

H. B. 2664

(By Delegates Sobonya, Butler, McCuskey, Stansbury, E. Nelson, Ihle,
Householder, Ellington, Westfall, Marcum and Byrd)

[Introduced February 9, 2015; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating
to creating "Andrea and Willy's Law"; and increasing certain penalties for driving under the
influence of alcohol, controlled substances or drugs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

This bill shall be known as "Andrea and Willy's Law."

(a) Any person who:

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

(A) Is under the influence of alcohol;

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

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

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

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

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

8 (3) Commits the act or failure in reckless disregard of the safety of others and when the
9 influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death,
10 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
11 for not less than ~~two~~ five years nor more than ten twenty years and shall be fined not less than ~~\$1,000~~
12 \$10,000 nor more than ~~\$3,000~~ \$100,000.

13 (b) Any person who:

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

15 (A) Is under the influence of alcohol;

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

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

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

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

22 (2) While driving does any act forbidden by law or fails to perform any duty imposed by law

1 in the driving of the vehicle, which act or failure proximately causes the death of any person within
 2 one year next following the act or failure, is guilty of a ~~misdemeanor~~ felony and, upon conviction
 3 thereof, shall be ~~confined in jail for not less than ninety days nor more than one year and shall be~~
 4 ~~fined not less than \$500 nor more than \$1,000~~ imprisoned in a state correctional facility for not less
 5 than three nor more than fifteen years and shall be fined not less than \$10,000 nor more than
 6 \$50,000.

7 (c) Any person who:

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

9 (A) Is under the influence of alcohol;

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

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

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

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

16 (2) While driving does any act forbidden by law or fails to perform any duty imposed by law
 17 in the driving of the vehicle, which act or failure proximately causes serious bodily injury, meaning
 18 a bodily injury which creates a substantial risk of death, which causes serious or prolonged
 19 disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of
 20 any bodily organ, to any person other than himself or herself, is guilty of a ~~misdemeanor~~ felony and,
 21 upon conviction thereof, shall be ~~confined in jail for not less than one day nor more than one year,~~
 22 ~~which jail term is to include actual confinement of not less than twenty-four hours,~~ imprisoned in

1 a state correctional facility for not less than two nor more than ten years and shall be fined not less
2 than ~~\$200~~ \$5,000 nor more than ~~\$1,000~~ \$25,000.

3 (d) Any person who:

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

5 (A) Is under the influence of alcohol;

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

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

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

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

12 (2) While driving does any act forbidden by law or fails to perform any duty imposed by law
13 in the driving of the vehicle, which act or failure proximately causes a bodily injury, other than a
14 bodily injury which creates a substantial risk of death, which causes serious or prolonged
15 disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of
16 any bodily organ, to any person other than himself or herself, is guilty of a felony and, upon
17 conviction thereof, shall be confined in a state correctional facility for not less than one nor more
18 than five years and shall be fined not less than \$1,000 nor more than \$5,000.

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

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

21 (A) Is under the influence of alcohol;

22 (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 controlled substance or any other
3 drug; or

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

6 (2) Is guilty of a misdemeanor and, upon conviction thereof, except as provided in section
7 two-b of this article, shall be confined in jail for ~~up to six months and shall be fined not less than~~
8 ~~\$100 nor more than \$500~~ not less than two days nor more than six months, which jail term is to
9 include actual confinement of not less than twenty-four hours, and shall be fined not less than \$200
10 nor more than \$1,000. A person sentenced pursuant to this subdivision shall receive credit for any
11 period of actual confinement he or she served upon arrest for the subject offense.

12 ~~(e)~~ (f) Any person who drives a vehicle in this state while he or she has an alcohol
13 concentration in his or her blood of fifteen hundredths of one percent or more, by weight, but less
14 than twenty-four hundredths of one percent or more, by weight, is guilty of a misdemeanor and,
15 upon conviction thereof, shall be confined in jail for not less than ~~two days nor more than six~~
16 ~~months, which jail term is to include actual confinement of not less than twenty-four hours, and shall~~
17 ~~be fined not less than \$200 nor more than \$1,000~~ three months nor more than nine months, which
18 jail term is to include actual confinement of not less than seventy-two hours, and shall be fined not
19 less than \$1,000 nor more than \$5,000. A person sentenced pursuant to this subdivision shall receive
20 credit for any period of actual confinement he or she served upon arrest for the subject offense.

21 (g) Any person who drives a vehicle in this state while he or she has an alcohol concentration
22 in his or her blood of twenty-four hundredths of one percent or more, by weight, is guilty of a

1 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor
 2 more than one year, which jail term is to include actual confinement of not less than seventy-two
 3 hours, and shall be fined not less than \$2,500 nor more than \$7,500.

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

12 (g) (i) Any person who:

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

14 (A) Is under the influence of alcohol;

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

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

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

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

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

1 nor more than six months, which jail term is to include actual confinement of not less than
2 twenty-four hours, and shall be fined not less than \$200 nor more than \$1,000.

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

9 (fr) (k) Any person under the age of twenty-one years who drives a vehicle in this state while
10 he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more,
11 by weight, but less than eight hundredths of one percent, by weight, for a first offense under this
12 subsection is guilty of a misdemeanor and, upon conviction thereof, shall be ~~fined not less than \$25~~
13 ~~nor more than \$100~~ confined in jail for not less than two days nor more than six months, which jail
14 term is to include actual confinement of not less than twenty-four hours, and shall be fined not less
15 than \$200 nor more than \$1,000. For a second or subsequent offense under this subsection, the
16 person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for
17 ~~twenty-four hours and shall be fined not less than \$100 nor more than \$500~~ not less than six months
18 nor more than one year, which jail term is to include actual confinement of not less than seventy-two
19 hours, and shall be fined not less than \$1,000 nor more than \$5,000. A person who is charged with
20 a first offense under the provisions of this subsection may move for a continuance of the
21 proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test
22 and Lock Program as provided in section three-a, article five-a of this chapter. Upon successful

1 completion of the program, the court shall dismiss the charge against the person and expunge the
 2 person's record as it relates to the alleged offense. In the event the person fails to successfully
 3 complete the program, the court shall proceed to an adjudication of the alleged offense. A motion
 4 for a continuance under this subsection may not be construed as an admission or be used as evidence.
 5 A person arrested and charged with an offense under the provisions of this subsection or subsection
 6 (a), (b), (c), (d), (e), (f), (g), ~~or (h)~~, (i) or (j) of this section may not also be charged with an offense
 7 under this subsection arising out of the same transaction or occurrence.

8 ~~(j)~~ (l) Any person who:

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

10 (A) Is under the influence of alcohol;

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

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

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

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

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

1 fined not less than \$1,000 nor more than \$5,000.

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

6 ~~(l)~~ (n) A person violating any provision of subsection (b), (c), (d), (e), (f), (g), ~~or (h), (i), (j)~~ or
 7 (k) of this section, for the third or any subsequent offense under this section, is guilty of a felony and,
 8 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ~~one~~ three
 9 nor more than ~~three~~ ten years and the court may, in its discretion, impose a fine of not less than
 10 ~~\$3,000~~ \$5,000 nor more than ~~\$5,000~~ \$15,000.

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

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

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

21 (3) Any period of conditional probation imposed pursuant section two-b of this article for
 22 violation of subsection (d) of this article, which violation occurred within the ten-year period

1 immediately preceding the date of arrest in the current proceeding.

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

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

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

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

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

NOTE: The purpose of this bill, to be known as "Andrea and Willy's Law", is to increase penalties for causing death or injury while driving under the influence of alcohol or drugs.

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