

H. B. 2664

(BY DELEGATE(S) SOBONYA, BUTLER, MCCUSKEY,
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WESTFALL, MARCUM AND BYRD)

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

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.

1 This bill shall be known as “Andrea and Willy’s Law.

2 (a) Any person who:

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

4 (A) Is under the influence of alcohol;

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

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

7 (D) Is under the combined influence of alcohol and any

8 controlled substance or any other drug; or

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

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

15 (3) Commits the act or failure in reckless disregard of the
16 safety of others and when the influence of alcohol, controlled
17 substances or drugs is shown to be a contributing cause to the

18 death, is guilty of a felony and, upon conviction thereof, shall be
19 imprisoned in a state correctional facility for not less than ~~two~~
20 five years nor more than ten twenty years and shall be fined not
21 less than ~~\$1,000~~ \$10,000 nor more than ~~\$3,000~~ \$100,000.

22 (b) Any person who:

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

24 (A) Is under the influence of alcohol;

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

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

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

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

31 (2) While driving does any act forbidden by law or fails to
32 perform any duty imposed by law in the driving of the vehicle,
33 which act or failure proximately causes the death of any person
34 within one year next following the act or failure, is guilty of a
35 ~~misdemeanor~~ felony and, upon conviction thereof, shall be
36 ~~confined in jail for not less than ninety days nor more than one~~
37 ~~year and shall be fined not less than \$500 nor more than \$1,000~~

38 imprisoned in a state correctional facility for not less than three
39 nor more than fifteen years and shall be fined not less than
40 \$10,000 nor more than \$50,000.

41 (c) Any person who:

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

43 (A) Is under the influence of alcohol;

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

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

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

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

50 (2) While driving does any act forbidden by law or fails to
51 perform any duty imposed by law in the driving of the vehicle,
52 which act or failure proximately causes serious bodily injury,
53 meaning a bodily injury which creates a substantial risk of death,
54 which causes serious or prolonged disfigurement, prolonged
55 impairment of health or prolonged loss or impairment of the
56 function of any bodily organ, to any person other than himself or
57 herself, is guilty of a ~~misdemeanor~~ felony and, upon conviction

58 thereof, shall be ~~confined in jail for not less than one day nor~~
59 ~~more than one year, which jail term is to include actual~~
60 ~~confinement of not less than twenty-four hours; imprisoned in a~~
61 ~~state correctional facility for not less than two nor more than ten~~
62 ~~years~~ and shall be fined not less than ~~\$200~~ \$5,000 nor more than
63 ~~\$1,000~~ \$25,000.

64 (d) Any person who:

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

66 (A) Is under the influence of alcohol;

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

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

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

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

74 (2) While driving does any act forbidden by law or fails to
75 perform any duty imposed by law in the driving of the vehicle,
76 which act or failure proximately causes a bodily injury, other
77 than a bodily injury which creates a substantial risk of death,

78 which causes serious or prolonged disfigurement, prolonged
79 impairment of health or prolonged loss or impairment of the
80 function of any bodily organ, to any person other than himself or
81 herself, is guilty of a felony and, upon conviction thereof, shall
82 be confined in a state correctional facility for not less than one
83 nor more than five years and shall be fined not less than \$1,000
84 nor more than \$5,000.

85 (e) Any person who:

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

87 (A) Is under the influence of alcohol;

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

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

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

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

95 (2) Is guilty of a misdemeanor and, upon conviction thereof,
96 except as provided in section two-b of this article, shall be
97 confined in jail for ~~up to six months and shall be fined not less~~

98 ~~than \$100 nor more than \$500~~ not less than two days nor more
99 than six months, which jail term is to include actual confinement
100 of not less than twenty-four hours, and shall be fined not less
101 than \$200 nor more than \$1,000. A person sentenced pursuant to
102 this subdivision shall receive credit for any period of actual
103 confinement he or she served upon arrest for the subject offense.

104 (Ⓣ) (f) Any person who drives a vehicle in this state while he
105 or she has an alcohol concentration in his or her blood of fifteen
106 hundredths of one percent or more, by weight, but less than
107 twenty-four hundredths of one percent or more, by weight, is
108 guilty of a misdemeanor and, upon conviction thereof, shall be
109 confined in jail for not less than ~~two days nor more than six~~
110 ~~months, which jail term is to include actual confinement of not~~
111 ~~less than twenty-four hours, and shall be fined not less than \$200~~
112 ~~nor more than \$1,000~~ three months nor more than nine months,
113 which jail term is to include actual confinement of not less than
114 seventy-two hours, and shall be fined not less than \$1,000 nor
115 more than \$5,000. A person sentenced pursuant to this
116 subdivision shall receive credit for any period of actual
117 confinement he or she served upon arrest for the subject offense.

118 (g) Any person who drives a vehicle in this state while he or
119 she has an alcohol concentration in his or her blood of
120 twenty-four hundredths of one percent or more, by weight, is
121 guilty of a misdemeanor and, upon conviction thereof, shall be
122 confined in jail for not less than six months nor more than one
123 year, which jail term is to include actual confinement of not less
124 than seventy-two hours, and shall be fined not less than \$2,500
125 nor more than \$7,500.

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

138 ~~(g)~~ (i) Any person who:

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

141 (A) Is under the influence of alcohol;

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

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

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

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

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

154 ~~(h)~~ (j) Any person who knowingly permits his or her vehicle
155 to be driven in this state by any other person who is an habitual
156 user of narcotic drugs or amphetamine or any derivative thereof
157 is guilty of a misdemeanor and, upon conviction thereof, shall be

158 confined in jail for not ~~more than six months and shall be fined~~
159 ~~not less than \$100 nor more than \$500~~ less than two days nor
160 more than six months, which jail term is to include actual
161 confinement of not less than twenty-four hours, and shall be
162 fined not less than \$200 nor more than \$1,000.

163 (†) (k) Any person under the age of twenty-one years who
164 drives a vehicle in this state while he or she has an alcohol
165 concentration in his or her blood of two hundredths of one
166 percent or more, by weight, but less than eight hundredths of one
167 percent, by weight, for a first offense under this subsection is
168 guilty of a misdemeanor and, upon conviction thereof, shall be
169 ~~fined not less than \$25 nor more than \$100~~ confined in jail for
170 not less than two days nor more than six months, which jail term
171 is to include actual confinement of not less than twenty-four
172 hours, and shall be fined not less than \$200 nor more than
173 \$1,000. For a second or subsequent offense under this
174 subsection, the person is guilty of a misdemeanor and, upon
175 conviction thereof, shall be confined in jail for ~~twenty-four hours~~
176 ~~and shall be fined not less than \$100 nor more than \$500~~ not less
177 than six months nor more than one year, which jail term is to

178 include actual confinement of not less than seventy-two hours,
179 and shall be fined not less than \$1,000 nor more than \$5,000. A
180 person who is charged with a first offense under the provisions
181 of this subsection may move for a continuance of the
182 proceedings, from time to time, to allow the person to participate
183 in the Motor Vehicle Alcohol Test and Lock Program as
184 provided in section three-a, article five-a of this chapter. Upon
185 successful completion of the program, the court shall dismiss the
186 charge against the person and expunge the person's record as it
187 relates to the alleged offense. In the event the person fails to
188 successfully complete the program, the court shall proceed to an
189 adjudication of the alleged offense. A motion for a continuance
190 under this subsection may not be construed as an admission or
191 be used as evidence. A person arrested and charged with an
192 offense under the provisions of this subsection or subsection (a),
193 (b), (c), (d), (e), (f), (g), ~~(h)~~, (i) or (j) of this section may not
194 also be charged with an offense under this subsection arising out
195 of the same transaction or occurrence.

196 (†) (1) Any person who:

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

198 (A) Is under the influence of alcohol;

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

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

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

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

205 (2) The person while driving has on or within the motor
206 vehicle one or more other persons who are unemancipated
207 minors who have not reached their sixteenth birthday is guilty of
208 a misdemeanor and, upon conviction thereof, shall be confined
209 in jail for not less than two days nor more than twelve months,
210 which jail term is to include actual confinement of not less than
211 forty-eight hours and shall be fined not less than ~~\$200 nor more~~
212 ~~than \$1,000~~ six months nor more than one year, which jail term
213 is to include actual confinement of not less than seventy-two
214 hours, and shall be fined not less than \$1,000 nor more than
215 \$5,000.

216 (✕) (m) A person violating any provision of subsection (b),
217 (c), (d), (e), (f), (g), (h), (i), (j) or (k) of this section, for the

218 second offense under this section, is guilty of a misdemeanor
219 and, upon conviction thereof, shall be confined in jail for not less
220 than six months nor more than one year and the court may, in its
221 discretion, impose a fine of not less than \$1,000 nor more than
222 \$3,000.

223 ~~(f)~~ (n) A person violating any provision of subsection (b),
224 (c), (d), (e), (f), (g), ~~or (h), (i), (j) or (k)~~ (h), (i), (j) or (k) of this section, for the
225 third or any subsequent offense under this section, is guilty of a
226 felony and, upon conviction thereof, shall be imprisoned in a
227 state correctional facility for not less than ~~one~~ three nor more
228 than ~~three~~ ten years and the court may, in its discretion, impose
229 a fine of not less than ~~\$3,000~~ \$5,000 nor more than ~~\$5,000~~
230 \$15,000.

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

234 (1) Any conviction under the provisions of subsection (a),
235 (b), (c), (d), (e), (f), ~~or (g)~~ (g), (h) or (i) of this section or under
236 a prior enactment of this section for an offense which occurred

237 within the ten-year period immediately preceding the date of
238 arrest in the current proceeding;

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

246 (3) Any period of conditional probation imposed pursuant
247 section two-b of this article for violation of subsection (d) of this
248 article, which violation occurred within the ten-year period
249 immediately preceding the date of arrest in the current
250 proceeding.

251 ~~(n)~~ (p) A person may be charged in a warrant or indictment
252 or information for a second or subsequent offense under this
253 section if the person has been previously arrested for or charged
254 with a violation of this section which is alleged to have occurred
255 within the applicable time period for prior offenses,
256 notwithstanding the fact that there has not been a final

257 adjudication of the charges for the alleged previous offense. In
258 that case, the warrant or indictment or information must set forth
259 the date, location and particulars of the previous offense or
260 offenses. No person may be convicted of a second or subsequent
261 offense under this section unless the conviction for the previous
262 offense has become final, or the person has previously had a
263 period of conditional probation imposed pursuant to section
264 two-b of this article.

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

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

275 ~~(q)~~ (s) The sentences provided in this section upon
276 conviction for a violation of this article are mandatory and are

277 not subject to suspension or probation: *Provided*, That the court
278 may apply the provisions of article eleven-a, chapter sixty-two
279 of this code to a person sentenced or committed to a term of one
280 year or less for a first offense under this section: *Provided*,
281 *further* however, That the court may impose a term of
282 conditional probation pursuant to section two-b of this article to
283 persons adjudicated thereunder. An order for home detention by
284 the court pursuant to the provisions of article eleven-b of said
285 chapter may be used as an alternative sentence to any period of
286 incarceration required by this section for a first or subsequent
287 offense: *Provided* ~~however~~ further, That for any period of home
288 incarceration ordered for a person convicted of second offense
289 under this section, electronic monitoring shall be required for no
290 fewer than five days of the total period of home confinement
291 ordered and the offender may not leave home for those five days
292 notwithstanding the provisions of section five, article eleven-b,
293 chapter sixty-two of this code: And *provided further*, That for
294 any period of home incarceration ordered for a person convicted
295 of a third or subsequent violation of this section, electronic
296 monitoring shall be included for no fewer than ten days of the

297 total period of home confinement ordered and the offender may
298 not leave home for those ten days notwithstanding section five,
299 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.

