

HB 4020

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REGULAR SESSION, 1994



ENROLLED

Com. Sub. for
HOUSE BILL No. 4020

(By Delegate Mr. Spraku, Mr. Chambers,
and Delegate Burk)
[By Request of the Executive]

Passed March 12, 1994

In Effect 90 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4020

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to repeal section two, article five, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and seven, article two, chapter seventeen-b of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections one, four, nine and twelve, article three, chapter seventeen-b of said code; to amend and reenact sections one and three, article four of said chapter; to amend and reenact section twenty-eight, article one, chapter seventeen-c of said code; to amend and reenact sections two, four and eight, article five of said chapter; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact sections one, one-a, two, three and three-a, article five-a of said chapter; to amend and reenact section seven, article two-a, chapter seventeen-d of said code; to amend and reenact section fifteen, article one, chapter seventeen-e of said code; to amend and reenact section eighteen, article seven, chapter twenty of said code; to amend and reenact section six, article seven, chapter twenty-four-a of said code; to amend and reenact section one, article six-a, chapter thirty-three of

said code; to amend and reenact section eight, article five, chapter forty-nine of said code; and to amend and reenact section nine, article six, chapter sixty of said code, all relating to the revision of criminal offenses and administrative sanctions for persons driving under the influence of alcohol, controlled substances or drugs; describing persons who shall not be licensed and providing exceptions thereto; providing for the issuance of junior driver's licenses to persons under the age of eighteen; establishing the examination requirements for applicants for a driver's license; requiring, before a license is issued, attendance at a class on the dangers and social consequences of driving under the influence; authorizing the division of motor vehicles to cancel licenses; requiring an abstract of judgment of conviction for violation of motor vehicle laws to be sent to the division of motor vehicles; providing that the surrender and return of license is not required; requiring a mandatory suspension for fraudulent use of driver's license; defining offenses relating to the unlawful use of license or nonoperator's identification, and providing penalties therefor; describing license and nonoperator's identification violations generally, and providing penalties therefor; operating a motor powered boat while under the influence of alcohol, controlled substances or while having a blood alcohol level of ten hundredths or more; defining offenses relating to driving while a license is suspended or revoked, driving while a license is revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents, and providing penalties therefor; defining the offense of driving while a license is suspended for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; defining the term "division" to mean the division of motor vehicles; defining offenses relating to driving under influence of alcohol, controlled substances or drugs, and providing

penalties therefor; defining the offense of driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and providing penalties therefor; authorizing home detention as an alternative to mandatory sentences for offenses relating to driving under the influence of alcohol, controlled substances or drugs; redefining the term "law-enforcement officer" to include special police officers appointed by the governor; establishing procedures for taking a child into custody for driving a motor vehicle with any amount of blood alcohol; describing the interpretation and use of a secondary chemical test for blood alcohol; providing for implied consent to administrative procedure for suspension and revocation of a license for driving under the influence of alcohol, controlled substances or drugs; authorizing the revocation of a license for driving under the influence of alcohol, controlled substances or drugs or refusing to submit to secondary chemical test; providing for the suspension of a license for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for the revocation of a license upon a conviction for driving under the influence of alcohol, controlled substances or drugs; providing for the suspension of a license upon a conviction for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for an administrative hearing and judicial review of an order of revocation or suspension; establishing a safety and treatment program as a precondition to the reissuance of a license; establishing a motor vehicle alcohol test and lock program; providing for suspension or revocation of license, registration and reinstatement for failure to have adequate security; correcting an incorrect code citation relating to disqualification of a commercial driver for a refusal to submit to a secondary test or submitting to a test which

discloses an alcohol concentration of four hundredths or more; authorizing an inspector for the public service commission to detain a driver until a law-enforcement officer is summoned to investigate and determine whether the person should be arrested and a secondary test of blood, breath or urine should be administered; setting forth restrictions for the handling of watercraft; duty to render aid after a collision, accident or casualty; accident reports; providing that an automobile liability insurance policy may not be cancelled because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; describing conditions under which a law-enforcement official may take a child into custody; and defining offenses relating to intoxication or drinking in public places and the illegal possession of alcoholic liquor and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and seven, article two, chapter seventeen-b of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-a; that sections one, four, nine and twelve, article three, chapter seventeen-b of said code be amended and reenacted; that sections one and three, article four of said chapter be amended and reenacted; that section twenty-eight, article one, chapter seventeen-c of said code be amended and reenacted; that sections two, four and eight, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-a; that sections one, one-a, two, three and three-a, article five-a of said chapter be amended and reenacted; that section seven, article two-a, chapter seventeen-d of said code be amended and reenacted; that section fifteen, article one, chapter seventeen-e of said code be amended and reenacted; that section eighteen, article seven, chapter twenty of said code be amended and reenacted; that section six, article seven, chapter twenty-four-a of said

code be amended and reenacted; that section one, article six-a, chapter thirty-three of said code be amended and reenacted; that section eight, article five, chapter forty-nine of said code be amended and reenacted; and that section nine, article six, chapter sixty of said code be amended and reenacted, all to read as follows:

**CHAPTER 17B.
MOTOR VEHICLE DRIVER LICENSES.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND
RENEWAL.**

§17B-2-3. What persons shall not be licensed; exceptions.

1 The division shall not issue any license hereunder:

2 (1) To any person, as an operator, who is under the
3 age of eighteen years: *Provided*, That the division may
4 issue a junior driver's license to a person under the age
5 of eighteen years in accordance with the provisions of
6 section three-a of this article;

7 (2) To any person, as a Class A, B, C or D driver, who
8 is under the age of eighteen years;

9 (3) To any person, whose license has been suspended,
10 during such suspension, nor to any person whose license
11 (other than a junior driver's license) has been revoked,
12 except as provided in section eight, article three of this
13 chapter;

14 (4) To any person who is an habitual drunkard or is
15 addicted to the use of narcotic drugs;

16 (5) To any person, as an operator or chauffeur, who
17 has previously been adjudged to be afflicted with or
18 suffering from any mental disability or disease and who
19 has not at the time of application been restored to
20 competency by judicial decree or released from a
21 hospital for the mentally incompetent upon the certifi-
22 cate of the superintendent of the institution that the
23 person is competent, and not then unless the commis-
24 sioner is satisfied that the person is competent to operate
25 a motor vehicle with a sufficient degree of care for the
26 safety of persons or property;

27 (6) To any person who is required by this chapter to

28 take an examination, unless the person has successfully
29 passed the examination;

30 (7) To any person when the commissioner has good
31 cause to believe that the operation of a motor vehicle on
32 the highways by the person would be inimical to public
33 safety or welfare.

§17B-2-3a. Junior driver's license.

1 (a) In accordance with rules and regulations estab-
2 lished by the commissioner and with the provisions
3 hereinafter set forth in this section, a junior driver's
4 license may be issued to any person between the ages
5 of sixteen and eighteen years, if the person is in
6 compliance with section eleven, article eight, chapter
7 eighteen of this code and is not otherwise disqualified
8 by law. Application for a junior driver's license shall be
9 on a form prescribed by the commissioner. A junior
10 driver's license may be issued upon the applicant's
11 successful completion of all examinations and driving
12 tests required by law for the issuance of a driver's
13 license to a person eighteen years of age or older. The
14 commissioner may impose reasonable conditions or
15 restrictions on the operation of a motor vehicle by a
16 person holding a junior driver's license, and the
17 conditions or restrictions shall be printed on the license.

18 (b) In addition to all other provisions of this chapter
19 for which a driver's license may be revoked, suspended
20 or cancelled, whenever a person holding a junior driver's
21 license operates a motor vehicle in violation of the
22 conditions or restrictions set forth on the license, or has
23 a record of two convictions for moving violations of the
24 traffic regulations and laws of the road, which convic-
25 tions have become final, the junior driver's license of the
26 person shall be permanently revoked, with like effect as
27 if the person had never held a junior driver's license:
28 *Provided*, That a junior driver's license shall be revoked
29 upon one final conviction for any offense described in
30 section five, article three of this chapter. Under no
31 circumstances shall such a license be revoked for
32 convictions of offenses in violation of any regulation or
33 law governing the standing or parking of motor

34 vehicles.

35 (c) A junior driver's license shall be suspended for
36 noncompliance with the provisions of section eleven,
37 article eight, chapter eighteen of this code, and may be
38 reinstated upon compliance.

39 (d) A person whose junior driver's license has been
40 revoked, or has been suspended without reinstatement,
41 shall not thereafter receive a junior driver's license, but
42 the person, upon attaining the age of eighteen, shall be
43 eligible, unless otherwise disqualified by law, for
44 examination and driver testing for a regular driver's
45 license. If a person has had his or her junior driver's
46 license revoked for a violation pursuant to section one
47 or two, article five-a, chapter seventeen-c of this code or
48 any offense specified in subsection (6), section five,
49 article three of this chapter, or has been adjudicated
50 delinquent upon a charge which would be crime under
51 the provisions of section two, article five, chapter
52 seventeen-c of this code if committed by an adult, the
53 person shall be disqualified for examination and driver
54 testing for a regular driver's license until that person
55 (1) has attained the age of eighteen years, (2) has
56 successfully completed the safety and treatment pro-
57 gram provided for in section three, article five-a,
58 chapter seventeen-c of this code, and (3) has had his or
59 her junior driver's license revoked or suspended for the
60 applicable statutory period of revocation or suspension
61 or a period of time equal to the period of revocation or
62 suspension which would have been imposed pursuant to
63 section two, article five-a, chapter seventeen-c if the
64 person had had a regular driver's license at the time of
65 the violation.

66 (e) No person shall receive a junior driver's license
67 unless the application therefor is accompanied by a
68 writing, duly acknowledged, consenting to the issuance
69 of the junior driver's license and executed by the parents
70 of the applicant; or if only one parent is living, then by
71 such parent; or if the parents be living separate and
72 apart, by the one to whom the custody of the applicant
73 was awarded; or if there is a guardian entitled to the
74 custody of the applicant, then by the guardian.

75 (f) Upon attaining the age of eighteen years, a person
76 holding an unrevoked, unsuspended or reinstated junior
77 driver's license shall, upon payment of the prescribed
78 fee, be entitled to receive a regular driver's license
79 without further examination or driver testing.

§17B-2-7. Examination of applicants.

1 (a) Upon the presentment by the applicant under the
2 age of eighteen years of the applicant's birth certificate,
3 or a certified copy thereof, as evidence that the applicant
4 is of lawful age, the division of public safety shall
5 examine every applicant for a license to operate a motor
6 vehicle in this state, except as otherwise provided in this
7 section. The examination shall include a test of the
8 applicant's eyesight, the applicant's ability to read and
9 understand highway signs regulating, warning, and
10 directing traffic, the applicant's knowledge of the traffic
11 laws of this state, and the applicant's knowledge of the
12 effects of alcohol upon persons and the dangers of
13 driving a motor vehicle under the influence of alcohol,
14 and shall include an actual demonstration of ability to
15 exercise ordinary and reasonable control in the opera-
16 tion of a motor vehicle, and such further physical and
17 mental examination as the division of motor vehicles and
18 the division of public safety deems necessary to deter-
19 mine the applicant's fitness to operate a motor vehicle
20 safely upon the highways.

21 (b) The commissioner and superintendent of public
22 safety shall promulgate legislative rules in accordance
23 with the provisions of chapter twenty-nine-a of this code
24 concerning the examination of applicants for licenses
25 and the qualifications required of applicants, and the
26 examination of applicants by the division of public
27 safety shall be in accordance with such rules. The rules
28 shall provide for the viewing of educational material or
29 films on the medical, biological, and psychological
30 effects of alcohol upon persons, the dangers of driving
31 a motor vehicle while under the influence of alcohol, and
32 the criminal penalties and administrative sanctions for
33 alcohol and drug related motor vehicle violations.

34 (c) After successful completion of the examination

35 required by this section or section seven-b of this article,
36 and prior to the issuance of a license pursuant to the
37 provisions of section eight of this article, every applicant
38 for a driver's license, junior driver's license or motor-
39 cycle-only license shall attend a mandatory education
40 class on the dangers and social consequences of driving
41 a motor vehicle while under the influence of alcohol. To
42 the extent practicable, the commissioner shall utilize as
43 lecturers at such classes persons who can relate first-
44 hand experiences as victims or family members of
45 victims of alcohol-related accidents or drivers who have
46 been involved in alcohol-related accidents which caused
47 serious bodily injury or death.

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.**

§17B-3-1. Authority of division to cancel license.

1 The division is hereby authorized to cancel any
2 operator's or chauffeur's license in any of the following
3 events:

4 (1) When the division determines that the licensee was
5 not entitled to the issuance thereof hereunder; or,

6 (2) When said licensee failed to give the required or
7 correct information in his application; or,

8 (3) When said licensee committed any fraud in making
9 such application; or,

10 (4) When the division determines that the required fee
11 has not been paid and the same is not paid upon
12 reasonable notice or demand.

**§17B-3-4. Abstract of judgment of conviction for viola-
tion of motor vehicle laws to be sent to
division.**

1 Whenever a conviction is had in any court of record,
2 or in a justice's court, or in the police court or mayor's
3 court of any incorporated municipality, for the violation
4 of any law of this state governing or regulating the
5 licensing or operation of any motor vehicle, or for the
6 violation of any provision of a charter, or bylaw, or
7 ordinance of such incorporated municipality governing

8 or regulating the operation of motor vehicles, except
9 regulations governing standing or parking, the clerk of
10 every such court, or the justice, or the clerk or recorder
11 of such municipality, as the case may be, shall in each
12 case transmit to the division within seventy-two hours
13 after such conviction is had a certified abstract of the
14 judgment on such conviction.

15 For the purposes of this chapter a forfeiture of bail
16 or collateral deposited to secure a defendant's appear-
17 ance in court, which forfeiture has not been vacated,
18 shall be equivalent to a conviction.

19 Willful failure, refusal or neglect to comply with the
20 provisions of this section shall subject the person who
21 is guilty thereof to a fine of not less than ten dollars nor
22 more than fifty dollars and may be the grounds for
23 removal from office.

§17B-3-9. Surrender and return of license not required.

1 The division, upon suspending or revoking a license,
2 shall not require that such license be surrendered to and
3 be retained by the division. The surrender of a license
4 shall not be a precondition to the commencement and
5 tolling of any applicable period of suspension or
6 revocation: *Provided*, That before such license may be
7 reinstated, the licensee shall pay a fee of fifteen dollars,
8 in addition to all other fees and charges, which fee shall
9 be collected by the department and deposited in a
10 special revolving fund to be appropriated to the
11 department for use in the enforcement of the provisions
12 of this section.

**§17B-3-12. Mandatory suspension for fraudulent use of
driver's license.**

1 (a) The commissioner shall suspend for a period of
2 ninety days the driver's license of any person upon
3 receipt of a sworn affidavit from any law-enforcement
4 officer, employee of the alcohol beverage control
5 commission or employee of the division of motor vehicles
6 stating that the person committed any one of the
7 following acts:

8 (1) Displayed or caused or permitted to be displayed

9 to any law-enforcement officer or employee of the
10 division of motor vehicles or have in his or her possession
11 any fictitious or fraudulently altered driver's license;

12 (2) Loaned or gave his or her driver's license to any
13 other person or knowingly permitted the use thereof by
14 another for an unlawful or fraudulent purpose;

15 (3) Displayed or represented as one's own any driver's
16 license not issued to him or her; or

17 (4) Used a false or fictitious name or birth date on any
18 application for a driver's license or knowingly made a
19 false statement, knowingly concealed a material fact or
20 otherwise committed a fraud in making application for
21 a driver's license.

22 (b) For the purposes of this section, "driver's license"
23 means any permit, camera card, identification card or
24 driver's license issued by this state or any other state
25 to a person which authorizes the person to drive a motor
26 vehicle of a specific class or classes subject to any
27 restriction or endorsement contained thereon.

28 (c) No person shall have his or her driver's license
29 suspended under any provision of this section unless he
30 or she shall first be given written notice of such
31 suspension sent by certified mail, return receipt
32 requested, at least twenty days prior to the effective date
33 of the suspension. Within ten days of the receipt of the
34 notice of suspension, the person may submit a written
35 request by certified mail for a hearing and request a
36 stay of the suspension pending the results of the hearing.
37 Upon receipt of the request for a hearing and request
38 for a stay of the suspension, the commissioner shall
39 grant a stay of the suspension pending the results of the
40 hearing. If the commissioner shall after hearing make
41 and enter an order affirming the earlier order of
42 suspension, the person affected shall be entitled to
43 judicial review as set forth in chapter twenty-nine-a of
44 this code and, pending the appeal, the court may grant
45 a stay or supersedeas of such order. If the person does
46 not appeal the suspension or if the suspension is
47 affirmed by the court, the order of suspension shall be
48 effective and the period of suspension shall commence

49 to run.

50 (d) The suspended driver's license shall be reinstated
51 following the period of suspension and upon compliance
52 with the conditions set forth in this chapter.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

**§17B-4-1. Unlawful use of license or nonoperator's
identification; license and nonoperator's
identification violations generally.**

1 It is a misdemeanor for any person to commit any one
2 of the following acts:

3 (1) To display or cause or permit to be displayed or
4 have in his possession any fictitious, or fraudulently
5 altered operator's or chauffeur's license or nonoperator's
6 identification;

7 (2) To lend his operator's or chauffeur's license or
8 nonoperator's identification to any other person or
9 knowingly permit the use thereof by another;

10 (3) To display or represent as one's own any operator's
11 or chauffeur's license or nonoperator's identification not
12 issued to him;

13 (4) To use a false or fictitious name in any application
14 for an operator's or chauffeur's license or nonoperator's
15 identification or to knowingly make a false statement or
16 to knowingly conceal a material fact or otherwise
17 commit a fraud in any such application;

18 (5) To permit any unlawful use of an operator's or
19 chauffeur's license or nonoperator's identification issued
20 to him; or

21 (6) To do any act forbidden or fail to perform any act
22 required by this chapter.

**§17B-4-3. Driving while license suspended or revoked;
driving while license revoked for driving
under the influence of alcohol, controlled
substances or drugs, or while having alco-
holic concentration in the blood of ten
hundredths of one percent or more, by
weight, or for refusing to take secondary
chemical test of blood alcohol contents.**

1 (a) Except as otherwise provided in subsections (b) or
2 (d) of this section, any person who drives a motor vehicle
3 on any public highway of this state at a time when his
4 or her privilege to do so has been lawfully suspended
5 or revoked by this state or any other jurisdiction shall,
6 for the first offense, be guilty of a misdemeanor, and,
7 upon conviction thereof, shall be confined in jail for
8 forty-eight hours and, in addition to such mandatory jail
9 sentence, shall be fined not less than fifty dollars nor
10 more than five hundred dollars; for the second offense,
11 such person is guilty of a misdemeanor, and, upon
12 conviction thereof, shall be confined in jail for a period
13 of ten days and, in addition to such mandatory jail
14 sentence, shall be fined not less than one hundred dollars
15 nor more than five hundred dollars; for the third or any
16 subsequent offense, such person is guilty of a misdemea-
17 nor, and, upon conviction thereof, shall be confined in
18 jail for six months and, in addition to such mandatory
19 jail sentence, shall be fined not less than one hundred
20 fifty dollars nor more than five hundred dollars.

21 (b) Any person who drives a motor vehicle on any
22 public highway of this state at a time when his or her
23 privilege to do so has been lawfully revoked for driving
24 under the influence of alcohol, controlled substances or
25 other drugs, or for driving while having an alcoholic
26 concentration in his or her blood of ten hundredths of
27 one percent or more, by weight, or for refusing to take
28 a secondary chemical test of blood alcohol content, shall,
29 for the first offense, be guilty of a misdemeanor, and,
30 upon conviction thereof, shall be confined in jail for six
31 months and in addition to such mandatory jail sentence,
32 shall be fined not less than one hundred dollars nor more
33 than five hundred dollars; for the second offense, such
34 person is guilty of a misdemeanor, and, upon conviction
35 thereof, shall be confined in jail for a period of one year
36 and, in addition to such mandatory jail sentence, shall
37 be fined not less than one thousand dollars nor more
38 than three thousand dollars; for the third or any
39 subsequent offense, such person is guilty of a felony,
40 and, upon conviction thereof, shall be imprisoned in the
41 penitentiary for not less than one year nor more than
42 three years and, in addition to such mandatory prison

43 sentence, shall be fined not less than three thousand
44 dollars nor more than five thousand dollars.

45 (c) Upon receiving a record of the conviction of any
46 person under subsection (a) or (b) of this section upon
47 a charge of driving a vehicle while the license of such
48 person was lawfully revoked, the division shall extend
49 the period of such suspension for an additional period
50 of one year from and after the date such person would
51 otherwise have been entitled to apply for a new license.

52 (d) Any person who drives a motor vehicle on any
53 public highway of this state at a time when his or her
54 privilege to do so has been lawfully suspended for
55 driving while under the age of twenty-one years with an
56 alcohol concentration in his or her blood of two hun-
57 dredths of one percent or more, by weight, but less than
58 ten hundredths of one percent, by weight, is guilty of
59 a misdemeanor, and, upon conviction thereof, shall be
60 confined in jail for twenty-four hours or shall be fined
61 not less than fifty dollars nor more than five hundred
62 dollars, or both.

63 (e) An order for home detention by the court pursuant
64 to the provisions of article eleven-b, chapter sixty-two of
65 this code may be used as an alternative sentence to any
66 period of incarceration required by this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-28. Division.

1 "Division" means the division of motor vehicles of this
2 state acting directly or through its duly authorized
3 officers and agents. Wherever in this chapter reference
4 is made to "the department of motor vehicles" or "the
5 department", unless a different meaning is clearly
6 required, the reference shall be deemed to be a
7 reference to the division of motor vehicles.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) Any person who:

2 (1) Drives a vehicle in this state while:

3 (A) He is under the influence of alcohol, or

4 (B) He is under the influence of any controlled
5 substance, or

6 (C) He is under the influence of any other drug, or

7 (D) He is under the combined influence of alcohol and
8 any controlled substance or any other drug, or

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

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

16 (3) Commits such act or failure in reckless disregard
17 of the safety of others, and when the influence of alcohol,
18 controlled substances or drugs is shown to be a contri-
19 buting cause to such death, shall be guilty of a felony,
20 and, upon conviction thereof, shall be imprisoned in the
21 penitentiary for not less than one nor more than ten
22 years and shall be fined not less than one thousand
23 dollars nor more than three thousand dollars.

24 (b) Any person who:

25 (1) Drives a vehicle in this state while:

26 (A) He is under the influence of alcohol, or

27 (B) He is under the influence of any controlled
28 substance, or

29 (C) He is under the influence of any other drug, or

30 (D) He is under the combined influence of alcohol and
31 any controlled substance or any other drug, or

32 (E) He has an alcohol concentration in his or her blood
33 of ten hundredths of one percent or more, by weight; and

34 (2) When so driving does any act forbidden by law or

35 fails to perform any duty imposed by law in the driving
36 of such vehicle, which act or failure proximately causes
37 the death of any person within one year next following
38 such act or failure, is guilty of a misdemeanor, and,
39 upon conviction thereof, shall be confined in jail for not
40 less than ninety days nor more than one year and shall
41 be fined not less than five hundred dollars nor more
42 than one thousand dollars.

43 (c) Any person who:

44 (1) Drives a vehicle in this state while:

45 (A) He is under the influence of alcohol, or

46 (B) He is under the influence of any controlled
47 substance, or

48 (C) He is under the influence of any other drug, or

49 (D) He is under the combined influence of alcohol and
50 any controlled substance or any other drug, or

51 (E) He has an alcohol concentration in his or her blood
52 of ten hundredths of one percent or more, by weight; and

53 (2) When so driving does any act forbidden by law or
54 fails to perform any duty imposed by law in the driving
55 of such vehicle, which act or failure proximately causes
56 bodily injury to any person other than himself, is guilty
57 of a misdemeanor, and, upon conviction thereof, shall be
58 confined in jail for not less than one day nor more than
59 one year, which jail term shall include actual confine-
60 ment of not less than twenty-four hours, and shall be
61 fined not less than two hundred dollars nor more than
62 one thousand dollars.

63 (d) Any person who:

64 (1) Drives a vehicle in this state while:

65 (A) He is under the influence of alcohol, or

66 (B) He is under the influence of any controlled
67 substance, or

68 (C) He is under the influence of any other drug, or

69 (D) He is under the combined influence of alcohol and

70 any controlled substance or any other drug, or

71 (E) He has an alcohol concentration in his or her blood
72 of ten hundredths of one percent or more, by weight;

73 (2) Is guilty of a misdemeanor, and, upon conviction
74 thereof, shall be confined in jail for not less than one day
75 nor more than six months, which jail term shall include
76 actual confinement of not less than twenty-four hours,
77 and shall be fined not less than one hundred dollars nor
78 more than five hundred dollars.

79 (e) Any person who, being an habitual user of narcotic
80 drugs or amphetamine or any derivative thereof, drives
81 a vehicle in this state, is guilty of a misdemeanor, and,
82 upon conviction thereof, shall be confined in jail for not
83 less than one day nor more than six months, which jail
84 term shall include actual confinement of not less than
85 twenty-four hours, and shall be fined not less than one
86 hundred dollars nor more than five hundred dollars.

87 (f) Any person who:

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

90 (A) Under the influence of alcohol, or

91 (B) Under the influence of any controlled substance,
92 or

93 (C) Under the influence of any other drug, or

94 (D) Under the combined influence of alcohol and any
95 controlled substance or any other drug, or

96 (E) Has an alcohol concentration in his or her blood
97 of ten hundredths of one percent or more, by weight;

98 (2) Is guilty of a misdemeanor, and, upon conviction
99 thereof, shall be confined in jail for not more than six
100 months and shall be fined not less than one hundred
101 dollars nor more than five hundred dollars.

102 (g) Any person who:

103 Knowingly permits his or her vehicle to be driven in
104 this state by any other person who is an habitual user
105 of narcotic drugs or amphetamine or any derivative

106 thereof, is guilty of a misdemeanor, and, upon conviction
107 thereof, shall be confined in jail for not more than six
108 months and shall be fined not less than one hundred
109 dollars nor more than five hundred dollars.

110 (h) Any person under the age of twenty-one years who
111 drives a vehicle in this state while he or she has an
112 alcohol concentration in his or her blood of two hun-
113 dredths of one percent or more, by weight, but less than
114 ten hundredths of one percent, by weight, shall, for a
115 first offense under this subsection, be guilty of a
116 misdemeanor, and, upon conviction thereof, shall be
117 fined not less than twenty-five dollars nor more than one
118 hundred dollars. For a second or subsequent offense
119 under this subsection, such person is guilty of a
120 misdemeanor, and, upon conviction thereof, shall be
121 confined in jail for twenty-four hours, and shall be fined
122 not less than one hundred dollars nor more than five
123 hundred dollars. A person who is charged with a first
124 offense under the provisions of this section may move for
125 a continuance of the proceedings from time to time to
126 allow the person to participate in the vehicle alcohol test
127 and lock program as provided for in section three-a,
128 article five-a of this chapter. Upon successful completion
129 of the program, the court shall dismiss the charge
130 against the person and expunge the person's record as
131 it relates to the alleged offense. In the event the person
132 fails to successfully complete the program, the court
133 shall proceed to an adjudication of the alleged offense.
134 A motion for a continuance under this section shall not
135 be construed as an admission or be used as evidence.

136 A person arrested and charged with an offense under
137 the provisions of subsection (a), (b), (c), (d), (e), (f) or (g)
138 of this section may not also be charged with an offense
139 under this subsection arising out of the same transaction
140 or occurrence.

141 (i) A person violating any provision of subsection (b),
142 (c), (d), (e), (f) or (g) of this section shall, for the second
143 offense under this section, be guilty of a misdemeanor,
144 and, upon conviction thereof, shall be confined in jail for
145 a period of not less than six months nor more than one
146 year, and the court may, in its discretion, impose a fine

147 of not less than one thousand dollars nor more than three
148 thousand dollars.

149 (j) A person violating any provision of subsection (b),
150 (c), (d), (e), (f) or (g) of this section shall, for the third
151 or any subsequent offense under this section, be guilty
152 of a felony, and, upon conviction thereof, shall be
153 imprisoned in the penitentiary for not less than one nor
154 more than three years, and the court may, in its
155 discretion, impose a fine of not less than three thousand
156 dollars nor more than five thousand dollars.

157 (k) For purposes of subsections (i) and (j) of this
158 section relating to second, third and subsequent offenses,
159 the following types of convictions shall be regarded as
160 convictions under this section:

161 (1) Any conviction under the provisions of subsections
162 (a), (b), (c), (d), (e) or (f) of the prior enactment of this
163 section for an offense which occurred on or after the
164 first day of September, one thousand nine hundred
165 eighty-one, and prior to the effective date of this section;

166 (2) Any conviction under the provisions of subsection
167 (a) or (b) of the prior enactment of this section for an
168 offense which occurred within a period of five years
169 immediately preceding the first day of September, one
170 thousand nine hundred eighty-one; and

171 (3) Any conviction under a municipal ordinance of this
172 state or any other state or a statute of the United States
173 or of any other state of an offense which has the same
174 elements as an offense described in subsections (a), (b),
175 (c), (d), (e), (f) or (g) of this section, which offense
176 occurred after June tenth, one thousand nine hundred
177 eighty-three.

178 (l) A person may be charged in a warrant or indict-
179 ment or information for a second or subsequent offense
180 under this section, if the person has been previously
181 arrested for or charged with a violation of this section
182 which is alleged to have occurred within the applicable
183 time periods for prior offenses, notwithstanding the fact
184 that there has not been a final adjudication of the
185 charges for the alleged previous offense. In such case,

186 the warrant or indictment or information must set forth
187 the date, location and particulars of the previous offense
188 or offenses. No person may be convicted of a second or
189 subsequent offense under this section unless the conviction
190 for the previous offense has become final.

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

198 (n) For purposes of this section, the term "controlled
199 substance" shall have the meaning ascribed to it in
200 chapter sixty-a of this code.

201 (o) The sentences provided herein upon conviction for
202 a violation of this article are mandatory and shall not
203 be subject to suspension or probation: *Provided*, That the
204 court may apply the provisions of article eleven-a,
205 chapter sixty-two of this code to a person sentenced or
206 committed to a term of one year or less. An order for
207 home detention by the court pursuant to the provisions
208 of article eleven-b, chapter sixty-two of this code may
209 be used as an alternative sentence to any period of
210 incarceration required by this section.

**§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 Any person who drives a motor vehicle in this state
2 shall be deemed to have given his consent by the
3 operation thereof, subject to the provisions of this
4 article, to a preliminary breath analysis and a secondary
5 chemical test of either his blood, breath or urine for the
6 purposes of determining the alcoholic content of his
7 blood. A preliminary breath analysis may be administered
8 in accordance with the provisions of section five
9 of this article whenever a law-enforcement officer has
10 reasonable cause to believe a person to have committed
11 an offense prohibited by section two of this article or by

12 an ordinance of a municipality of this state which has
13 the same elements as an offense described in said section
14 two of this article. A secondary test of blood, breath or
15 urine shall be incidental to a lawful arrest and shall be
16 administered at the direction of the arresting law-
17 enforcement officer having reasonable grounds to
18 believe the person to have committed an offense
19 prohibited by section two of this article or by an
20 ordinance of a municipality of this state which has the
21 same elements as an offense described in said section
22 two of this article. The law-enforcement agency by
23 which such law-enforcement officer is employed shall
24 designate which one of the aforesaid secondary tests
25 shall be administered: *Provided*, That if the test so
26 designated is a blood test and the person so arrested
27 refuses to submit to such blood test, then the law-
28 enforcement officer making such arrest shall designate
29 in lieu thereof, either a breath or urine test to be
30 administered, and notwithstanding the provisions of
31 section seven of this article, such refusal to submit to
32 a blood test only shall not result in the revocation of the
33 arrested person's license to operate a motor vehicle in
34 this state. Any person to whom a preliminary breath test
35 is administered who is then arrested shall be given a
36 written statement advising him that his refusal to
37 submit to the secondary chemical test finally designated
38 as provided in this section, will result in the revocation
39 of his license to operate a motor vehicle in this state for
40 a period of at least one year and up to life.

41 For the purpose of this article the term "law-
42 enforcement officer" or "police officer" shall mean and
43 be limited to (1) any member of the department of
44 public safety of this state, (2) any sheriff and any deputy
45 sheriff of any county, (3) any member of a police
46 department in any municipality as defined in section
47 two, article one, chapter eight of this code, (4) any
48 conservation officer of the department of natural
49 resources, and (5) any special police officer appointed by
50 the governor pursuant to the provisions of section forty-
51 one, article three, chapter sixty-one of this code who has
52 completed the course of instruction at a law-enforcement
53 training academy as provided for under the provisions

54 of section nine, article twenty-nine, chapter thirty of this
55 code. If any municipality or the department of natural
56 resources does not have available to its law-enforcement
57 officers the testing equipment or facilities necessary to
58 conduct any secondary test which a law-enforcement
59 officer may administer under this article, or if the
60 person to be tested is arrested by a special police officer,
61 then any member of the department of public safety, the
62 sheriff of the county wherein the arrest is made or any
63 deputy of such sheriff or any municipal law-enforcement
64 officer of another municipality within the county
65 wherein the arrest is made may, upon the request of
66 such arresting law-enforcement officer and in his
67 presence, conduct such secondary test and the results of
68 such test may be used in evidence to the same extent
69 and in the same manner as if such test had been
70 conducted by such arresting law-enforcement officer.
71 Only the person actually administering or conducting
72 such test shall be competent to testify as to the results
73 and the veracity of such test.

**§17C-5-6a. Taking a child into custody; driving a motor
vehicle with any amount of blood alcohol.**

1 (a) A preliminary breath analysis may be adminis-
2 tered to a child whenever a law-enforcement official has
3 reasonable cause to believe the child to have been
4 driving a motor vehicle with any amount of alcohol in
5 his or her blood, for the purpose of determining the
6 child's blood alcohol content. Such breath analysis must
7 be administered as soon as possible after the law-
8 enforcement officer arrives at a reasonable belief that
9 the child has been driving a motor vehicle with any
10 amount of alcohol in his or her blood. Any preliminary
11 breath analysis administered pursuant to this subsection
12 must be administered with a device and in a manner
13 approved by the division of health for that purpose. If
14 a preliminary breath analysis is administered, the
15 results shall be used solely for the purpose of guiding
16 the officer in deciding whether the child, at the time of
17 driving the motor vehicle, had an alcohol concentration
18 in his or her blood of two hundredths of one percent or
19 more, by weight, and should therefore be taken into

20 custody to administer a secondary test in accordance
21 with the provisions of this section.

22 (b) A child may be taken into custody by a law-
23 enforcement official without a warrant or court order
24 if the official has reasonable grounds to believe the child
25 to have been driving a motor vehicle with any amount
26 of alcohol in his or her blood. If a preliminary breath
27 analysis is administered and the results of the analysis
28 indicate that the child has an alcohol concentration in
29 his or her blood of less than two hundredths of one
30 percent, by weight, the child may not be taken into
31 custody unless other grounds exist under subsection (b),
32 section eight, article five, chapter forty-nine of this code.
33 Upon taking a child into custody pursuant to the
34 provisions of this section, the official shall take all
35 reasonable steps to cause notification to be made to the
36 child's parent or custodian or, if the parent or custodian
37 cannot be located, to a close relative.

38 (c) Upon taking a child into custody pursuant to this
39 section, the official shall take the child to a facility
40 where a secondary test of the child's blood or urine may
41 be administered at the direction of the official or a test
42 of the child's breath may be administered by the official.
43 The law-enforcement agency by which such law-
44 enforcement official is employed shall designate
45 whether the secondary test is a test of either blood,
46 breath or urine: *Provided*, That if the test so designated
47 is a blood test and the child refuses to submit to the
48 blood test, then the law-enforcement official taking the
49 child into custody shall designate in lieu thereof a breath
50 test to be administered. Notwithstanding the provisions
51 of section seven of this article, a refusal to submit to a
52 blood test only shall not result in the revocation of the
53 child's license to operate a motor vehicle in this state.
54 Any child taken into custody pursuant to this section
55 shall be given a written statement advising him or her
56 that a refusal to submit to a secondary test of either
57 blood, breath or urine, as finally designated by the law-
58 enforcement agency or official in accordance with this
59 subsection, will result in the suspension of his or her
60 license to operate a motor vehicle in this state for a

61 period of at least thirty days or a revocation of the
62 license for a period up to life.

63 (d) If the law-enforcement official taking the child into
64 custody is employed by a law-enforcement agency which
65 does not have available the testing equipment or
66 facilities necessary to conduct any secondary breath test
67 which may be administered pursuant to the provisions
68 of this section, then the official who took the child into
69 custody may request another qualified person to
70 administer a secondary breath test: *Provided*, That the
71 breath test shall be administered in the presence of the
72 official who took the child into custody. The results of
73 such breath test may be used in evidence to the same
74 extent and in the same manner as if such test had been
75 conducted by the law-enforcement official who took the
76 child into custody. The qualified person administering
77 the breath test must be a member of the division of
78 public safety, the sheriff of the county wherein the child
79 was taken into custody or any deputy of such sheriff, or
80 a law-enforcement official of another municipality
81 within the county wherein the child was taken into
82 custody. Only the person actually administering the
83 secondary breath test is competent to testify as to the
84 results and the veracity of the test. If the secondary test
85 is a blood test, the test shall be conducted in accordance
86 with the provisions of section six of this article.

87 (e) After taking the child into custody, if the law-
88 enforcement official has reasonable cause to believe that
89 the act of the child in driving the motor vehicle is such
90 that it would provide grounds for arrest for an offense
91 defined under the provisions of section two of this article
92 if the child were an adult, then the official shall proceed
93 to treat the child in the same manner as any other child
94 taken into custody without a warrant or court order, in
95 accordance with the provisions of section eight of this
96 article.

97 (f) If the results of any secondary test administered
98 pursuant to this section indicate that the child, at the
99 time of driving the motor vehicle, had an alcohol
100 concentration in his or her blood of ten hundredths of
101 one percent or less, by weight, and if the law-enforce-

102 ment official does not have reasonable cause to believe
103 that the act of the child in driving the motor vehicle is
104 such that it would provide grounds for arrest for an
105 offense defined under the provisions of section two of
106 this article if the child were an adult, then the official
107 shall release the child: *Provided*, That if the results of
108 any secondary test administered pursuant to this section
109 indicate that the child, at the time of driving the motor
110 vehicle, had an alcohol concentration in his or her blood
111 of two hundredths of one percent or more, by weight,
112 the child shall only be released to a parent or custodian,
113 or to some other responsible adult.

§17C-5-8. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle
2 in this state while under the influence of alcohol,
3 controlled substances or drugs, or upon the trial of any
4 civil or criminal action arising out of acts alleged to
5 have been committed by any person driving a motor
6 vehicle while under the influence of alcohol, controlled
7 substances or drugs, evidence of the amount of alcohol
8 in the person's blood at the time of the arrest or of the
9 acts alleged, as shown by a chemical analysis of his or
10 her blood, breath or urine, is admissible, if the sample
11 or specimen was taken within two hours from and after
12 the time of arrest or of the acts alleged, and shall give
13 rise to the following presumptions or have the following
14 effect:

15 (a) Evidence that there was, at that time, five
16 hundredths of one percent or less, by weight, of alcohol
17 in his or her blood, shall be prima facie evidence that
18 the person was not under the influence of alcohol;

19 (b) Evidence that there was, at that time, more than
20 five hundredths of one percent and less than ten
21 hundredths of one percent, by weight, of alcohol in the
22 person's blood shall be relevant evidence, but it is not
23 to be given prima facie effect in indicating whether the
24 person was under the influence of alcohol;

25 (c) Evidence that there was, at that time, ten hun-
26 dredths of one percent or more, by weight, of alcohol in
27 his or her blood, shall be admitted as prima facie

28 evidence that the person was under the influence of
29 alcohol.

30 A determination of the percent, by weight, of alcohol
31 in the blood shall be based upon a formula of (1) the
32 number of grams of alcohol per one hundred cubic
33 centimeters of blood, (2) the number of grams of alcohol
34 per two hundred ten liters of breath, or (3) the number
35 of grams of alcohol per sixty-seven milliliters of urine.

36 A chemical analysis of a person's blood, breath or
37 urine, in order to give rise to the presumptions or to
38 have the effect provided for in subdivisions (a),(b) and
39 (c) of this section, must be performed in accordance with
40 methods and standards approved by the state division
41 of health. A chemical analysis of blood or urine to
42 determine the alcoholic content of blood shall be
43 conducted by a qualified laboratory or by the state
44 police scientific laboratory of the criminal identification
45 bureau of the division of public safety.

46 The provisions of this article shall not limit the
47 introduction in any administrative or judicial proceed-
48 ing of any other competent evidence bearing on the
49 question of whether the person was under the influence
50 of alcohol, controlled substances or drugs.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPEN-
SION AND REVOCATION OF LICENSES FOR
DRIVING UNDER THE INFLUENCE OF ALCO-
HOL, CONTROLLED SUBSTANCES OR DRUGS.**

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

1 (a) Any person who is licensed to operate a motor
2 vehicle in this state and who drives a motor vehicle in
3 this state shall be deemed to have given his or her
4 consent by the operation thereof, subject to the provi-
5 sions of this article, to the procedure set forth in this
6 article for the determination of whether his or her
7 license to operate a motor vehicle in this state should be
8 revoked because he or she did drive a motor vehicle
9 while under the influence of alcohol, controlled substan-

10 ces or drugs, or combined influence of alcohol or
11 controlled substances or drugs, or did drive a motor
12 vehicle while having an alcoholic concentration in his or
13 her blood of ten hundredths of one percent or more, by
14 weight, or did refuse to submit to any designated
15 secondary chemical test, or did drive a motor vehicle
16 while under the age of twenty-one years with an alcohol
17 concentration in his or her blood of two hundredths of
18 one percent or more, by weight, but less than ten
19 hundredths of one percent, by weight.

20 (b) Any law-enforcement officer arresting a person for
21 an offense described in section two, article five of this
22 chapter or for an offense described in a municipal
23 ordinance which has the same elements as an offense
24 described in said section two of article five shall report
25 to the commissioner of the division of motor vehicles by
26 written statement within forty-eight hours the name and
27 address of the person so arrested. The report shall
28 include the specific offense with which the person is
29 charged, and, if applicable, a copy of the results of any
30 secondary tests of blood, breath or urine. The signing
31 of the statement required to be signed by this subsection
32 shall constitute an oath or affirmation by the person
33 signing the statement that the statements contained
34 therein are true and that any copy filed is a true copy.
35 The statement shall contain upon its face a warning to
36 the officer signing that to willfully sign a statement
37 containing false information concerning any matter or
38 thing, material or not material, is false swearing and is
39 a misdemeanor.

40 (c) If, upon examination of the written statement of
41 the officer and the tests results described in subsection
42 (b) of this section, the commissioner shall determine that
43 a person was arrested for an offense described in section
44 two, article five of this chapter or for an offense
45 described in a municipal ordinance which has the same
46 elements as an offense described in said section two of
47 article five, and that the results of any secondary test
48 or tests indicate that at the time the test or tests were
49 administered the person had, in his or her blood, an
50 alcohol concentration of ten hundredths of one percent

51 or more, by weight, or at the time the person was
52 arrested he or she was under the influence of alcohol,
53 controlled substances or drugs, the commissioner shall
54 make and enter an order revoking the person's license
55 to operate a motor vehicle in this state. If the results of
56 the tests indicate that at the time the test or tests were
57 administered the person was under the age of twenty-
58 one years and had an alcohol concentration in his or her
59 blood of two hundredths of one percent or more, by
60 weight, but less than ten hundredths of one percent, by
61 weight, the commissioner shall make and enter an order
62 suspending the person's license to operate a motor
63 vehicle in this state. A copy of the order shall be
64 forwarded to the person by registered or certified mail,
65 return receipt requested, and shall contain the reasons
66 for the revocation or suspension and describe the
67 applicable revocation or suspension periods provided for
68 in section two of this article. No revocation or suspension
69 shall become effective until ten days after receipt of a
70 copy of the order.

71 (d) Any law-enforcement officer taking a child into
72 custody under the provisions of section six-a, article five
73 of this chapter who has reasonable cause to believe that
74 the child, at the time of driving the motor vehicle, had
75 an alcohol concentration in his or her blood of two
76 hundredths of one percent or more, by weight, or that
77 the act of the child in driving the motor vehicle was such
78 that it would provide grounds for arrest for an offense
79 defined under the provisions of section two, article five,
80 of this chapter if the child were an adult, shall report
81 to the commissioner of the division of motor vehicles by
82 written statement within forty-eight hours the name and
83 address of the child.

84 (e) If applicable, the report shall include a description
85 of the specific offense with which the child could have
86 been charged if the child were an adult, and a copy of
87 the results of any secondary tests of blood, breath or
88 urine. The signing of the statement required to be
89 signed by this subsection shall constitute an oath or
90 affirmation by the person signing such statement that
91 the statements contained therein are true and that any

92 copy filed is a true copy. Such statement shall contain
93 upon its face a warning to the officer signing that to
94 willfully sign a statement containing false information
95 concerning any matter or thing, material or not
96 material, is false swearing and is a misdemeanor.

97 (f) Upon examination of the written statement of the
98 officer and any test results described in subsection (d)
99 of this section, if the commissioner determines that the
100 results of the tests indicate that at the time the test or
101 tests were administered the child had, in his or her
102 blood, an alcohol concentration of two hundredths of one
103 percent or more, by weight, but also determines that the
104 act of the child in driving the motor vehicle was not such
105 that it would provide grounds for arrest for an offense
106 defined under the provisions of subsections (a), (b), (c),
107 (d), (e), (f) or (g), section two, article five of this chapter
108 if the child were an adult, the commissioner shall make
109 and enter an order suspending the child's license to
110 operate a motor vehicle in this state. If the commissioner
111 determines that the act of the child in driving the motor
112 vehicle was such that it would provide grounds for
113 arrest for an offense defined under the provisions of
114 subsections (a), (b), (c), (d), (e), (f) or (g), section two,
115 article five of this chapter if the child were an adult,
116 the commissioner shall make and enter an order
117 revoking the child's license to operate a motor vehicle
118 in this state. A copy of such order shall be forwarded
119 to the child by registered or certified mail, return
120 receipt requested, and shall contain the reasons for the
121 suspension or revocation and describe the applicable
122 suspension or revocation periods provided for in section
123 two of this article. No suspension or revocation shall
124 become effective until ten days after receipt of a copy
125 of such order.

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

1 (a) If a person is convicted for an offense defined in
2 section two, article five of this chapter or for an offense
3 described in a municipal ordinance which has the same
4 elements as an offense described in said section two of

5 article five, because the person did drive a motor vehicle
6 while under the influence of alcohol, controlled substan-
7 ces or drugs, or the combined influence of alcohol or
8 controlled substances or drugs, or did drive a motor
9 vehicle while having an alcoholic concentration in his or
10 her blood of ten hundredths of one percent or more, by
11 weight, or did drive a motor vehicle while under the age
12 of twenty-one years with an alcohol concentration in his
13 blood of two hundredths of one percent or more, by
14 weight, but less than ten hundredths of one percent, by
15 weight, and if the person does not act to appeal the
16 conviction within the time periods described in subsec-
17 tion (b) of this section, the person's license to operate a
18 motor vehicle in this state shall be revoked or suspended
19 in accordance with the provisions of this section.

20 (b) The clerk of the court in which a person is
21 convicted for an offense described in section two, article
22 five of this chapter or for an offense described in a
23 municipal ordinance which has the same elements as an
24 offense described in said section two of article five, shall
25 forward to the commissioner a transcript of the
26 judgment of conviction. If the conviction is the judgment
27 of a magistrate court, the magistrate court clerk shall
28 forward the transcript when the person convicted has
29 not requested an appeal within twenty days of the
30 sentencing for such conviction. If the conviction is the
31 judgment of a mayor or police court judge or municipal
32 court judge, the clerk or recorder shall forward the
33 transcript when the person convicted has not perfected
34 an appeal within ten days from and after the date upon
35 which the sentence is imposed. If the conviction is the
36 judgment of a circuit court, the circuit clerk shall
37 forward the transcript when the person convicted has
38 not filed a notice of intent to file a petition for appeal
39 or writ of error within thirty days after the judgment
40 was entered.

41 (c) If, upon examination of the transcript of the
42 judgment of conviction, the commissioner shall deter-
43 mine that the person was convicted for an offense
44 described in section two, article five of this chapter or
45 for an offense described in a municipal ordinance which

46 has the same elements as an offense described in said
47 section two of article five, because the person did drive
48 a motor vehicle while under the influence of alcohol,
49 controlled substances or drugs, or the combined influ-
50 ence of alcohol or controlled substances or drugs, or did
51 drive a motor vehicle while having an alcoholic concen-
52 tration in his or her blood of ten hundredths of one
53 percent or more, by weight, the commissioner shall
54 make and enter an order revoking the person's license
55 to operate a motor vehicle in this state. If the commis-
56 sioner determines that the person was convicted of
57 driving a motor vehicle while under the age of twenty-
58 one years with an alcohol concentration in his blood of
59 two hundredths of one percent or more, by weight, but
60 less than ten hundredths of one percent, by weight, the
61 commissioner shall make and enter an order suspending
62 the person's license to operate a motor vehicle in this
63 state. The order shall contain the reasons for the
64 revocation or suspension and the revocation or suspen-
65 sion periods provided for in section two of this article.
66 Further, the order shall give the procedures for
67 requesting a hearing which is to be held in accordance
68 with the provisions of section two of this article. The
69 person shall be advised in the order that because of the
70 receipt of a transcript of the judgment of conviction by
71 the commissioner a presumption exists that the person
72 named in the transcript of the judgment of conviction
73 is the person named in the commissioner's order and
74 such constitutes sufficient evidence to support revoca-
75 tion or suspension and that the sole purpose for the
76 hearing held under this section is for the person
77 requesting the hearing to present evidence that he or she
78 is not the person named in the transcript of the
79 judgment of conviction. A copy of the order shall be
80 forwarded to the person by registered or certified mail,
81 return receipt requested. No revocation or suspension
82 shall become effective until ten days after receipt of a
83 copy of the order.

84 (d) The provisions of this section shall not apply if an
85 order reinstating the operator's license of the person has
86 been entered by the commissioner prior to the receipt
87 of the transcript of the judgment of conviction.

88 (e) For the purposes of this section, a person is
89 convicted when the person enters a plea of guilty or is
90 found guilty by a court or jury.

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

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked
3 or suspended under the provisions of section one of this
4 article or section seven, article five of this chapter, the
5 commissioner of motor vehicles shall stay the imposition
6 of the period of revocation or suspension and afford the
7 person an opportunity to be heard. The written request
8 must be filed with the commissioner in person or by
9 registered or certified mail, return receipt requested,
10 within ten days after receipt of a copy of the order of
11 revocation or suspension. The hearing shall be before the
12 commissioner or a hearing examiner retained by the
13 commissioner who shall rule on evidentiary issues and
14 submit proposed findings of fact and conclusions of law
15 for the consideration of said commissioner and all of the
16 pertinent provisions of article five, chapter twenty-nine-
17 a of this code shall apply: *Provided*, That in the case of
18 a resident of this state the hearing shall be held in the
19 county wherein the arrest was made in this state unless
20 the commissioner or the commissioner's authorized
21 deputy or agent and the person agree that the hearing
22 may be held in some other county.

23 (b) Any such hearing shall be held within twenty days
24 after the date upon which the commissioner received the
25 timely written request therefor, unless there is a
26 postponement or continuance. The commissioner may
27 postpone or continue any hearing on the commissioner's
28 own motion, or upon application for each person for good
29 cause shown. The commissioner shall adopt and imple-
30 ment by a procedural rule written policies governing the
31 postponement or continuance of any such hearing on the
32 commissioner's own motion or for the benefit of any law-
33 enforcement officer or any person requesting the
34 hearing, and such policies shall be enforced and applied
35 to all parties equally. For the purpose of conducting the
36 hearing, the commissioner shall have the power and
37 authority to issue subpoenas and subpoenas duces tecum

38 in accordance with the provisions of section one, article
39 five, chapter twenty-nine-a of this code: *Provided*, That
40 the notice of hearing to the appropriate law-enforcement
41 officers by registered or certified mail, return receipt
42 requested, shall constitute a subpoena to appear at the
43 hearing without the necessity of payment of fees by the
44 division of motor vehicles. All subpoenas and subpoenas
45 duces tecum shall be issued and served within the time
46 and for the fees and shall be enforced, as specified in
47 section one, article five of said chapter twenty-nine-a,
48 and all of the said section one provisions dealing with
49 subpoenas and subpoenas duces tecum shall apply to
50 subpoenas and subpoenas duces tecum issued for the
51 purpose of a hearing hereunder.

52 (c) Law-enforcement officers shall be compensated for
53 the time expended in their travel and appearance before
54 the commissioner by the law-enforcement agency by
55 whom they are employed at their regular rate if they
56 are scheduled to be on duty during said time or at their
57 regular overtime rate if they are scheduled to be off
58 duty during said time.

59 (d) The principal question at the hearing shall be
60 whether the person did drive a motor vehicle while
61 under the influence of alcohol, controlled substances or
62 drugs, or did drive a motor vehicle while having an
63 alcohol concentration in the person's blood of ten
64 hundredths of one percent or more, by weight, or did
65 refuse to submit to the designated secondary chemical
66 test, or did drive a motor vehicle while under the age
67 of twenty-one years with an alcohol concentration in his
68 blood of two hundredths of one percent or more, by
69 weight, but less than ten hundredths of one percent, by
70 weight.

71 The commissioner may propose a legislative rule in
72 compliance with the provisions of article three, chapter
73 twenty-nine-a of this code, which rule may provide that
74 if a person accused of driving a motor vehicle while
75 under the influence of alcohol, controlled substances or
76 drugs, or accused of driving a motor vehicle while
77 having an alcohol concentration in the person's blood of
78 ten hundredths of one percent or more, by weight, or

79 accused of driving a motor vehicle while under the age
80 of twenty-one years with an alcohol concentration in his
81 blood of two hundredths of one percent or more, by
82 weight, but less than ten hundredths of one percent, by
83 weight, intends to challenge the results of any secondary
84 chemical test of blood, breath or urine, or intends to
85 cross-examine the individual or individuals who admin-
86 istered the test or performed the chemical analysis, the
87 person shall, within an appropriate period of time prior
88 to the hearing, notify the commissioner in writing of
89 such intention. The rule may provide that when there
90 is a failure to comply with the notice requirement, the
91 results of the secondary test, if any, shall be admissible
92 as though the person and the commissioner had stipu-
93 lated the admissibility of such evidence. Any such rule
94 shall provide that the rule shall not be invoked in the
95 case of a person who is not represented by counsel unless
96 the communication from the commissioner to the person
97 establishing a time and place for the hearing also
98 informed the person of the consequences of the person's
99 failure to timely notify the commissioner of the person's
100 intention to challenge the results of the secondary
101 chemical test or cross-examine the individual or
102 individuals who administered the test or performed the
103 chemical analysis.

104 (e) In the case of a hearing wherein a person is
105 accused of driving a motor vehicle while under the
106 influence of alcohol, controlled substances or drugs, or
107 accused of driving a motor vehicle while having an
108 alcoholic concentration in the person's blood of ten
109 hundredths of one percent or more, by weight, or
110 accused of driving a motor vehicle while under the age
111 of twenty-one years with an alcohol concentration in his
112 or her blood of two hundredths of one percent or more,
113 by weight, but less than ten hundredths of one percent,
114 by weight, the commissioner shall make specific
115 findings as to (1) whether the arresting law-enforcement
116 officer had reasonable grounds to believe the person to
117 have been driving while under the influence of alcohol,
118 controlled substances or drugs, or while having an
119 alcoholic concentration in the person's blood of ten
120 hundredths of one percent or more, by weight, or to have

121 been driving a motor vehicle while under the age of
122 twenty-one years with an alcohol concentration in his or
123 her blood of two hundredths of one percent or more, by
124 weight, but less than ten hundredths of one percent, by
125 weight, (2) whether the person was lawfully placed
126 under arrest for an offense involving driving under the
127 influence of alcohol, controlled substances or drugs, or
128 was lawfully taken into custody for the purpose of
129 administering a secondary test, and (3) whether the
130 tests, if any, were administered in accordance with the
131 provisions of this article and article five of this chapter.

132 (f) If, in addition to a finding that the person did drive
133 a motor vehicle while under the influence of alcohol,
134 controlled substances or drugs, or did drive a motor
135 vehicle while having an alcoholic concentration in the
136 person's blood of ten hundredths of one percent or more,
137 by weight, or did drive a motor vehicle while under the
138 age of twenty-one years with an alcohol concentration in
139 his blood of two hundredths of one percent or more, by
140 weight, but less than ten hundredths of one percent, by
141 weight, the commissioner also finds by a preponderance
142 of the evidence that the person when so driving did an
143 act forbidden by law or failed to perform a duty imposed
144 by law, which act or failure proximately caused the
145 death of a person and was committed in reckless
146 disregard of the safety of others, and if the commis-
147 sioner further finds that the influence of alcohol,
148 controlled substances or drugs or the alcoholic concen-
149 tration in the blood was a contributing cause to the
150 death, the commissioner shall revoke the person's license
151 for a period of ten years: *Provided*, That if the commis-
152 sioner has previously suspended or revoked the person's
153 license under the provisions of this section or section one
154 of this article within the ten years immediately preced-
155 ing the date of arrest, the period of revocation shall be
156 for the life of the person.

157 (g) If, in addition to a finding that the person did drive
158 a motor vehicle while under the influence of alcohol,
159 controlled substances or drugs, or did drive a motor
160 vehicle while having an alcoholic concentration in the
161 person's blood of ten hundredths of one percent or more,

162 by weight, the commissioner also finds by a preponder-
163 ance of the evidence that the person when so driving did
164 an act forbidden by law or failed to perform a duty
165 imposed by law, which act or failure proximately caused
166 the death of a person, the commissioner shall revoke the
167 person's license for a period of five years: *Provided*, That
168 if the commissioner has previously suspended or revoked
169 the person's license under the provisions of this section
170 or section one of this article within the ten years
171 immediately preceding the date of arrest, the period of
172 revocation shall be for the life of the person.

173 (h) If, in addition to a finding that the person did drive
174 a motor vehicle while under the influence of alcohol,
175 controlled substances or drugs, or did drive a motor
176 vehicle while having an alcoholic concentration in the
177 person's blood of ten hundredths of one percent or more,
178 by weight, the commissioner also finds by a preponder-
179 ance of the evidence that the person when so driving did
180 an act forbidden by law or failed to perform a duty
181 imposed by law, which act or failure proximately caused
182 bodily injury to a person other than himself or herself,
183 the commissioner shall revoke the person's license for a
184 period of two years: *Provided*, That if the commissioner
185 has previously suspended or revoked the person's license
186 under the provisions of this section or section one of this
187 article within the ten years immediately preceding the
188 date of arrest, the period of revocation shall be ten years:
189 *Provided, however*, That if the commissioner has
190 previously suspended or revoked the person's license
191 more than once under the provisions of this section or
192 section one of this article within the ten years imme-
193 diately preceding the date of arrest, the period of
194 revocation shall be for the life of the person.

195 (i) If the commissioner finds by a preponderance of the
196 evidence that the person did drive a motor vehicle while
197 under the influence of alcohol, controlled substances or
198 drugs, or did drive a motor vehicle while having an
199 alcoholic concentration in the person's blood of ten
200 hundredths of one percent or more, by weight, or finds
201 that the person, being an habitual user of narcotic drugs
202 or amphetamine or any derivative thereof, did drive a

203 motor vehicle, or finds that the person knowingly
204 permitted the person's vehicle to be driven by another
205 person who was under the influence of alcohol, con-
206 trolled substances or drugs, or knowingly permitted the
207 person's vehicle to be driven by another person who had
208 an alcoholic concentration in his or her blood of ten
209 hundredths of one percent or more, by weight, the
210 commissioner shall revoke the person's license for a
211 period of six months: *Provided*, That if the commissioner
212 has previously suspended or revoked the person's license
213 under the provisions of this section or section one of this
214 article within the ten years immediately preceding the
215 date of arrest, the period of revocation shall be ten years:
216 *Provided, however*, That if the commissioner has
217 previously suspended or revoked the person's license
218 more than once under the provisions of this section or
219 section one of this article within the ten years imme-
220 diately preceding the date of arrest, the period of
221 revocation shall be for the life of the person.

222 (j) If, in addition to a finding that the person did drive
223 a motor vehicle while under the age of twenty-one years
224 with an alcohol concentration in his blood of two
225 hundredths of one percent or more, by weight, but less
226 than ten hundredths of one percent, by weight, the
227 commissioner also finds by a preponderance of the
228 evidence that the person when so driving did an act
229 forbidden by law or failed to perform a duty imposed
230 by law, which act or failure proximately caused the
231 death of a person, and if the commissioner further finds
232 that the alcoholic concentration in the blood was a
233 contributing cause to the death, the commissioner shall
234 revoke the person's license for a period of five years:
235 *Provided*, That if the commissioner has previously
236 suspended or revoked the person's license under the
237 provisions of this section or section one of this article
238 within the ten years immediately preceding the date of
239 arrest, the period of revocation shall be for the life of
240 the person.

241 (k) If, in addition to a finding that the person did drive
242 a motor vehicle while under the age of twenty-one years
243 with an alcohol concentration in his blood of two

244 hundredths of one percent or more, by weight, but less
245 than ten hundredths of one percent, by weight, the
246 commissioner also finds by a preponderance of the
247 evidence that the person when so driving did an act
248 forbidden by law or failed to perform a duty imposed
249 by law, which act or failure proximately caused bodily
250 injury to a person other than himself or herself, and if
251 the commissioner further finds that the alcoholic
252 concentration in the blood was a contributing cause to
253 the bodily injury, the commissioner shall revoke the
254 person's license for a period of two years: *Provided*, That
255 if the commissioner has previously suspended or revoked
256 the person's license under the provisions of this section
257 or section one of this article within the ten years
258 immediately preceding the date of arrest, the period of
259 revocation shall be ten years: *Provided, however*, That if
260 the commissioner has previously suspended or revoked
261 the person's license more than once under the provisions
262 of this section or section one of this article within the
263 ten years immediately preceding the date of arrest, the
264 period of revocation shall be for the life of the person.

265 (l) If the commissioner finds by a preponderance of the
266 evidence that the person did drive a motor vehicle while
267 under the age of twenty-one years with an alcohol
268 concentration in his blood of two hundredths of one
269 percent or more, by weight, but less than ten hun-
270 dredths of one percent, by weight, the commissioner
271 shall suspend the person's license for a period of sixty
272 days.

273 (m) For purposes of this section, where reference is
274 made to previous suspensions or revocations under this
275 section, the following types of criminal convictions or
276 administrative suspensions or revocations shall also be
277 regarded as suspensions or revocations under this
278 section or section one of this article:

279 (1) Any administrative revocation under the provi-
280 sions of the prior enactment of this section for conduct
281 which occurred within the ten years immediately
282 preceding the date of arrest.

283 (2) Any suspension or revocation on the basis of a

284 conviction under a municipal ordinance of another state
285 or a statute of the United States or of any other state
286 of an offense which has the same elements as an offense
287 described in section two, article five of this chapter, for
288 conduct which occurred within the ten years imme-
289 diately preceding the date of arrest.

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

294 (n) In the case of a hearing wherein a person is
295 accused of refusing to submit to a designated secondary
296 test, the commissioner shall make specific findings as to
297 (1) whether the arresting law-enforcement officer had
298 reasonable grounds to believe the person had been
299 driving a motor vehicle in this state while under the
300 influence of alcohol, controlled substances or drugs, (2)
301 whether the person was lawfully placed under arrest for
302 an offense relating to driving a motor vehicle in this
303 state while under the influence of alcohol, controlled
304 substances or drugs, (3) whether the person refused to
305 submit to the secondary test finally designated in the
306 manner provided in section four, article five of this
307 chapter, and (4) whether the person had been given a
308 written statement advising the person that the person's
309 license to operate a motor vehicle in this state would be
310 revoked for at least one year and up to life if the person
311 refused to submit to the test finally designated in the
312 manner provided in section four, article five of this
313 chapter.

314 (o) If the commissioner finds by a preponderance of
315 the evidence that (1) the arresting law-enforcement
316 officer had reasonable grounds to believe the person had
317 been driving a motor vehicle in this state while under
318 the influence of alcohol, controlled substances or drugs,
319 (2) the person was lawfully placed under arrest for an
320 offense relating to driving a motor vehicle in this state
321 while under the influence of alcohol, controlled substan-
322 ces or drugs, (3) the person refused to submit to the
323 secondary chemical test finally designated, and (4) the
324 person had been given a written statement advising the

325 person that the person's license to operate a motor
326 vehicle in this state would be revoked for a period of at
327 least one year and up to life if the person refused to
328 submit to the test finally designated, the commissioner
329 shall revoke the person's license to operate a motor
330 vehicle in this state for the periods specified in section
331 seven, article five of this chapter.

332 (p) If the commissioner finds to the contrary with
333 respect to the above issues, the commissioner shall
334 rescind his or her earlier order of revocation or shall
335 reduce the order of revocation to the appropriate period
336 of revocation under this section, or section seven, article
337 five of this chapter.

338 A copy of the commissioner's order made and entered
339 following the hearing shall be served upon the person
340 by registered or certified mail, return receipt requested.
341 During the pendency of any such hearing, the revocation
342 of the person's license to operate a motor vehicle in this
343 state shall be stayed.

344 If the commissioner shall after hearing make and
345 enter an order affirming the commissioner's earlier
346 order of revocation, the person shall be entitled to
347 judicial review as set forth in chapter twenty-nine-a of
348 this code, except that the commissioner shall not stay
349 enforcement of the order; and, pending the appeal, the
350 court may grant a stay or supersedeas of the order only
351 upon motion and hearing, and a finding by the court
352 upon the evidence presented, that there is a substantial
353 probability that the appellant shall prevail upon the
354 merits, and the appellant will suffer irreparable harm
355 if the order is not stayed: *Provided*, That in no event
356 shall the stay or supersedeas of the order exceed thirty
357 days.

358 (q) In any revocation or suspension pursuant to this
359 section, if the driver whose license is revoked or
360 suspended had not reached the driver's eighteenth
361 birthday at the time of the conduct for which the license
362 is revoked or suspended, the driver's license shall be
363 revoked or suspended until the driver's eighteenth
364 birthday, or the applicable statutory period of revoca-

365 tion or suspension prescribed by this section, whichever
366 is longer.

367 (r) Funds for this section's hearing and appeal process
368 may be provided from the drunk driving prevention
369 fund, as created by section sixteen, article fifteen,
370 chapter eleven of this code, upon application for such
371 funds to the commission on drunk driving prevention.

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

1 (a) The division of motor vehicles, in cooperation with
2 the department of health and human resources, the
3 division of alcoholism and drug abuse, shall propose a
4 legislative rule or rules for promulgation in accordance
5 with the provisions of chapter twenty-nine-a of this code,
6 establishing a comprehensive safety and treatment
7 program for persons whose licenses have been revoked
8 under the provisions of this article, or section seven,
9 article five of this chapter, or subsection (6), section
10 three, article five, chapter seventeen-b of this code, and
11 shall likewise establish the minimum qualifications for
12 mental health facilities or other public agencies or
13 private entities conducting the safety and treatment
14 program: *Provided*, That the commissioner may estab-
15 lish standards whereby the division will accept or
16 approve participation by violators in another treatment
17 program which provides the same or substantially
18 similar benefits as the safety and treatment program
19 established pursuant to this section. The program shall
20 include, but not be limited to, treatment of alcoholism,
21 alcohol and drug abuse, psychological counseling,
22 educational courses on the dangers of alcohol and drugs
23 as they relate to driving, defensive driving, or other
24 safety driving instruction, and other programs designed
25 to properly educate, train and rehabilitate the offender.

26 (b) (1) The division of motor vehicles, in cooperation
27 with the department of health and human resources, the
28 division of alcoholism and drug abuse, shall provide for
29 the preparation of an educational and treatment
30 program for each person whose license has been revoked
31 under the provisions of this article or section seven,

32 article five of this chapter, or subsection (6), section five,
33 article three, chapter seventeen-b of this code, which
34 shall contain the following: (A) A listing and evaluation
35 of the offender's prior traffic record; (B) characteristics
36 and history of alcohol or drug use, if any; (C) his or her
37 amenability to rehabilitation through the alcohol safety
38 program; and (D) a recommendation as to treatment or
39 rehabilitation, and the terms and conditions of the
40 treatment or rehabilitation. The program shall be
41 prepared by persons knowledgeable in the diagnosis of
42 alcohol or drug abuse and treatment. The cost of the
43 program shall be paid out of fees established by the
44 commissioner of motor vehicles in cooperation with the
45 department of health and human resources, division of
46 alcohol and drug abuse. These fees shall be deposited in
47 a special account administering the program, to be
48 designated the "driver's rehabilitation fund."

49 (2) The commissioner, after giving due consideration
50 to the program developed for the offender, shall
51 prescribe the necessary terms and conditions for the
52 reissuance of the license to operate a motor vehicle in
53 this state revoked under this article, or section seven,
54 article five of this chapter, or subsection (6), section five,
55 article three, chapter seventeen-b of this code, which
56 shall include successful completion of the educational,
57 treatment or rehabilitation program, subject to the
58 following:

59 (A) When the period of revocation is six months, the
60 license to operate a motor vehicle in this state shall not
61 be reissued until (i) at least ninety days have elapsed
62 from the date of the initial revocation, during which
63 time the revocation was actually in effect, (ii) the
64 offender has successfully completed the program, (iii) all
65 costs of the program and administration have been paid,
66 and (iv) all costs assessed as a result of a revocation
67 hearing have been paid.

68 (B) When the period of revocation is for a period of
69 years, the license to operate a motor vehicle in this state
70 shall not be reissued until (i) at least one half of such
71 time period has elapsed from the date of the initial
72 revocation, during which time the revocation was

73 actually in effect, (ii) the offender has successfully
74 completed the program, (iii) all costs of the program and
75 administration have been paid, and (iv) all costs assessed
76 as a result of a revocation hearing have been paid.

77 (C) When the period of revocation is for life, the
78 license to operate a motor vehicle in this state shall not
79 be reissued until (i) at least ten years have elapsed from
80 the date of the initial revocation, during which time the
81 revocation was actually in effect, (ii) the offender has
82 successfully completed the program, (iii) all costs of the
83 program and administration have been paid, and (iv) all
84 costs assessed as a result of a revocation hearing have
85 been paid.

86 (D) Notwithstanding any provision of this code or any
87 rule or regulation, any mental health facilities or other
88 public agencies or private entities conducting the safety
89 and treatment program when certifying that a person
90 has successfully completed a safety and treatment
91 program, shall only have to certify that such person has
92 successfully completed the program.

93 (c) (1) The division of motor vehicles, in cooperation
94 with the department of health and human resources,
95 division of alcoholism and drug abuse, shall provide for
96 the preparation of an educational program for each
97 person whose license has been suspended for sixty days
98 pursuant to the provisions of subsection (l), section two,
99 article five-a of this chapter. The educational program
100 shall consist of not less than twelve nor more than
101 eighteen hours of actual classroom time.

102 (2) When a sixty day period of suspension has been
103 ordered, the license to operate a motor vehicle shall not
104 be reinstated until (A) at least sixty days have elapsed
105 from the date of the initial suspension, during which
106 time the suspension was actually in effect, (B) the
107 offender has successfully completed the educational
108 program, and (C) all costs of the program and admin-
109 istration have been paid, and (D) all costs assessed as
110 a result of a suspension hearing have been paid.

111 (d) A required component of the rehabilitation
112 program provided for in subsection (b) and the educa-

113 tion program provided for in subsection (c) shall be
114 participation by the violator with a victim impact panel
115 program providing a forum for victims of alcohol and
116 drug related offenses and offenders to share first-hand
117 experiences on the impact of alcohol and drug related
118 offenses in their lives. The commissioner shall propose
119 legislative rules for promulgation in accordance with
120 the provisions of chapter twenty-nine-a of this code to
121 implement victim impact panels where appropriate
122 numbers of victims are available and willing to partic-
123 ipate, and shall establish guidelines for other innovative
124 programs which may be substituted where such victims
125 are not available, so as to assist persons whose licenses
126 have been suspended or revoked for alcohol and drug
127 related offenses to gain a full understanding of the
128 severity of their offenses in terms of the impact of such
129 offenses on victims and offenders. The legislative rules
130 proposed for promulgation by the commissioner shall
131 require, at a minimum, discussion and consideration of
132 the following:

133 (A) Economic losses suffered by victims or offenders;

134 (B) Death or physical injuries suffered by victims or
135 offenders;

136 (C) Psychological injuries suffered by victims or
137 offenders;

138 (D) Changes in the personal welfare or familial
139 relationships of victims or offenders; and

140 (E) Other information relating to the the impact of
141 alcohol and drug related offenses upon victims or
142 offenders.

143 Any rules promulgated pursuant to this subsection
144 shall contain provisions which ensure that any meetings
145 between victims and offenders shall be non-confronta-
146 tional and ensure the physical safety of the persons
147 involved.

**§17C-5A-3a. Establishment of and participation in the
motor vehicle alcohol test and lock
program.**

1 (a) The division of motor vehicles shall control and
2 regulate a motor vehicle alcohol test and lock program
3 for persons whose licenses have been revoked pursuant
4 to this article or the provisions of article five of this
5 chapter. Such program shall include the establishment
6 of a users fee for persons participating in the program
7 which shall be paid in advance and deposited into the
8 driver's rehabilitation fund. Except where specified
9 otherwise, the use of the term "program" in this section
10 refers to the motor vehicle alcohol test and lock
11 program. The commissioner of the division of motor
12 vehicles shall propose legislative rules for promulgation
13 in accordance with the provisions of chapter twenty-
14 nine-a of this code for the purpose of implementing the
15 provisions of this section. Such rules shall also prescribe
16 those requirements which, in addition to the require-
17 ments specified by this section for eligibility to partic-
18 ipate in the program, the commissioner determines
19 must be met to obtain the commissioner's approval to
20 operate a motor vehicle equipped with a motor vehicle
21 alcohol test and lock system. For purposes of this
22 section, a "motor vehicle alcohol test and lock system"
23 means a mechanical or computerized system which, in
24 the opinion of the commissioner, prevents the operation
25 of a motor vehicle when, through the system's assess-
26 ment of the blood alcohol content of the person operating
27 or attempting to operate the vehicle, such person is
28 determined to be under the influence of alcohol.

29 (b) (1) Any person whose license has been revoked
30 pursuant to this article or the provisions of article five
31 of this chapter is eligible to participate in the program
32 when such person's minimum revocation period as
33 specified by subsection (c) of this section has expired and
34 such person is enrolled in or has successfully completed
35 the safety and treatment program or presents proof to
36 the commissioner within sixty days of receiving appro-
37 val to participate by the commissioner that he or she is
38 enrolled in a safety and treatment program: *Provided,*
39 That no person whose license has been revoked pursuant
40 to the provisions of subsection (f) or (g), section two of
41 this article shall be eligible for participation in the
42 program: *Provided, however,* That any person whose

43 license is revoked pursuant to this article or pursuant
44 to article five of this chapter for an act which occurred
45 either while participating in or after successfully
46 completing the program shall not again be eligible to
47 participate in such program.

48 (2) Any person whose license has been suspended
49 pursuant to the provisions of subsection (1), section two
50 of this article for driving a motor vehicle while under
51 the age of twenty-one years with an alcohol concentra-
52 tion in his or her blood of two hundredths of one percent
53 or more, by weight, but less than ten hundredths of one
54 percent, by weight, is eligible to participate in the
55 program after thirty days have elapsed from the date
56 of the initial suspension, during which time the suspen-
57 sion was actually in effect: *Provided*, That in the case
58 of a person under the age of eighteen, the person shall
59 be eligible to participate in the program after thirty
60 days have elapsed from the date of the initial suspension,
61 during which time the suspension was actually in effect,
62 or after the person's eighteenth birthday, whichever is
63 later. Before the commissioner approves a person to
64 operate a motor vehicle equipped with a motor vehicle
65 alcohol test and lock system, the person must agree to
66 thereafter comply with the following conditions:

67 (A) If not already enrolled, the person will enroll in
68 and complete the educational program provided for in
69 subsection (c), section three of this article at the earliest
70 time that placement in the educational program is
71 available, unless good cause is demonstrated to the
72 commissioner as to why placement should be postponed;

73 (B) The person will pay all costs of the educational
74 program, any administrative costs, and all costs assessed
75 for any suspension hearing.

76 (3) Notwithstanding the provisions of this section to
77 the contrary, no person eligible to participate in the
78 program shall operate a motor vehicle unless approved
79 to do so by the commissioner.

80 (c) For purposes of this section, "minimum revocation
81 period" means the portion which has actually expired of
82 the period of revocation imposed by the commissioner

83 pursuant to this article or the provisions of article five
84 of this chapter upon a person eligible for participation
85 in the program as follows:

86 (1) For a person whose license has been revoked for
87 six months pursuant to subsection (i), section two of this
88 article, the minimum period of revocation is thirty days;

89 (2) For a person whose license has been revoked for
90 one year pursuant to section seven, article five of this
91 chapter, the minimum period of revocation is ninety
92 days;

93 (3) For a person whose license has been revoked for
94 any other period of time pursuant to section two of this
95 article or pursuant to section seven, article five of this
96 chapter, the minimum period of revocation is one year.

97 (e) Upon permitting an eligible person to participate
98 in the program, the commissioner shall issue to such
99 person, and such person shall be required to exhibit on
100 demand, a driver's license which shall reflect that such
101 person is restricted to the operation of a motor vehicle
102 which is equipped with an approved motor vehicle
103 alcohol test and lock system.

104 (f) Any person who has completed the safety and
105 treatment program and who has not violated the terms
106 required by the commissioner of such person's partici-
107 pation in the motor vehicle alcohol test and lock
108 program shall be entitled to the restoration of such
109 person's driver's license upon the expiration of:

110 (1) One hundred eighty days of the full revocation
111 period imposed by the commissioner for a person
112 described in subdivision (1), subsection (c) of this section;

113 (2) The full revocation period imposed by the commis-
114 sioner for a person described in subdivision (2), subsec-
115 tion (c) of this section;

116 (3) One year from the date a person described in
117 subdivision (3), subsection (c) of this section is permitted
118 to operate a motor vehicle by the commissioner;

119 (g) A person whose license has been suspended
120 pursuant to the provisions of subsection (l), section two

121 of this article, who has completed the educational
122 program, and who has not violated the terms required
123 by the commissioner of such person's participation in the
124 motor vehicle alcohol test and lock program shall be
125 entitled to the reinstatement of his or her driver's license
126 six months from the date the person is permitted to
127 operate a motor vehicle by the commissioner. When a
128 license has been reinstated pursuant this subsection, the
129 records ordering the suspension, records of any admi-
130 nistrative hearing, records of any blood alcohol test
131 results and all other records pertaining to the suspen-
132 sion shall be expunged by operation of law: *Provided,*
133 That a person shall be entitled to expungement under
134 the provisions of this subsection only once. The expun-
135 gement shall be accomplished by physically marking the
136 records to show that such records have been expunged,
137 and by securely sealing and filing the records. Expun-
138 gement shall have the legal effect as if the suspension
139 never occurred. The records shall not be disclosed or
140 made available for inspection, and in response to a
141 request for record information, the commissioner shall
142 reply that no information is available. Information from
143 the file may be used by the commissioner for research
144 and statistical purposes so long as the use of such
145 information does not divulge the identity of the person.

146 (h) In addition to any other penalty imposed by this
147 code, any person who operates a motor vehicle not
148 equipped with an approved motor vehicle alcohol test
149 and lock system during such person's participation in
150 the motor vehicle alcohol test and lock program is guilty
151 of a misdemeanor, and, upon conviction thereof, shall be
152 confined in the county jail for a period not less than one
153 month nor more than six months and fined not less than
154 one hundred dollars nor more than five hundred dollars.
155 Any person who assists another person required by the
156 terms of such other person's participation in the motor
157 vehicle alcohol test and lock program to use a motor
158 vehicle alcohol test and lock system in any effort to
159 bypass the system, is guilty of a misdemeanor, and, upon
160 conviction thereof, shall be confined in the county jail
161 not more than six months and fined not less than one
162 hundred dollars nor more than one thousand dollars.

**CHAPTER 17D. MOTOR VEHICLE
SAFETY RESPONSIBILITY ACT.**

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

1 (a) Any owner of a motor vehicle, subject to the
2 provisions of this article, who fails to have the required
3 security in effect at the time such vehicle is being
4 operated upon the roads or highways of this state, shall
5 have his or her driver license suspended by the
6 commissioner of the division of motor vehicles for a
7 period of thirty days and shall have his or her motor
8 vehicle registration revoked until such time as he or she
9 shall present to the division of motor vehicles the proof
10 of security required by this article: *Provided*, That if a
11 motor vehicle is registered in more than one name, the
12 driver license of only one of the owners shall be
13 suspended by the commissioner.

14 (b) Any person who knowingly operates a motor
15 vehicle upon the roads or highways of this state, which
16 does not have the security required by the provisions of
17 this article, shall have his or her driver license
18 suspended by the commissioner for a period of thirty
19 days.

20 (c) A person's driver license shall be suspended for a
21 period of thirty days, if the person is operating a motor
22 vehicle designated for off highway use upon the roads
23 and highways of this state without the required security
24 in effect, if the motor vehicle is not properly registered
25 and licensed, or if the required security was cancelled.

26 (d) The commissioner may withdraw a suspension of
27 a driver license provided that the commissioner is
28 satisfied that there was not a violation of the provisions
29 of required security related to operation of a motor
30 vehicle upon the roads or highways of this state by such
31 person. The commissioner may request additional
32 information as needed in order to make such
33 determination.

34 (e) No person shall have his or her driver license or

35 motor vehicle registration suspended or revoked under
36 any provisions of this section unless he or she shall first
37 be given written notice of such suspension or revocation
38 sent by certified mail, at least twenty days prior to the
39 effective date of such suspension or revocation, and upon
40 such person's written request, sent by certified mail, he
41 or she shall be afforded an opportunity for a hearing
42 thereupon as well as a stay of the commissioner's order
43 of suspension or revocation and an opportunity for
44 judicial review of such hearing. Upon affirmation of the
45 commissioner's order, the period of suspension or
46 revocation shall commence to run.

47 (f) Such suspended driver license shall be reinstated
48 following the period of suspension upon compliance with
49 the conditions set forth in this article and such revoked
50 motor vehicle registration shall be reissued only upon
51 lawful compliance with the provisions of this article.

52 (e) If the commissioner has previously suspended the
53 person's driver license under the provisions of this
54 section or section five of this article, the period of
55 suspension shall be for a period of ninety days.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-15. Implied consent requirements for commercial motor vehicles drivers.

1 (a) A person who drives a commercial motor vehicle
2 within this state is deemed to have given consent,
3 subject to provisions of section four, article five, chapter
4 seventeen-c of this code, to take a test or tests of that
5 person's blood, breath or urine for the purpose of
6 determining that person's alcohol concentration, or the
7 presence of other drugs.

8 (b) A test or tests may be administered at the direction
9 of a law-enforcement officer, who after stopping or
10 detaining the commercial motor vehicle driver, has
11 reasonable cause to believe that driver was driving a
12 commercial motor vehicle while having alcohol in his or
13 her system.

14 (c) A person requested to submit to a test as provided
15 in subsection (a) of this section must be warned by the
16 law-enforcement officer requesting the test that a
17 refusal to submit to the test will result in that person
18 being disqualified from operating a commercial motor
19 vehicle under section fifteen of this article.

20 (d) If the person refuses testing, or submits to a test
21 which discloses an alcohol concentration of four hun-
22 dredths or more, that law-enforcement officer must
23 submit a sworn report to the department of motor
24 vehicles certifying that the test was requested pursuant
25 to subsection (a) of this section and that the person
26 refused to submit to testing, or submitted to a test which
27 disclosed an alcohol concentration of four hundredths or
28 more.

29 (e) Upon receipt of the sworn report of a law-
30 enforcement officer submitted under subsection (d) of
31 this section, the commissioner must disqualify the driver
32 from driving a commercial motor vehicle under section
33 thirteen of this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT; MOTORBOATING; LITTER CONTROL.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

1 (a) No person shall operate a motorboat or other vessel
2 or manipulate any water skis, surfboard or similar
3 device in a reckless or negligent manner so as to
4 endanger the life, limb or property of any person.

5 (b) No person shall operate any motorboat or vessel,
6 or manipulate any water skis, surfboard or similar
7 device while under the influence of alcohol or a
8 controlled substance or drug, under the combined
9 influence of alcohol and any controlled substance or any
10 other drug, or while having an alcohol concentration in
11 his blood of ten hundredths of one percent or more, by
12 weight.

13 (c) It shall be the duty of the operator of a vessel

14 involved in a collision, accident or other casualty, so far
15 as he can do so without serious danger to his own vessel,
16 crew and passengers (if any), to render to other persons
17 affected by the collision, accident or other casualty such
18 assistance as may be practicable and as may be
19 necessary in order to save them from or minimize any
20 danger caused by the collision, accident or other
21 casualty, and also to give his name, address and
22 identification of his vessel in writing to any person
23 injured and to the owner of any property damaged in
24 the collision, accident or other casualty.

25 (d) The operator of a vessel involved in a collision,
26 accident or other casualty shall file an accident report
27 with the director if the incident results in a loss of life,
28 in a personal injury that requires medical treatment
29 beyond first aid or in excess of five hundred dollars
30 damage to a vessel or other property. The report shall
31 be made on such forms and contain such information as
32 prescribed by the director. Upon a request duly made
33 by an authorized official or agency of the United States,
34 any information compiled or otherwise available to the
35 director pursuant to this subsection shall be transmitted
36 to the official or agency.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-6. Duty of prosecuting attorneys and peace officers to enforce chapter; police powers of inspectors.

1 It shall be the duty of the department of public safety
2 and the sheriffs of the counties in West Virginia to make
3 arrests and the duty of the prosecuting attorneys of the
4 several counties to prosecute all violations of this
5 chapter, and the commission employees designated by it
6 as inspectors shall have all the lawful powers of peace
7 officers to enforce this chapter in any county or city of
8 this state. If, in the course of enforcing the provisions
9 of this chapter, a commission employee designated by it
10 as an inspector shall have reasonable cause to believe
11 that a driver has been operating a vehicle regulated by

12 this chapter in violation of section two, article five,
 13 chapter seventeen-c of this code or section fourteen,
 14 article one, chapter seventeen-e of this code, the
 15 inspector may detain the driver until a member of the
 16 division of public safety, a sheriff or deputy sheriff, or
 17 a member of a municipal law-enforcement agency is
 18 summoned to investigate the suspected violation and
 19 determine whether the person should be arrested and a
 20 secondary test of blood, breath or urine should be
 21 administered.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
 2 providing automobile liability insurance in this state
 3 insuring a private passenger automobile shall, after the
 4 policy has been in effect for sixty days, or in case of
 5 renewal effective immediately, issue or cause to issue a
 6 notice of cancellation during the term of the policy
 7 except for one or more of the following specified reasons:

8 (a) The named insured fails to discharge when due any
 9 of his obligations in connection with the payment of
 10 premium for such policy or any installment thereof;

11 (b) The policy was obtained through material
 12 misrepresentation;

13 (c) The insured violates any of the material terms and
 14 conditions of the policy;

15 (d) The named insured or any other operator, either
 16 resident in the same household or who customarily
 17 operates an automobile insured under such policy:

18 (1) Has had his operator's license suspended or
 19 revoked during the policy period including suspension
 20 or revocation for failure to comply with the provisions
 21 of article five-a, chapter seventeen-c of this code,
 22 regarding consent for chemical test for intoxication:
 23 *Provided*, That when a license is suspended for sixty
 24 days by the commissioner of motor vehicles because a
 25 person did drive a motor vehicle while under the age
 26 of twenty-one years with an alcohol concentration in his
 27 blood of two hundredths of one percent or more, by

28 weight, but less than ten hundredths of one percent, by
29 weight, pursuant to subsection (1), section two, article
30 five-a, chapter seventeen-c of this code, such suspension
31 shall not be grounds for cancellation; or

32 (2) Is or becomes subject to epilepsy or heart attacks,
33 and such individual cannot produce a certificate from
34 a physician testifying to his ability to operate a motor
35 vehicle.

36 (e) The named insured or any other operator, either
37 resident in the same household or who customarily
38 operates an automobile insured under such policy is
39 convicted of or forfeits bail during the policy period for
40 any of the following:

41 (1) Any felony or assault involving the use of a motor
42 vehicle;

43 (2) Negligent homicide arising out of the operation of
44 a motor vehicle;

45 (3) Operating a motor vehicle while under the
46 influence of alcohol or of any controlled substance or
47 while having an alcohol concentration in his blood of ten
48 one hundredths of one percent (.10) or more by weight;

49 (4) Leaving the scene of a motor vehicle accident in
50 which the insured is involved without reporting as
51 required by law;

52 (5) Theft of a motor vehicle or the unlawful taking of
53 a motor vehicle;

54 (6) Making false statements in an application for a
55 motor vehicle operator's license;

56 (7) A third violation, committed within a period of
57 twelve months, of any moving traffic violation which
58 constitutes a misdemeanor, whether or not the violations
59 were repetitious of the same offense or were different
60 offenses. Notwithstanding any of the provisions of this
61 section to the contrary, no insurance company may
62 cancel a policy of automobile liability insurance without
63 first giving the insured thirty days' notice of its
64 intention to cancel: *Provided*, That cancellation of the
65 insurance policy by the insurance carrier for failure of

66 consideration to be paid by the insured upon initial
67 issuance of the insurance policy is effective upon the
68 expiration of ten days' notice of cancellation to the
69 insured.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-8. Taking a child into custody; detention hearing; counsel.

1 (a) In proceedings instituted by the filing of a juvenile
2 petition the circuit court may enter an order directing
3 that a child be taken into custody only if one of the
4 following conditions exist: (1) The petition shows that
5 grounds exist for the arrest of an adult in identical
6 circumstances; (2) the health, safety and welfare of the
7 child demand such custody; (3) the child is a fugitive
8 from a lawful custody or commitment order of a juvenile
9 court; or (4) the child has a record of willful failure to
10 appear at juvenile proceedings, and custody is necessary
11 to assure his or her presence before the court. A
12 detention hearing shall be held without delay by the
13 judge, juvenile referee or magistrate authorized to
14 conduct such hearing, and in no event shall the delay
15 exceed the next succeeding judicial day, excluding
16 Saturday, and such child shall be released on recogniz-
17 ance to his or her parent, guardian or custodian unless
18 findings are made as specified in subsection (d) of this
19 section.

20 (b) Absent a warrant or court order, a child may be
21 taken into custody by a law-enforcement official only if
22 one of the following conditions exist: (1) Grounds exist
23 for the arrest of an adult in identical circumstances; (2)
24 emergency conditions exist which in the judgment of the
25 officer pose imminent danger to the health, safety and
26 welfare of the child; (3) the official has reasonable
27 grounds to believe that the child is a runaway without
28 just cause from the child's parents or legal custodian
29 and the health, safety and welfare of the child is
30 endangered; (4) the child is a fugitive from a lawful
31 custody or commitment order of a juvenile court; or (5)
32 the official has reasonable grounds to believe the child

33 to have been driving a motor vehicle with any amount
34 of alcohol in his or her blood. Except as is otherwise
35 provided in section six-a, article five, chapter seventeen-
36 c of this code, upon taking a child into custody, with or
37 without a warrant or court order, the official shall: (i)
38 Immediately notify the child's parent, custodian or, if
39 the parent or custodian cannot be located, a close
40 relative; (ii) release the child into the custody of his or
41 her parent or custodian unless the circumstances
42 warrant otherwise; (iii) refer the matter to the prosecut-
43 ing attorney, state division or probation officer for
44 proceedings under this article; and (iv) if a child is being
45 held in custody absent a warrant or court order, cause
46 a warrant, petition or order, as the case may be, to be
47 immediately issued authorizing the detention of such
48 child.

49 If a child is taken into custody pursuant to subdivision
50 (2) or (3) hereunder the state division shall be imme-
51 diately notified. Any child taken into custody as a
52 runaway shall not be held in custody more than forty-
53 eight hours without a court order, or more than seven
54 days in any event. Such child shall not be confined in
55 any facility wherein persons are being detained for an
56 offense which would be a crime if committed by an
57 adult.

58 (c) In the event that a child is delivered into the
59 custody of a sheriff or director of a detention facility,
60 such sheriff or director shall immediately notify the
61 court or referee. Said sheriff or director shall imme-
62 diately provide to every child who is delivered into his
63 or her custody, a written statement explaining the
64 child's right to a prompt detention hearing, his or her
65 right to counsel including appointed counsel if he cannot
66 afford counsel and his or her privilege against self-
67 incrimination. In all cases when a child is delivered into
68 custody, the child shall be released to his or her parent,
69 guardian or custodian by the end of the next succeeding
70 judicial day, excluding Saturday, after being delivered
71 into such custody, unless the child has been placed in
72 detention pursuant to subsection (d) of this section.

73 (d) A child in custody must immediately be taken

74 before a referee or judge of the circuit court and in no
 75 event shall a delay exceed the next succeeding judicial
 76 day: *Provided*, That if there be no judge or referee then
 77 available in the county, then such child shall be taken
 78 immediately before any magistrate in the county for the
 79 sole purpose of holding a detention hearing. The judge,
 80 referee or magistrate shall inform the child of his or her
 81 right to remain silent, that any statement may be used
 82 against him or her and of his or her right to counsel,
 83 and no interrogation shall be made without the presence
 84 of a parent or counsel. If the child or his or her parent,
 85 guardian or custodian has not retained counsel, counsel
 86 shall be appointed as soon as practicable. The referee,
 87 judge or magistrate shall hear testimony concerning the
 88 circumstances for taking the child into custody and the
 89 possible need for detention in accordance with section
 90 two, article five-a of this chapter. The sole mandatory
 91 issue at the detention hearing shall be whether the child
 92 shall be detained pending further court proceedings.
 93 The court shall, if advisable, and if the health, safety
 94 and welfare of the child will not be endangered thereby,
 95 release the child on recognizance to his or her parents,
 96 custodians or an appropriate agency; however, if
 97 warranted, the court may require bail, except that bail
 98 may be denied in any case where bail could be denied
 99 if the accused were an adult.

100 The judge of the circuit court or referee may, in
 101 conjunction with the detention hearing, conduct a
 102 preliminary hearing pursuant to section nine, article
 103 five of this chapter: *Provided*, That all parties are
 104 prepared to proceed and the child has counsel during
 105 such hearing.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

1 (a) A person shall not:

2 (1) Appear in a public place in an intoxicated
3 condition;

4 (2) Drink alcoholic liquor in a public place;

5 (3) Drink alcoholic liquor in a motor vehicle on any
6 highway, street, alley or in a public garage;

7 (4) Tender a drink of alcoholic liquor to another
8 person in a public place;

9 (5) Possess alcoholic liquor in the amount in excess of
10 ten gallons, in containers not bearing stamps or seals of
11 the commission, without having first obtained written
12 authority from the said commission therefor; or

13 (6) Possess any alcoholic liquor which was manufac-
14 tured or acquired in violation of the provisions of this
15 chapter.

16 (b) Any law-enforcement officer may arrest without a
17 warrant and take the following actions against a person
18 who, in his or her presence, violates subdivision (1) of
19 subsection (a) of this section: (1) If there is some
20 nonintoxicated person who will accept responsibility for
21 the intoxicated person, the officer may issue the
22 intoxicated person a citation specifying a date for
23 appearance before a judicial officer and release him to
24 the custody of the individual accepting responsibility:
25 *Provided*, That the issuance of a citation shall be used
26 whenever feasible; (2) if it does not impose an undue
27 burden on the officer he may, after issuance of such a
28 citation transport the individual to the individual's
29 present residence or arrange for such transportation; (3)
30 if the individual is incapacitated or the alternatives
31 provided in subdivisions (1) and (2) of this subsection are
32 not possible, the officer shall transport or arrange for
33 transportation to the appropriate judicial officer as
34 defined by section seventeen, article eleven, chapter
35 twenty-seven of the code; or (4) if the individual is
36 incapacitated and, in the law-enforcement officer's
37 judgment, is in need of acute medical attention, that
38 officer shall arrange for transportation by ambulance or
39 otherwise to a hospital emergency room. The officer
40 shall accompany the individual until he is discharged

41 from the emergency room or admitted to the hospital.
42 If the individual is released from the emergency room,
43 the officer may proceed as described in subdivisions (1),
44 (2) and (3) of this subsection. If the individual is
45 admitted to the hospital, the officer shall issue a citation
46 to the individual specifying a date for appearance before
47 a judicial officer.

48 (c) Upon presentment before the proper judicial
49 officer the law-enforcement officer shall serve as the
50 chief complaining witness. The judicial officer must
51 make a finding that there is probative evidence that the
52 individual may be guilty of the charge of public
53 intoxication. If such evidence is not presented, the
54 charge shall be dismissed and the individual released.
55 If sufficient evidence is presented, the judicial officer
56 shall issue a warrant and establish bail or issue a
57 summons to the individual. Once a warrant or summons
58 has been issued, the following actions may be taken: (1)
59 If the individual is no longer incapacitated, he may be
60 released; (2) if the individual is still incapacitated but
61 a nonintoxicated person is available to accept responsi-
62 bility for him, he may be released to the responsible
63 person; or (3) if the individual is still incapacitated and
64 no responsible person is available, the judicial officer
65 shall proceed under the provisions of article five or six-
66 a, chapter twenty-seven of this code.

67 (d) Any law-enforcement officer is hereby authorized
68 and empowered to arrest and hold in custody, without
69 a warrant, until complaint may be made before a
70 judicial officer and a warrant or summons issued, any
71 person who in the presence of the law-enforcement
72 officer violates any one or more of subdivisions (1)
73 through (6), subsection (a) of this section: *Provided*, That
74 the law-enforcement officer may use reasonable force to
75 prevent harm to himself, the individual arrested or
76 others in carrying out the provisions of this section.

77 (e) Any person who violates subdivision (1), subsection
78 (a) of this section shall be guilty of a misdemeanor, and,
79 upon conviction thereof, shall be sentenced by a judicial
80 officer in accordance with the following options: (1)
81 Upon first offense, a fine of not less than five dollars nor

82 more than one hundred dollars and not more than sixty
83 days in jail or completion of an alcohol education
84 program of not more than six hours' duration at the
85 nearest community mental health — mental retardation
86 center. If the individual, prior to conviction, agrees to
87 voluntarily attend the alcohol education program, the
88 judicial officer may delay sentencing until the program
89 is completed and upon completion may dismiss the
90 charges; (2) upon conviction for a second offense, a fine
91 of not less than five dollars nor more than one hundred
92 dollars and not more than sixty days in jail or comple-
93 tion of not less than five hours of alcoholism counseling
94 at the nearest community mental health — mental
95 retardation center; (3) upon third and subsequent
96 convictions, a fine of not less than five dollars nor more
97 than one hundred dollars and not less than five nor more
98 than sixty days in jail or a fine of not less than five
99 dollars nor more than one hundred dollars and comple-
100 tion of not less than five hours of alcoholism counseling
101 at the nearest community mental health — mental
102 retardation center: *Provided*, That three convictions for
103 public intoxication within the preceding six months
104 shall be considered evidence of alcoholism: *Provided*,
105 *however*, That for the educational counseling programs
106 described in this subsection the community mental
107 health — mental retardation center may charge each
108 participant its usual and customary fee and shall certify
109 in writing to the referring judicial officer the comple-
110 tion or failure to complete the prescribed program for
111 each individual.

112 (f) A person charged with a violation of subdivision
113 (1), subsection (a) of this section who is an alcoholic shall
114 be found not guilty by reason of addiction and proper
115 disposition made pursuant to articles five and six-a,
116 chapter twenty-seven of this code.

117 (g) Any person who violates subdivision (2), or (3),
118 subsection (a) of this section shall be guilty of a
119 misdemeanor, and, upon conviction thereof, shall be
120 fined not less than five nor more than one hundred
121 dollars, or confined in jail not more than sixty days, or
122 both such fine and imprisonment. Any person who

123 violates subdivision (4) or (5), subsection (a) of this
124 section shall be guilty of a misdemeanor, and, upon
125 conviction, shall be fined not less than one hundred
126 dollars nor more than five hundred dollars, or confined
127 in jail not less than sixty days nor more than twelve
128 months, or both such fine and imprisonment, and, upon
129 conviction of second or subsequent offense, he shall be
130 guilty of a felony and shall be confined in the peniten-
131 tiary of this state for a period of not less than one year
132 nor more than three years.

PRESENTED TO THE

GOVERNOR

Date 3/30/94

Time 12:55 PM