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**H. B. 4500**

(By Delegates Savilla, Householder, Sobonya, Andes and  
Ellington)

[Introduced February 13, 2012; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,  
1931, as amended, relating to creating "Andrea's Law"; and  
increasing certain penalties for driving under the influence  
of alcohol, controlled substances or drugs.

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

That §17C-5-2 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

- (a) Any person who:
  - (1) Drives a vehicle in this state while he or she:
    - (A) Is under the influence of alcohol;
    - (B) Is under the influence of any controlled substance;

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

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

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

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

10 (3) Commits the act or failure in reckless disregard of the  
11 safety of others and when the influence of alcohol, controlled  
12 substances or drugs is shown to be a contributing cause to the  
13 death, is guilty of a felony and, upon conviction thereof, shall be  
14 imprisoned in a state correctional facility for ~~not less than two~~  
15 ~~years nor more than ten years~~ and shall be fined ~~not less than~~  
16 ~~\$1,000 nor more than \$3,000~~ life.

17 (b) Any person who:

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

19 (A) Is under the influence of alcohol;

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

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

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

24 (E) Has an alcohol concentration in his or her blood of eight

1 hundredths of one percent or more, by weight; and

2 (2) While driving does any act forbidden by law or fails to  
3 perform any duty imposed by law in the driving of the vehicle,  
4 which act or failure proximately causes the death of any person  
5 within one year next following the act or failure, is guilty of a  
6 ~~misdemeanor~~ felony and, upon conviction thereof, shall be ~~confined~~  
7 ~~in jail for not less than ninety days nor more than one year and~~  
8 ~~shall be fined not less than \$500 nor more than \$1,000~~ imprisoned  
9 in a state correctional facility for not less than ten nor more  
10 than forty years.

11 (c) Any person who:

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

13 (A) Is under the influence of alcohol;

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

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

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

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

20 (2) While driving does any act forbidden by law or fails to  
21 perform any duty imposed by law in the driving of the vehicle,  
22 which act or failure proximately causes bodily injury to any person  
23 other than himself or herself, is guilty of a ~~misdemeanor~~ felony  
24 and, upon conviction thereof, shall be ~~confined in jail for not~~

1 ~~less than one day nor more than one year, which jail term is to~~  
2 ~~include actual confinement of not less than twenty-four hours, and~~  
3 ~~shall be fined not less than \$200 nor more than \$1,000 in a state~~  
4 ~~correctional facility for not less than three nor more than fifteen~~  
5 ~~years.~~

6 (d) Any person who:

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

8 (A) Is under the influence of alcohol;

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

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

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

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

16 (2) Is guilty of a misdemeanor and, upon conviction thereof,  
17 except as provided in section two-b of this article, shall be  
18 confined in jail for ~~up to six months and shall be fined not less~~  
19 ~~than \$100 nor more than \$500 not less than two days nor more than~~  
20 ~~six months, which jail term is to include actual confinement of not~~  
21 ~~less than twenty-four hours, and shall be fined not less than \$200~~  
22 ~~nor more than \$1,000.~~ A person sentenced pursuant to this  
23 subdivision shall receive credit for any period of actual  
24 confinement he or she served upon arrest for the subject offense.

1           (e) Any person who drives a vehicle in this state while he or  
2 she has an alcohol concentration in his or her blood of fifteen  
3 hundredths of one percent or more, by weight, is guilty of a  
4 misdemeanor and, upon conviction thereof, shall be confined in jail  
5 for not less than ~~two days nor more than six months, which jail~~  
6 ~~term is to include actual confinement of not less than twenty-four~~  
7 ~~hours, and shall be fined not less than \$200 nor more than \$1,000~~  
8 six months nor more than one year, which jail term is to include  
9 actual confinement of not less than seventy-two hours, and shall be  
10 fined not less than \$1,000 nor more than \$5,000. A person  
11 sentenced pursuant to this subdivision shall receive credit for any  
12 period of actual confinement he or she served upon arrest for the  
13 subject offense.

14           (f) Any person who, being an habitual user of narcotic drugs  
15 or amphetamine or any derivative thereof, drives a vehicle in this  
16 state is guilty of a misdemeanor and, upon conviction thereof,  
17 shall be confined in jail for not less than ~~one day nor more than~~  
18 ~~six months, which jail term is to include actual confinement of not~~  
19 ~~less than twenty-four hours, and shall be fined not less than \$100~~  
20 ~~nor more than \$500~~ two days nor more than six months, which jail  
21 term is to include actual confinement of not less than twenty-four  
22 hours, and shall be fined not less than \$200 nor more than \$1,000.  
23 A person sentenced pursuant to this subdivision shall receive  
24 credit for any period of actual confinement he or she served upon

1 arrest for the subject offense.

2 (g) Any person who:

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

5 (A) Is under the influence of alcohol;

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

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

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

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

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

18 (h) Any person who knowingly permits his or her vehicle to be  
19 driven in this state by any other person who is an habitual user of  
20 narcotic drugs or amphetamine or any derivative thereof is guilty  
21 of a misdemeanor and, upon conviction thereof, shall be confined in  
22 jail for not ~~more than six months~~ and shall be ~~fined not less than~~  
23 ~~\$100 nor more than \$500~~ less than two days nor more than six  
24 months, which jail term is to include actual confinement of not

1 less than twenty-four hours, and shall be fined not less than \$200  
2 nor more than \$1,000.

3 (i) Any person under the age of twenty-one years who drives a  
4 vehicle in this state while he or she has an alcohol concentration  
5 in his or her blood of two hundredths of one percent or more, by  
6 weight, but less than eight hundredths of one percent, by weight,  
7 for a first offense under this subsection is guilty of a  
8 misdemeanor and, upon conviction thereof, ~~fined not less than \$25~~  
9 ~~nor more than \$100~~ shall be confined in jail for not less than two  
10 days nor more than six months, which jail term is to include actual  
11 confinement of not less than twenty-four hours, and shall be fined  
12 not less than \$200 nor more than \$1,000. For a second or  
13 subsequent offense under this subsection, the person is guilty of  
14 a misdemeanor and, upon conviction thereof, shall be confined in  
15 jail for ~~twenty-four hours and shall be fined not less than \$100~~  
16 ~~nor more than \$500~~ not less than six months nor more than one year,  
17 which jail term is to include actual confinement of not less than  
18 seventy-two hours, and shall be fined not less than \$1,000 nor more  
19 than \$5,000. A person who is charged with a first offense under  
20 the provisions of this subsection may move for a continuance of the  
21 proceedings, from time to time, to allow the person to participate  
22 in the Motor Vehicle Alcohol Test and Lock Program as provided in  
23 section three-a, article five-a of this chapter. Upon successful  
24 completion of the program, the court shall dismiss the charge

1 against the person and expunge the person's record as it relates to  
2 the alleged offense. In the event the person fails to successfully  
3 complete the program, the court shall proceed to an adjudication of  
4 the alleged offense. A motion for a continuance under this  
5 subsection may not be construed as an admission or be used as  
6 evidence. A person arrested and charged with an offense under the  
7 provisions of this subsection or subsection (a), (b), (c), (d),  
8 (e), (f), (g) or (h) of this section may not also be charged with  
9 an offense under this subsection arising out of the same  
10 transaction or occurrence.

11 (j) Any person who:

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

13 (A) Is under the influence of alcohol;

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

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

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

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

20 (2) The person while driving has on or within the motor  
21 vehicle one or more other persons who are unemancipated minors who  
22 have not reached their sixteenth birthday is guilty of a  
23 misdemeanor and, upon conviction thereof, shall be confined in jail  
24 for not less than two days nor more than twelve months, which jail



1 term is to include actual confinement of not less than forty-eight  
2 hours and shall be fined not less than ~~\$200 nor more than \$1,000~~  
3 six months nor more than one year, which jail term is to include  
4 actual confinement of not less than seventy-two hours, and shall  
5 be fined not less than \$1,000 nor more than \$5,000.

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

12 (l) A person violating any provision of subsection (b), (c),  
13 (d), (e), (f), (g) or (i) of this section, for the third or any  
14 subsequent offense under this section, is guilty of a felony and,  
15 upon conviction thereof, shall be imprisoned in a state  
16 correctional facility for not less than ~~one~~ three nor more than  
17 ~~three~~ ten years and the court may, in its discretion, impose a fine  
18 of not less than ~~\$3,000~~ \$5,000 nor more than ~~\$5,000~~ \$15,000.

19 (m) For purposes of subsections (k) and (l) of this section  
20 relating to second, third and subsequent offenses, the following  
21 events shall be regarded as offenses under this section:

22 (1) Any conviction under the provisions of subsection (a),  
23 (b), (c), (d), (e), (f) or (g) of this section or under a prior  
24 enactment of this section for an offense which occurred within the

1 ten-year period immediately preceding the date of arrest in the  
2 current proceeding;

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

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

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

1 the person has previously had a period of conditional probation  
2 imposed pursuant to section two-b of this article.

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

10 (p) For purposes of this section, the term "controlled  
11 substance" has the meaning ascribed to it in chapter sixty-a of  
12 this code.

13 (q) The sentences provided in this section upon conviction for  
14 a violation of this article are mandatory and are not subject to  
15 suspension or probation: *Provided*, That the court may apply the  
16 provisions of article eleven-a, chapter sixty-two of this code to  
17 a person sentenced or committed to a term of one year or less for  
18 a first offense under this section: *Provided further*, That the  
19 court may impose a term of conditional probation pursuant to  
20 section two-b of this article to persons adjudicated thereunder.  
21 An order for home detention by the court pursuant to the provisions  
22 of article eleven-b of said chapter may be used as an alternative  
23 sentence to any period of incarceration required by this section  
24 for a first or subsequent offense: *Provided, however*, That for any

1 period of home incarceration ordered for a person convicted of  
2 second offense under this section, electronic monitoring shall be  
3 required for no fewer than five days of the total period of home  
4 confinement ordered and the offender may not leave home for those  
5 five days notwithstanding the provisions of section five, article  
6 eleven-b, chapter sixty-two of this code: *Provided further*, That  
7 for any period of home incarceration ordered for a person convicted  
8 of a third or subsequent violation of this section, electronic  
9 monitoring shall be included for no fewer than ten days of the  
10 total period of home confinement ordered and the offender may not  
11 leave home for those ten days notwithstanding section five, article  
12 eleven-b, chapter sixty-two of this code.

NOTE: The purpose of this bill, to be known as "Andrea's Law",  
is to increase penalties for causing death or injury while driving  
under the influence of alcohol or drugs.

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