

**Senate Bill No. 117**

(By Senators Miller, Palumbo, Beach, Plymale and Unger)

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[Introduced January 14, 2015; referred to the Committee on Transportation and Infrastructure;

and then to the Committee on the Judiciary.]

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**FISCAL  
NOTE**

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 and §17C-5A-3 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 and §17C-5A-3 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 controlled substance or any other
- 7 drug; or
- 8 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or
- 9 more, by weight; and
- 10 (2) While driving does any act forbidden by law or fails to perform any duty imposed by law
- 11 in the driving of the vehicle, which act or failure proximately causes the death of ~~any~~ or serious
- 12 bodily injury to another person within one year next following the act or failure ~~and~~
- 13 ~~(3) Commits the act or failure in reckless disregard of the safety of others and when the~~
- 14 ~~influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death,~~
- 15 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
- 16 for not less than ~~two years~~ one year nor more than ten years for an act or failure under this section
- 17 that causes the death of another person, and not less than one nor more than three years for an act
- 18 or failure under this section that causes serious bodily injury to another person, and shall be fined
- 19 not less than \$1,000 nor more than \$3,000.
- 20 (3) For purposes of this subsection, "serious bodily injury" means bodily injury which creates
- 21 a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment
- 22 of health or prolonged loss or impairment of the function of any bodily organ.

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

1 more, by weight; and

2 (2) While driving does any act forbidden by law or fails to perform any duty imposed by law  
3 in the driving of the vehicle, which act or failure proximately causes bodily injury to any person  
4 other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be  
5 confined in jail for not less than one day nor more than one year, which jail term is to include actual  
6 confinement of not less than twenty-four hours, and shall be fined not less than \$200 nor more than  
7 \$1,000.

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

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

10 (A) Is under the influence of alcohol;

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

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

13 (D) Is under the combined influence of alcohol and any 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, but less than fifteen hundredths of one percent, by weight;

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

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

1 of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days  
 2 nor more than six months, which jail term is to include actual confinement of not less than  
 3 twenty-four hours, and shall be fined not less than \$200 nor more than \$1,000. A person sentenced  
 4 pursuant to this subdivision shall receive credit for any period of actual confinement he or she served  
 5 upon arrest for the subject offense.

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

12 ~~(g)~~ (f) 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; or

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.

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

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

22           ~~(f)~~ (i) Any person who:

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

2 (A) Is under the influence of alcohol;

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

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

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

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

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

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

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

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

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

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

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

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



1           ~~(e)~~ (n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) ~~(e)~~ or  
 2 ~~(f)~~ or (e) of this section, or any person permitted to drive as described under subsection ~~(g)~~ or ~~(h)~~ (f)  
 3 or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug  
 4 does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) ~~(g)~~  
 5 or ~~(h)~~ or (g) of this section.

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

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

1 ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.

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

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

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

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

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

22 (c) (1) If the prosecuting attorney files a motion alleging that the defendant during the period

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

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

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

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

17 (d) When the defendant ~~shall have~~ has completed satisfactorily the Motor Vehicle Alcohol  
18 Test and Lock Program and complied with its conditions, the defendant may move the court for an  
19 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by  
20 certification of the Division of Motor Vehicles that the defendant has successfully completed the  
21 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the  
22 prosecuting attorney who shall within thirty days after service advise the judge of any objections to

1 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there  
2 are no objections filed within the thirty-day period, the court shall thereafter dismiss the charges  
3 against the defendant. If there are objections filed with regard to the dismissal of charges, the court  
4 shall proceed as set forth in subsection (c) of this section.

5 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be  
6 convicted of a subsequent violation of this article, discharge and dismissal under this section shall  
7 be without adjudication of guilt and is not a conviction for purposes of disqualifications or  
8 disabilities imposed by law upon conviction of a crime except for those provided in article five-a of  
9 this chapter. Except as provided in ~~subsection (k), (l) and (m)~~ subsections (j), (k) and (l), section two  
10 of this article regarding subsequent offenses, the effect of the dismissal and discharge shall be to  
11 restore the person in contemplation of law to the status he or she occupied prior to arrest and trial.  
12 No person as to whom a dismissal and discharge have been effected ~~shall be~~ may thereafter held to  
13 be guilty of perjury, false swearing or otherwise giving a false statement by reason of his or her  
14 failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him  
15 or her for any purpose other than any inquiry made in connection with any subsequent offense as that  
16 term is defined in subsection ~~(m)~~ (l), section two of this article.

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

19 (g) No person ~~shall~~ may be eligible for dismissal and discharge under this section: (1) In any  
20 prosecution in which any violation of any other provision of this article has been charged;(2) if the  
21 person holds a commercial driver's license or operates commercial motor vehicle(s); or (3) the person  
22 has previously had his or her driver's license revoked under section two-a of this article or under any

1 statute of the United States or of any state relating to driving under the influence of alcohol, any  
2 controlled substance or any other drug.

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

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

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

17 (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a  
18 violation of subsection ~~(d)~~ (c), section two, article five of this chapter whose case is disposed of  
19 pursuant to the provisions of this section shall be liable for any court costs assessable against a  
20 person convicted of a violation of subsection ~~(j)~~ (i), section two, article five of this chapter. Payment  
21 of such costs may be made a condition of probation. The costs assessed pursuant to this subsection,  
22 whether as a term of probation or not, shall be distributed as other court costs in accordance with

1 section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four,  
2 article twenty-nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two of  
3 this code.

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

8 **§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the**  
9 **influence of alcohol, controlled substances or drugs or refusal to submit to**  
10 **secondary chemical test.**

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

22 (b) Any law-enforcement officer investigating a person for an offense described in section

1 two, article five of this chapter or for an offense described in a municipal ordinance which has the  
2 same elements as an offense described in ~~said~~ that section shall report to the Commissioner of the  
3 Division of Motor Vehicles by written statement within forty-eight hours of the conclusion of the  
4 investigation the name and address of the person believed to have committed the offense. The report  
5 shall include the specific offense with which the person is charged and, if applicable, a copy of the  
6 results of any secondary tests of blood, breath or urine. The signing of the statement required to be  
7 signed by this subsection constitutes an oath or affirmation by the person signing the statement that  
8 the statements contained in the statement are true and that any copy filed is a true copy. The  
9 statement shall contain upon its face a warning to the officer signing that to willfully sign a statement  
10 containing false information concerning any matter or thing, material or not material, is false  
11 swearing and is a misdemeanor.

12 (c) If, upon examination of the written statement of the officer and the tests results described  
13 in subsection (b) of this section, the commissioner determines that a person committed an offense  
14 described in section two, article five of this chapter or an offense described in a municipal ordinance  
15 which has the same elements as an offense described in said section and that the results of any  
16 secondary test or tests indicate that at the time the test or tests were administered the person had, in  
17 his or her blood, an alcohol concentration of eight hundredths of one percent or more, by weight, or  
18 at the time the person committed the offense he or she was under the influence of alcohol, controlled  
19 substances or drugs, the commissioner shall make and enter an order revoking or suspending the  
20 person's license to operate a motor vehicle in this state. If the results of the tests indicate that at the  
21 time the test or tests were administered the person was under the age of twenty-one years and had  
22 an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight,

1 but less than eight hundredths of one percent, by weight, the commissioner shall make and enter an  
2 order suspending the person's license to operate a motor vehicle in this state. A copy of the order  
3 shall be forwarded to the person by registered or certified mail, return receipt requested, and shall  
4 contain the reasons for the revocation or suspension and describe the applicable revocation or  
5 suspension periods provided in section two of this article. A revocation or suspension ~~shall~~ is not  
6 ~~become~~ effective until ten days after receipt of a copy of the order.

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

14 (e) If applicable, the report shall include a description of the specific offense with which the  
15 child could have been charged if the child were an adult and a copy of the results of any secondary  
16 tests of blood, breath or urine. The signing of the statement required to be signed by this subsection  
17 constitutes an oath or affirmation by the person signing the statement that the statements contained  
18 in the statement are true and that any copy filed is a true copy. The statement shall contain upon its  
19 face a warning to the officer signing that to willfully sign a statement containing false information  
20 concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

21 (f) Upon examination of the written statement of the officer and any test results described in  
22 subsection (d) of this section, if the commissioner determines that the results of the test indicate that



1 at the time the test or tests were administered the child had, in his or her blood, an alcohol  
2 concentration of two hundredths of one percent or more, by weight, but also determines that the act  
3 of the child in driving the motor vehicle was not such that it would provide grounds for arrest for an  
4 offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f) ~~(g) or (h)~~ or (g), section  
5 two, article five of this chapter if the child were an adult, the commissioner shall make and enter an  
6 order suspending the child's license to operate a motor vehicle in this state. If the commissioner  
7 determines that the act of the child in driving the motor vehicle was such that it would provide  
8 grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f)  
9 ~~(g) or (h)~~ or (g), section two, article five of this chapter if the child were an adult, the commissioner  
10 shall make and enter an order revoking the child's license to operate a motor vehicle in this state.  
11 A copy of the order shall be forwarded to the child by registered or certified mail, return receipt  
12 requested, and shall contain the reasons for the suspension or revocation and describe the applicable  
13 suspension or revocation periods provided ~~for~~ in section two of this article. A suspension or  
14 revocation ~~shall~~ is not ~~become~~ effective until ten days after receipt of a copy of the order.

15 **§17C-5A-2. Hearing; revocation; review.**

16 (a) Written objections to an order of revocation or suspension under the provisions of section  
17 one of this article or section seven, article five of this chapter shall be filed with the Office of  
18 Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings  
19 shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of  
20 the period of revocation or suspension and afford the person an opportunity to be heard by the Office  
21 of Administrative Hearings. The written objection must be filed with Office of Administrative  
22 Hearings in person, by registered or certified mail, return receipt requested, or by facsimile

1 transmission or electronic mail within thirty calendar days after receipt of a copy of the order of  
2 revocation or suspension or no hearing will be granted: *Provided*, That a successful transmittal sheet  
3 shall be necessary for proof of written objection in the case of filing by fax. The hearing shall be  
4 before a hearing examiner employed by the Office of Administrative Hearings who shall rule on  
5 evidentiary issues. Upon consideration of the designated record, the hearing examiner shall, based  
6 on the determination of the facts of the case and applicable law, render a decision affirming,  
7 reversing or modifying the action protested. The decision shall contain findings of fact and  
8 conclusions of law and shall be provided to all parties by registered or certified mail, return receipt  
9 requested.

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

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

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

1 commissioner for good cause shown.

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

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

19 (e) The principal question at the hearing shall be whether the person did drive a motor vehicle  
20 while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle  
21 while having an alcohol concentration in the person's blood of eight hundredths of one percent or  
22 more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a

1 motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her  
2 blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one  
3 percent, by weight.

4 (f) In the case of a hearing in which a person is accused of driving a motor vehicle while  
5 under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle  
6 while having an alcohol concentration in the person's blood of eight hundredths of one percent or  
7 more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with  
8 an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight,  
9 but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall  
10 make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable  
11 grounds to believe the person to have been driving while under the influence of alcohol, controlled  
12 substances or drugs, or while having an alcohol concentration in the person's blood of eight  
13 hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under  
14 the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of  
15 one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether  
16 the person was lawfully placed under arrest for an offense involving driving under the influence of  
17 alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of  
18 administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest  
19 occurred due to driver incapacitation; (3) whether the person committed an offense involving driving  
20 under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody  
21 for the purpose of administering a secondary test; and (4) whether the tests, if any, were administered  
22 in accordance with the provisions of this article and article five of this chapter.

1 (g) If, in addition to a finding that the person did drive a motor vehicle while under the  
2 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an  
3 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,  
4 or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration  
5 in his or her blood of two hundredths of one percent or more, by weight, but less than eight  
6 hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a  
7 preponderance of the evidence that the person when driving did an act forbidden by law or failed to  
8 perform a duty imposed by law, which act or failure proximately caused the death to or serious  
9 bodily injury as that term is defined in section two, article five of this chapter of a person ~~and was~~  
10 ~~committed in reckless disregard of the safety of others and if the Office of Administrative Hearings~~  
11 ~~further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration~~  
12 ~~in the blood was a contributing cause to the death~~, the commissioner shall revoke the person's license  
13 for a period of ten years: *Provided*, That if the person's license has previously been suspended or  
14 revoked under the provisions of this section or section one of this article within the ten years  
15 immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

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

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

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

16       (†) (i) If the Office of Administrative Hearings finds by a preponderance of the evidence that  
17 the person did drive a motor vehicle while under the influence of alcohol, controlled substances or  
18 drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of  
19 eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent  
20 or more, by weight, or finds that the person knowingly permitted the person's vehicle to be driven  
21 by another person who was under the influence of alcohol, controlled substances or drugs, or  
22 knowingly permitted the person's vehicle to be driven by another person who had an alcohol

1 concentration in his or her blood of eight hundredths of one percent or more, by weight, the  
2 commissioner shall revoke the person's license for a period of six months or a period of fifteen days  
3 with an additional one hundred ~~and~~ twenty days of participation in the Motor Vehicle Alcohol Test  
4 and Lock Program in accordance with the provisions of section three-a of this article: *Provided,*  
5 That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been  
6 imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any  
7 period of participation imposed by the commissioner: *Provided, however,* That a person whose  
8 license is revoked for driving while under the influence of drugs is not eligible to participate in the  
9 Motor Vehicle Alcohol Test and Lock Program: *Provided further,* That if the person's license has  
10 previously been suspended or revoked under the provisions of this section or section one of this  
11 article within the ten years immediately preceding the date of arrest, the period of revocation shall  
12 be ten years: *And provided further,* That if the person's license has previously been suspended or  
13 revoked more than once under the provisions of this section or section one of this article within the  
14 ten years immediately preceding the date of arrest, the period of revocation shall be for the life of  
15 the person.

16 ~~(k)~~ (j) (1) If in addition to finding by a preponderance of the evidence that the person did  
17 drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office  
18 of Administrative Hearings also finds by a preponderance of the evidence that the person did drive  
19 a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths  
20 of one percent or more, by weight, the commissioner shall revoke the person's license for a period  
21 of forty-five days with an additional two hundred ~~and~~ seventy days of participation in the Motor  
22 Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article

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

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

17 (†) (k) If, in addition to a finding that the person did drive a motor vehicle while under the  
18 age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one  
19 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of  
20 Administrative Hearings also finds by a preponderance of the evidence that the person when driving  
21 did an act forbidden by law or failed to perform a duty imposed by law, which act or failure  
22 proximately caused the death of a person, and if the Office of Administrative Hearings further finds



1 that the alcohol concentration in the blood was a contributing cause to the death, the commissioner  
2 shall revoke the person's license for a period of five years: *Provided*, That if the person's license has  
3 previously been suspended or revoked under the provisions of this section or section one of this  
4 article within the ten years immediately preceding the date of arrest, the period of revocation shall  
5 be for the life of the person.

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

20 ~~(n)~~ (m) If the Office of Administrative Hearings finds by a preponderance of the evidence  
21 that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol  
22 concentration in his or her blood of two hundredths of one percent or more, by weight, but less than

1 eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for  
2 a period of sixty days: *Provided*, That if the person's license has previously been suspended or  
3 revoked under the provisions of this section or section one of this article, the period of revocation  
4 shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

5 ~~(n)~~ (n) If, in addition to a finding that the person did drive a motor vehicle while under the  
6 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an  
7 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,  
8 the Office of Administrative Hearings also finds by a preponderance of the evidence that the person  
9 when driving did have on or within the motor vehicle another person who has not reached his or her  
10 sixteenth birthday, the commissioner shall revoke the person's license for a period of one year:  
11 *Provided*, That if the person's license has previously been suspended or revoked under the provisions  
12 of this section or section one of this article within the ten years immediately preceding the date of  
13 arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license  
14 has previously been suspended or revoked more than once under the provisions of this section or  
15 section one of this article within the ten years immediately preceding the date of arrest, the period  
16 of revocation shall be for the life of the person.

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

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

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

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

7           ~~(q)~~ (p) In the case of a hearing in which a person is accused of refusing to submit to a  
8 designated secondary test, the Office of Administrative Hearings shall make specific findings as to:

9 (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had  
10 been driving a motor vehicle in this state while under the influence of alcohol, controlled substances  
11 or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving  
12 under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody  
13 for the purpose of administering a secondary test: *Provided*, That this element shall be waived in  
14 cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an  
15 offense relating to driving a motor vehicle in this state while under the influence of alcohol,  
16 controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally  
17 designated in the manner provided in section four, article five of this chapter; and (5) whether the  
18 person had been given a written statement advising the person that the person's license to operate a  
19 motor vehicle in this state would be revoked for at least forty-five days and up to life if the person  
20 refused to submit to the test finally designated in the manner provided in said section.

21           ~~(r)~~ (q) If the Office of Administrative Hearings finds by a preponderance of the evidence that:

22 (1) The investigating officer had reasonable grounds to believe the person had been driving a motor

1 vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether  
2 the person was lawfully placed under arrest for an offense involving driving under the influence of  
3 alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of  
4 administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest  
5 occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor  
6 vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the  
7 person refused to submit to the secondary test finally designated in the manner provided in section  
8 four, article five of this chapter; and (5) the person had been given a written statement advising the  
9 person that the person's license to operate a motor vehicle in this state would be revoked for at least  
10 forty-five days and up to life if the person refused to submit to the test finally designated, the  
11 commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods  
12 specified in section seven, article five of this chapter. The revocation period prescribed in this  
13 subsection shall run concurrently with any other revocation period ordered under this section or  
14 section one of this article arising out of the same occurrence. The revocation period prescribed in  
15 this subsection shall run concurrently with any other revocation period ordered under this section or  
16 section one of this article arising out of the same occurrence.

17       ~~(s)~~ (r) If the Office of Administrative Hearings finds to the contrary with respect to the above  
18 issues the commissioner shall rescind his or her earlier order of revocation or shall reduce the order  
19 of revocation to the appropriate period of revocation under this section or section seven, article five  
20 of this chapter. A copy of the Office of Administrative Hearings' final order containing its findings  
21 of fact and conclusions of law made and entered following the hearing shall be served upon the  
22 person whose license is at issue or upon the person's legal counsel if the person is represented by

1 legal counsel by registered or certified mail, return receipt requested, or by electronic mail if  
2 available. The final order shall be served upon the commissioner by electronic mail. During the  
3 pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state  
4 shall be stayed.

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

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

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

1 **§17C-5A-3. Safety and treatment program; reissuance of license.**

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

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

16 (c) The Department of Health and Human Resources, Division of Alcoholism and Drug  
17 Abuse, shall provide for the preparation of an educational and treatment program for each person  
18 whose license has been revoked under the provisions of this article or section seven, article five of  
19 this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall  
20 contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) the  
21 characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation  
22 through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation and

1 the terms and conditions of the treatment or rehabilitation. The program shall be prepared by  
2 persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

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

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

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

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

20 (3) Program providers shall remit to the Department of Health and Human Resources a  
21 portion of the fee collected, which shall be deposited by the Secretary of the Department of Health  
22 and Human Resources into the Department of Health and Human Resources Safety and Treatment

1 Fund. The Department of Health and Human Resources shall reimburse enrollment fees to program  
2 providers for each eligible indigent offender.

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

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

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

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

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

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

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

22 (2) When the period of revocation is for a period of one year or for more than a year, the



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

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

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

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

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

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

- 17           (A) Economic losses suffered by victims or offenders;  
18           (B) Death or physical injuries suffered by victims or offenders;  
19           (C) Psychological injuries suffered by victims or offenders;  
20           (D) Changes in the personal welfare or familial relationships of victims or offenders; and  
21           (E) Other information relating to the impact of alcohol and drug-related offenses upon  
22 victims or offenders.

1           The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse,  
2 shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure  
3 the physical safety of the persons involved.

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

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

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

NOTE: The purpose of this bill is to make it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and cause serious bodily harm to another person. The bill also establishes penalties for first and subsequent violations of specific provisions

of the article.

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