

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 95

(By Senators Miller and Beach)

[Originating in the Committee on the Judiciary;
reported February 19, 2013.]

A BILL to amend and reenact §17C-5-2 and §17C-5-2b of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code, all relating to making it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and cause death or serious bodily injury to another person; eliminating misdemeanor offense of driving a vehicle while

under the influence of alcohol, controlled substance or other drug and causing death; amending internal code references; and establishing criminal and administrative penalties.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 and §17C-5-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

- 1 (a) 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

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

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

~~(3) Commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death,~~ is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ~~two years~~ one year nor more than ten years for an act or failure under this section that causes the death of another person, and not less than one nor more than three years for an act or failure under this section that causes serious bodily injury to another person, and shall be fined not less than \$1,000 nor more than \$3,000.

26 (3) For purposes of this subsection, “serious bodily
27 injury” means bodily injury which creates a substantial
28 risk of death, which causes serious or prolonged
29 disfigurement, prolonged impairment of health or
30 prolonged loss or impairment of the function of any bodily
31 organ.

32 ~~(b) Any person who:~~

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

34 ~~(A) Is under the influence of alcohol;~~

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

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

37 ~~(D) Is under the combined influence of alcohol and any~~
38 ~~controlled substance or any other drug;~~

39 ~~(E) Has an alcohol concentration in his or her blood of~~
40 ~~eight hundredths of one percent or more, by weight, and~~

41 ~~(2) While driving does any act forbidden by law or~~
42 ~~fails to perform any duty imposed by law in the driving of~~
43 ~~the vehicle, which act or failure proximately causes the~~

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44 ~~death of any person within one year next following the act~~
45 ~~or failure, is guilty of a misdemeanor and, upon conviction~~
46 ~~thereof, shall be confined in jail for not less than ninety~~
47 ~~days nor more than one year and shall be fined not less~~
48 ~~than \$500 nor more than \$1,000.~~

49 (c) (b) Any person who:

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

51 (A) Is under the influence of alcohol;

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

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

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

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

58 (2) While driving does any act forbidden by law or
59 fails to perform any duty imposed by law in the driving of
60 the vehicle, which act or failure proximately causes bodily
61 injury to any person other than himself or herself, is guilty

62 of a misdemeanor and, upon conviction thereof, shall be
63 confined in jail for not less than one day nor more than one
64 year, which jail term is to include actual confinement of
65 not less than twenty-four hours, and shall be fined not less
66 than \$200 nor more than \$1,000.

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

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

69 (A) Is under the influence of alcohol;

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

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

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

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

77 (2) Is guilty of a misdemeanor and, upon conviction
78 thereof, except as provided in section two-b of this article,
79 shall be confined in jail for up to six months and shall be

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80 fined not less than \$100 nor more than \$500. A person
81 sentenced pursuant to this subdivision shall receive credit
82 for any period of actual confinement he or she served upon
83 arrest for the subject offense.

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

95 ~~(f)~~ (e) Any person who, being ~~an~~ a habitual user of
96 narcotic drugs or amphetamine or any derivative thereof,
97 drives a vehicle in this state is guilty of a misdemeanor

98 and, upon conviction thereof, shall be confined in jail for
99 not less than one day nor more than six months, which jail
100 term is to include actual confinement of not less than
101 twenty-four hours, and shall be fined not less than \$100
102 nor more than \$500. A person sentenced pursuant to this
103 subdivision shall receive credit for any period of actual
104 confinement he or she served upon arrest for the subject
105 offense.

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

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

109 (A) Is under the influence of alcohol;

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

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

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

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

116 (2) Is guilty of a misdemeanor and, upon conviction
117 thereof, shall be confined in jail for not more than six
118 months and shall be fined not less than \$100 nor more than
119 \$500.

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

127 ~~(i)~~ (h) Any person under the age of twenty-one years
128 who drives a vehicle in this state while he or she has an
129 alcohol concentration in his or her blood of two
130 hundredths of one percent or more, by weight, but less
131 than eight hundredths of one percent, by weight, for a first
132 offense under this subsection is guilty of a misdemeanor
133 and, upon conviction thereof, shall be fined not less than

134 \$25 nor more than \$100. For a second or subsequent
135 offense under this subsection, the person is guilty of a
136 misdemeanor and, upon conviction thereof, shall be
137 confined in jail for twenty-four hours and shall be fined
138 not less than \$100 nor more than \$500. A person who is
139 charged with a first offense under the provisions of this
140 subsection may move for a continuance of the
141 proceedings, from time to time, to allow the person to
142 participate in the Motor Vehicle Alcohol Test and Lock
143 Program as provided in section three-a, article five-a of
144 this chapter. Upon successful completion of the program,
145 the court shall dismiss the charge against the person and
146 expunge the person's record as it relates to the alleged
147 offense. In the event the person fails to successfully
148 complete the program, the court shall proceed to an
149 adjudication of the alleged offense. A motion for a
150 continuance under this subsection may not be construed as
151 an admission or be used as evidence. A person arrested

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152 and charged with an offense under the provisions of this
153 subsection or subsection (a), (b), (c), (d), (e), (f) ~~(g)~~ or ~~(h)~~
154 or (g) of this section may not also be charged with an
155 offense under this subsection arising out of the same
156 transaction or occurrence.

157 ~~(j)~~ (i) Any person who:

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

159 (A) Is under the influence of alcohol;

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

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

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

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

166 (2) The person while driving has on or within the
167 motor vehicle one or more other persons who are
168 unemancipated minors who have not reached their
169 sixteenth birthday is guilty of a misdemeanor and, upon

170 conviction thereof, shall be confined in jail for not less
171 than two days nor more than twelve months, which jail
172 term is to include actual confinement of not less than
173 forty-eight hours and shall be fined not less than \$200 nor
174 more than \$1,000.

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

182 ~~(k)~~ (k) A person violating any provision of subsection
183 (b), (c), (d), (e), (f) ~~(g) or (i)~~ or (g) of this section, for the
184 third or any subsequent offense under this section, is guilty
185 of a felony and, upon conviction thereof, shall be
186 imprisoned in a state correctional facility for not less than
187 one nor more than three years and the court may, in its

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188 discretion, impose a fine of not less than \$3,000 nor more

189 than \$5,000.

190 ~~(m)~~ (l) For purposes of subsections ~~(k)~~ and ~~(f)~~ (j) and

191 (k) of this section relating to second, third and subsequent

192 offenses, the following events shall be regarded as

193 offenses under this section:

194 (1) Any conviction under the provisions of subsection

195 (a), (b), (c), (d), (e) ~~(f)~~ or ~~(g)~~ or (f) of this section or under

196 a prior enactment of this section for an offense which

197 occurred within the ten-year period immediately preceding

198 the date of arrest in the current proceeding;

199 (2) Any conviction under a municipal ordinance of this

200 state or any other state or a statute of the United States or

201 of any other state of an offense which has the same

202 elements as an offense described in subsection (a), (b), (c),

203 (d), (e), (f) ~~(g)~~ or ~~(h)~~ or (g) of this section, which offense

204 occurred within the ten-year period immediately preceding

205 the date of arrest in the current proceeding; and

206 (3) Any period of conditional probation imposed
207 pursuant to section two-b of this article for violation of
208 subsection ~~(d)~~ (c) of this article, which violation occurred
209 within the ten-year period immediately preceding the date
210 of arrest in the current proceeding.

211 ~~(n)~~ (m) A person may be charged in a warrant or
212 indictment or information for a second or subsequent
213 offense under this section if the person has been
214 previously arrested for or charged with a violation of
215 this section which is alleged to have occurred within the
216 applicable time period for prior offenses,
217 notwithstanding the fact that there has not been a final
218 adjudication of the charges for the alleged previous
219 offense. In that case, the warrant or indictment or
220 information must set forth the date, location and
221 particulars of the previous offense or offenses. No
222 person may be convicted of a second or subsequent
223 offense under this section unless the conviction for the

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224 previous offense has become final, or the person has
225 previously had a period of conditional probation imposed
226 pursuant to section two-b of this article.

227 ~~(o)~~ (n) The fact that any person charged with a
228 violation of subsection (a), (b), (c), (d) ~~(e)~~ ~~or (f)~~ or (e) of
229 this section, or any person permitted to drive as described
230 under subsection ~~(g)~~ ~~or (h)~~ (f) or (g) of this section, is or
231 has been legally entitled to use alcohol, a controlled
232 substance or a drug does not constitute a defense against
233 any charge of violating subsection (a), (b), (c), (d), (e), (f)
234 ~~(g)~~ ~~or (h)~~ or (g) of this section.

235 ~~(p)~~ (o) For purposes of this section, the term
236 “controlled substance” has the meaning ascribed to it in
237 chapter sixty-a of this code.

238 ~~(q)~~ (p) The sentences provided in this section upon
239 conviction for a violation of this article are mandatory
240 and are not subject to suspension or probation: *Provided,*
241 That the court may apply the provisions of article

242 eleven-a, chapter sixty-two of this code to a person
243 sentenced or committed to a term of one year or less for
244 a first offense under this section: *Provided, further*
245 however. That the court may impose a term of
246 conditional probation pursuant to section two-b of this
247 article to persons adjudicated thereunder. An order for
248 home detention by the court pursuant to the provisions of
249 article eleven-b of said chapter may be used as an
250 alternative sentence to any period of incarceration
251 required by this section for a first or subsequent offense:
252 *Provided however further*. That for any period of home
253 incarceration ordered for a person convicted of second
254 offense under this section, electronic monitoring shall be
255 required for no fewer than five days of the total period of
256 home confinement ordered and the offender may not
257 leave home for those five days notwithstanding the
258 provisions of section five, article eleven-b, chapter
259 sixty-two of this code: And provided further, That for any

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260 period of home incarceration ordered for a person
261 convicted of a third or subsequent violation of this
262 section, electronic monitoring shall be included for no
263 fewer than ten days of the total period of home
264 confinement ordered and the offender may not leave
265 home for those ten days notwithstanding section five,
266 article eleven-b, chapter sixty-two of this code.

**§17C-5-2b. Deferral of further proceedings for certain first
offenses upon condition of participation in
Motor Vehicle Alcohol Test and Lock
Program; procedure on charge of violation of
conditions.**

1 (a) Except as provided in ~~subsections~~ subsection (g) of
2 this section, whenever any person who has not previously
3 been convicted of any offense under this article or under
4 any statute of the United States or of any state relating to
5 driving under the influence of alcohol, any controlled
6 substance or any other drug:

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

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

23 (b) A defendant's election to participate in deferral
24 under this section shall constitute a waiver of his or her

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25 right to an administrative hearing as provided in section
26 two, article five-a of this chapter.

27 (c) (1) If the prosecuting attorney files a motion
28 alleging that the defendant during the period of the Motor
29 Vehicle Alcohol Test and Lock program has been removed
30 therefrom by the Division of Motor Vehicles, or has failed
31 to successfully complete the program before making a
32 motion for dismissal pursuant to subsection (d) of this
33 section, the court may issue such process as is necessary
34 to bring the defendant before the court.

35 (2) A motion alleging such violation filed pursuant to
36 subdivision (1) of this subsection must be filed during the
37 period of the Motor Vehicle Alcohol Test and Lock
38 Program or, if filed thereafter, must be filed within a
39 reasonable time after the alleged violation was committed.

40 (3) When the defendant is brought before the court, the
41 court shall afford the defendant an opportunity to be heard.
42 If the court finds that the defendant has been rightfully

43 removed from the Motor Vehicle Alcohol Test and Lock
44 Program by the Division of Motor Vehicles, the court may
45 order, when appropriate, that the deferral be terminated,
46 and thereupon enter an adjudication of guilt and proceed
47 as otherwise provided.

48 (4) ~~Should~~ If the defendant ~~fail~~ fails to complete or be
49 removed from the Motor Vehicle Alcohol Test and Lock
50 Program, the defendant waives the appropriate statute of
51 limitations and the defendant's right to a speedy trial under
52 any applicable federal or state constitutional provisions,
53 statutes or rules of court during the period of enrollment in
54 the program.

55 (d) When the defendant ~~shall have~~ has completed
56 satisfactorily the Motor Vehicle Alcohol Test and Lock
57 Program and complied with its conditions, the defendant
58 may move the court for an order dismissing the charges.
59 This motion shall be supported by affidavit of the
60 defendant and by certification of the Division of Motor

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61 Vehicles that the defendant has successfully completed the
62 Motor Vehicle Alcohol Test and Lock Program. A copy
63 of the motion shall be served on the prosecuting attorney
64 who shall within thirty days after service advise the judge
65 of any objections to the motion, serving a copy of such
66 objections on the defendant or the defendant's attorney. If
67 there are no objections filed within the thirty-day period,
68 the court shall thereafter dismiss the charges against the
69 defendant. If there are objections filed with regard to the
70 dismissal of charges, the court shall proceed as set forth in
71 subsection (c) of this section.

72 (e) Except as provided herein, unless a defendant
73 adjudicated pursuant to this subsection be convicted of a
74 subsequent violation of this article, discharge and
75 dismissal under this section shall be without adjudication
76 of guilt and is not a conviction for purposes of
77 disqualifications or disabilities imposed by law upon
78 conviction of a crime except for those provided in article

79 five-a of this chapter. Except as provided in subsection
80 ~~(k), (l) and (m)~~ subsections (j), (k) and (l), section two of
81 this article regarding subsequent offenses, the effect of the
82 dismissal and discharge shall be to restore the person in
83 contemplation of law to the status he or she occupied prior
84 to arrest and trial. No person as to whom a dismissal and
85 discharge have been effected ~~shall be~~ may thereafter held
86 to be guilty of perjury, false swearing or otherwise giving
87 a false statement by reason of his or her failure to disclose
88 or acknowledge his or her arrest or trial in response to any
89 inquiry made of him or her for any purpose other than any
90 inquiry made in connection with any subsequent offense
91 as that term is defined in subsection ~~(m)~~ (l), section two of
92 this article.

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

95 (g) No person ~~shall~~ may be eligible for dismissal and
96 discharge under this section: (1) In any prosecution in

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197 which any violation of any other provision of this article
198 has been charged;(2) if the person holds a commercial
199 driver's license or operates commercial motor vehicle(s);
200 or (3) the person has previously had his or her driver's
201 license revoked under section two-a of this article or under
202 any statute of the United States or of any state relating to
203 driving under the influence of alcohol, any controlled
204 substance or any other drug.

205 (h) (1) After a period of not less than one year, which
206 shall begin to run immediately upon the expiration of a
207 term of probation imposed upon any person under this
208 section, the person may apply to the court for an order to
209 expunge from all official records all recordations of his or
210 her arrest, trial and conviction, pursuant to this section
211 except for those maintained by the Division of Motor
212 Vehicles: *Provided*, That any person who has previously
213 been convicted of a felony may not make a motion for
214 expungement pursuant to this section.

115 (2) If the prosecuting attorney objects to the
116 expungement, the objections shall be filed with the court
117 within thirty days after service of a motion for
118 expungement and copies of the objections shall be served
119 on the defendant or the defendant's attorney.

120 (3) If the objections are filed, the court shall hold a
121 hearing on the objections, affording all parties an
122 opportunity to be heard. If the court determines after a
123 hearing that the person during the period of his or her
124 probation and during the period of time prior to his or her
125 application to the court under this subsection has not been
126 guilty of any serious or repeated violation of the
127 conditions of his or her probation, it shall order the
128 expungement.

129 (i) Notwithstanding any provision of this code to the
130 contrary, any person prosecuted for a violation of
131 subsection ~~(d)~~ (c), section two, article five of this chapter
132 whose case is disposed of pursuant to the provisions of this

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133 section shall be liable for any court costs assessable
134 against a person convicted of a violation of subsection (j)
135 (i), section two, article five of this chapter. Payment of
136 such costs may be made a condition of probation. The
137 costs assessed pursuant to this subsection, whether as a
138 term of probation or not, shall be distributed as other court
139 costs in accordance with section two, article three, chapter
140 fifty, section four, article two-a, chapter fourteen, section
141 four, article twenty-nine, chapter thirty and sections two,
142 seven and ten, article five, chapter sixty-two of this code.

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

**§17C-5A-1. Implied consent to administrative procedure;
revocation for driving under the influence of**

**alcohol, controlled substances or drugs or
refusal to submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor
2 vehicle in this state and who drives a motor vehicle in this
3 state shall be ~~deemed~~ considered to have given his or her
4 consent by the operation thereof, subject to the provisions
5 of this article, to the procedure set forth in this article for
6 the determination of whether his or her license to operate
7 a motor vehicle in this state should be revoked because he
8 or she did drive a motor vehicle while under the influence
9 of alcohol, controlled substances or drugs, or combined
10 influence of alcohol or controlled substances or drugs, or
11 did drive a motor vehicle while having an alcohol
12 concentration in his or her blood of eight hundredths of
13 one percent or more, by weight, or did refuse to submit to
14 any secondary chemical test required under the provisions
15 of article five of this chapter or did drive a motor vehicle
16 while under the age of twenty-one years with an alcohol

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17 concentration in his or her blood of two hundredths of one
18 percent or more, by weight, but less than eight hundredths
19 of one percent, by weight.

20 (b) Any law-enforcement officer investigating a person
21 for an offense described in section two, article five of this
22 chapter or for an offense described in a municipal
23 ordinance which has the same elements as an offense
24 described in ~~said~~ that section shall report to the
25 Commissioner of the Division of Motor Vehicles by
26 written statement within forty-eight hours of the
27 conclusion of the investigation the name and address of
28 the person believed to have committed the offense. The
29 report shall include the specific offense with which the
30 person is charged and, if applicable, a copy of the results
31 of any secondary tests of blood, breath or urine. The
32 signing of the statement required to be signed by this
33 subsection constitutes an oath or affirmation by the person
34 signing the statement that the statements contained in the

35 statement are true and that any copy filed is a true copy.
36 The statement shall contain upon its face a warning to the
37 officer signing that to willfully sign a statement containing
38 false information concerning any matter or thing, material
39 or not material, is false swearing and is a misdemeanor.

40 (c) If, upon examination of the written statement of the
41 officer and the tests results described in subsection (b) of
42 this section, the commissioner determines that a person
43 committed an offense described in section two, article five
44 of this chapter or an offense described in a municipal
45 ordinance which has the same elements as an offense
46 described in said section and that the results of any
47 secondary test or tests indicate that at the time the test or
48 tests were administered the person had, in his or her blood,
49 an alcohol concentration of eight hundredths of one
50 percent or more, by weight, or at the time the person
51 committed the offense he or she was under the influence
52 of alcohol, controlled substances or drugs, the

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53 commissioner shall make and enter an order revoking or
54 suspending the person's license to operate a motor vehicle in
55 this state. If the results of the tests indicate that at the time
56 the test or tests were administered the person was under the
57 age of twenty-one years and had an alcohol concentration in
58 his or her blood of two hundredths of one percent or more, by
59 weight, but less than eight hundredths of one percent, by
60 weight, the commissioner shall make and enter an order
61 suspending the person's license to operate a motor vehicle in
62 this state. A copy of the order shall be forwarded to the
63 person by registered or certified mail, return receipt
64 requested, and shall contain the reasons for the revocation or
65 suspension and describe the applicable revocation or
66 suspension periods provided in section two of this article. A
67 revocation or suspension ~~shall~~ is not ~~become~~ effective until
68 ten days after receipt of a copy of the order.

69 (d) Any law-enforcement officer taking a child into
70 custody under the provisions of section six-a, article five

71 of this chapter who has reasonable cause to believe that
72 the child, at the time of driving the motor vehicle, had an
73 alcohol concentration in his or her blood of two
74 hundredths of one percent or more, by weight, or that the
75 act of the child in driving the motor vehicle was such that
76 it would provide grounds for arrest for an offense defined
77 under the provisions of section two of ~~said~~ that article if
78 the child were an adult, shall report to the Commissioner
79 of the Division of Motor Vehicles by written statement
80 within forty-eight hours the name and address of the child.

81 (e) If applicable, the report shall include a description
82 of the specific offense with which the child could have
83 been charged if the child were an adult and a copy of the
84 results of any secondary tests of blood, breath or urine.
85 The signing of the statement required to be signed by this
86 subsection constitutes an oath or affirmation by the person
87 signing the statement that the statements contained in the
88 statement are true and that any copy filed is a true copy.

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89 The statement shall contain upon its face a warning to the
90 officer signing that to willfully sign a statement containing
91 false information concerning any matter or thing, material
92 or not material, is false swearing and is a misdemeanor.

93 (f) Upon examination of the written statement of the
94 officer and any test results described in subsection (d) of
95 this section, if the commissioner determines that the
96 results of the test indicate that at the time the test or tests
97 were administered the child had, in his or her blood, an
98 alcohol concentration of two hundredths of one percent or
99 more, by weight, but also determines that the act of the
100 child in driving the motor vehicle was not such that it
101 would provide grounds for arrest for an offense defined
102 under the provisions of subsection (a), (b), (c), (d), (e), (f)
103 ~~(g) or (h)~~ or (g), section two, article five of this chapter if
104 the child were an adult, the commissioner shall make and
105 enter an order suspending the child's license to operate a
106 motor vehicle in this state. If the commissioner

107 determines that the act of the child in driving the motor
108 vehicle was such that it would provide grounds for arrest
109 for an offense defined under the provisions of subsection
110 (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g), section two,
111 article five of this chapter if the child were an adult, the
112 commissioner shall make and enter an order revoking the
113 child's license to operate a motor vehicle in this state. A
114 copy of the order shall be forwarded to the child by
115 registered or certified mail, return receipt requested, and
116 shall contain the reasons for the suspension or revocation
117 and describe the applicable suspension or revocation
118 periods provided ~~for~~ in section two of this article. A
119 suspension or revocation ~~shall~~ is not ~~become~~ effective
120 until ten days after receipt of a copy of the order.

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

- 1 (a) Written objections to an order of revocation or
- 2 suspension under the provisions of section one of this
- 3 article or section seven, article five of this chapter shall be

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4 filed with the Office of Administrative Hearings. Upon
5 the receipt of an objection, the Office of Administrative
6 Hearings shall notify the Commissioner of the Division of
7 Motor Vehicles, who shall stay the imposition of the
8 period of revocation or suspension and afford the person
9 an opportunity to be heard by the Office of Administrative
10 Hearings. The written objection must be filed with Office
11 of Administrative Hearings in person, by registered or
12 certified mail, return receipt requested, or by facsimile
13 transmission or electronic mail within thirty calendar days
14 after receipt of a copy of the order of revocation or
15 suspension or no hearing will be granted: *Provided*, That
16 a successful transmittal sheet shall be necessary for proof
17 of written objection in the case of filing by fax. The
18 hearing shall be before a hearing examiner employed by
19 the Office of Administrative Hearings who shall rule on
20 evidentiary issues. Upon consideration of the designated
21 record, the hearing examiner shall, based on the

22 determination of the facts of the case and applicable law,
23 render a decision affirming, reversing or modifying the
24 action protested. The decision shall contain findings of fact
25 and conclusions of law and shall be provided to all parties by
26 registered or certified mail, return receipt requested.

27 (b) The hearing shall be held at an office of the
28 Division of Motor Vehicles located in or near the county
29 in which the arrest was made in this state or at some other
30 suitable place in the county in which the arrest was made
31 if an office of the division is not available. The Office of
32 Administrative Hearings shall send a notice of hearing to
33 the person whose driving privileges are at issue and the
34 person's legal counsel if the person is represented by legal
35 counsel, the investigating or arresting law-enforcement
36 officers, the Division of Motor Vehicles and the Attorney
37 General's Office, if the Attorney General has filed a notice
38 of appearance of counsel on behalf of the Division of
39 Motor Vehicles.

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

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

48 (3) The Office of Administrative Hearings may issue
49 subpoenas commanding the appearance of witnesses and
50 subpoenas duces tecum commanding the submission of
51 documents, items or other things. Subpoenas duces tecum
52 shall be returnable on the date of the next scheduled
53 hearing unless otherwise specified. The Office of
54 Administrative hearings shall issue subpoenas and
55 subpoenas duces tecum at the request of a party or the
56 party's legal representative. The party requesting the
57 subpoena shall be responsible for service of the subpoena

58 upon the appropriate individual. Every subpoena or
59 subpoena duces tecum shall be served at least five days
60 before the return date thereof, either by personal service
61 made by a person over eighteen years of age or by
62 registered or certified mail, return receipt requested, and
63 received by the party responsible for serving the subpoena
64 or subpoena duces tecum: *Provided*, That the Division of
65 Motor Vehicles may serve subpoenas to law-enforcement
66 officers through electronic mail to the department of his or
67 her employer. If a person does not obey the subpoena or
68 fails to appear, the party who issued the subpoena to the
69 person may petition the circuit court wherein the action
70 lies for enforcement of the subpoena.

71 (d) Law-enforcement officers shall be compensated for
72 the time expended in their travel and appearance before
73 the Office of Administrative Hearings by the
74 law-enforcement agency by whom they are employed at
75 their regular rate if they are scheduled to be on duty during

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76 said time or at their regular overtime rate if they are
77 scheduled to be off duty during said time.

78 (e) The principal question at the hearing shall be
79 whether the person did drive a motor vehicle while under
80 the influence of alcohol, controlled substances or drugs, or
81 did drive a motor vehicle while having an alcohol
82 concentration in the person's blood of eight hundredths of
83 one percent or more, by weight, or did refuse to submit to
84 the designated secondary chemical test, or did drive a
85 motor vehicle while under the age of twenty-one years
86 with an alcohol concentration in his or her blood of two
87 hundredths of one percent or more, by weight, but less
88 than eight hundredths of one percent, by weight.

89 (f) In the case of a hearing in which a person is
90 accused of driving a motor vehicle while under the
91 influence of alcohol, controlled substances or drugs, or
92 accused of driving a motor vehicle while having an
93 alcohol concentration in the person's blood of eight

94 hundredths of one percent or more, by weight, or accused
95 of driving a motor vehicle while under the age of
96 twenty-one years with an alcohol concentration in his or
97 her blood of two hundredths of one percent or more, by
98 weight, but less than eight hundredths of one percent, by
99 weight, the Office of Administrative Hearings shall make
100 specific findings as to: (1) Whether the investigating
101 law-enforcement officer had reasonable grounds to believe
102 the person to have been driving while under the influence
103 of alcohol, controlled substances or drugs, or while having
104 an alcohol concentration in the person's blood of eight
105 hundredths of one percent or more, by weight, or to have
106 been driving a motor vehicle while under the age of
107 twenty-one years with an alcohol concentration in his or
108 her blood of two hundredths of one percent or more, by
109 weight, but less than eight hundredths of one percent, by
110 weight; (2) whether the person was lawfully placed under
111 arrest for an offense involving driving under the influence

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112 of alcohol, controlled substances or drugs, or was lawfully
113 taken into custody for the purpose of administering a
114 secondary test: *Provided*, That this element shall be
115 waived in cases where no arrest occurred due to driver
116 incapacitation; (3) whether the person committed an
117 offense involving driving under the influence of alcohol,
118 controlled substances or drugs, or was lawfully taken into
119 custody for the purpose of administering a secondary test;
120 and (4) whether the tests, if any, were administered in
121 accordance with the provisions of this article and article
122 five of this chapter.

123 (g) If, in addition to a finding that the person did drive
124 a motor vehicle while under the influence of alcohol,
125 controlled substances or drugs, or did drive a motor
126 vehicle while having an alcohol concentration in the
127 person's blood of eight hundredths of one percent or more,
128 by weight, or did drive a motor vehicle while under the
129 age of twenty-one years with an alcohol concentration in

130 his or her blood of two hundredths of one percent or more,
131 by weight, but less than eight hundredths of one percent,
132 by weight, the Office of Administrative Hearings also
133 finds by a preponderance of the evidence that the person
134 when driving did an act forbidden by law or failed to
135 perform a duty imposed by law, which act or failure
136 proximately caused the death to or serious bodily injury as
137 that term is defined in section two, article five of this
138 chapter of a person ~~and was committed in reckless~~
139 ~~disregard of the safety of others and if the Office of~~
140 ~~Administrative Hearings further finds that the influence of~~
141 ~~alcohol, controlled substances or drugs or the alcohol~~
142 ~~concentration in the blood was a contributing cause to the~~
143 ~~death~~, the commissioner shall revoke the person's license
144 for a period of ten years: *Provided*, That if the person's
145 license has previously been suspended or revoked under
146 the provisions of this section or section one of this article
147 within the ten years immediately preceding the date of

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148 arrest, the period of revocation shall be for the life of the
149 person.

150 ~~(h) If, in addition to a finding that the person did drive a~~
151 ~~motor vehicle while under the influence of alcohol,~~
152 ~~controlled substances or drugs, or did drive a motor vehicle~~
153 ~~while having an alcohol concentration in the person's blood~~
154 ~~of eight hundredths of one percent or more, by weight, the~~
155 ~~Office of Administrative Hearings also finds by a~~
156 ~~preponderance of the evidence that the person when driving~~
157 ~~did an act forbidden by law or failed to perform a duty~~
158 ~~imposed by law, which act or failure proximately caused the~~
159 ~~death of a person, the commissioner shall revoke the person's~~
160 ~~license for a period of five years: *Provided,* That if the~~
161 ~~person's license has previously been suspended or revoked~~
162 ~~under the provisions of this section or section one of this~~
163 ~~article within the ten years immediately preceding the date of~~
164 ~~arrest, the period of revocation shall be for the life of the~~
165 ~~person.~~

166 (i) (h) If, in addition to a finding that the person did
167 drive a motor vehicle while under the influence of alcohol,
168 controlled substances or drugs, or did drive a motor
169 vehicle while having an alcohol concentration in the
170 person's blood of eight hundredths of one percent or more,
171 by weight, the Office of Administrative Hearings also
172 finds by a preponderance of the evidence that the person
173 when driving did an act forbidden by law or failed to
174 perform a duty imposed by law, which act or failure
175 proximately caused bodily injury to a person other than
176 himself or herself, the commissioner shall revoke the
177 person's license for a period of two years: *Provided*, That
178 if the license has previously been suspended or revoked
179 under the provisions of this section or section one of this
180 article within the ten years immediately preceding the date
181 of arrest, the period of revocation shall be ten years:
182 *Provided, however*, That if the person's license has
183 previously been suspended or revoked more than once

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184 under the provisions of this section or section one of this
185 article within the ten years immediately preceding the date
186 of arrest, the period of revocation shall be for the life of
187 the person.

188 ~~(j)~~ (i) If the Office of Administrative Hearings finds by
189 a preponderance of the evidence that the person did drive
190 a motor vehicle while under the influence of alcohol,
191 controlled substances or drugs, or did drive a motor
192 vehicle while having an alcohol concentration in the
193 person's blood of eight hundredths of one percent or more,
194 by weight, but less than fifteen hundredths of one percent
195 or more, by weight, or finds that the person knowingly
196 permitted the person's vehicle to be driven by another
197 person who was under the influence of alcohol, controlled
198 substances or drugs, or knowingly permitted the person's
199 vehicle to be driven by another person who had an alcohol
200 concentration in his or her blood of eight hundredths of
201 one percent or more, by weight, the commissioner shall

202 revoke the person's license for a period of six months or
203 a period of fifteen days with an additional one hundred ~~and~~
204 twenty days of participation in the Motor Vehicle Alcohol
205 Test and Lock Program in accordance with the provisions
206 of section three-a of this article: *Provided*, That any
207 period of participation in the Motor Vehicle Alcohol Test
208 and Lock Program that has been imposed by a court
209 pursuant to section two-b, article five of this chapter shall
210 be credited against any period of participation imposed by
211 the commissioner: *Provided, however*, That a person
212 whose license is revoked for driving while under the
213 influence of drugs is not eligible to participate in the
214 Motor Vehicle Alcohol Test and Lock Program: *Provided*
215 *further*, That if the person's license has previously been
216 suspended or revoked under the provisions of this section
217 or section one of this article within the ten years
218 immediately preceding the date of arrest, the period of
219 revocation shall be ten years: *And provided further*, That

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220 if the person's license has previously been suspended or
221 revoked more than once under the provisions of this
222 section or section one of this article within the ten years
223 immediately preceding the date of arrest, the period of
224 revocation shall be for the life of the person.

225 ~~(k)~~ (j) (1) If in addition to finding by a preponderance
226 of the evidence that the person did drive a motor vehicle
227 while under the influence of alcohol, controlled substance
228 or drugs, the Office of Administrative Hearings also finds
229 by a preponderance of the evidence that the person did
230 drive a motor vehicle while having an alcohol
231 concentration in the person's blood of fifteen hundredths
232 of one percent or more, by weight, the commissioner shall
233 revoke the person's license for a period of forty-five days
234 with an additional two hundred ~~and~~ seventy days of
235 participation in the Motor Vehicle Alcohol Test and Lock
236 Program in accordance with the provisions of section
237 three-a, article five-a, chapter seventeen-c of this code:

238 *Provided*, That if the person's license has previously been
239 suspended or revoked under the provisions of this section
240 or section one of this article within the ten years
241 immediately preceding the date of arrest, the period of
242 revocation shall be ten years: *Provided, however*, That if
243 the person's license has previously been suspended or
244 revoked ~~the person's license~~ more than once under the
245 provisions of this section or section one of this article
246 within the ten years immediately preceding the date of
247 arrest, the period of revocation shall be for the life of the
248 person.

249 (2) If a person whose license is revoked pursuant to
250 subdivision (1) of this subsection proves by clear and
251 convincing evidence that they do not own a motor vehicle
252 upon which the alcohol test and lock device may be
253 installed or is otherwise incapable of participating in the
254 Motor Vehicle Alcohol Test and Lock Program, the period
255 of revocation shall be one hundred eighty days: *Provided*,

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256 That if the person's license has previously been suspended
257 or revoked under the provisions of this section or section
258 one of this article within the ten years immediately
259 preceding the date of arrest, the period of revocation shall
260 be ten years: *Provided, however,* That if the person's
261 license has previously been suspended or revoked more
262 than once under the provisions of this section or section
263 one of this article within the ten years immediately
264 preceding the date of arrest, the period of revocation shall
265 be for the life of the person.

266 (†) (k) If, in addition to a finding that the person did
267 drive a motor vehicle while under the age of twenty-one
268 years with an alcohol concentration in his or her blood of
269 two hundredths of one percent or more, by weight, but less
270 than eight hundredths of one percent, by weight, the Office
271 of Administrative Hearings also finds by a preponderance
272 of the evidence that the person when driving did an act
273 forbidden by law or failed to perform a duty imposed by

274 law, which act or failure proximately caused the death of
275 a person, and if the Office of Administrative Hearings
276 further finds that the alcohol concentration in the blood
277 was a contributing cause to the death, the commissioner
278 shall revoke the person's license for a period of five years:
279 *Provided*, That if the person's license has previously been
280 suspended or revoked under the provisions of this section
281 or section one of this article within the ten years
282 immediately preceding the date of arrest, the period of
283 revocation shall be for the life of the person.

284 ~~(m)~~ (l) If, in addition to a finding that the person did
285 drive a motor vehicle while under the age of twenty-one
286 years with an alcohol concentration in his or her blood of
287 two hundredths of one percent or more, by weight, but less
288 than eight hundredths of one percent, by weight, the Office
289 of Administrative Hearings also finds by a preponderance
290 of the evidence that the person when driving did an act
291 forbidden by law or failed to perform a duty imposed by

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292 law, which act or failure proximately caused bodily injury
293 to a person other than himself or herself, and if the Office
294 of Administrative Hearings further finds that the alcohol
295 concentration in the blood was a contributing cause to the
296 bodily injury, the commissioner shall revoke the person's
297 license for a period of two years: *Provided*, That if the
298 person's license has previously been suspended or revoked
299 under the provisions of this section or section one of this
300 article within the ten years immediately preceding the date
301 of arrest, the period of revocation shall be ten years:
302 *Provided, however*, That if the person's license has
303 previously been suspended or revoked more than once
304 under the provisions of this section or section one of this
305 article within the ten years immediately preceding the date
306 of arrest, the period of revocation shall be for the life of
307 the person.

308 (n) (m) If the Office of Administrative Hearings finds
309 by a preponderance of the evidence that the person did

310 drive a motor vehicle while under the age of twenty-one
311 years with an alcohol concentration in his or her blood of
312 two hundredths of one percent or more, by weight, but less
313 than eight hundredths of one percent, by weight, the
314 commissioner shall suspend the person's license for a
315 period of sixty days: *Provided*, That if the person's
316 license has previously been suspended or revoked under
317 the provisions of this section or section one of this article,
318 the period of revocation shall be for one year, or until the
319 person's twenty-first birthday, whichever period is longer.

320 (⊖) (n) If, in addition to a finding that the person did
321 drive a motor vehicle while under the influence of alcohol,
322 controlled substances or drugs, or did drive a motor
323 vehicle while having an alcohol concentration in the
324 person's blood of eight hundredths of one percent or more,
325 by weight, the Office of Administrative Hearings also
326 finds by a preponderance of the evidence that the person
327 when driving did have on or within the motor vehicle

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328 another person who has not reached his or her sixteenth
329 birthday, the commissioner shall revoke the person's license
330 for a period of one year: *Provided*, That if the person's
331 license has previously been suspended or revoked under the
332 provisions of this section or section one of this article within
333 the ten years immediately preceding the date of arrest, the
334 period of revocation shall be ten years: *Provided, however*,
335 That if the person's license has previously been suspended or
336 revoked more than once under the provisions of this section
337 or section one of this article within the ten years immediately
338 preceding the date of arrest, the period of revocation shall be
339 for the life of the person.

340 ~~(p)~~ (o) For purposes of this section, where reference is
341 made to previous suspensions or revocations under this
342 section, the following types of criminal convictions or
343 administrative suspensions or revocations shall also be
344 regarded as suspensions or revocations under this section
345 or section one of this article:

346 (1) Any administrative revocation under the provisions
347 of the prior enactment of this section for conduct which
348 occurred within the ten years immediately preceding the
349 date of arrest;

350 (2) Any suspension or revocation on the basis of a
351 conviction under a municipal ordinance of another state or
352 a statute of the United States or of any other state of an
353 offense which has the same elements as an offense
354 described in section two, article five of this chapter for
355 conduct which occurred within the ten years immediately
356 preceding the date of arrest; or

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

361 ~~(q)~~ (p) In the case of a hearing in which a person is
362 accused of refusing to submit to a designated secondary
363 test, the Office of Administrative Hearings shall make

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364 specific findings as to: (1) Whether the arresting
365 law-enforcement officer had reasonable grounds to believe
366 the person had been driving a motor vehicle in this state
367 while under the influence of alcohol, controlled substances
368 or drugs; (2) whether the person was lawfully placed under
369 arrest for an offense involving driving under the influence
370 of alcohol, controlled substances or drugs, or was lawfully
371 taken into custody for the purpose of administering a
372 secondary test: *Provided*, That this element shall be
373 waived in cases where no arrest occurred due to driver
374 incapacitation; (3) whether the person committed an
375 offense relating to driving a motor vehicle in this state
376 while under the influence of alcohol, controlled substances
377 or drugs; (4) whether the person refused to submit to the
378 secondary test finally designated in the manner provided
379 in section four, article five of this chapter; and (5) whether
380 the person had been given a written statement advising the
381 person that the person's license to operate a motor vehicle

382 in this state would be revoked for at least forty-five days
383 and up to life if the person refused to submit to the test
384 finally designated in the manner provided in said section.

385 (r) (q) If the Office of Administrative Hearings finds
386 by a preponderance of the evidence that: (1) The
387 investigating officer had reasonable grounds to believe the
388 person had been driving a motor vehicle in this state while
389 under the influence of alcohol, controlled substances or
390 drugs; (2) whether the person was lawfully placed under
391 arrest for an offense involving driving under the influence
392 of alcohol, controlled substances or drugs, or was lawfully
393 taken into custody for the purpose of administering a
394 secondary test: *Provided*, That this element shall be
395 waived in cases where no arrest occurred due to driver
396 incapacitation; (3) the person committed an offense
397 relating to driving a motor vehicle in this state while under
398 the influence of alcohol, controlled substances or drugs;
399 (4) the person refused to submit to the secondary test

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400 finally designated in the manner provided in section four,
401 article five of this chapter; and (5) the person had been given
402 a written statement advising the person that the person's
403 license to operate a motor vehicle in this state would be
404 revoked for at least forty-five days and up to life if the person
405 refused to submit to the test finally designated, the
406 commissioner shall revoke the person's license to operate a
407 motor vehicle in this state for the periods specified in section
408 seven, article five of this chapter. The revocation period
409 prescribed in this subsection shall run concurrently with any
410 other revocation period ordered under this section or section
411 one of this article arising out of the same occurrence. The
412 revocation period prescribed in this subsection shall run
413 concurrently with any other revocation period ordered under
414 this section or section one of this article arising out of the
415 same occurrence.

416 ~~(s)~~ (r) If the Office of Administrative Hearings finds to
417 the contrary with respect to the above issues the

418 commissioner shall rescind his or her earlier order of
419 revocation or shall reduce the order of revocation to the
420 appropriate period of revocation under this section or
421 section seven, article five of this chapter. A copy of the
422 Office of Administrative Hearings' final order containing
423 its findings of fact and conclusions of law made and
424 entered following the hearing shall be served upon the
425 person whose license is at issue or upon the person's legal
426 counsel if the person is represented by legal counsel by
427 registered or certified mail, return receipt requested, or by
428 electronic mail if available. The final order shall be served
429 upon the commissioner by electronic mail. During the
430 pendency of any hearing, the revocation of the person's
431 license to operate a motor vehicle in this state shall be
432 stayed.

433 A person whose license is at issue and the
434 commissioner shall be entitled to judicial review as set
435 forth in chapter twenty-nine-a of this code. Neither the

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436 commissioner nor the Office of Administrative Hearings
437 may stay enforcement of the order. The court may grant
438 a stay or supersede as of the order only upon motion and
439 hearing, and a finding by the court upon the evidence
440 presented, that there is a substantial probability that the
441 appellant shall prevail upon the merits and the appellant
442 will suffer irreparable harm if the order is not stayed:
443 *Provided*, That in no event shall the stay or supersedeas of
444 the order exceed one hundred fifty days. Notwithstanding
445 the provisions of section four, article five of said chapter,
446 the Office of Administrative Hearings may not be
447 compelled to transmit a certified copy of the file or the
448 transcript of the hearing to the circuit court in less than
449 sixty days.

450 (t) (s) In any revocation or suspension pursuant to this
451 section, if the driver whose license is revoked or
452 suspended had not reached the driver's eighteenth birthday
453 at the time of the conduct for which the license is revoked

454 or suspended, the driver's license shall be revoked or
455 suspended until the driver's eighteenth birthday or the
456 applicable statutory period of revocation or suspension
457 prescribed by this section, whichever is longer.

458 ~~(u)~~ (t) Funds for this section's hearing and appeal
459 process may be provided from the Drunk Driving
460 Prevention Fund, as created by section forty-one, article
461 two, chapter fifteen of this code, upon application for the
462 funds to the Commission on Drunk Driving Prevention.

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

1 (a) The Department of Health and Human Resources,
2 Division of Alcoholism and Drug Abuse, shall administer
3 a comprehensive safety and treatment program for persons
4 whose licenses have been revoked under the provisions of
5 this article or section seven, article five of this chapter or
6 subsection (6), section five, article three, chapter
7 seventeen-b of this code and shall also establish the

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8 minimum qualifications for mental health facilities, day
9 report centers, community correction centers or other
10 public agencies or private entities conducting the safety
11 and treatment program: *Provided*, That the Department
12 of Health and Human Resources, Division of
13 Alcoholism and Drug Abuse, may establish standards
14 whereby the division will accept or approve
15 participation by violators in another treatment program
16 which provides the same or substantially similar benefits
17 as the safety and treatment program established pursuant
18 to this section.

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

26 (c) The Department of Health and Human Resources,
27 Division of Alcoholism and Drug Abuse, shall provide for
28 the preparation of an educational and treatment program for
29 each person whose license has been revoked under the
30 provisions of this article or section seven, article five of this
31 chapter or subsection (6), section five, article three, chapter
32 seventeen-b of this code which shall contain the following:
33 (1) A listing and evaluation of the offender's prior traffic
34 record; (2) the characteristics and history of alcohol or drug
35 use, if any; (3) his or her amenability to rehabilitation through
36 the alcohol safety program; and (4) a recommendation as to
37 treatment or rehabilitation and the terms and conditions of the
38 treatment or rehabilitation. The program shall be prepared by
39 persons knowledgeable in the diagnosis of alcohol or drug
40 abuse and treatment.

41 (d) There is hereby created a special revenue account
42 within the State Treasury known as the Department of Health
43 and Human Resources Safety and Treatment Fund. The

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44 account shall be administered by the Secretary of the
45 Department of Health and Human Resources for the purpose
46 of administering the comprehensive safety and treatment
47 program established by subsection (a) of this section. The
48 account may be invested, and all earnings and interest
49 accruing shall be retained in the account. The Auditor shall
50 conduct an audit of the fund at least every three fiscal years.

51 Effective July 1, 2010, the State Treasurer shall make a
52 one-time transfer of \$250,000 from the Motor Vehicle Fees
53 Fund into the Department of Health and Human Resources
54 Safety and Treatment Fund.

55 (e) (1) The program provider shall collect the established
56 fee from each participant upon enrollment unless the
57 department has determined that the participant is an indigent
58 based upon criteria established pursuant to legislative rule
59 authorized in this section.

60 (2) If the department determined that a participant is
61 an indigent based upon criteria established pursuant to

62 the legislative rule authorized by this section, the
63 department shall provide the applicant with proof of its
64 determination regarding indigency, which proof the
65 applicant shall present to the interlock provider as part
66 of the application process provided in section three-a of
67 this article and/or the rules promulgated pursuant
68 thereto.

69 (3) Program providers shall remit to the Department of
70 Health and Human Resources a portion of the fee collected,
71 which shall be deposited by the Secretary of the Department
72 of Health and Human Resources into the Department of
73 Health and Human Resources Safety and Treatment Fund.
74 The Department of Health and Human Resources shall
75 reimburse enrollment fees to program providers for each
76 eligible indigent offender.

77 (f) On or before January 15 of each year, the Secretary
78 of the Department of Health and Human Resources shall
79 report to the Legislature on:

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

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

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

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

88 (g) The Commissioner of the Division of Motor
89 Vehicles, after giving due consideration to the program
90 developed for the offender, shall prescribe the necessary
91 terms and conditions for the reissuance of the license to
92 operate a motor vehicle in this state revoked under this
93 article or section seven, article five of this chapter or
94 subsection (6), section five, article three, chapter
95 seventeen-b of this code which shall include successful
96 completion of the educational, treatment or rehabilitation
97 program, subject to the following:

98 (1) When the period of revocation is six months, the
99 license to operate a motor vehicle in this state may not be
100 reissued until: (A) At least ninety days have elapsed from
101 the date of the initial revocation, during which time the
102 revocation was actually in effect;(B) the offender has
103 successfully completed the program; (C) all costs of the
104 program and administration have been paid; and (D) all
105 costs assessed as a result of a revocation hearing have
106 been paid.

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

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116 been paid. Notwithstanding any provision in this code, a
117 person whose license is revoked for refusing to take a
118 chemical test as required by section seven, article five of
119 this chapter for a first offense is not eligible to reduce the
120 revocation period by completing the safety and treatment
121 program.

122 (3) When the period of revocation is for life, the
123 license to operate a motor vehicle in this state may not be
124 reissued until: (A) At least ten years have elapsed from the
125 date of the initial revocation, during which time the
126 revocation was actually in effect; (B) the offender has
127 successfully completed the program; (C) all costs of the
128 program and administration have been paid; and (D) all
129 costs assessed as a result of a revocation hearing have
130 been paid.

131 (4) Notwithstanding any provision of this code or any
132 rule, any mental health facilities or other public agencies
133 or private entities conducting the safety and treatment

134 program when certifying that a person has successfully
135 completed a safety and treatment program shall only have
136 to certify that the person has successfully completed the
137 program.

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

146 (2) When a sixty-day period of suspension has been
147 ordered, the license to operate a motor vehicle may not be
148 reinstated until: (A) At least sixty days have elapsed from
149 the date of the initial suspension, during which time the
150 suspension was actually in effect; (B) the offender has
151 successfully completed the educational program; (C) all

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152 costs of the program and administration have been paid;
153 and (D) all costs assessed as a result of a suspension
154 hearing have been paid.

155 (i) A required component of the treatment program
156 provided in subsection (b) of this section and the education
157 program provided for in subsection (c) of this section shall be
158 participation by the violator with a victim impact panel
159 program providing a forum for victims of alcohol and
160 drug-related offenses and offenders to share first-hand
161 experiences on the impact of alcohol and drug-related
162 offenses in their lives. The Department of Health and
163 Human Resources, Division of Alcoholism and Drug Abuse
164 shall propose and implement a plan for victim impact panels
165 where appropriate numbers of victims are available and
166 willing to participate and shall establish guidelines for other
167 innovative programs which may be substituted where the
168 victims are not available to assist persons whose licenses
169 have been suspended or revoked for alcohol and drug-related

170 offenses to gain a full understanding of the severity of their
171 offenses in terms of the impact of the offenses on victims and
172 offenders. The plan shall require, at a minimum, discussion
173 and consideration of the following:

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

175 (B) Death or physical injuries suffered by victims or
176 offenders;

177 (C) Psychological injuries suffered by victims or
178 offenders;

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

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

183 The Department of Health and Human Resources,
184 Division of Alcoholism and Drug Abuse, shall ensure that
185 any meetings between victims and offenders shall be
186 nonconfrontational and ensure the physical safety of the
187 persons involved.

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188 (j)(1) The Secretary of the Department of Health and
189 Human Resources shall promulgate a rule for legislative
190 approval in accordance with article three, chapter
191 twenty-nine-a of this code to administer the provisions of
192 this section and establish a fee to be collected from each
193 offender enrolled in the safety and treatment program.
194 The rule shall include: (A) A reimbursement mechanism
195 to program providers of required fees for the safety and
196 treatment program for indigent offenders, criteria for
197 determining eligibility of indigent offenders, and any
198 necessary application forms; and (B) program standards
199 that encompass provider criteria including minimum
200 professional training requirements for providers,
201 curriculum approval, minimum course length requirements
202 and other items that may be necessary to properly
203 implement the provisions of this section.

204 (2) The Legislature finds that an emergency exists and,
205 therefore, the Secretary shall file by July 1, 2010, an

206 emergency rule to implement this section pursuant to the
207 provisions of section fifteen, article three, chapter
208 twenty-nine-a of this code.

209 (k) Nothing in this section may be construed to
210 prohibit day report or community correction programs,
211 authorized pursuant to article eleven-c, chapter sixty-two
212 of this code, from administering a comprehensive safety
213 and treatment program pursuant to this section.

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

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

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

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

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

27 those requirements which, in addition to the requirements
28 specified by this section for eligibility to participate in the
29 program, the commissioner determines must be met to
30 obtain the commissioner's approval to operate a motor
31 vehicle equipped with a motor vehicle alcohol test and
32 lock system.

33 (C) Nothing in this section may be construed to
34 prohibit day report or community correction programs
35 authorized pursuant to article eleven-c, chapter sixty-two
36 of this code, or a home incarceration program authorized
37 pursuant to article eleven-b, chapter sixty-two of this code,
38 from being a provider of motor vehicle alcohol test and
39 lock systems for eligible participants as authorized by this
40 section.

41 (4) For purposes of this section, a "motor vehicle
42 alcohol test and lock system" means a mechanical or
43 computerized system which, in the opinion of the
44 commissioner, prevents the operation of a motor vehicle

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45 when, through the system's assessment of the blood
46 alcohol content of the person operating or attempting to
47 operate the vehicle, the person is determined to be under
48 the influence of alcohol.

49 (5) The fee for installation and removal of ignition
50 interlock devices shall be waived for persons determined
51 to be indigent by the Department of Health and Human
52 Resources pursuant to section three, article five-a, chapter
53 seventeen-c of this code. The commissioner shall
54 establish by legislative rule, proposed pursuant to article
55 three, chapter twenty-nine-a of this code, procedures to be
56 followed with regard to persons determined by the
57 Department of Health and Human Resources to be
58 indigent. The rule shall include, but is not limited to,
59 promulgation of application forms; establishment of
60 procedures for the review of applications; and the
61 establishment of a mechanism for the payment of
62 installations for eligible offenders.

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

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

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

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

72 (D) The total cost of the program to the state during the
73 prior year.

74 (b)(1) Any person whose license is revoked for the first
75 time pursuant to this article or the provisions of article five
76 of this chapter is eligible to participate in the program
77 when the person's minimum revocation period as specified
78 by subsection (c) of this section has expired and the person
79 is enrolled in or has successfully completed the safety and
80 treatment program or presents proof to the commissioner

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81 within sixty days of receiving approval to participate by
82 the commissioner that he or she is enrolled in a safety and
83 treatment program: *Provided*, That anyone whose license
84 is revoked for the first time pursuant to subsection (k),
85 section two of this article must participate in the program
86 when the person's minimum revocation period as specified
87 by subsection (c) of this section has expired and the person
88 is enrolled in or has successfully completed the safety and
89 treatment program or presents proof to the commissioner
90 within sixty days of receiving approval to participate by
91 the commissioner that he or she is enrolled in a safety and
92 treatment program.

93 (2) Any person whose license has been suspended
94 pursuant to the provisions of subsection ~~(n)~~ (m), section
95 two of this article for driving a motor vehicle while under
96 the age of twenty-one years with an alcohol concentration
97 in his or her blood of two hundredths of one percent or
98 more, by weight, but less than eight hundredths of one

99 percent, by weight, is eligible to participate in the program
100 after thirty days have elapsed from the date of the initial
101 suspension, during which time the suspension was actually
102 in effect: *Provided*, That in the case of a person under the
103 age of eighteen, the person is eligible to participate in the
104 program after thirty days have elapsed from the date of the
105 initial suspension, during which time the suspension was
106 actually in effect, or after the person's eighteenth birthday,
107 whichever is later. Before the commissioner approves a
108 person to operate a motor vehicle equipped with a motor
109 vehicle alcohol test and lock system, the person must agree
110 to comply with the following conditions:

111 (A) If not already enrolled, the person shall enroll in
112 and complete the educational program provided in
113 subsection (d), section three of this article at the earliest
114 time that placement in the educational program is
115 available, unless good cause is demonstrated to the
116 commissioner as to why placement should be postponed;

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117 (B) The person shall pay all costs of the educational
118 program, any administrative costs and all costs assessed
119 for any suspension hearing.

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

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

128 (1) For a person whose license has been revoked for a
129 first offense for six months pursuant to the provisions of
130 section one-a of this article for conviction of an offense
131 defined in subsection ~~(d) or (g)~~ (c) or (f), section two,
132 article five of this chapter or pursuant to subsection ~~(j)~~ (i),
133 section two of this article, the minimum period of
134 revocation for participation in the test and lock program is

135 fifteen days and the minimum period for the use of the
136 ignition interlock device is one hundred and twenty-five
137 days;

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

144 (3) For a person whose license has been revoked for a
145 first offense pursuant to section one-a of this article for
146 conviction of an offense defined in subsection ~~(e)~~ (f),
147 section two, article five of this chapter or pursuant to
148 subsection ~~(j)~~ (i), section two of this article, the minimum
149 period of revocation for participation in the test and lock
150 program is forty-five days and the minimum period for the
151 use of the ignition interlock device is two hundred seventy
152 days;

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153 (4) For a person whose license has been revoked for a
154 first offense pursuant to the provisions of section one-a of
155 this article for conviction of an offense defined in subsection
156 (a), section two, article five of this chapter or pursuant to
157 subsection ~~(f)~~ (e), section two of this article, the minimum
158 period of revocation before the person is eligible for
159 participation in the test and lock program is twelve months
160 and the minimum period for the use of the ignition interlock
161 device is two years;

162 (5) For a person whose license has been revoked for a
163 first offense pursuant to the provisions of section one-a of
164 this article for conviction of an offense ~~defined in subsection~~
165 ~~(b), section two, article five of this chapter or pursuant to~~
166 subsection ~~(h)~~ (g), section two of this article, the minimum
167 period of revocation is six months and the minimum period
168 for the use of the ignition interlock device is two years;

169 (6) For a person whose license has been revoked for a
170 first offense pursuant to the provisions of section one-a of

171 this article for conviction of an offense defined in
172 subsection ~~(e)~~ (b), section two, article five of this chapter
173 or pursuant to subsection ~~(h)~~ (g), section two of this
174 article, the minimum period of revocation for participation
175 in the program is two months and the minimum period for
176 the use of the ignition interlock device is one year;

177 (7) For a person whose license has been revoked for a
178 first offense pursuant to the provisions of section one-a of
179 this article for conviction of an offense defined in
180 subsection ~~(j)~~ (i), section two, article five of this chapter or
181 pursuant to subsection ~~(m)~~ (l), section two of this article,
182 the minimum period of revocation for participation in the
183 program is two months and the minimum period for the
184 use of the ignition interlock device is ten months;

185 (d) Notwithstanding any provision of the code to the
186 contrary, a person shall participate in the program if the
187 person is convicted under section two, article five of this
188 chapter or the person's license is revoked under section

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189 two of this article or section seven, article five of this
190 chapter and the person was previously either convicted or
191 his or her license was revoked under any provision cited
192 in this subsection within the past ten years. The minimum
193 revocation period for a person required to participate in the
194 program under this subsection is one year and the
195 minimum period for the use of the ignition interlock
196 device is two years, except that the minimum revocation
197 period for a person required to participate because of a
198 violation of subsection ~~(n)~~ (m), section two of this article
199 or subsection ~~(i)~~ (h), section two, article five of this
200 chapter is two months and the minimum period of
201 participation is one year. The division shall add an
202 additional two months to the minimum period for the use
203 of the ignition interlock device if the offense was
204 committed while a minor was in the vehicle. The division
205 shall add an additional six months to the minimum period
206 for the use of the ignition interlock device if a person other

207 than the driver received injuries. The division shall add an
208 additional two years to the minimum period for the use of
209 the ignition interlock device if a person other than the
210 driver is injured and the injuries result in that person's
211 death. The division shall add one year to the minimum
212 period for the use of the ignition interlock device for each
213 additional previous conviction or revocation within the
214 past ten years. Any person required to participate under
215 this subsection must have an ignition interlock device
216 installed on every vehicle he or she owns or operates.

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

221 (f) An applicant for the test and lock program may not
222 have been convicted of any violation of section three,
223 article four, chapter seventeen-b of this code for driving
224 while the applicant's driver's license was suspended or

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225 revoked within the six-month period preceding the date of
226 application for admission to the test and lock program
227 unless such is necessary for employment purposes.

228 (g) Upon permitting an eligible person to participate in
229 the program, the commissioner shall issue to the person,
230 and the person is required to exhibit on demand, a driver's
231 license which shall reflect that the person is restricted to
232 the operation of a motor vehicle which is equipped with an
233 approved motor vehicle alcohol test and lock system.

234 (h) The commissioner may extend the minimum period
235 of revocation and the minimum period of participation in
236 the program for a person who violates the terms and
237 conditions of participation in the program as found in this
238 section, or legislative rule, or any agreement or contract
239 between the participant and the division or program
240 service provider. If the commissioner finds that any
241 person participating in the program pursuant to section
242 two-b, article five of this chapter must be removed

243 therefrom for violation(s) of the terms and conditions
244 thereof, he or she shall notify the person, the court that
245 imposed the term of participation in the program, and the
246 prosecuting attorney in the county wherein the order
247 imposing participation in the program was entered.

248 (i) A person whose license has been suspended
249 pursuant to the provisions of subsection ~~(n)~~ (m), section
250 two of this article who has completed the educational
251 program and who has not violated the terms required by
252 the commissioner of the person's participation in the
253 program is entitled to the reinstatement of his or her
254 driver's license six months from the date the person is
255 permitted to operate a motor vehicle by the commissioner.
256 When a license has been reinstated pursuant to this
257 subsection, the records ordering the suspension, records of
258 any administrative hearing, records of any blood alcohol
259 test results and all other records pertaining to the
260 suspension shall be expunged by operation of law:

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261 *Provided*, That a person is entitled to expungement under
262 the provisions of this subsection only once. The
263 expungement shall be accomplished by physically marking
264 the records to show that the records have been expunged
265 and by securely sealing and filing the records.
266 Expungement has the legal effect as if the suspension
267 never occurred. The records may not be disclosed or made
268 available for inspection and in response to a request for
269 record information, the commissioner shall reply that no
270 information is available. Information from the file may be
271 used by the commissioner for research and statistical
272 purposes so long as the use of the information does not
273 divulge the identity of the person.

274 (j) In addition to any other penalty imposed by this
275 code, any person who operates a motor vehicle not
276 equipped with an approved motor vehicle alcohol test and
277 lock system during that person's participation in the Motor
278 Vehicle Alcohol Test and Lock Program is guilty of a

279 misdemeanor and, upon conviction thereof, shall be
280 confined in jail for a period not less than one month nor
281 more than six months and fined not less than \$100 nor
282 more than \$500. Any person who attempts to bypass the
283 alcohol test and lock system is guilty of a misdemeanor
284 and, upon conviction thereof, shall be confined in jail not
285 more than six months and fined not less than \$100 nor
286 more than \$1,000: *Provided*, That notwithstanding any
287 provision of this code to the contrary, a person enrolled
288 and participating in the test and lock program may operate
289 a motor vehicle solely at his or her job site if the operation
290 is a condition of his or her employment. For the purpose
291 of this section, “job site” does not include any street or
292 highway open to the use of the public for purposes of
293 vehicular traffic.