

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### Senate Bill 41

FISCAL  
NOTE

BY SENATORS TRUMP AND BOSO

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §17C-5-2, §17C-5-2b, §17C-5-4, §17C-5-7, and §17C-5-12 of the  
2 Code of West Virginia, 1931, as amended; to amend and reenact §17C-5A-1, §17C-5A-  
3 1a, and §17C-5A-3 of said code; to amend said code by adding thereto two new sections,  
4 designated §17C-5A-1b and §17C-5A-1c; to amend said code by adding thereto a new  
5 section, designated §17C-5C-6; and to amend and reenact §17C-19-3 of said code, all  
6 relating generally to the procedures for drivers' license suspensions and revocations for  
7 driving under the influence of alcohol, controlled substances, or drugs; transferring  
8 authority for hearing matters related to suspensions or revocations of drivers' license for  
9 operating a motor vehicle while under the influence of alcohol, controlled substances, or  
10 drugs from the Office of Administrative Hearings to courts; establishing mandatory  
11 revocation periods for individuals convicted of driving under the influence; authorizing  
12 alternate revocation period involving participation in Motor Vehicle Alcohol Test and Lock  
13 Program for certain first offenses; establishing mandatory revocation periods for  
14 individuals upon subsequent convictions for driving under the influence; directing  
15 Commissioner of Division of Motor Vehicles to revoke driver's license upon conviction for  
16 driving under the influence; requiring individuals whose driver's licenses have been  
17 revoked upon conviction for driving under the influence to complete comprehensive safety  
18 and treatment program before driver's license can be reinstated; prohibiting persons  
19 convicted of certain felonies from participating in Motor Vehicle Alcohol Test and Lock  
20 Program; permitting persons convicted of certain misdemeanors to participate in Motor  
21 Vehicle Alcohol Test and Lock Program; requiring driver consent prior to imposing  
22 participation in Motor Vehicle Alcohol Test and Lock Program; requiring any period of  
23 revocation imposed pursuant to a conviction begin once any period of incarceration has  
24 been served; making individuals who are found guilty of driving under the influence  
25 ineligible for deferral of further proceedings upon condition of participation in Motor Vehicle  
26 Alcohol Test and Lock Program; requiring deferral program to be completed within one

27 year; prohibiting secondary test of blood without issuance of warrant signed by a  
28 magistrate or circuit judge; authorizing secondary test of blood with written consent;  
29 requiring that individual arrested for driving under the influence be advised verbally of  
30 certain consequences for refusal to submit to secondary chemical test; requiring that  
31 individual arrested for driving under the influence be given written statement informing the  
32 individual of legal consequences of taking or refusing to submit to secondary chemical test  
33 and informing the individual of right to receive secondary blood test; requiring arresting  
34 officer to wait 15 minutes before refusal considered final; requiring that, following an  
35 individual's refusal to submit to secondary chemical test, an arresting officer execute a  
36 signed statement that the officer administered all required warnings; directing officer to  
37 submit copy of written statement to Commissioner of Division of Motor Vehicles and court  
38 having jurisdiction over charges filed against the individual; eliminating all statutory  
39 provisions authorizing or requiring the Commissioner of the Division of Motor Vehicles to  
40 take administrative action upon an individual's driver's license on the basis of a driving  
41 under the influence arrest absent direction from court; directing Bureau for Public Health  
42 to prepare report for Joint Committee on Government and Finance related to minimum  
43 levels of drugs and controlled substances to be admitted as prima facie evidence of driving  
44 under the influence and minimum levels that laboratories can reliably identify and measure  
45 in blood; limiting administrative jurisdiction of Division of Motor Vehicles and Office of  
46 Administrative Hearings to offenses occurring on or before June 30, 2020; providing that  
47 administrative hearings relating to refusal to undergo a secondary chemical test do not  
48 apply to offenses occurring on or after July 1, 2020; eliminating requirement for an order  
49 entered by the Division of Motor Vehicles revoking a driver's license to advise of  
50 procedures for requesting administrative hearing when the offense is driving under the  
51 influence; limiting the right of individuals to challenge suspension or revocation of driver's  
52 licenses to the issue of mistaken identity; requiring the commissioner to take corrective

53 action if a driver's license is incorrectly suspended or revoked based on mistaken identity;  
54 providing that plea of no contest constitutes a conviction; requiring pretrial suspension of  
55 driver's license if individual refuses to submit to secondary chemical test; permitting  
56 pretrial suspension of driver's license by court under certain circumstances; establishing  
57 right to request and receive hearing of suspension orders pending criminal proceedings in  
58 court where case is pending; setting time limits for defendant to request hearing and for  
59 hearing to be held; requiring the clerk of a court to transmit a copy of an order suspending  
60 or revoking a driver's license and any surrendered license to the Division of Motor  
61 Vehicles; providing terms and length of pretrial license suspension; giving persons  
62 convicted of driving under the influence credit for pretrial suspension time against period  
63 of revocation imposed; authorizing court to modify pretrial suspension of driver's license;  
64 providing that any period of modified pretrial driver's license suspension is not credited  
65 against future period of revocation imposed; establishing the scope of review for judicial  
66 review of pretrial driver's license suspension for refusal to submit to secondary chemical  
67 test; directing clerk of court to forward orders on refusal hearings to Division of Motor  
68 Vehicles; providing that finding of driver refusal is final if no hearing requested; prescribing  
69 periods of revocation for Commissioner of Division of Motor Vehicles to impose upon  
70 receipt of court order on refusal; directing copy of revocation order to be sent to person by  
71 certified mail; specifying contents of order; providing that revocation for refusal run  
72 concurrently with other revocation imposed as a result of same incident that led to refusal;  
73 making persons convicted of driving under the influence eligible for participation in  
74 comprehensive safety and treatment program and related reductions in length of  
75 revocation for successful completion thereof; establishing procedures and timeline for the  
76 Office of Administrative Hearings to transfer jurisdiction of certain driver's license  
77 suspension and revocation matters to the courts; establishing timeline for Office of  
78 Administrative Hearings to transfer jurisdiction of certain driver's license suspension and

79 revocation matters to Division of Motor Vehicles; directing arresting officer to request, and  
 80 driver to surrender, driver’s license upon arrest for driving under the influence; eliminating  
 81 obsolete language; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

1 (a) Definitions. —

2 (1) “Impaired state” means a person:

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 or inhalant substance;

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.

10 (2) “Bodily injury” means injury that causes substantial physical pain, illness or any  
 11 impairment of physical condition.

12 (3) “Serious bodily injury” means bodily injury that creates a substantial risk of death, that  
 13 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or  
 14 impairment of the function of any bodily organ.

15 (b) Any person who drives a vehicle in this state while he or she is in an impaired state  
 16 and such impaired state proximately causes the death of any person is guilty of a felony and,  
 17 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three  
 18 nor more than 15 years, ~~and~~ shall be fined not less than \$1,000 nor more than \$3,000, and shall  
 19 have his or her driver’s license revoked by the Commissioner of the Division of Motor Vehicles for  
 20 a period of 10 years; *Provided*, That any death charged under this subsection must occur within

21 one year of the offense: Provided, however, That if the person has previously been convicted  
22 under the provisions of this subsection, or §17C-5-2(c) or §17C-5-2(d) of this code, then the  
23 person shall have his or her driver's license revoked by the Commissioner of the Division of Motor  
24 Vehicles for life.

25 (c) Any person who drives a vehicle in this state while he or she is in an impaired state  
26 and such impaired state proximately causes serious bodily injury to any person other than himself  
27 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
28 correctional facility for not less than two nor more than 10 years, ~~and~~ shall be fined not less than  
29 \$1,000 nor more than \$3,000, and shall have his or her driver's license revoked by the  
30 Commissioner of the Division of Motor Vehicles for a period of five years: Provided, That if the  
31 person has previously been convicted under the provisions of this subsection, or §17C-5-2(b) or  
32 §17C-5-2(d) of this code, then the person shall have his or her driver's license revoked by the  
33 Commissioner of the Division of Motor Vehicles for life.

34 (d) Any person who drives a vehicle in this state while he or she is in an impaired state  
35 and such impaired state proximately causes a bodily injury to any person other than himself or  
36 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not  
37 less than one day nor more than one year, ~~and~~ shall be fined not less than \$200 nor more than  
38 \$1,000, and shall have his or her driver's license revoked by the Commissioner of the Division of  
39 Motor Vehicles for a period of two years: Provided, That such jail term shall include actual  
40 confinement of not less than 24 hours: Provided, however, That a person sentenced pursuant to  
41 this subsection shall receive credit for any period of actual confinement he or she served upon  
42 arrest for the subject offense: Provided further, That if the person has previously been convicted  
43 under the provisions of this subsection, or §17C-5-2(b) or §17C-5-2(c) of this code, then the  
44 person shall have his or her driver's license revoked by the Commissioner of the Division of Motor  
45 Vehicles for life.

46 (e) Any person who drives a vehicle in this state: (i) While he or she is in an impaired state;

47 or (ii) while he or she ~~is in an impaired state but~~ has an alcohol concentration in his or her blood  
48 of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon  
49 conviction thereof, shall be confined in jail for up to six months, ~~and~~ shall be fined not less than  
50 \$100 nor more than \$500, and shall have his or her driver's license revoked by the Commissioner  
51 of the Division of Motor Vehicles for a period of six months or a period of 15 days with an additional  
52 120 days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with  
53 §17C-5A-3a of this code. *Provided*, That a person sentenced pursuant to this subsection shall  
54 receive credit for any period of actual confinement he or she served upon arrest for the subject  
55 offense.

56 (f) Any person who drives a vehicle in this state while he or she has an alcohol  
57 concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty  
58 of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days  
59 nor more than six months, which jail term is to include actual confinement of not less than 24  
60 hours, ~~and~~ shall be fined not less than \$200 nor more than \$1,000, and shall have his or her  
61 driver's license revoked by the Commissioner of the Division of Motor Vehicles for a period of one  
62 year or for a period of 45 days with an additional 270 days of participation in the Motor Vehicle  
63 Alcohol Test and Lock Program in accordance with §17C-5A-3a of this code. A person sentenced  
64 pursuant to this ~~subdivision~~ subsection shall receive credit for any period of actual confinement  
65 he or she served upon arrest for the subject offense.

66 (g) Any person who, being a habitual user of narcotic drugs or amphetamine or any  
67 derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction  
68 thereof, shall be confined in jail for not less than one day nor more than six months, which jail  
69 term is to include actual confinement of not less than 24 hours, ~~and~~ shall be fined not less than  
70 \$100 nor more than \$500, and shall have his or her driver's license revoked by the Commissioner  
71 of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this  
72 ~~subdivision~~ subsection shall receive credit for any period of actual confinement he or she served

73 upon arrest for the subject offense.

74 (h) Any person who knowingly permits his or her vehicle to be driven in this state by any  
75 other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof,  
76 shall be confined in jail for not more than six months, ~~and~~ shall be fined not less than \$100 nor  
77 more than \$500, and shall have his or her driver's license revoked by the Commissioner of the  
78 Division of Motor Vehicles for a period of six months or a period of 15 days with an additional 120  
79 days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with  
80 §17C-5A-3a of this code.

81 (i) Any person who knowingly permits his or her vehicle to be driven in this state by any  
82 other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is  
83 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than  
84 six months, ~~and~~ shall be fined not less than \$100 nor more than \$500, and shall have his or her  
85 driver's license revoked by the Commissioner of the Division of Motor Vehicles for a period of six  
86 months.

87 (j) Any person under the age of 21 years who drives a vehicle in this state while he or she  
88 has an alcohol concentration in his or her blood of two hundredths of one percent or more, by  
89 weight, but less than eight hundredths of one percent, by weight, for a first offense under this  
90 subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than  
91 \$25 nor more than \$100 and have his or her driver's license suspended by the Commissioner of  
92 the Division of Motor Vehicles for a period of 60 days. For a second or subsequent offense under  
93 this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be  
94 confined in jail for 24 hours, ~~and~~ shall be fined not less than \$100 nor more than \$500, and shall  
95 have his or her driver's license revoked by the Commissioner of the Division of Motor Vehicles for  
96 a period of one year or until the person's twenty-first birthday, whichever period is longer. A person  
97 who is charged with a first offense under the provisions of this subsection may move for a  
98 continuance of the proceedings, from time to time, to allow the person to participate in the Motor



99 Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Upon successful  
100 completion of the program, the court shall dismiss the charge against the person and expunge  
101 the person's record as it relates to the alleged offense. In the event the person fails to successfully  
102 complete the program, the court shall proceed to an adjudication of the alleged offense. A motion  
103 for a continuance under this subsection may not be construed as an admission or be used as  
104 evidence.

105 A person arrested and charged with an offense under the provisions of this subsection or  
106 §17C-5-2(b) through §17C-5-2(i) of this code may not also be charged with an offense under this  
107 subsection arising out of the same transaction or occurrence.

108 (k) Any person who drives a vehicle in this state while he or she is in an impaired state  
109 and has within the vehicle one or more other persons who are unemancipated minors who have  
110 not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof,  
111 shall be *confined* in jail for not less than two days nor more than 12 months, and shall be fined  
112 not less than \$200 nor more than \$1,000, and shall have his or her driver's license revoked by  
113 the Commissioner of the Division of Motor Vehicles for a period of one year: *Provided*, That such  
114 jail term shall include actual confinement of not less than 48 hours: *Provided*, however, That a  
115 person sentenced pursuant to this subsection shall receive credit for any period of actual  
116 confinement he or she served upon arrest for the subject offense: *Provided further*, That if the  
117 person has previously been convicted under the provisions of this section, then the person shall  
118 have his or her driver's license revoked by the Commissioner of the Division of Motor Vehicles for  
119 a period of 10 years: *And Provided further*, That if the person has previously been convicted under  
120 the provisions of this section on two or more occasions, then the person shall have his or her  
121 driver's license revoked by the Commissioner of the Division of Motor Vehicles for life.

122 (l) A person violating ~~§17C-5-2(d)~~, §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h),  
123 ~~§17C-5-2(j)~~, or §17C-5-2(i) of this code for the second offense under this section, is guilty of a  
124 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months

125 nor more than one year, shall have his or her driver's license revoked by the Commissioner of the  
126 Division of Motor Vehicles for a period of 10 years, and the court may, in its discretion, impose a  
127 fine of not less than \$1,000 nor more than \$3,000.

128 (m) A person violating ~~§17C-5-2(d)~~, §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h),  
129 ~~§17C-5-2(j)~~, or §17C-5-2(i) of this code for the third or any subsequent offense under this section,  
130 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility  
131 for not less than two nor more than five years, shall have his or her driver's license revoked by  
132 the Commissioner of the Division of Motor Vehicles for life, and the court may, in its discretion,  
133 impose a fine of not less than \$3,000 nor more than \$5,000.

134 (n) For purposes of §17C-5-2(l) and §17C-5-2(m) of this code relating to second, third and  
135 subsequent offenses, the following events shall be regarded as offenses under this section:

136 (1) Any conviction under §17C-5-2(b) through §17C-5-2(h) of this code or under a prior  
137 enactment of this section for an offense which occurred within the 10-year period immediately  
138 preceding the date of arrest in the current proceeding;

139 (2) Any conviction under a municipal ordinance of this state or any other state or a statute  
140 of the United States or of any other state of an offense which has the same elements as an offense  
141 described in §17C-5-2(b) through §17C-5-2(i) of this code, which offense occurred within the ten-  
142 year period immediately preceding the date of arrest in the current proceeding; and

143 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for  
144 violation of §17C-5-2(e) of this code, which violation occurred within the ten-year period  
145 immediately preceding the date of arrest in the current proceeding.

146 (o) A person may be charged in a warrant or indictment or information for a second or  
147 subsequent offense under this section if the person has been previously arrested for or charged  
148 with a violation of this section which is alleged to have occurred within the applicable time period  
149 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the  
150 charges for the alleged previous offense. In that case, the warrant or indictment or information

151 must set forth the date, location and particulars of the previous offense or offenses. No person  
152 may be convicted of a second or subsequent offense under this section unless the conviction for  
153 the previous offense has become final, or the person has previously had a period of conditional  
154 probation imposed pursuant to §17C-5-2b of this code.

155 (p) The fact that any person charged with a violation of §17C-5-2(b) through §17C-5-2(g)  
156 of this code, or any person permitted to drive as described under §17C-5-2(h) or §17C-5-2(i) of  
157 this code, is or has been legally entitled to use alcohol, a controlled substance or a drug does not  
158 constitute a defense against any charge of violating §17C-5-2(b) through §17C-5-2(i) of this code.

159 (q) For purposes of this section, the term “controlled substance” has the meaning ascribed  
160 to it in §60A-1-1 et seq. of this code.

161 (r) The sentences provided in this section upon conviction for a violation of this article are  
162 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply  
163 the provisions of §62-11a-1 et seq. of this code to a person sentenced or committed to a term of  
164 one year or less for a first offense under this section: *Provided*, however, That the court may  
165 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated  
166 thereunder. An order for home detention by the court pursuant to the provisions of §62-11b-1 et  
167 seq. of this code may be used as an alternative sentence to any period of incarceration required  
168 by this section for a first or subsequent offense: *Provided* further, That for any period of home  
169 incarceration ordered for a person convicted of second offense under this section, electronic  
170 monitoring shall be required for no fewer than five days of the total period of home confinement  
171 ordered and the offender may not leave home for those five days notwithstanding the provisions  
172 of §62-11b-5 of this code: And *Provided* further, That for any period of home incarceration ordered  
173 for a person convicted of a third or subsequent violation of this section, electronic monitoring shall  
174 be included for no fewer than 10 days of the total period of home confinement ordered and the  
175 offender may not leave home for those 10 days notwithstanding §62-11b-5 of this code.

176 (s) A person whose driver's license has been revoked by the Commissioner of the Division

177 of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment  
 178 program as set forth in §17C-5A-3 of this code before his or her driver's license can be reinstated.

179 (t) No person convicted of a felony offense under this section shall be eligible for  
 180 participation in the Motor Vehicle Alcohol Test and Lock Program as described §17C-5A-3a of  
 181 this code. Any person who is convicted of a misdemeanor offense is eligible for participation in  
 182 the Motor Vehicle Alcohol Test and Lock Program as described in §17C-5A-3a of this code.

183 (u) For any offense for which an alternative revocation period is permitted conditioned  
 184 upon participation in the Motor Vehicle Alcohol Test and Lock Program, no such alternative  
 185 sentence may be imposed without the consent of the driver.

186 (v) Any period of revocation imposed by the Commissioner of the Division of Motor  
 187 Vehicles pursuant to the provisions of this section shall begin only after any period of incarceration  
 188 has been completed.

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

1 (a) Except as provided in §17C-5-2b(g) of this code, whenever any person who has not  
 2 previously been convicted of any offense under this article or under any statute of the United  
 3 States or of any state relating to driving under the influence of alcohol, any controlled substance  
 4 or any other drug:

5 (1) Notifies the court within 30 days of his or her arrest of his or her intention to participate  
 6 in a deferral pursuant to this section; and

7 (2) Pleads guilty to ~~or is found guilty of~~ driving under the influence of alcohol under §17C-  
 8 5-2(e) of this code, the court, without entering a judgment of guilt and with the consent of the  
 9 accused, shall defer further proceedings and, notwithstanding any provisions of this code to the  
 10 contrary, place him or her on probation, which conditions shall include that he or she successfully  
 11 completes the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this

12 code. Participation therein shall be for a period of at least 165 days after he or she has served  
13 the 15 days of license suspension imposed pursuant to in §17C-5A-2 of this code, and shall be  
14 completed within one year.

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

18 ~~(e)~~ (b) (1) If the prosecuting attorney files a motion alleging that the defendant during the  
19 period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the  
20 Division of Motor Vehicles, or has failed to successfully complete the program before making a  
21 motion for dismissal pursuant to §17C-5-2b(d) of this code, the court may issue such process as  
22 is necessary to bring the defendant before the court.

23 (2) A motion alleging such violation filed pursuant in §17C-5A-2b(b)(1) must be filed during  
24 the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed  
25 within a reasonable time after the alleged violation was committed.

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

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

35 ~~(d)~~ (c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol  
36 Test and Lock Program and complied with its conditions, the defendant may move the court for  
37 an order dismissing the charges. This motion shall be supported by affidavit of the defendant and

38 by certification of the Division of Motor Vehicles that the defendant has successfully completed  
39 the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the  
40 prosecuting attorney who shall within 30 days after service advise the judge of any objections to  
41 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If  
42 there are no objections filed within the thirty-day period, the court shall thereafter dismiss the  
43 charges against the defendant. If there are objections filed with regard to the dismissal of charges,  
44 the court shall proceed as set forth in in §17C-5-2b(c) of this code.

45 ~~(e)~~ (d) Except as provided herein, unless a defendant adjudicated pursuant to this  
46 subsection be convicted of a subsequent violation of this article, discharge and dismissal under  
47 this section shall be without adjudication of guilt and is not a conviction for purposes of  
48 disqualifications or disabilities imposed by law upon conviction of a crime except for those  
49 provided in §17C-5A-1 *et seq.* of this code. Except as provided in §17C-5-2(k) through §17C-5-  
50 2(n) of this code regarding subsequent offenses, the effect of the dismissal and discharge shall  
51 be to restore the person in contemplation of law to the status he or she occupied prior to arrest  
52 and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter  
53 held to be guilty of perjury, false swearing or otherwise giving a false statement by reason of his  
54 or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made  
55 of him or her for any purpose other than any inquiry made in connection with any subsequent  
56 offense as that term is defined in §17C-5-2(n) of this code.

57 ~~(f)~~ (e) There may be only one discharge and dismissal under this section with respect to  
58 any person.

59 ~~(g)~~ (f) No person shall be eligible for dismissal and discharge under this section: (1) In any  
60 prosecution in which any violation of any other provision of this article has been charged; (2) if  
61 the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the  
62 person has previously had his or her driver's license revoked under §17C-5-2a of this code or  
63 under any statute of the United States or of any state relating to driving under the influence of

64 alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary  
65 chemical test pursuant to §17C-5-7 of this code.

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

72 (2) If the prosecuting attorney objects to the expungement, the objections shall be filed  
73 with the court within 30 days after service of a motion for expungement and copies of the  
74 objections shall be served on the defendant or the defendant's attorney.

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

80 ~~(i)~~ (h) Notwithstanding any provision of this code to the contrary, any person prosecuted  
81 for a violation of §17C-5-2(e) of this code whose case is disposed of pursuant to the provisions of  
82 this section shall be liable for any court costs assessable against a person convicted of a violation  
83 of §17C-5-2(k) of this code. Payment of such costs may be made a condition of probation. The  
84 costs assessed pursuant to this subsection, whether as a term of probation or not, shall be  
85 distributed as other court costs in accordance with §50-3-2 of this code; §14-2A-4 of this code;  
86 §30-29-4 of this code; and §62-5-2, §62-5-7, and §62-5-10 of this code.

**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer;  
designation of type of test; definition of law-enforcement officer.**

1 (a) Any person who drives a motor vehicle in this state is considered to have given his or

2 her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary  
3 chemical test of either his or her blood or breath to determine the alcohol concentration in his or  
4 her blood, or the concentration in the person's body of a controlled substance, drug or any  
5 combination thereof.

6 (b) A preliminary breath analysis may be administered in accordance with the provisions  
7 of §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a  
8 person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a  
9 municipality of this state which has the same elements as an offense described in §17C-5-2 of  
10 this code.

11 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be  
12 administered at the direction of the arresting law-enforcement officer having probable cause to  
13 believe the person has committed an offense prohibited by §17C-5-2 of this code or by an  
14 ordinance of a municipality of this state which has the same elements as an offense described in  
15 said section: Provided, That absent written consent of the person, no secondary test of blood may  
16 be performed without issuance of a warrant signed by a magistrate or a circuit judge.

17 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall  
18 designate the secondary tests to be administered. Notwithstanding the §17C-5-7 of this code, the  
19 refusal to submit to a blood test only may not result in the revocation of the arrested person's  
20 license to operate a motor vehicle in this state.

21 (e) Any person to whom a preliminary breath test is administered who is arrested shall be  
22 advised verbally that his or her refusal to submit to a secondary chemical test will result in  
23 suspension of his or her license to operate a motor vehicle while any criminal charges are pending  
24 brought pursuant to §17C-5-2 of this code or an ordinance of a municipality of this state which  
25 has the same elements as an offense described in said section, and given a written statement  
26 advising him or her ~~that his or her refusal to submit to the secondary chemical test pursuant to~~  
27 ~~subsection (d) of this section will result in the revocation of his or her license to operate a motor~~



28 ~~vehicle in this state for a period of at least forty-five days and up to life~~ of the following:

29 (1) That a person's refusal to submit to a secondary chemical test pursuant to §17C-5-  
30 4(d) of this code results in the suspension of his or her license to operate a motor vehicle during  
31 the pendency of any criminal charges brought alleging a violation of §17C-5-2 of this code or an  
32 ordinance of a municipality of this state which has the same elements as an offense described in  
33 said section;

34 (2) That a person's refusal to submit to the secondary chemical test pursuant to §17C-5-  
35 4(d) of this code will result in the revocation of his or her license to operate a motor vehicle for a  
36 period of at least 45 days and up to life;

37 (3) That, if a test is taken, the results of the test may be used against him or her in court  
38 as evidence of violating §17C-5-2 of this code or an ordinance of a municipality of this state which  
39 has the same elements as an offense described in said section; and

40 (4) That, if the person first submits to the requested secondary chemical test, the person  
41 has the right to have a test or tests of his or her blood performed as provided in §17C-5-9 of this  
42 code.

43 (f) Any law-enforcement officer who has been properly trained in the administration of any  
44 secondary chemical test authorized by this article, including, but not limited to, certification by the  
45 Bureau for Public Health in the operation of any equipment required for the collection and analysis  
46 of a breath sample, may conduct the test at any location in the county wherein the arrest is made:  
47 *Provided,* That the law-enforcement officer may conduct the test at the nearest available properly  
48 functioning secondary chemical testing device located outside the county in which the arrest was  
49 made, if: (i) There is no properly functioning secondary chemical testing device located within the  
50 county the arrest was made; or (ii) there is no magistrate available within the county the arrest  
51 was made for the arraignment of the person arrested. A law-enforcement officer who is directing  
52 that a secondary chemical test be conducted has the authority to transport the person arrested to  
53 where the secondary chemical testing device is located.

54 (g) If the arresting officer lacks proper training in the administration of a secondary  
55 chemical test, then any other law-enforcement officer who has received training in the  
56 administration of the secondary chemical test to be administered may, upon the request of the  
57 arresting law-enforcement officer and in his or her presence, conduct the secondary test. The  
58 results of a test conducted pursuant to this subsection may be used in evidence to the same  
59 extent and in the same manner as if the test had been conducted by the arresting law-enforcement  
60 officer.

61 (h) Only the person actually administering or conducting a test conducted pursuant to this  
62 article is competent to testify as to the results and the veracity of the test.

63 (†) (i) (1) For the purpose of this article, the term “law-enforcement officer” or “police officer”  
64 means: (A) Any member of the West Virginia State Police; (B) any sheriff and any deputy sheriff  
65 of any county; (C) any member of a police department in any municipality as defined in §8-1-2 of  
66 this code; (D) any natural resources police officer of the Division of Natural Resources; and (E)  
67 any special police officer appointed by the Governor pursuant to the provisions of §61-3-41 of this  
68 code who has completed the course of instruction at a law-enforcement training academy as  
69 provided for under the provisions of §30-29-9 of this code.

70 (2) In addition to standards promulgated by the Governor’s Committee on Crime,  
71 Delinquency and Correction, pursuant to §30-29-3 of this code, governing the qualification of law-  
72 enforcement officers and the entry-level law-enforcement training curricula, the Governor’s  
73 Committee on Crime, Delinquency and Correction shall require the satisfactory completion of a  
74 minimum of not less than six hours of training in the recognition of impairment in drivers who are  
75 under the influence of controlled substances or drugs other than alcohol.

76 (3) In addition to standards promulgated by the Governor’s Committee on Crime,  
77 Delinquency and Correction, pursuant to §30-29-3 of this code, establishing standards governing  
78 in-service law-enforcement officer training curricula and in-service supervisory level training  
79 curricula, the Governor’s Committee on Crime, Delinquency and Correction shall require the

80 satisfactory completion of a minimum of not less than six hours of training in the recognition of  
81 impairment in drivers who are under the influence of controlled substances or drugs other than  
82 alcohol.

83 (4) ~~That after December 31, 2014~~ A law-enforcement officer who has not satisfactorily  
84 completed the minimum number of hours of training in the recognition of impairment in drivers  
85 who are under the influence of controlled substances or drugs other than alcohol, required by  
86 §17C-5-4(h)(2) or §17C-5-4(h)(3) of this code, may no longer require any person to submit to  
87 secondary chemical test of his or her blood for the purposes of determining the concentration in  
88 the person's body of a controlled substance, drug or any combination thereof.

89 (j) A law-enforcement officer who has reasonable cause to believe that a person has  
90 committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat,  
91 jet ski or other motorized vessel, shall follow the provisions of this section in administering, or  
92 causing to be administered, a preliminary breath analysis and incidental to a lawful arrest, a  
93 secondary chemical test of the accused person's blood or breath to determine the alcohol  
94 concentration in his or her blood, or the concentration in the person's body of a controlled  
95 substance, drug or any combination thereof.

**§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not  
withdrawn if person arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in §17C-5-4 of this code refuses to submit to  
2 any secondary chemical test, the tests shall not be given: *Provided*, That prior to the refusal, the  
3 person is given ~~an oral warning and~~ a written statement ~~advising him or her that~~ containing the  
4 warnings set forth in §17C-5-4(e) of this code, and a verbal warning that his or her refusal to  
5 submit to the secondary test finally designated will result in the ~~revocation~~ suspension of his or  
6 her license to operate a motor vehicle in this state ~~for a period of at least forty-five days and up to~~  
7 ~~life~~ during the pendency of any criminal charge brought pursuant to §17C-5-2 of this code or an  
8 ordinance of a municipality of this state which has the same elements as an offense described in

9 ~~said section. and that~~ After 15 minutes following the receipt of these warnings by the person under  
10 arrest, the refusal is considered final. The arresting officer after that period of time expires has no  
11 further duty to provide the person with an opportunity to take the secondary test.

12 (b) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner  
13 of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against  
14 the person pursuant to §17C-5-2 of this code a written statement of the officer that: (1) He or she  
15 had probable cause to believe the person had been driving a motor vehicle in this state while  
16 under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed  
17 under arrest for an offense relating to driving a motor vehicle in this state while under the influence  
18 of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary  
19 chemical test finally designated in the manner provided in §17C-5-4 of this code; and (4) the  
20 person was given a written statement ~~advising him or her that~~ containing the warnings contained  
21 in §17C-5-4(e) of this code, and a verbal warning that his or her refusal to submit to the secondary  
22 test finally designated will result in the suspension of his or her license to operate a motor vehicle  
23 in this state ~~would be revoked for a period of at least forty-five days and up to life if he or she~~  
24 ~~refused to submit to the secondary test finally designated in the manner provided in section four~~  
25 ~~of this article~~ during the pendency of any criminal charge brought pursuant to §17C-5-2 or an  
26 ordinance of a municipality of this state which has the same elements as an offense described in  
27 said section. The signing of the statement required to be signed by this section constitutes an  
28 oath or affirmation by the person signing the statement that the statements contained in the  
29 statement are true and that any copy filed is a true copy. The statement shall contain upon its  
30 face a warning to the officer signing that to willfully sign a statement containing false information  
31 concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.  
32 ~~Upon receiving the statement the commissioner shall make and enter an order revoking the~~  
33 ~~person's license to operate a motor vehicle in this state for the period prescribed by this section~~  
34 For the first refusal to submit to the designated secondary chemical test, the commissioner

35 ~~shall make and enter an order revoking the person=s license to operate a motor vehicle in this~~  
36 ~~state for a period of one year or forty five days, with an additional one year of participation in the~~  
37 ~~Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-~~  
38 ~~a, article five-a of this chapter: *Provided, That a person revoked for driving while under the*~~  
39 ~~influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The~~  
40 ~~application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be~~  
41 ~~considered to be a waiver of the hearing provided in section two of said article. If the person=s~~  
42 ~~license has previously been revoked under the provisions of this section, the commissioner shall,~~  
43 ~~for the refusal to submit to the designated secondary chemical test, make and enter an order~~  
44 ~~revoking the person=s license to operate a motor vehicle in this state for a period of ten years:~~  
45 ~~*Provided, however, That the license may be reissued in five years in accordance with the*~~  
46 ~~provisions of section three, article five-a of this chapter. If the person=s license has previously~~  
47 ~~been revoked more than once under the provisions of this section, the commissioner shall, for the~~  
48 ~~refusal to submit to the designated secondary chemical test, make and enter an order revoking~~  
49 ~~the person=s license to operate a motor vehicle in this state for a period of life. A copy of each~~  
50 ~~order shall be forwarded to the person by registered or certified mail, return receipt requested,~~  
51 ~~and shall contain the reasons for the revocation and shall specify the revocation period imposed~~  
52 ~~pursuant to this section. A revocation shall not become effective until ten days after receipt of the~~  
53 ~~copy of the order~~

54 (c) Any person who is unconscious or who is otherwise in a condition rendering him or her  
55 incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his  
56 or her blood or breath as provided in §17C-5-4 of this code and the test may be administered  
57 although the person is not informed that his or her failure to submit to the test will result in the  
58 revocation of his or her license to operate a motor vehicle in this state for the period provided for  
59 in this section. ~~A revocation under this section shall run concurrently with the period of any~~

60 ~~suspension or revocation imposed in accordance with other provisions of this code and growing~~  
 61 ~~out of the same incident which gave rise to the arrest for driving a motor vehicle while under the~~  
 62 ~~influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the~~  
 63 ~~test finally designated in accordance with the provisions of section four of this article.~~

64 ~~(b) For the purposes of this section, where reference is made to previous suspensions or~~  
 65 ~~revocations under this section, the following types of suspensions or revocations shall also be~~  
 66 ~~regarded as suspensions or revocations under this section:~~

67 ~~(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance~~  
 68 ~~of another state or a statute of the United States or of any other state of an offense which has the~~  
 69 ~~same elements as an offense described in section two of this article for conduct which occurred~~  
 70 ~~on or after June 10, 1983; and~~

71 ~~(2) Any revocation under the provisions of section one or two, article five-a of this chapter~~  
 72 ~~for conduct which occurred on or after June 10, 1983.~~

73 ~~(c) A person whose license to operate a motor vehicle in this state has been revoked shall~~  
 74 ~~be afforded an opportunity to be heard, in accordance with the provisions of section two, article~~  
 75 ~~five-a of this chapter.~~

76 ~~(d) The refusal to submit to a blood test may be admissible at the courts discretion in a~~  
 77 ~~trial for the offense of driving a motor vehicle in this state while under the influence of alcohol a~~  
 78 ~~controlled substance or drug or the combination of alcohol and drugs~~

#### **§17C-5-12. Report to the Legislature.**

1 On or before December 31, ~~2013~~ 2019, the Bureau for Public Health shall submit to the  
 2 Joint Committee on Government and Finance a report that includes the following:

3 (1) Recommendations for the minimum levels of those drugs or controlled substances  
 4 contained in §17C-5-8(d) of this code, that must be present in a person's blood in order for the  
 5 test to be admitted as prima facie evidence that the person was under the influence of a controlled  
 6 substance or drug in a prosecution for the offense of driving a motor vehicle in this state; and

7 (2) Recommendations for the minimum levels of those drugs or controlled substances  
8 contained in §17C-5-8(d) of this code, that laboratories approved to test blood for drug or  
9 controlled substance content can reliably identify and measure for the concentrations of drugs,  
10 controlled substances and their metabolites, in blood.

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

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

1 (a) Any person who is licensed to operate a motor vehicle in this state and who drives a  
2 motor vehicle in this state shall be deemed to have given his or her consent by the operation  
3 thereof, subject to the provisions of this article, to the procedure set forth in this article for the  
4 determination of whether his or her license to operate a motor vehicle in this state should be  
5 revoked because he or she did drive a motor vehicle while under the influence of alcohol,  
6 controlled substances or drugs, or combined influence of alcohol or controlled substances or  
7 drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of  
8 eight hundredths of one percent or more, by weight, or did refuse to submit to any secondary  
9 chemical test required under the provisions of §§17C-5-1 *et seq.* of this code, or did drive a motor  
10 vehicle while under the age of 21 years with an alcohol concentration in his or her blood of two  
11 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by  
12 weight: Provided, That the provisions of this subsection do not apply to offenses occurring on or  
13 after July 1, 2019.

14 (b) Any law-enforcement officer investigating a person for an offense described in §17C-  
15 5-2 of this code occurring on or before June 30, 2019, or for an offense described in a municipal

16 ordinance which has the same elements as an offense described in said section occurring on or  
17 before June 30, 2019, shall report to the Commissioner of the Division of Motor Vehicles by written  
18 statement within 48 hours of the conclusion of the investigation the name and address of the  
19 person believed to have committed the offense. The report shall include the specific offense with  
20 which the person is charged and, if applicable, a copy of the results of any secondary tests of  
21 blood, breath or urine. The signing of the statement required to be signed by this subsection  
22 constitutes an oath or affirmation by the person signing the statement that the statements  
23 contained in the statement are true and that any copy filed is a true copy. The statement shall  
24 contain upon its face a warning to the officer signing that to willfully sign a statement containing  
25 false information concerning any matter or thing, material or not material, is false swearing and is  
26 a misdemeanor.

27 (c) If, upon examination of the written statement of the officer and the tests' results  
28 described in §17C-5A-1(b) of this code, the commissioner determines that a person committed  
29 an offense described in §17C-5-2 of this code or an offense described in a municipal ordinance  
30 which has the same elements as an offense described in said section and that the results of any  
31 secondary test or tests indicate that at the time the test or tests were administered the person  
32 had, in his or her blood, an alcohol concentration of eight hundredths of one percent or more, by  
33 weight, or at the time the person committed the offense he or she was under the influence of  
34 alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking  
35 or suspending the person's license to operate a motor vehicle in this state. If the results of the  
36 tests indicate that at the time the test or tests were administered the person was under the age of  
37 21 years and had an alcohol concentration in his or her blood of two hundredths of one percent  
38 or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner  
39 shall make and enter an order suspending the person's license to operate a motor vehicle in this  
40 state. A copy of the order shall be forwarded to the person by registered or certified mail, return  
41 receipt requested, and shall contain the reasons for the revocation or suspension and describe



42 the applicable revocation or suspension periods provided in §17C-5A-2 of this code. A revocation  
43 or suspension shall not become effective until 10 days after receipt of a copy of the order.

44 (d) Any law-enforcement officer taking a child into custody under the provisions of §17C-  
45 5-6a of this code on or before June 30, 2019, who has reasonable cause to believe that the child,  
46 at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two  
47 hundredths of one percent or more, by weight, or that the act of the child in driving the motor  
48 vehicle was such that it would provide grounds for arrest for an offense defined under the  
49 provisions of §17C-5-2 of said code if the child were an adult, shall report to the Commissioner of  
50 the Division of Motor Vehicles by written statement within 48 hours the name and address of the  
51 child.

52 (e) If applicable, the report described in §17C-5A-1(d) of this code shall include a  
53 description of the specific offense with which the child could have been charged if the child were  
54 an adult and a copy of the results of any secondary tests of blood, breath or urine. The signing of  
55 the statement required to be signed by this subsection constitutes an oath or affirmation by the  
56 person signing the statement that the statements contained in the statement are true and that any  
57 copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing  
58 that to willfully sign a statement containing false information concerning any matter or thing,  
59 material or not material, is false swearing and is a misdemeanor.

60 (f) Upon examination of the written statement of the officer and any test results described  
61 in §17C-5A-1(d) of this code, if the commissioner determines that the results of the test indicate  
62 that at the time the test or tests were administered the child had, in his or her blood, an alcohol  
63 concentration of two hundredths of one percent or more, by weight, but also determines that the  
64 act of the child in driving the motor vehicle was not such that it would provide grounds for arrest  
65 for an offense defined under the provisions of §17C-5-2(a) through §17C-5-2(h) of this code if the  
66 child were an adult, the commissioner shall make and enter an order suspending the child's  
67 license to operate a motor vehicle in this state. If the commissioner determines that the act of the

68 child in driving the motor vehicle was such that it would provide grounds for arrest for an offense  
69 defined under the provisions of said subsections if the child were an adult, the commissioner shall  
70 make and enter an order revoking the child's license to operate a motor vehicle in this state. A  
71 copy of the order shall be forwarded to the child by registered or certified mail, return receipt  
72 requested, and shall contain the reasons for the suspension or revocation and describe the  
73 applicable suspension or revocation periods provided for in §17C-5A-1 *et seq.* of this code. A  
74 suspension or revocation shall not become effective until 10 days after receipt of a copy of the  
75 order.

**§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol,  
controlled substances or drugs.**

1 (a) If a person has a term of conditional probation imposed pursuant to §17C-5-2b of this  
2 code, or is convicted for an offense defined in §17C-5-2 of this code or for an offense described  
3 in a municipal ordinance which has the same elements as an offense described in said section  
4 because the person did drive a motor vehicle while under the influence of alcohol, controlled  
5 substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or  
6 did drive a motor vehicle while having an alcohol concentration in his or her blood of eight  
7 hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of  
8 21 years with an alcohol concentration in his or her blood of two hundredths of one percent or  
9 more, by weight, but less than eight hundredths of one percent, by weight, and if the person does  
10 not act to appeal the conviction within the time periods described in §17C-5A-1a(b) of this code,  
11 the person's license to operate a motor vehicle in this state shall be revoked or suspended in  
12 accordance with the provisions of this section.

13 (b) The clerk of the court in which a person has had a term of conditional probation  
14 imposed pursuant to §17C-5-2b of this code, or is convicted for an offense described in §17C-5-  
15 2 of this code or for an offense described in a municipal ordinance which has the same elements  
16 as an offense described in said section shall forward to the Commissioner of the Division of Motor

17 Vehicles a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate  
18 court, the magistrate court clerk shall forward the transcript when the person convicted has not  
19 requested an appeal within 20 days of the sentencing for such conviction. If the term of conditional  
20 probation is the act of a magistrate court, the magistrate court clerk shall forward the transcript  
21 when the order imposing the term of conditional probation is entered. If the conviction is the  
22 judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall  
23 forward the transcript when the person convicted has not perfected an appeal within 10 days from  
24 and after the date upon which the sentence is imposed. If the conviction is the judgment of a  
25 circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed  
26 a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was  
27 entered.

28 (c) If, upon examination of the transcript of the judgment of conviction, or imposition of a  
29 term of conditional probation pursuant to §17C-5-2b of this code, the Commissioner of the Division  
30 of Motor Vehicles determines that the person was convicted for an offense described in §17C-5-  
31 2 of this code or an ordinance of a municipality of this state which has the same elements as an  
32 offense described in said section, or had a period of conditional probation imposed pursuant to  
33 §17C-5-2b of this code, ~~or for an offense described in a municipal ordinance which has the same~~  
34 ~~elements as an offense described in said section~~ because the person did drive a motor vehicle  
35 while under the influence of alcohol, controlled substances or drugs, or the combined influence of  
36 alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcohol  
37 concentration in his or her blood of eight hundredths of one percent or more, by weight, the  
38 commissioner shall make and enter an order revoking the person's license to operate a motor  
39 vehicle in this state. If the commissioner determines that the person was convicted of driving a  
40 motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood of  
41 two hundredths of one percent or more, by weight, but less than eight hundredths of one percent,  
42 by weight, the commissioner shall make and enter an order suspending the person's license to

43 operate a motor vehicle in this state. The order shall contain the reasons for the revocation or  
44 suspension and the revocation or suspension periods provided for in said section. ~~Further, the~~  
45 ~~order shall give the procedures for requesting a hearing which is to be held in accordance with~~  
46 ~~the provisions of said section. The person shall be advised in the order that because of the receipt~~  
47 ~~of a transcript of the judgment of conviction by the commissioner a presumption exists that the~~  
48 ~~person named in the transcript of the judgment of conviction is the person named in the~~  
49 ~~commissioner's order and such constitutes sufficient evidence to support revocation or~~  
50 ~~suspension and that the sole purpose for the hearing held under this section is for the person~~  
51 ~~requesting the hearing to present evidence that he or she is not the person named in the transcript~~  
52 ~~of the judgment of conviction. A copy of the order shall be forwarded to the person by registered~~  
53 ~~or certified mail, return receipt requested. No revocation or suspension shall become effective~~  
54 ~~until ten days after receipt of a copy of the order.~~

55 ~~(d) The provisions of this section shall not apply if an order reinstating the operator's~~  
56 ~~license of the person has been entered by the commissioner prior to the receipt of the transcript~~  
57 ~~of the judgment of conviction~~

58 (d) If a person receives an order advising that his or her license has been suspended or  
59 revoked following receipt by the commissioner of a transcript of a judgment of conviction, and the  
60 person believes that he or she is not the person named in the commissioner's order, the person  
61 may notify the commissioner in writing. Upon receipt of this notification, the commissioner shall  
62 immediately review the contents of the judgment of conviction and the information provided by  
63 the person in question and determine if an error has been made. If such an error is discovered,  
64 the commissioner shall immediately reverse the suspension or revocation of the person's license  
65 and take steps to correctly identify the individual against whom the judgment of conviction has  
66 been entered and immediately suspend his or her license pursuant to §17C-5A-1a(c) of this code.

67 ~~(e) For the purposes of this section, a person is convicted when the person enters a plea~~  
68 ~~of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction~~

69 ~~for purposes of this section except where the person holds a commercial drivers license or~~  
70 ~~operates a commercial vehicle~~

**§17C-5A-1b. Pretrial suspension of driver's license.**

1 (a) The court shall, at the first appearance or arraignment, or as soon as such relevant  
2 information becomes available, suspend the driver's license and driving privileges of any person  
3 charged with a violation of §17C-5-2 of this code who refused to submit to a secondary chemical  
4 test as required by §17C-5-4 of this code.

5 (b) Upon motion by the prosecutor, the court may, at the arraignment or as soon as such  
6 relevant information becomes available, suspend the driver's license and driving privileges of any  
7 person charged with a violation of §17C-5-2 of this code if the court finds that allowing the person  
8 to maintain a license would pose a substantial risk of harming others during the pendency of the  
9 action.

10 (c) A person whose license has been suspended pursuant to this section may file a motion  
11 for a hearing of the suspension in the court in which the charges are pending within 10 days, and  
12 the court shall conduct the review in accordance with this article within 30 days after the filing of  
13 the motion. The court shall, at the time of the suspension, advise the defendant of his or her right  
14 to a hearing.

15 (d) Upon notice that the court has ordered the suspension of a person's license, the clerk  
16 of the court in which the charges are pending shall forthwith transmit to the Commissioner of the  
17 Division of Motor Vehicles a copy of the order suspending the person's license, along with any  
18 license surrendered by the person, and the commissioner shall promptly update the division's  
19 records to indicate that the person's license is suspended.

20 (e) Licenses suspended under this section shall remain suspended until a judgment of  
21 conviction or acquittal is entered in the case or until the court enters an order directing the  
22 Commissioner of the Division of Motor Vehicles to terminate the suspension, but in no event for  
23 a period longer than the maximum license suspension period applicable to the person under

24 §17C-5-2 of this code.

25 (f) Any person whose driver's license has been suspended pursuant to this section shall  
26 be given credit for all pretrial suspension time against the period of revocation imposed.

27 (g) The court may, in its discretion or upon motion by a party, impose a modified pretrial  
28 suspension of the driver's license and driving privileges for any person whose license is  
29 suspended pursuant to the provisions of this section. No person shall be given credit for any such  
30 period of modified pretrial suspension against any future period of revocation imposed.

**§17C-5A-1c. License suspension and registration for test refusal.**

1 (a) If a person files a motion for a hearing upon a pretrial suspension of his or her license  
2 under §17C-5A-1b(a) of this code, the scope of the hearing is limited to determining whether one  
3 or more of the following conditions have not been met:

4 (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the  
5 arrested person had committed a violation of §17C-5-2 of this code;

6 (2) Whether the law-enforcement officer requested the arrested person to submit to the  
7 chemical test or tests designated pursuant to §17C-5-4 of this code;

8 (3) Whether, at the time the test was requested, the law-enforcement officer administered  
9 the required written and verbal warnings pursuant to §17C-5-7 of this code; and

10 (4) Whether the arrested person refused to submit to the chemical test or tests requested  
11 by the law-enforcement officer.

12 (b) Following a hearing held pursuant to §17C-5A-1c(a), the clerk of the court in which the  
13 charges are pending shall forthwith transmit to the Commissioner of the Division of Motor Vehicles  
14 a copy of the order entered.

15 (c) If a person whose license is suspended under §17C-5A-1b(a) of this code fails to file  
16 a timely request for a hearing, the determination that the individual refused to submit to the  
17 requested secondary chemical test shall be determined to be final. At the expiration of this time,  
18 the court shall make and enter an order to that effect. The clerk of the court in which the charges

19 are pending shall forthwith transmit to the Commissioner of the Division of Motor Vehicles a copy  
20 of the order.

21 (d) Upon receipt of an order provided pursuant to §17C-5A-1c(b) or §17C-5A-1c(c) of this  
22 code finding that a person did not refuse the secondary chemical test, the Commissioner of the  
23 Division of Motor Vehicles shall reinstate the person's driver's license from any pretrial suspension  
24 imposed for refusal to submit to the secondary chemical test.

25 (e) Upon receipt of an order provided pursuant to §17C-5A-1c(b) or §17C-5A-1c(c) of this  
26 code finding that a person refused the secondary chemical test, the Commissioner of the Division  
27 of Motor Vehicles shall make and enter an order revoking the person's driver's license as follows:

28 (1) For the first refusal to submit to the designated secondary chemical test, the  
29 commissioner shall make and enter an order revoking the person's license to operate a motor  
30 vehicle in this state for a period of one year or 45 days, with an additional one year of participation  
31 in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of §17C-  
32 5A-3a of this code: *Provided*, That a person whose license is revoked for driving while under the  
33 influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program.

34 (2) If the person's license has previously been revoked under the provisions of this section,  
35 the commissioner shall, for the refusal to submit to the designated secondary chemical test, make  
36 and enter an order revoking the person's license to operate a motor vehicle in this state for a  
37 period of 10 years: *Provided*, That the license may be reissued in five years in accordance with  
38 the provisions of §17C-5A-3 of this code.

39 (3) If the person's license has previously been revoked more than once under the  
40 provisions of this section, the commissioner shall, for the refusal to submit to the designated  
41 secondary chemical test, make and enter an order revoking the person's license to operate a  
42 motor vehicle in this state for a period of life.

43 (f) A copy of each order entered pursuant to §17C-5A-1c(d) of this code shall be forwarded  
44 to the person by registered or certified mail, return receipt requested, and shall contain the

45 reasons for the revocation and shall specify the revocation period imposed pursuant to this  
46 section.

47 (g) A revocation under this section shall run concurrently with the period of any suspension  
48 or revocation imposed in accordance with other provisions of this code and growing out of the  
49 same incident which gave rise to the arrest for driving a motor vehicle while under the influence  
50 of alcohol, controlled substances or drugs and the subsequent refusal to undergo the test finally  
51 designated in accordance with the provisions of §17C-5A-4 of this code.

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

1 (a) The Department of Health and Human Resources, Division of Alcoholism and Drug  
2 Abuse shall administer a comprehensive safety and treatment program for persons whose  
3 licenses have been revoked under the provisions of this article or §17C-5-2 of this code or §17C-  
4 5-7 of this code or §17B-3-5(6) of this code and shall also establish the minimum qualifications  
5 for mental health facilities, day report centers, community correction centers or other public  
6 agencies or private entities conducting the safety and treatment program: *Provided*, That the  
7 Department of Health and Human Resources, Division of Alcoholism and Drug Abuse may  
8 establish standards whereby the division will accept or approve participation by violators in  
9 another treatment program which provides the same or substantially similar benefits as the safety  
10 and treatment program established pursuant to this section.

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

15 (c) The Department of Health and Human Resources, Division of Alcoholism and Drug  
16 Abuse shall provide for the preparation of an educational and treatment ~~the~~ program for each  
17 person whose license has been revoked under the provisions of this article or §17C-5-2 of this  
18 code or §17C-5-7 of this code or §17B-3-5(6) of this code which shall contain the following: (1) A



19 listing and evaluation of the offender's prior traffic record; (2) the characteristics and history of  
20 alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety  
21 program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions  
22 of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in  
23 the diagnosis of alcohol or drug abuse and treatment.

24 (d) There is hereby created a special revenue account within the State Treasury known  
25 as the Department of Health and Human Resources Safety and Treatment Fund. The account  
26 shall be administered by the Secretary of the Department of Health and Human Resources for  
27 the purpose of administering the comprehensive safety and treatment program established by  
28 §17C-5A-3(a) of this code. The account may be invested, and all earnings and interest accruing  
29 shall be retained in the account. The Auditor shall conduct an audit of the fund at least every three  
30 fiscal years.

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

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

37 (2) If the department determined that a participant is an indigent based upon criteria  
38 established pursuant to the legislative rule authorized by this section, the department shall provide  
39 the applicant with proof of its determination regarding indigency, which proof the applicant shall  
40 present to the interlock provider as part of the application process provided in §17C-5A-3(a) of  
41 this code and/or the rules promulgated pursuant thereto.

42 (3) Program providers shall remit to the Department of Health and Human Resources a  
43 portion of the fee collected, which shall be deposited by the Secretary of the Department of Health  
44 and Human Resources into the Department of Health and Human Resources Safety and

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

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

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

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

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

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

55 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to  
56 the program developed for the offender, shall prescribe the necessary terms and conditions for  
57 the reissuance of the license to operate a motor vehicle in this state revoked under this article or  
58 §17C-5-2 of this code or §17C-5-7 of this code or §17B-3-5(6) of this code which shall include  
59 successful completion of the educational, treatment or rehabilitation program, subject to the  
60 following:

61 (1) When the period of revocation is six months, the license to operate a motor vehicle in  
62 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial  
63 revocation, during which time the revocation was actually in effect; (B) the offender has  
64 successfully completed the program; (C) all costs of the program and administration have been  
65 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

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

71 revocation hearing have been paid. Notwithstanding any provision in this code, a person whose  
72 license is revoked for refusing to take a chemical test as required by §17C-5-7 of this code for a  
73 first offense is not eligible to reduce the revocation period by completing the safety and treatment  
74 program.

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

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

84 (h) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug  
85 Abuse shall provide for the preparation of an educational program for each person whose license  
86 has been suspended for 60 days pursuant to the provisions of §17C-5A-2(n) of this code. The  
87 educational program shall consist of not less than 12 nor more than 18 hours of actual classroom  
88 time.

89 (2) When a 60-day period of suspension has been ordered, the license to operate a motor  
90 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial  
91 suspension, during which time the suspension was actually in effect; (B) the offender has  
92 successfully completed the educational program; (C) all costs of the program and administration  
93 have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

94 (i) A required component of the treatment program provided in §17C-5A-3(b) of this code  
95 and the education program provided for §17C-5A-3(c) of this code shall be participation by the  
96 violator with a victim impact panel program providing a forum for victims of alcohol and drug-

97 related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-  
98 related offenses in their lives. The Department of Health and Human Resources, Division of  
99 Alcoholism and Drug Abuse shall propose and implement a plan for victim impact panels where  
100 appropriate numbers of victims are available and willing to participate and shall establish  
101 guidelines for other innovative programs which may be substituted where the victims are not  
102 available to assist persons whose licenses have been suspended or revoked for alcohol and drug-  
103 related offenses to gain a full understanding of the severity of their offenses in terms of the impact  
104 of the offenses on victims and offenders. The plan shall require, at a minimum, discussion and  
105 consideration of the following:

- 106 (A) Economic losses suffered by victims or offenders;
- 107 (B) Death or physical injuries suffered by victims or offenders;
- 108 (C) Psychological injuries suffered by victims or offenders;
- 109 (D) Changes in the personal welfare or familial relationships of victims or offenders; and
- 110 (E) Other information relating to the impact of alcohol and drug-related offenses upon  
111 victims or offenders.

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

115 (j)(1) The Secretary of the Department of Health and Human Resources shall promulgate  
116 a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the  
117 provisions of this section and establish a fee to be collected from each offender enrolled in the  
118 safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program  
119 providers of required fees for the safety and treatment program for indigent offenders, criteria for  
120 determining eligibility of indigent offenders, and any necessary application forms; and (B) program  
121 standards that encompass provider criteria including minimum professional training requirements  
122 for providers, curriculum approval, minimum course length requirements and other items that may

123 be necessary to properly implement the provisions of this section.

124 (2) The Legislature finds that an emergency exists and, therefore, the Secretary shall file  
125 by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of §29A-  
126 3-15 of this code.

127 (k) Nothing in this section may be construed to prohibit day report or community correction  
128 programs, authorized pursuant to §62-11C-1 et seq. of this code, from administering a  
129 comprehensive safety and treatment program pursuant to this section.

## **ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.**

### **§17C-5C-6. Phase out and termination of Office of Administrative Hearings.**

1 (a) The Office of Administrative Hearings shall retain jurisdiction over proceedings  
2 described in §17C-5C-3(3) of this code arising from offenses occurring on or before June 30,  
3 2020. The Office of Administrative Hearings shall have no jurisdiction over proceedings described  
4 in said subdivision arising from offenses occurring on or after July 1, 2020.

5 (b) With respect to all other proceedings described in §17C-5C-3 of this code, the Office  
6 of Administrative Hearings shall retain jurisdiction until June 30, 2021. Beginning on July 1, 2021,  
7 jurisdiction over all matters then pending or thereafter filed shall be returned to the Commissioner  
8 of the Division of Motor Vehicles.

9 (c) The Office of Administrative Hearings shall, in an orderly and efficient manner, bring  
10 disposition to all such matters pending before it.

11 (d) Upon resolution of all such matters, the Office of Administrative Hearings shall be  
12 terminated: *Provided*, That the Office of Administrative Hearings shall terminate no later than July  
13 1, 2022.

14 (e) The Secretary of the Department of Transportation may establish interim policies and  
15 procedures to aid in the orderly and efficient process during the disposition of remaining cases  
16 before the Office of Administrative Hearings during the phase-out period until termination,  
17 including the transfer of employees from the Office of Administrative Hearings, if feasible, to other

18 divisions under the Department of Transportation.

19 (f) The Office of Administrative Hearings may apply to the Purchasing Division to purchase  
20 in the open market services pursuant to the provisions of §5A-3-15 of this code if the Secretary  
21 of the Department of Transportation determines that doing so is necessary for the orderly and  
22 efficient disposition of those matters pending before it, as required by §17C-5C-6(b) of this code.

23 (g) If, by the deadline set forth in §17C-5C-6(c) of this code, the Office of Administrative  
24 Hearings has been unable to finally dispose of and resolve all matters pending before it, the  
25 Secretary of the Department of Transportation is directed to appoint additional hearing examiners  
26 on a temporary basis and other support personnel to bring to a resolution all remaining matters.

## **ARTICLE 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL CASES.**

### **§17C-19-3. When person arrested must be taken immediately before a magistrate or court.**

1 (a) Whenever any person is arrested for any violation of this chapter punishable as a  
2 misdemeanor, the arrested person shall be immediately taken before a magistrate or court within  
3 the county in which the offense charged is alleged to have been committed and who has  
4 jurisdiction of the offense and is nearest or most accessible with reference to the place where the  
5 arrest is made, in any of the following cases:

6 (1) When a person arrested demands an immediate appearance before a magistrate or  
7 court;

8 (2) When the person is arrested upon a charge of negligent homicide;

9 (3) When the person is arrested upon a charge of driving while under the influence of  
10 alcohol, or under the influence of any controlled substance, or under the influence of any other  
11 drug, or under the combined influence of alcohol and any controlled substance or any other drug;

12 (4) When the person is arrested upon a charge of failure to stop in the event of an accident  
13 causing death, personal injury or damage to property;

14 (5) When the person is arrested upon a charge of violating §17C-17-14 of this code relating  
15 to weight violations, except as otherwise provided in that section;

16 (6) When the person arrested is a resident of a state that has not entered into a  
17 nonresident violator compact with this state;

18 (7) In any other event when the person arrested refuses to accept the written notice to  
19 appear in court as his or her promise to appear in court or to comply with the terms of the written  
20 notice to appear in court as provided in §17C-19-4 of this code; and

21 (8) When a person is arrested for driving with a suspended or revoked driver's license for  
22 miscellaneous reasons: *Provided*, That when a person is arrested for driving with a suspended or  
23 revoked driver's license for miscellaneous reasons, the arresting officer may issue a charge by  
24 citation if a magistrate or judge is not on duty or reasonably available.

25 (b) When the person arrested is a resident of a state that has entered into a nonresident  
26 violator compact with this state, the arresting officer shall issue the person a written notice as  
27 provided for in §17C-19-4 of this code and may not take the person immediately before a  
28 magistrate or court, except under the terms of the compact or under the circumstances set forth  
29 in §17C-19-3(a) of this code.

30 (c) Whenever a person is arrested for any violation of §17C-5-2 of this code, the arresting  
31 officer shall request, and the person shall immediately surrender, his or her driver's license. The  
32 arresting officer shall submit the person's driver's license to the court before which the person is  
33 taken to appear pursuant to §17C-19-3(a) of this code.

NOTE: The purpose of this bill is to revise procedures for drivers' license suspensions and revocations for driving under the influence of alcohol, controlled substances or drugs..

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