the
19 contrary, any person prosecuted for a violation of subsection~~(d)~~
20 (c), section two, article five of this chapter whose case is
21 disposed of pursuant to the provisions of this section shall be
22 liable for any court costs assessable against a person convicted of
23 a violation of subsection ~~(j)~~ (i), section two, article five of
24 this chapter. Payment of such costs may be made a condition of

1 probation. The costs assessed pursuant to this subsection, whether
2 as a term of probation or not, shall be distributed as other court
3 costs in accordance with section two, article three, chapter fifty,
4 section four, article two-a, chapter fourteen, section four,
5 article twenty-nine, chapter thirty and sections two, seven and
6 ten, article five, chapter sixty-two of this code.

7 **ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND**
8 **REVOCAION OF LICENSES FOR DRIVING UNDER THE**
9 **INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR**
10 **DRUGS.**

11 **§17C-5A-1. Implied consent to administrative procedure; revocation**
12 **for driving under the influence of alcohol,**
13 **controlled substances or drugs or refusal to submit**
14 **to secondary chemical test.**

15 (a) Any person who is licensed to operate a motor vehicle in
16 this state and who drives a motor vehicle in this state shall be
17 ~~deemed~~ considered to have given his or her consent by the operation
18 thereof, subject to the provisions of this article, to the
19 procedure set forth in this article for the determination of
20 whether his or her license to operate a motor vehicle in this state
21 should be revoked because he or she did drive a motor vehicle while
22 under the influence of alcohol, controlled substances or drugs, or
23 combined influence of alcohol or controlled substances or drugs, or

1 did drive a motor vehicle while having an alcohol concentration in
2 his or her blood of eight hundredths of one percent or more, by
3 weight, or did refuse to submit to any secondary chemical test
4 required under the provisions of article five of this chapter or
5 did drive a motor vehicle while under the age of twenty-one years
6 with an alcohol concentration in his or her blood of two hundredths
7 of one percent or more, by weight, but less than eight hundredths
8 of one percent, by weight.

9 (b) Any law-enforcement officer investigating a person for an
10 offense described in section two, article five of this chapter or
11 for an offense described in a municipal ordinance which has the
12 same elements as an offense described in ~~said~~ that section shall
13 report to the Commissioner of the Division of Motor Vehicles by
14 written statement within forty-eight hours of the conclusion of the
15 investigation the name and address of the person believed to have
16 committed the offense. The report shall include the specific
17 offense with which the person is charged and, if applicable, a copy
18 of the results of any secondary tests of blood, breath or urine.
19 The signing of the statement required to be signed by this
20 subsection constitutes an oath or affirmation by the person signing
21 the statement that the statements contained in the statement are
22 true and that any copy filed is a true copy. The statement shall
23 contain upon its face a warning to the officer signing that to
24 willfully sign a statement containing false information concerning

1 any matter or thing, material or not material, is false swearing
2 and is a misdemeanor.

3 (c) If, upon examination of the written statement of the
4 officer and the tests results described in subsection (b) of this
5 section, the commissioner determines that a person committed an
6 offense described in section two, article five of this chapter or
7 an offense described in a municipal ordinance which has the same
8 elements as an offense described in said section and that the
9 results of any secondary test or tests indicate that at the time
10 the test or tests were administered the person had, in his or her
11 blood, an alcohol concentration of eight hundredths of one percent
12 or more, by weight, or at the time the person committed the offense
13 he or she was under the influence of alcohol, controlled substances
14 or drugs, the commissioner shall make and enter an order revoking
15 or suspending the person's license to operate a motor vehicle in
16 this state. If the results of the tests indicate that at the time
17 the test or tests were administered the person was under the age of
18 twenty-one years and had an alcohol concentration in his or her
19 blood of two hundredths of one percent or more, by weight, but less
20 than eight hundredths of one percent, by weight, the commissioner
21 shall make and enter an order suspending the person's license to
22 operate a motor vehicle in this state. A copy of the order shall
23 be forwarded to the person by registered or certified mail, return
24 receipt requested, and shall contain the reasons for the revocation

1 or suspension and describe the applicable revocation or suspension
2 periods provided in section two of this article. A revocation or
3 suspension ~~shall~~ is not ~~become~~ effective until ten days after
4 receipt of a copy of the order.

5 (d) Any law-enforcement officer taking a child into custody
6 under the provisions of section six-a, article five of this chapter
7 who has reasonable cause to believe that the child, at the time of
8 driving the motor vehicle, had an alcohol concentration in his or
9 her blood of two hundredths of one percent or more, by weight, or
10 that the act of the child in driving the motor vehicle was such
11 that it would provide grounds for arrest for an offense defined
12 under the provisions of section two of ~~said~~ that article if the
13 child were an adult, shall report to the Commissioner of the
14 Division of Motor Vehicles by written statement within forty-eight
15 hours the name and address of the child.

16 (e) If applicable, the report shall include a description of
17 the specific offense with which the child could have been charged
18 if the child were an adult and a copy of the results of any
19 secondary tests of blood, breath or urine. The signing of the
20 statement required to be signed by this subsection constitutes an
21 oath or affirmation by the person signing the statement that the
22 statements contained in the statement are true and that any copy
23 filed is a true copy. The statement shall contain upon its face a
24 warning to the officer signing that to willfully sign a statement

1 containing false information concerning any matter or thing,
2 material or not material, is false swearing and is a misdemeanor.

3 (f) Upon examination of the written statement of the officer
4 and any test results described in subsection (d) of this section,
5 if the commissioner determines that the results of the test
6 indicate that at the time the test or tests were administered the
7 child had, in his or her blood, an alcohol concentration of two
8 hundredths of one percent or more, by weight, but also determines
9 that the act of the child in driving the motor vehicle was not such
10 that it would provide grounds for arrest for an offense defined
11 under the provisions of subsection (a), (b), (c), (d), (e), (f),
12 ~~(g) or (h)~~ or (g), section two, article five of this chapter if the
13 child were an adult, the commissioner shall make and enter an order
14 suspending the child's license to operate a motor vehicle in this
15 state. If the commissioner determines that the act of the child in
16 driving the motor vehicle was such that it would provide grounds
17 for arrest for an offense defined under the provisions of
18 subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g), section
19 two, article five of this chapter if the child were an adult, the
20 commissioner shall make and enter an order revoking the child's
21 license to operate a motor vehicle in this state. A copy of the
22 order shall be forwarded to the child by registered or certified
23 mail, return receipt requested, and shall contain the reasons for
24 the suspension or revocation and describe the applicable suspension

1 or revocation periods provided ~~for~~ in section two of this article.
2 A suspension or revocation ~~shall~~ is not ~~become~~ effective until ten
3 days after receipt of a copy of the order.

4 **§17C-5A-2. Hearing; revocation; review.**

5 (a) Written objections to an order of revocation or suspension
6 under the provisions of section one of this article or section
7 seven, article five of this chapter shall be filed with the Office
8 of Administrative Hearings. Upon the receipt of an objection, the
9 Office of Administrative Hearings shall notify the Commissioner of
10 the Division of Motor Vehicles, who shall stay the imposition of
11 the period of revocation or suspension and afford the person an
12 opportunity to be heard by the Office of Administrative Hearings.
13 The written objection must be filed with Office of Administrative
14 Hearings in person, by registered or certified mail, return receipt
15 requested, or by facsimile transmission or electronic mail within
16 thirty calendar days after receipt of a copy of the order of
17 revocation or suspension or no hearing will be granted: *Provided,*
18 That a successful transmittal sheet shall be necessary for proof of
19 written objection in the case of filing by fax. The hearing shall
20 be before a hearing examiner employed by the Office of
21 Administrative Hearings who shall rule on evidentiary issues. Upon
22 consideration of the designated record, the hearing examiner shall,
23 based on the determination of the facts of the case and applicable
24 law, render a decision affirming, reversing or modifying the action

1 protested. The decision shall contain findings of fact and
2 conclusions of law and shall be provided to all parties by
3 registered or certified mail, return receipt requested.

4 (b) The hearing shall be held at an office of the Division of
5 Motor Vehicles located in or near the county in which the arrest
6 was made in this state or at some other suitable place in the
7 county in which the arrest was made if an office of the division is
8 not available. The Office of Administrative Hearings shall send a
9 notice of hearing to the person whose driving privileges are at
10 issue and the person's legal counsel if the person is represented
11 by legal counsel, the investigating or arresting law-enforcement
12 officers, the Division of Motor Vehicles, and the Attorney
13 General's Office, if the Attorney General has filed a notice of
14 appearance of counsel on behalf of the Division of Motor Vehicles.

15 (c) (1) Any hearing shall be held within one hundred eighty
16 days after the date upon which the Office of Administrative
17 Hearings received the timely written objection unless there is a
18 postponement or continuance.

19 (2) The Office of Administrative Hearings may postpone or
20 continue any hearing on its own motion or upon application by the
21 party whose license is at issue in that hearing or by the
22 commissioner for good cause shown.

23 (3) The Office of Administrative Hearings may issue subpoenas
24 commanding the appearance of witnesses and subpoenas duces tecum

1 commanding the submission of documents, items or other things.
2 Subpoenas duces tecum shall be returnable on the date of the next
3 scheduled hearing unless otherwise specified. The Office of
4 Administrative hearings shall issue subpoenas and subpoenas duces
5 tecum at the request of a party or the party's legal
6 representative. The party requesting the subpoena shall be
7 responsible for service of the subpoena upon the appropriate
8 individual. Every subpoena or subpoena duces tecum shall be served
9 at least five days before the return date thereof, either by
10 personal service made by a person over eighteen years of age or by
11 registered or certified mail, return receipt requested, and
12 received by the party responsible for serving the subpoena or
13 subpoena duces tecum: *Provided*, That the Division of Motor
14 Vehicles may serve subpoenas to law-enforcement officers through
15 electronic mail to the department of his or her employer. If a
16 person does not obey the subpoena or fails to appear, the party who
17 issued the subpoena to the person may petition the circuit court
18 wherein the action lies for enforcement of the subpoena.

19 (d) Law-enforcement officers shall be compensated for the time
20 expended in their travel and appearance before the Office of
21 Administrative Hearings by the law-enforcement agency by whom they
22 are employed at their regular rate if they are scheduled to be on
23 duty during said time or at their regular overtime rate if they are
24 scheduled to be off duty during said time.

1 (e) The principal question at the hearing shall be whether the
2 person did drive a motor vehicle while under the influence of
3 alcohol, controlled substances or drugs, or did drive a motor
4 vehicle while having an alcohol concentration in the person's blood
5 of eight hundredths of one percent or more, by weight, or did
6 refuse to submit to the designated secondary chemical test, or did
7 drive a motor vehicle while under the age of twenty-one years with
8 an alcohol concentration in his or her blood of two hundredths of
9 one percent or more, by weight, but less than eight hundredths of
10 one percent, by weight.

11 (f) In the case of a hearing in which a person is accused of
12 driving a motor vehicle while under the influence of alcohol,
13 controlled substances or drugs, or accused of driving a motor
14 vehicle while having an alcohol concentration in the person's blood
15 of eight hundredths of one percent or more, by weight, or accused
16 of driving a motor vehicle while under the age of twenty-one years
17 with an alcohol concentration in his or her blood of two hundredths
18 of one percent or more, by weight, but less than eight hundredths
19 of one percent, by weight, the Office of Administrative Hearings
20 shall make specific findings as to: (1) Whether the investigating
21 law-enforcement officer had reasonable grounds to believe the
22 person to have been driving while under the influence of alcohol,
23 controlled substances or drugs, or while having an alcohol
24 concentration in the person's blood of eight hundredths of one

1 percent or more, by weight, or to have been driving a motor vehicle
2 while under the age of twenty-one years with an alcohol
3 concentration in his or her blood of two hundredths of one percent
4 or more, by weight, but less than eight hundredths of one percent,
5 by weight; (2) whether the person was lawfully placed under arrest
6 for an offense involving driving under the influence of alcohol,
7 controlled substances or drugs, or was lawfully taken into custody
8 for the purpose of administering a secondary test: *Provided, That*
9 this element shall be waived in cases where no arrest occurred due
10 to driver incapacitation; (3) whether the person committed an
11 offense involving driving under the influence of alcohol,
12 controlled substances or drugs, or was lawfully taken into custody
13 for the purpose of administering a secondary test; and (4) whether
14 the tests, if any, were administered in accordance with the
15 provisions of this article and article five of this chapter.

16 (g) If, in addition to a finding that the person did drive a
17 motor vehicle while under the influence of alcohol, controlled
18 substances or drugs, or did drive a motor vehicle while having an
19 alcohol concentration in the person's blood of eight hundredths of
20 one percent or more, by weight, or did drive a motor vehicle while
21 under the age of twenty-one years with an alcohol concentration in
22 his or her blood of two hundredths of one percent or more, by
23 weight, but less than eight hundredths of one percent, by weight,
24 the Office of Administrative Hearings also finds by a preponderance

1 of the evidence that the person when driving did an act forbidden
2 by law or failed to perform a duty imposed by law, which act or
3 failure proximately caused the death of a person ~~and was committed~~
4 ~~in reckless disregard of the safety of others and if the Office of~~
5 ~~Administrative Hearings further finds that the influence of~~
6 ~~alcohol, controlled substances or drugs or the alcohol~~
7 ~~concentration in the blood was a contributing cause to the death,~~
8 the commissioner shall revoke the person's license for a period of
9 ten years: *Provided*, That if the person's license has previously
10 been suspended or revoked under the provisions of this section or
11 section one of this article within the ten years immediately
12 preceding the date of arrest, the period of revocation shall be for
13 the life of the person.

14 ~~(h) If, in addition to a finding that the person did drive a~~
15 ~~motor vehicle while under the influence of alcohol, controlled~~
16 ~~substances or drugs, or did drive a motor vehicle while having an~~
17 ~~alcohol concentration in the person's blood of eight hundredths of~~
18 ~~one percent or more, by weight, the Office of Administrative~~
19 ~~Hearings also finds by a preponderance of the evidence that the~~
20 ~~person when driving did an act forbidden by law or failed to~~
21 ~~perform a duty imposed by law, which act or failure proximately~~
22 ~~caused the death of a person, the commissioner shall revoke the~~
23 ~~person's license for a period of five years: *Provided*, That if the~~
24 ~~person's license has previously been suspended or revoked under the~~

1 ~~provisions of this section or section one of this article within~~
2 ~~the ten years immediately preceding the date of arrest, the period~~
3 ~~of revocation shall be for the life of the person.~~

4 ~~(i)~~ (h) If, in addition to a finding that the person did drive
5 a motor vehicle while under the influence of alcohol, controlled
6 substances or drugs, or did drive a motor vehicle while having an
7 alcohol concentration in the person's blood of eight hundredths of
8 one percent or more, by weight, the Office of Administrative
9 Hearings also finds by a preponderance of the evidence that the
10 person when driving did an act forbidden by law or failed to
11 perform a duty imposed by law, which act or failure proximately
12 caused bodily injury to a person other than himself or herself, the
13 commissioner shall revoke the person's license for a period of two
14 years: *Provided*, That if the license has previously been suspended
15 or revoked under the provisions of this section or section one of
16 this article within the ten years immediately preceding the date of
17 arrest, the period of revocation shall be ten years: *Provided*,
18 *however*, That if the person's license has previously been suspended
19 or revoked more than once under the provisions of this section or
20 section one of this article within the ten years immediately
21 preceding the date of arrest, the period of revocation shall be for
22 the life of the person.

23 ~~(j)~~ (i) If the Office of Administrative Hearings finds by a
24 preponderance of the evidence that the person did drive a motor

1 vehicle while under the influence of alcohol, controlled substances
2 or drugs, or did drive a motor vehicle while having an alcohol
3 concentration in the person's blood of eight hundredths of one
4 percent or more, by weight, but less than fifteen hundredths of one
5 percent or more, by weight, or finds that the person knowingly
6 permitted the person's vehicle to be driven by another person who
7 was under the influence of alcohol, controlled substances or drugs,
8 or knowingly permitted the person's vehicle to be driven by another
9 person who had an alcohol concentration in his or her blood of
10 eight hundredths of one percent or more, by weight the commissioner
11 shall revoke the person's license for a period of six months or a
12 period of fifteen days with an additional one hundred and twenty
13 days of participation in the Motor Vehicle Alcohol Test and Lock
14 Program in accordance with the provisions of section three-a of
15 this article: *Provided*, That any period of participation in the
16 Motor Vehicle Alcohol Test and Lock Program that has been imposed
17 by a court pursuant to section two-b, article five of this chapter
18 shall be credited against any period of participation imposed by
19 the commissioner: *Provided*, however, That a person whose license
20 is revoked for driving while under the influence of drugs is not
21 eligible to participate in the Motor Vehicle Alcohol Test and Lock
22 Program: *Provided* further, That if the person's license has
23 previously been suspended or revoked under the provisions of this
24 section or section one of this article within the ten years

1 immediately preceding the date of arrest, the period of revocation
2 shall be ten years: *And provided further,* That if the person's
3 license has previously been suspended or revoked more than once
4 under the provisions of this section or section one of this article
5 within the ten years immediately preceding the date of arrest, the
6 period of revocation shall be for the life of the person.

7 ~~(k)~~ (j) (1) If in addition to finding by a preponderance of
8 the evidence that the person did drive a motor vehicle while under
9 the influence of alcohol, controlled substance or drugs, the Office
10 of Administrative Hearings also finds by a preponderance of the
11 evidence that the person did drive a motor vehicle while having an
12 alcohol concentration in the person's blood of fifteen hundredths
13 of one percent or more, by weight, the commissioner shall revoke
14 the person's license for a period of forty-five days with an
15 additional two hundred and seventy days of participation in the
16 Motor Vehicle Alcohol Test and Lock Program in accordance with the
17 provisions of section three-a, article five-a, chapter seventeen-c
18 of this code: *Provided,* That if the person's license has
19 previously been suspended or revoked under the provisions of this
20 section or section one of this article within the ten years
21 immediately preceding the date of arrest, the period of revocation
22 shall be ten years: *Provided, however,* That if the person's
23 license has previously been suspended or revoked the person's
24 license more than once under the provisions of this section or

1 section one of this article within the ten years immediately
2 preceding the date of arrest, the period of revocation shall be for
3 the life of the person.

4 (2) If a person whose license is revoked pursuant to
5 subdivision (1) of this subsection proves by clear and convincing
6 evidence that they do not own a motor vehicle upon which the
7 alcohol test and lock device may be installed or is otherwise
8 incapable of participating in the Motor Vehicle Alcohol Test and
9 Lock Program, the period of revocation shall be one hundred eighty
10 days: *Provided*, That if the person's license has previously been
11 suspended or revoked under the provisions of this section or
12 section one of this article within the ten years immediately
13 preceding the date of arrest, the period of revocation shall be ten
14 years: *Provided, however*, That if the person's license has
15 previously been suspended or revoked more than once under the
16 provisions of this section or section one of this article within
17 the ten years immediately preceding the date of arrest, the period
18 of revocation shall be for the life of the person.

19 ~~(i)~~ (k) If, in addition to a finding that the person did drive
20 a motor vehicle while under the age of twenty-one years with an
21 alcohol concentration in his or her blood of two hundredths of one
22 percent or more, by weight, but less than eight hundredths of one
23 percent, by weight, the Office of Administrative Hearings also
24 finds by a preponderance of the evidence that the person when

1 driving did an act forbidden by law or failed to perform a duty
2 imposed by law, which act or failure proximately caused the death
3 of a person, and if the Office of Administrative Hearings further
4 finds that the alcohol concentration in the blood was a
5 contributing cause to the death, the commissioner shall revoke the
6 person's license for a period of five years: *Provided*, That if the
7 person's license has previously been suspended or revoked under the
8 provisions of this section or section one of this article within
9 the ten years immediately preceding the date of arrest, the period
10 of revocation shall be for the life of the person.

11 ~~(m)~~ (l) If, in addition to a finding that the person did drive
12 a motor vehicle while under the age of twenty-one years with an
13 alcohol concentration in his or her blood of two hundredths of one
14 percent or more, by weight, but less than eight hundredths of one
15 percent, by weight, the Office of Administrative Hearings also
16 finds by a preponderance of the evidence that the person when
17 driving did an act forbidden by law or failed to perform a duty
18 imposed by law, which act or failure proximately caused bodily
19 injury to a person other than himself or herself, and if the Office
20 of Administrative Hearings further finds that the alcohol
21 concentration in the blood was a contributing cause to the bodily
22 injury, the commissioner shall revoke the person's license for a
23 period of two years: *Provided*, That if the person's license has
24 previously been suspended or revoked under the provisions of this

1 section or section one of this article within the ten years
2 immediately preceding the date of arrest, the period of revocation
3 shall be ten years: *Provided, however,* That if the person's
4 license has previously been suspended or revoked more than once
5 under the provisions of this section or section one of this article
6 within the ten years immediately preceding the date of arrest, the
7 period of revocation shall be for the life of the person.

8 ~~(n)~~ (m) If the Office of Administrative Hearings finds by a
9 preponderance of the evidence that the person did drive a motor
10 vehicle while under the age of twenty-one years with an alcohol
11 concentration in his or her blood of two hundredths of one percent
12 or more, by weight, but less than eight hundredths of one percent,
13 by weight, the commissioner shall suspend the person's license for
14 a period of sixty days: *Provided,* That if the person's license has
15 previously been suspended or revoked under the provisions of this
16 section or section one of this article, the period of revocation
17 shall be for one year, or until the person's twenty-first birthday,
18 whichever period is longer.

19 ~~(o)~~ (n) If, in addition to a finding that the person did drive
20 a motor vehicle while under the influence of alcohol, controlled
21 substances or drugs, or did drive a motor vehicle while having an
22 alcohol concentration in the person's blood of eight hundredths of
23 one percent or more, by weight, the Office of Administrative
24 Hearings also finds by a preponderance of the evidence that the

1 person when driving did have on or within the Motor vehicle another
2 person who has not reached his or her sixteenth birthday, the
3 commissioner shall revoke the person's license for a period of one
4 year: *Provided*, That if the person's license has previously been
5 suspended or revoked under the provisions of this section or
6 section one of this article within the ten years immediately
7 preceding the date of arrest, the period of revocation shall be ten
8 years: *Provided, however*, That if the person's license has
9 previously been suspended or revoked more than once under the
10 provisions of this section or section one of this article within
11 the ten years immediately preceding the date of arrest, the period
12 of revocation shall be for the life of the person.

13 ~~(p)~~ (o) For purposes of this section, where reference is made
14 to previous suspensions or revocations under this section, the
15 following types of criminal convictions or administrative
16 suspensions or revocations shall also be regarded as suspensions or
17 revocations under this section or section one of this article:

18 (1) Any administrative revocation under the provisions of the
19 prior enactment of this section for conduct which occurred within
20 the ten years immediately preceding the date of arrest;

21 (2) Any suspension or revocation on the basis of a conviction
22 under a municipal ordinance of another state or a statute of the
23 United States or of any other state of an offense which has the
24 same elements as an offense described in section two, article five

1 of this chapter for conduct which occurred within the ten years
2 immediately preceding the date of arrest; or

3 (3) Any revocation under the provisions of section seven,
4 article five of this chapter for conduct which occurred within the
5 ten years immediately preceding the date of arrest.

6 ~~(q)~~ (p) In the case of a hearing in which a person is accused
7 of refusing to submit to a designated secondary test, the Office of
8 Administrative Hearings shall make specific findings as to: (1)
9 Whether the arresting law-enforcement officer had reasonable
10 grounds to believe the person had been driving a motor vehicle in
11 this state while under the influence of alcohol, controlled
12 substances or drugs; (2) whether the person was lawfully placed
13 under arrest for an offense involving driving under the influence
14 of alcohol, controlled substances or drugs, or was lawfully taken
15 into custody for the purpose of administering a secondary test:
16 *Provided*, That this element shall be waived in cases where no
17 arrest occurred due to driver incapacitation; (3) whether the
18 person committed an offense relating to driving a motor vehicle in
19 this state while under the influence of alcohol, controlled
20 substances or drugs; (4) whether the person refused to submit to
21 the secondary test finally designated in the manner provided in
22 section four, article five of this chapter; and (5) whether the
23 person had been given a written statement advising the person that
24 the person's license to operate a motor vehicle in this state would

1 be revoked for at least forty-five days and up to life if the
2 person refused to submit to the test finally designated in the
3 manner provided in said section.

4 ~~(r)~~ (g) If the Office of Administrative Hearings finds by a
5 preponderance of the evidence that: (1) The investigating officer
6 had reasonable grounds to believe the person had been driving a
7 motor vehicle in this state while under the influence of alcohol,
8 controlled substances or drugs; (2) whether the person was lawfully
9 placed under arrest for an offense involving driving under the
10 influence of alcohol, controlled substances or drugs, or was
11 lawfully taken into custody for the purpose of administering a
12 secondary test: *Provided*, That this element shall be waived in
13 cases where no arrest occurred due to driver incapacitation; (3)
14 the person committed an offense relating to driving a motor vehicle
15 in this state while under the influence of alcohol, controlled
16 substances or drugs; (4) the person refused to submit to the
17 secondary test finally designated in the manner provided in section
18 four, article five of this chapter; and (5) the person had been
19 given a written statement advising the person that the person's
20 license to operate a motor vehicle in this state would be revoked
21 for at least forty-five days and up to life if the person refused
22 to submit to the test finally designated, the commissioner shall
23 revoke the person's license to operate a motor vehicle in this
24 state for the periods specified in section seven, article five of

1 this chapter. The revocation period prescribed in this subsection
2 shall run concurrently with any other revocation period ordered
3 under this section or section one of this article arising out of
4 the same occurrence. The revocation period prescribed in this
5 subsection shall run concurrently with any other revocation period
6 ordered under this section or section one of this article arising
7 out of the same occurrence.

8 ~~(s)~~ (r) If the Office of Administrative Hearings finds to the
9 contrary with respect to the above issues the commissioner shall
10 rescind his or her earlier order of revocation or shall reduce the
11 order of revocation to the appropriate period of revocation under
12 this section or section seven, article five of this chapter. A
13 copy of the Office of Administrative Hearings' final order
14 containing its findings of fact and conclusions of law made and
15 entered following the hearing shall be served upon the person whose
16 license is at issue or upon the person's legal counsel if the
17 person is represented by legal counsel by registered or certified
18 mail, return receipt requested or by electronic mail if available.
19 The final order shall be served upon the commissioner by electronic
20 mail. During the pendency of any hearing, the revocation of the
21 person's license to operate a motor vehicle in this state shall be
22 stayed.

23 A person whose license is at issue and the commissioner shall
24 be entitled to judicial review as set forth in chapter

1 twenty-nine-a of this code. Neither the commissioner nor the
2 Office of Administrative Hearings may stay enforcement of the
3 order. The court may grant a stay or supersede as of the order
4 only upon motion and hearing, and a finding by the court upon the
5 evidence presented, that there is a substantial probability that
6 the appellant shall prevail upon the merits and the appellant will
7 suffer irreparable harm if the order is not stayed: *Provided*, That
8 in no event shall the stay or supersedeas of the order exceed one
9 hundred fifty days. Notwithstanding the provisions of section
10 four, article five of said chapter, the Office of Administrative
11 Hearings may not be compelled to transmit a certified copy of the
12 file or the transcript of the hearing to the circuit court in less
13 than sixty days.

14 ~~(t)~~ (s) In any revocation or suspension pursuant to this
15 section, if the driver whose license is revoked or suspended had
16 not reached the driver's eighteenth birthday at the time of the
17 conduct for which the license is revoked or suspended, the driver's
18 license shall be revoked or suspended until the driver's eighteenth
19 birthday or the applicable statutory period of revocation or
20 suspension prescribed by this section, whichever is longer.

21 ~~(u)~~ (t) Funds for this section's hearing and appeal process
22 may be provided from the Drunk Driving Prevention Fund, as created
23 by section forty-one, article two, chapter fifteen of this code,
24 upon application for the funds to the commission on Drunk Driving

1 Prevention.

2 **§17C-5A-3. Safety and treatment program; reissuance of license.**

3 (a) The Department of Health and Human Resources, Division of
4 Alcoholism and Drug Abuse shall administer a comprehensive safety
5 and treatment program for persons whose licenses have been revoked
6 under the provisions of this article or section seven, article five
7 of this chapter or subsection (6), section five, article three,
8 chapter seventeen-b of this code and shall also establish the
9 minimum qualifications for mental health facilities, day report
10 centers, community correction centers or other public agencies or
11 private entities conducting the safety and treatment program:
12 *Provided*, That the Department of Health and Human Resources,
13 Division of Alcoholism and Drug Abuse may establish standards
14 whereby the division will accept or approve participation by
15 violators in another treatment program which provides the same or
16 substantially similar benefits as the safety and treatment program
17 established pursuant to this section.

18 (b) The program shall include, but not be limited to,
19 treatment of alcoholism, alcohol and drug abuse, psychological
20 counseling, educational courses on the dangers of alcohol and drugs
21 as they relate to driving, defensive driving or other safety
22 driving instruction and other programs designed to properly
23 educate, train and rehabilitate the offender.

24 (c) The Department of Health and Human Resources, Division of

1 Alcoholism and Drug Abuse shall provide for the preparation of an
2 educational and treatment program for each person whose license has
3 been revoked under the provisions of this article or section seven,
4 article five of this chapter or subsection (6), section five,
5 article three, chapter seventeen-b of this code which shall contain
6 the following: (1) A listing and evaluation of the offender's prior
7 traffic record; (2) the characteristics and history of alcohol or
8 drug use, if any; (3) his or her amenability to rehabilitation
9 through the alcohol safety program; and (4) a recommendation as to
10 treatment or rehabilitation and the terms and conditions of the
11 treatment or rehabilitation. The program shall be prepared by
12 persons knowledgeable in the diagnosis of alcohol or drug abuse and
13 treatment.

14 (d) There is hereby created a special revenue account within
15 the State Treasury known as the Department of Health and Human
16 Resources Safety and Treatment Fund. The account shall be
17 administered by the Secretary of the Department of Health and Human
18 Resources for the purpose of administering the comprehensive safety
19 and treatment program established by subsection (a) of this
20 section. The account may be invested, and all earnings and
21 interest accruing shall be retained in the account. The Auditor
22 shall conduct an audit of the fund at least every three fiscal
23 years.

24 Effective July 1, 2010, the State Treasurer shall make a

1 one-time transfer of \$250,000 from the Motor Vehicle Fees Fund into
2 the Department of Health and Human Resources Safety and Treatment
3 Fund.

4 (e) (1) The program provider shall collect the established fee
5 from each participant upon enrollment unless the department has
6 determined that the participant is an indigent based upon criteria
7 established pursuant to legislative rule authorized in this
8 section.

9 (2) If the department determined that a participant is an
10 indigent based upon criteria established pursuant to the
11 legislative rule authorized by this section, the department shall
12 provide the applicant with proof of its determination regarding
13 indigency, which proof the applicant shall present to the interlock
14 provider as part of the application process provided in section
15 three-a of this article and/or the rules promulgated pursuant
16 thereto.

17 (3) Program providers shall remit to the Department of Health
18 and Human Resources a portion of the fee collected, which shall be
19 deposited by the Secretary of the Department of Health and Human
20 Resources into the Department of Health and Human Resources Safety
21 and Treatment Fund. The Department of Health and Human Resources
22 shall reimburse enrollment fees to program providers for each
23 eligible indigent offender.

24 (f) On or before January 15 of each year, the Secretary of the

1 Department of Health and Human Resources shall report to the
2 Legislature on:

3 (1) The total number of offenders participating in the safety
4 and treatment program during the prior year;

5 (2) The total number of indigent offenders participating in
6 the safety and treatment program during the prior year;

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

9 (4) The total amount of reimbursements paid to program
10 provider during the prior year.

11 (g) The Commissioner of the Division of Motor Vehicles, after
12 giving due consideration to the program developed for the offender,
13 shall prescribe the necessary terms and conditions for the
14 reissuance of the license to operate a motor vehicle in this state
15 revoked under this article or section seven, article five of this
16 chapter or subsection (6), section five, article three, chapter
17 seventeen-b of this code which shall include successful completion
18 of the educational, treatment or rehabilitation program, subject to
19 the following:

20 (1) When the period of revocation is six months, the license
21 to operate a motor vehicle in this state may not be reissued until:

22 (A) At least ninety days have elapsed from the date of the initial
23 revocation, during which time the revocation was actually in
24 effect; (B) the offender has successfully completed the program; (C)

1 all costs of the program and administration have been paid; and (D)
2 all costs assessed as a result of a revocation hearing have been
3 paid.

4 (2) When the period of revocation is for a period of one year
5 or for more than a year, the license to operate a motor vehicle in
6 this state may not be reissued until: (A) At least one-half of the
7 time period has elapsed from the date of the initial revocation,
8 during which time the revocation was actually in effect; (B) the
9 offender has successfully completed the program; (C) all costs of
10 the program and administration have been paid; and (D) all costs
11 assessed as a result of a revocation hearing have been paid.
12 Notwithstanding any provision in this code, a person whose license
13 is revoked for refusing to take a chemical test as required by
14 section seven, article five of this chapter for a first offense is
15 not eligible to reduce the revocation period by completing the
16 safety and treatment program.

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

1 (4) Notwithstanding any provision of this code or any rule,
2 any mental health facilities or other public agencies or private
3 entities conducting the safety and treatment program when
4 certifying that a person has successfully completed a safety and
5 treatment program shall only have to certify that the person has
6 successfully completed the program.

7 (h) (1) The Department of Health and Human Resources, Division
8 of Alcoholism and Drug Abuse shall provide for the preparation of
9 an educational program for each person whose license has been
10 suspended for sixty days pursuant to the provisions of subsection
11 ~~(n)~~ (m), section two, article five-a of this chapter. The
12 educational program shall consist of not less than twelve nor more
13 than eighteen hours of actual classroom time.

14 (2) When a sixty-day period of suspension has been ordered,
15 the license to operate a motor vehicle may not be reinstated until:
16 (A) At least sixty days have elapsed from the date of the initial
17 suspension, during which time the suspension was actually in
18 effect; (B) the offender has successfully completed the educational
19 program; (C) all costs of the program and administration have been
20 paid; and (D) all costs assessed as a result of a suspension
21 hearing have been paid.

22 (i) A required component of the treatment program provided in
23 subsection (b) of this section and the education program provided
24 for in subsection (c) of this section shall be participation by the

1 violator with a victim impact panel program providing a forum for
2 victims of alcohol and drug-related offenses and offenders to share
3 first-hand experiences on the impact of alcohol and drug-related
4 offenses in their lives. The Department of Health and Human
5 Resources, Division of Alcoholism and Drug Abuse shall propose and
6 implement a plan for victim impact panels where appropriate numbers
7 of victims are available and willing to participate and shall
8 establish guidelines for other innovative programs which may be
9 substituted where the victims are not available to assist persons
10 whose licenses have been suspended or revoked for alcohol and
11 drug-related offenses to gain a full understanding of the severity
12 of their offenses in terms of the impact of the offenses on victims
13 and offenders. The plan shall require, at a minimum, discussion
14 and consideration of the following:

15 (A) Economic losses suffered by victims or offenders;

16 (B) Death or physical injuries suffered by victims or
17 offenders;

18 (C) Psychological injuries suffered by victims or offenders;

19 (D) Changes in the personal welfare or familial relationships
20 of victims or offenders; and

21 (E) Other information relating to the impact of alcohol and
22 drug-related offenses upon victims or offenders.

23 The Department of Health and Human Resources, Division of
24 Alcoholism and Drug Abuse shall ensure that any meetings between

1 victims and offenders shall be nonconfrontational and ensure the
2 physical safety of the persons involved.

3 (j)(1) The Secretary of the Department of Health and Human
4 Resources shall promulgate a rule for legislative approval in
5 accordance with article three, chapter twenty-nine-a of this code
6 to administer the provisions of this section and establish a fee to
7 be collected from each offender enrolled in the safety and
8 treatment program. The rule shall include: (A) A reimbursement
9 mechanism to program providers of required fees for the safety and
10 treatment program for indigent offenders, criteria for determining
11 eligibility of indigent offenders, and any necessary application
12 forms; and (B) program standards that encompass provider criteria
13 including minimum professional training requirements for providers,
14 curriculum approval, minimum course length requirements and other
15 items that may be necessary to properly implement the provisions of
16 this section.

17 (2) The Legislature finds that an emergency exists and,
18 therefore, the Secretary shall file by July 1, 2010, an emergency
19 rule to implement this section pursuant to the provisions of
20 section fifteen, article three, chapter twenty-nine-a of this code.

21 (k) Nothing in this section may be construed to prohibit day
22 report or community correction programs, authorized pursuant to
23 article eleven-c, chapter sixty-two of this code, from
24 administering a comprehensive safety and treatment program pursuant

1 to this section.

2 **§17C-5A-3a. Establishment of and participation in the Motor**
3 **Vehicle Alcohol Test and Lock Program.**

4 (a) (1) The Division of Motor Vehicles shall control and
5 regulate a Motor Vehicle Alcohol Test and Lock Program for persons
6 whose licenses have been revoked pursuant to this article or the
7 provisions of article five of this chapter or have been convicted
8 under section two, article five of this chapter, or who are serving
9 a term of a conditional probation pursuant to section two-b,
10 article five of this chapter.

11 (2) The program shall include the establishment of a users fee
12 for persons participating in the program which shall be paid in
13 advance and deposited into the Driver's Rehabilitation Fund:
14 *Provided*, That on and after July 1, 2007, any unexpended balance
15 remaining in the Driver's Rehabilitation Fund shall be transferred
16 to the Motor Vehicle Fees Fund created under the provisions of
17 section twenty-one, article two, chapter seventeen-a of this code
18 and all further fees collected shall be deposited in that fund.

19 (3) (A) Except where specified otherwise, the use of the term
20 "program" in this section refers to the Motor Vehicle Alcohol Test
21 and Lock Program.

22 (B) The Commissioner of the Division of Motor Vehicles shall
23 propose legislative rules for promulgation in accordance with the
24 provisions of chapter twenty-nine-a of this code for the purpose of

1 implementing the provisions of this section. The rules shall also
2 prescribe those requirements which, in addition to the requirements
3 specified by this section for eligibility to participate in the
4 program, the commissioner determines must be met to obtain the
5 commissioner's approval to operate a motor vehicle equipped with a
6 motor vehicle alcohol test and lock system.

7 (C) Nothing in this section may be construed to prohibit day
8 report or community correction programs authorized pursuant to
9 article eleven-c, chapter sixty-two of this code, or a home
10 incarceration program authorized pursuant to article eleven-b,
11 chapter sixty-two of this code, from being a provider of motor
12 vehicle alcohol test and lock systems for eligible participants as
13 authorized by this section.

14 (4) For purposes of this section, a "motor vehicle alcohol
15 test and lock system" means a mechanical or computerized system
16 which, in the opinion of the commissioner, prevents the operation
17 of a motor vehicle when, through the system's assessment of the
18 blood alcohol content of the person operating or attempting to
19 operate the vehicle, the person is determined to be under the
20 influence of alcohol.

21 (5) The fee for installation and removal of ignition interlock
22 devices shall be waived for persons determined to be indigent by
23 the Department of Health and Human Resources pursuant to section
24 three, article five-a, chapter seventeen-c of this code. The

1 commissioner shall establish by legislative rule, proposed pursuant
2 to article three, chapter twenty-nine-a of this code, procedures to
3 be followed with regard to persons determined by the Department of
4 Health and Human Resources to be indigent. The rule shall include,
5 but is not limited to, promulgation of application forms;
6 establishment of procedures for the review of applications; and the
7 establishment of a mechanism for the payment of installations for
8 eligible offenders.

9 (6) On or before January 15 of each year, the Commissioner of
10 the Division of Motor Vehicles shall report to the Legislature on:

11 (A) The total number of offenders participating in the program
12 during the prior year;

13 (B) The total number of indigent offenders participating in
14 the program during the prior year;

15 (C) The terms of any contracts with the providers of ignition
16 interlock devices; and

17 (D) The total cost of the program to the state during the
18 prior year.

19 (b) (1) Any person whose license is revoked for the first time
20 pursuant to this article or the provisions of article five of this
21 chapter is eligible to participate in the program when the person's
22 minimum revocation period as specified by subsection (c) of this
23 section has expired and the person is enrolled in or has
24 successfully completed the safety and treatment program or presents

1 proof to the commissioner within sixty days of receiving approval
2 to participate by the commissioner that he or she is enrolled in a
3 safety and treatment program: *Provided*, That anyone whose license
4 is revoked for the first time pursuant to subsection (k), section
5 two of this article must participate in the program when the
6 person's minimum revocation period as specified by subsection (c)
7 of this section has expired and the person is enrolled in or has
8 successfully completed the safety and treatment program or presents
9 proof to the commissioner within sixty days of receiving approval
10 to participate by the commissioner that he or she is enrolled in a
11 safety and treatment program.

12 (2) Any person whose license has been suspended pursuant to
13 the provisions of subsection ~~(n)~~ (m), section two of this article
14 for driving a motor vehicle while under the age of twenty-one years
15 with an alcohol concentration in his or her blood of two hundredths
16 of one percent or more, by weight, but less than eight hundredths
17 of one percent, by weight, is eligible to participate in the
18 program after thirty days have elapsed from the date of the initial
19 suspension, during which time the suspension was actually in
20 effect: *Provided*, That in the case of a person under the age of
21 eighteen, the person is eligible to participate in the program
22 after thirty days have elapsed from the date of the initial
23 suspension, during which time the suspension was actually in effect
24 or after the person's eighteenth birthday, whichever is later.

1 Before the commissioner approves a person to operate a motor
2 vehicle equipped with a motor vehicle alcohol test and lock system,
3 the person must agree to comply with the following conditions:

4 (A) If not already enrolled, the person shall enroll in and
5 complete the educational program provided in subsection (d),
6 section three of this article at the earliest time that placement
7 in the educational program is available, unless good cause is
8 demonstrated to the commissioner as to why placement should be
9 postponed;

10 (B) The person shall pay all costs of the educational program,
11 any administrative costs and all costs assessed for any suspension
12 hearing.

13 (3) Notwithstanding the provisions of this section to the
14 contrary, a person eligible to participate in the program under
15 this subsection may not operate a motor vehicle unless approved to
16 do so by the commissioner.

17 (c) A person who participates in the program under subdivision
18 (1), subsection (b) of this section is subject to a minimum
19 revocation period and minimum period for the use of the ignition
20 interlock device as follows:

21 (1) For a person whose license has been revoked for a first
22 offense for six months pursuant to the provisions of section one-a
23 of this article for conviction of an offense defined in subsection
24 ~~(d) or (g)~~ (c) or (f), section two, article five of this chapter or

1 pursuant to subsection ~~(j)~~ (i), section two of this article, the
2 minimum period of revocation for participation in the test and lock
3 program is fifteen days and the minimum period for the use of the
4 ignition interlock device is one hundred and twenty-five days;

5 (2) For a person whose license has been revoked for a first
6 offense pursuant to section seven, article five of this chapter,
7 the minimum period of revocation for participation in the test and
8 lock program is forty-five days and the minimum period for the use
9 of the ignition interlock device is one year;

10 (3) For a person whose license has been revoked for a first
11 offense pursuant to section one-a of this article for conviction of
12 an offense defined in subsection ~~(e)~~ (f), section two, article five
13 of this chapter or pursuant to subsection ~~(j)~~ (i), section two of
14 this article, the minimum period of revocation for participation in
15 the test and lock program is forty-five days and the minimum period
16 for the use of the ignition interlock device is two hundred seventy
17 days;

18 (4) For a person whose license has been revoked for a first
19 offense pursuant to the provisions of section one-a of this article
20 for conviction of an offense defined in subsection (a), section
21 two, article five of this chapter or pursuant to subsection ~~(f)~~
22 (e), section two of this article, the minimum period of revocation
23 before the person is eligible for participation in the test and
24 lock program is twelve months and the minimum period for the use of

1 the ignition interlock device is two years;

2 (5) For a person whose license has been revoked for a first
3 offense pursuant to the provisions of section one-a of this article
4 for conviction of an offense ~~defined in subsection (b), section~~
5 ~~two, article five of this chapter or pursuant to subsection (h)~~
6 (g), section two of this article, the minimum period of revocation
7 is six months and the minimum period for the use of the ignition
8 interlock device is two years;

9 (6) For a person whose license has been revoked for a first
10 offense pursuant to the provisions of section one-a of this article
11 for conviction of an offense defined in subsection ~~(e)~~ (b), section
12 two, article five of this chapter or pursuant to subsection ~~(h)~~
13 (g), section two of this article, the minimum period of revocation
14 for participation in the program is two months and the minimum
15 period for the use of the ignition interlock device is one year;

16 (7) For a person whose license has been revoked for a first
17 offense pursuant to the provisions of section one-a of this article
18 for conviction of an offense defined in subsection ~~(j)~~ (i), section
19 two, article five of this chapter or pursuant to subsection ~~(m)~~
20 (l), section two of this article, the minimum period of revocation
21 for participation in the program is two months and the minimum
22 period for the use of the ignition interlock device is ten months;

23 (d) Notwithstanding any provision of the code to the contrary,
24 a person shall participate in the program if the person is

1 convicted under section two, article five of this chapter or the
2 person's license is revoked under section two of this article or
3 section seven, article five of this chapter and the person was
4 previously either convicted or his or her license was revoked under
5 any provision cited in this subsection within the past ten years.
6 The minimum revocation period for a person required to participate
7 in the program under this subsection is one year and the minimum
8 period for the use of the ignition interlock device is two years,
9 except that the minimum revocation period for a person required to
10 participate because of a violation of subsection ~~(n)~~ (m), section
11 two of this article or subsection ~~(i)~~ (h), section two, article
12 five of this chapter is two months and the minimum period of
13 participation is one year. The division shall add an additional
14 two months to the minimum period for the use of the ignition
15 interlock device if the offense was committed while a minor was in
16 the vehicle. The division shall add an additional six months to
17 the minimum period for the use of the ignition interlock device if
18 a person other than the driver received injuries. The division
19 shall add an additional two years to the minimum period for the use
20 of the ignition interlock device if a person other than the driver
21 is injured and the injuries result in that person's death. The
22 division shall add one year to the minimum period for the use of
23 the ignition interlock device for each additional previous
24 conviction or revocation within the past ten years. Any person

1 required to participate under this subsection must have an ignition
2 interlock device installed on every vehicle he or she owns or
3 operates.

4 (e) Notwithstanding any other provision in this code, a person
5 whose license is revoked for driving under the influence of drugs
6 is not eligible to participate in the Motor Vehicle Alcohol Test
7 and Lock Program.

8 (f) An applicant for the test and lock program may not have
9 been convicted of any violation of section three, article four,
10 chapter seventeen-b of this code for driving while the applicant's
11 driver's license was suspended or revoked within the six-month
12 period preceding the date of application for admission to the test
13 and lock program unless such is necessary for employment purposes.

14 (g) Upon permitting an eligible person to participate in the
15 program, the commissioner shall issue to the person, and the person
16 is required to exhibit on demand, a driver's license which shall
17 reflect that the person is restricted to the operation of a motor
18 vehicle which is equipped with an approved motor vehicle alcohol
19 test and lock system.

20 (h) The commissioner may extend the minimum period of
21 revocation and the minimum period of participation in the program
22 for a person who violates the terms and conditions of participation
23 in the program as found in this section, or legislative rule, or
24 any agreement or contract between the participant and the division

1 or program service provider. If the commissioner finds that any
2 person participating in the program pursuant to section two-b,
3 article five of this chapter must be removed therefrom for
4 violation(s) of the terms and conditions thereof, he or she shall
5 notify the person, the court that imposed the term of participation
6 in the program, and the prosecuting attorney in the county wherein
7 the order imposing participation in the program was entered.

8 (i) A person whose license has been suspended pursuant to the
9 provisions of subsection ~~(n)~~ (m), section two of this article who
10 has completed the educational program and who has not violated the
11 terms required by the commissioner of the person's participation in
12 the program is entitled to the reinstatement of his or her driver's
13 license six months from the date the person is permitted to operate
14 a motor vehicle by the commissioner. When a license has been
15 reinstated pursuant to this subsection, the records ordering the
16 suspension, records of any administrative hearing, records of any
17 blood alcohol test results and all other records pertaining to the
18 suspension shall be expunged by operation of law: *Provided*, That
19 a person is entitled to expungement under the provisions of this
20 subsection only once. The expungement shall be accomplished by
21 physically marking the records to show that the records have been
22 expunged and by securely sealing and filing the records.
23 Expungement has the legal effect as if the suspension never
24 occurred. The records may not be disclosed or made available for

1 inspection and in response to a request for record information, the
2 commissioner shall reply that no information is available.
3 Information from the file may be used by the commissioner for
4 research and statistical purposes so long as the use of the
5 information does not divulge the identity of the person.

6 (j) In addition to any other penalty imposed by this code, any
7 person who operates a motor vehicle not equipped with an approved
8 motor vehicle alcohol test and lock system during that person's
9 participation in the Motor Vehicle Alcohol Test and Lock Program is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 confined in jail for a period not less than one month nor more than
12 six months and fined not less than \$100 nor more than \$500. Any
13 person who attempts to bypass the alcohol test and lock system is
14 guilty of a misdemeanor and, upon conviction thereof, shall be
15 confined in jail not more than six months and fined not less than
16 \$100 nor more than \$1,000: *Provided*, That notwithstanding any
17 provision of this code to the contrary, a person enrolled and
18 participating in the test and lock program may operate a motor
19 vehicle solely at his or her job site if the operation is a
20 condition of his or her employment. For the purpose of this
21 section, job site does not include any street or highway open to
22 the use of the public for purposes of vehicular traffic.

NOTE: The purpose of this bill is to make it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and proximately cause the death of a person.

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