

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3302**

By Delegates Westfall, Burkhammer and Pinson

[Introduced February 06, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, and to  
 2 amend and reenact §61-2-30 of said code; all relating to recognizing an embryo or fetus as  
 3 a distinct unborn victim for the offense of DUI causing death.

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

**CHAPTER 17C. TRAFFIC REGULATIONS AND RULES OF THE ROAD.**

**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) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

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

16 (5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established  
 17 in §17C-5A-3a and administered by the Division of Motor Vehicles.

18 (b) Any person who drives a vehicle in this state while he or she is in an impaired state, and

19 such impaired state proximately causes the death of any person, including an embryo or fetus as  
20 defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be  
21 imprisoned in a state correctional facility for not less than three nor more than 15 years and shall  
22 be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a  
23 motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10  
24 years or for a period of time conditioned on participation in the test and lock program in  
25 accordance with §17C-5A-3a of this code: *Provided*, That any death charged under this  
26 subsection must occur within one year of the offense: *Provided, however*, That if the person has  
27 previously been convicted under this section, the person shall have his or her license to operate a  
28 motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period  
29 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of  
30 this code.

31 (c) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
32 such impaired state proximately causes serious bodily injury to any person other than himself or  
33 herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional  
34 facility for not less than two nor more than 10 years and shall be fined not less than \$1,000 nor  
35 more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the  
36 Commissioner of the Division of Motor Vehicles for a period of five years or for a period of time  
37 conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this  
38 code: *Provided*, That if the person has previously been convicted under this section, the person  
39 shall have his or her license to operate a motor vehicle revoked by the Commissioner of the  
40 Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and  
41 lock program in accordance with §17C-5A-3a of this code.

42 (d) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
43 such impaired state proximately causes a bodily injury to any person other than himself or herself,  
44 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than

45 one day nor more than one year and shall be fined not less than \$200 nor more than \$1,000, and  
46 shall have his or her license to operate a motor vehicle revoked by the Commissioner of the  
47 Division of Motor Vehicles for a period of two years or for a period of time conditioned on  
48 participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided,*  
49 That if the person has previously been convicted under this section, the person shall have his or  
50 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor  
51 Vehicles for life or for a period of time conditioned on participation in the test and lock program in  
52 accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall  
53 include actual confinement of not less than 24 hours: *Provided, however,* That a person sentenced  
54 pursuant to this subsection shall receive credit for any period of actual confinement he or she  
55 served upon arrest for the subject offense.

56 (e) Any person who drives a vehicle on any public highway or private road in this state: (1)  
57 while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an  
58 alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight,  
59 is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six  
60 months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license  
61 to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a  
62 period of six months or for a period of time conditioned on participation in the test and lock program  
63 in accordance with §17C-5A-3a of this code: *Provided,* That a person sentenced pursuant to this  
64 subsection shall receive credit for any period of actual confinement he or she served upon arrest  
65 for the subject offense.

66 (f) Any person who drives a vehicle on any public highway or private road in this state while  
67 he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or  
68 more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail  
69 for not less than two days nor more than six months, which jail term is to include actual  
70 confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000,

71 and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the  
72 Division of Motor Vehicles for a period of one year or for a period of time conditioned on  
73 participation in the test and lock program in accordance with §17C-5A-3a of this code. A person  
74 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he  
75 or she served upon arrest for the subject offense.

76 (g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any  
77 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a  
78 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor  
79 more than six months, which jail term is to include actual confinement of not less than 24 hours,  
80 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to  
81 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a  
82 period of six months. A person sentenced pursuant to this subsection shall receive credit for any  
83 period of actual confinement he or she served upon arrest for the subject offense.

84 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway  
85 or private road in this state by any other person who is in an impaired state is guilty of a  
86 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months  
87 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to  
88 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a  
89 period of six months or for a period of time conditioned on participation in the test and lock program  
90 in accordance with §17C-5A-3a of this code.

91 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway  
92 or private road in this state by any other person who is a habitual user of narcotic drugs or  
93 amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof,  
94 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more  
95 than \$500, and shall have his or her license to operate a motor vehicle revoked by the  
96 Commissioner of the Division of Motor Vehicles for a period of six months.

97 (j) (1) Any person under the age of 21 years who drives a vehicle on any public highway or  
98 private road in this state while he or she has an alcohol concentration in his or her blood of two  
99 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by  
100 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction  
101 thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate  
102 a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of  
103 60 days or for a period of time conditioned on participation in the test and lock program in  
104 accordance with §17C-5A-3a of this code. For a second or subsequent offense under this  
105 subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined  
106 in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his or  
107 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor  
108 Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or  
109 for a period of time conditioned on participation in the test and lock program in accordance with  
110 §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this  
111 subsection may move for a continuance of the proceedings, from time to time, to allow the person  
112 to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon  
113 successful completion of the program, the court shall dismiss the charge against the person and  
114 expunge the person's record as it relates to the alleged offense. In the event the person fails to  
115 successfully complete the program, the court shall proceed to an adjudication of the alleged  
116 offense. A motion for a continuance under this subsection may not be construed as an admission  
117 or be used as evidence.

118 (2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her  
119 license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a  
120 period of time conditioned on participation in the test and lock program in accordance with  
121 §17C-5A-3a of this code, if the person:

122 (i) Has previously been convicted under this subsection and is subsequently convicted of

123 an offense under another subsection of this section; or

124 (ii) Is convicted under this subsection and has previously been convicted of an offense  
125 under another subsection of this section.

126 (B) Nothing in this subdivision permits a shorter period of license revocation, license  
127 suspension, or participation in the test and lock program than is mandatory for the specific offense  
128 for which the person is convicted.

129 (3) A person arrested and charged with an offense under the provisions of this subsection  
130 or subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section may not also be charged with an  
131 offense under this subsection arising out of the same transaction or occurrence.

132 (k) Any person who drives a vehicle on any public highway or private road in this state  
133 while he or she is in an impaired state and has within the vehicle one or more other persons who  
134 are unemancipated minors who have not yet reached their 16th birthday is guilty of a  
135 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor  
136 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have  
137 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor  
138 Vehicles for a period of one year or for a period of time conditioned on participation in the test and  
139 lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall  
140 include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced  
141 pursuant to this subsection shall receive credit for any period of actual confinement he or she  
142 served upon arrest for the subject offense.

143 (l) A person convicted of an offense under this section, who has previously been convicted  
144 of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction  
145 thereof, shall be confined in jail for not less than six months nor more than one year, may be fined  
146 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor  
147 vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period  
148 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of

149 this code: *Provided*, That if the second conviction is for an offense as described in subsections (b),  
150 (c), or (d) of this section and the subsection creating the offense requires a period of incarceration,  
151 period of license revocation, or fine that is greater than what is required for a conviction under this  
152 subsection, the greater period of incarceration, period of revocation, or fine shall be imposed:  
153 *Provided, however*, That this section does not apply to a second conviction that is subject to a  
154 period of license revocation under subsection (j) of this section.

155 (m) A person convicted of an offense under this section, who has previously been  
156 convicted of any offense under this section on two or more occasions, is guilty of a felony and,  
157 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor  
158 more than five years, shall have his or her license to operate a motor vehicle revoked by the  
159 Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on  
160 participation in the test and lock program in accordance with §17C-5A-3a of this code, and the  
161 court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided*,  
162 That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or  
163 (d) of this section and the subsection creating the offense requires a period of incarceration, period  
164 of license revocation, or fine that is greater than what is required for a conviction under this  
165 subsection, the greater period of incarceration, period of revocation, and fine shall be imposed:  
166 *Provided, however*, That this section does not apply to a third or subsequent conviction that is  
167 subject to a period of license revocation under subsection (j) of this section.

168 (n) For purposes of subsections (l) and (m) of this section relating to second, third, and  
169 subsequent offenses, the following events shall be regarded as offenses and convictions under  
170 this section:

171 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of  
172 this section, or under a prior enactment of this section, for an offense which occurred within the  
173 10-year period immediately preceding the date of arrest in the current proceeding;

174 (2) Any conviction under a municipal ordinance of this state or any other state or a statute



175 of the United States or of any other state of an offense which has the same elements as an offense  
176 described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred  
177 within the 10-year period immediately preceding the date of arrest in the current proceeding; and

178 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for  
179 violation of subsection (e) of this section, which violation occurred within the 10-year period  
180 immediately preceding the date of arrest in the current proceeding.

181 (o) A person may be charged in a warrant, indictment, or information for a second or  
182 subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has been  
183 previously arrested for, or charged with, a violation of this section which is alleged to have  
184 occurred within the applicable time period for prior offenses, notwithstanding the fact that there  
185 has not been a final adjudication of the charges for the alleged previous offense. In that case, the  
186 warrant or indictment or information must set forth the date, location, and particulars of the  
187 previous offense or offenses. No person may be convicted of a second or subsequent offense  
188 under this section unless the conviction for the previous offense has become final, or the person  
189 has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

190 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or (g)  
191 of this section, or any person permitted to drive as described under subsection (h) or (i) of this  
192 section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not  
193 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i) of  
194 this section.

195 (q) The sentences provided in this section upon conviction for a violation of this article are  
196 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the  
197 provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of one  
198 year or less for a first offense under this section: *Provided, however*, That the court may impose a  
199 term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated  
200 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*

201 *seq.* of this code may be used as an alternative sentence to any period of incarceration required by  
202 this section for a first or subsequent offense: *Provided further*, That for any period of home  
203 incarceration ordered for a person convicted of a second offense under this section, electronic  
204 monitoring shall be required for no fewer than five days of the total period of home confinement  
205 ordered and the offender may not leave home for those five days notwithstanding the provisions of  
206 §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered for  
207 a person convicted of a third or subsequent violation of this section, electronic monitoring shall be  
208 included for no fewer than 10 days of the total period of home confinement ordered and the  
209 offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

210 (r) A person whose license to operate a motor vehicle has been revoked or suspended by  
211 the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a  
212 comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or  
213 her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

214 (s) For any offense for which an alternative revocation period is permitted conditioned upon  
215 participation in the test and lock program, an alternative sentence may not be imposed without the  
216 consent of the driver.

217 (t) Upon entering the order of conviction for an offense under this section, or the imposition  
218 of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall  
219 immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

220 (u) The amendments made to this section during the 2020 regular session of the  
221 Legislature shall become effective on July 1, 2020.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.**

1 (a) This section may be known and cited as the Unborn Victims of Violence Act.

2 (b) For the purposes of this article, the following definitions shall apply: *Provided*, That  
3 these definitions only apply for purposes of prosecution of unlawful acts under this section and  
4 may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for  
5 purposes of argument in a civil cause of action, unless there has been a criminal conviction under  
6 this section.

7 (1) "Embryo" means the developing human in its early stages. The embryonic period  
8 commences at fertilization and continues to the end of the embryonic period and the beginning of  
9 the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last  
10 menstrual period.

11 (2) "Fetus" means a developing human that has ended the embryonic period and  
12 thereafter continues to develop and mature until termination of the pregnancy or birth.

13 (c) For purposes of enforcing the provisions of §61-2-1, §61-2-4, §61-2-7, §61-2-9(a), §61-  
14 2-9(c), §61-2-10, §61-2-10b, 61-2-28(a), and §17C-5-2(b) of this code, a pregnant woman and the  
15 embryo or fetus she is carrying in the womb constitute separate and distinct victims.

16 (d) *Exceptions.* -- The provisions of this section do not apply to:

17 (1) Acts committed during a legal abortion to which the pregnant woman, or a person  
18 authorized by law to act on her behalf, consented or for which the consent is implied by law;

19 (2) Acts or omissions by medical or health care personnel during or as a result of medical  
20 or health-related treatment or services, including, but not limited to, medical care, abortion,  
21 diagnostic testing or fertility treatment;

22 (3) Acts or omissions by medical or health care personnel or scientific research personnel  
23 in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

24 (4) Acts involving the use of force in lawful defense of self or another, but not an embryo or  
25 fetus; and

26 (5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is

27 carrying.

28 (e) For purposes of the enforcement of the provisions of this section, a violation of the  
29 provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection  
30 afforded by the provisions of subdivision (1), subsection (d) of this section.

31 (f) *Other convictions not barred.* -- A prosecution for or conviction under this section is not a  
32 bar to conviction of or punishment for any other crime committed by the defendant arising from the  
33 same incident.

NOTE: The purpose of this bill is to recognize an embryo or fetus as a distinct unborn victim  
for the offense of DUI causing death.

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