

1 **ENGROSSED**

2 **H. B. 2664**

3
4 (By Delegates Sobonya, Butler, McCuskey, Stansbury, E. Nelson, Ihle,
5 Householder, Ellington, Westfall, Marcum and Byrd)

6
7 [Introduced February 9, 2015; referred to the
8 Committee on the Judiciary then Finance.]

9
10
11 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating
12 to creating "Andrea and Willy's Law"; and increasing certain penalties for driving under the
13 influence of alcohol, controlled substances or drugs.

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

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

17 ~~ARTICLE 5. SERIOUS TRAFFIC OFFENSES~~

18 ~~§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.~~

19 ~~— (a) Any person who:~~

20 ~~— (1) Drives a vehicle in this state while he or she:~~

21 ~~— (A) Is under the influence of alcohol;~~

22 ~~— (B) Is under the influence of any controlled substance;~~

23 ~~— (C) Is under the influence of any other drug;~~

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

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

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

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

13 ~~——(b) Any person who:~~

14 ~~——(1) Drives a vehicle in this state while he or she:~~

15 ~~——(A) Is under the influence of alcohol;~~

16 ~~——(B) Is under the influence of any controlled substance;~~

17 ~~——(C) Is under the influence of any other drug;~~

18 ~~——(D) Is under the combined influence of alcohol and any controlled substance or any other~~
19 ~~drug;~~

20 ~~——(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or~~
21 ~~more, by weight; and~~

22 ~~——(2) While driving does any act forbidden by law or fails to perform any duty imposed by law~~

1 in the driving of the vehicle, which act or failure proximately causes the death of any person within
2 one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof,
3 shall be confined in jail for not less than ninety days nor more than one year and shall be fined not
4 less than \$500 nor more than \$1,000.

5 ——— (c) Any person who:

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

7 ——— (A) Is under the influence of alcohol;

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

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

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

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

14 ——— (2) While driving does any act forbidden by law or fails to perform any duty imposed by law
15 in the driving of the vehicle, which act or failure proximately causes bodily injury to any person
16 other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be
17 confined in jail for not less than one day nor more than one year, which jail term is to include actual
18 confinement of not less than twenty-four hours, and shall be fined not less than \$200 nor more than
19 \$1,000.

20 ——— (d) Any person who:

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

22 ——— (A) Is under the influence of alcohol;

1 ~~——(B) Is under the influence of any controlled substance;~~

2 ~~——(C) Is under the influence of any other drug;~~

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

5 ~~——(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or~~
6 ~~more, by weight, but less than fifteen hundredths of one percent, by weight;~~

7 ~~——(2) Is guilty of a misdemeanor and, upon conviction thereof, except as provided in section~~
8 ~~two-b of this article, shall be confined in jail for up to six months and shall be fined not less than~~
9 ~~\$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive credit for~~
10 ~~any period of actual confinement he or she served upon arrest for the subject offense.~~

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

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

1 ~~any period of actual confinement he or she served upon arrest for the subject offense.~~
2 ~~—— (g) Any person who:~~
3 ~~—— (1) Knowingly permits his or her vehicle to be driven in this state by any other person who:~~
4 ~~—— (A) Is under the influence of alcohol;~~
5 ~~—— (B) Is under the influence of any controlled substance;~~
6 ~~—— (C) Is under the influence of any other drug;~~
7 ~~—— (D) Is under the combined influence of alcohol and any controlled substance or any other~~
8 ~~drug;~~
9 ~~—— (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or~~
10 ~~more, by weight;~~
11 ~~—— (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not~~
12 ~~more than six months and shall be fined not less than \$100 nor more than \$500.~~
13 ~~—— (h) Any person who knowingly permits his or her vehicle to be driven in this state by any~~
14 ~~other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof is~~
15 ~~guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six~~
16 ~~months and shall be fined not less than \$100 nor more than \$500.~~
17 ~~—— (i) Any person under the age of twenty-one years who drives a vehicle in this state while he~~
18 ~~or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by~~
19 ~~weight, but less than eight hundredths of one percent, by weight, for a first offense under this~~
20 ~~subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25~~
21 ~~nor more than \$100. For a second or subsequent offense under this subsection, the person is guilty~~
22 ~~of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and~~

1 shall be fined not less than \$100 nor more than \$500. A person who is charged with a first offense
 2 under the provisions of this subsection may move for a continuance of the proceedings, from time
 3 to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as
 4 provided in section three-a, article five-a of this chapter. Upon successful completion of the
 5 program, the court shall dismiss the charge against the person and expunge the person's record as it
 6 relates to the alleged offense. In the event the person fails to successfully complete the program, the
 7 court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this
 8 subsection may not be construed as an admission or be used as evidence.

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

12 ~~—— (j) Any person who:~~

13 ~~—— (1) Drives a vehicle in this state while he or she:~~

14 ~~—— (A) Is under the influence of alcohol;~~

15 ~~—— (B) Is under the influence of any controlled substance;~~

16 ~~—— (C) Is under the influence of any other drug;~~

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

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

21 ~~—— (2) The person while driving has on or within the motor vehicle one or more other persons~~
 22 ~~who are unemancipated minors who have not reached their sixteenth birthday is guilty of a~~

1 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
2 more than twelve months, which jail term is to include actual confinement of not less than forty-eight
3 hours and shall be fined not less than \$200 nor more than \$1,000.

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

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

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

15 ~~——(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g) of this~~
16 ~~section or under a prior enactment of this section for an offense which occurred within the ten-year~~
17 ~~period immediately preceding the date of arrest in the current proceeding;~~

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

22 ~~——(3) Any period of conditional probation imposed pursuant section two-b of this article for~~

1 ~~violation of subsection (d) of this article, which violation occurred within the ten-year period~~
2 ~~immediately preceding the date of arrest in the current proceeding.~~

3 ~~———(n) A person may be charged in a warrant or indictment or~~
4 ~~information for a second or subsequent offense under this section if the person has been previously~~
5 ~~arrested for or charged with a violation of this section which is alleged to have occurred within the~~
6 ~~applicable time period for prior offenses, notwithstanding the fact that there has not been a final~~
7 ~~adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment~~
8 ~~or information must set forth the date, location and particulars of the previous offense or offenses.~~
9 ~~No person may be convicted of a second or subsequent offense under this section unless the~~
10 ~~conviction for the previous offense has become final, or the person has previously had a period of~~
11 ~~conditional probation imposed pursuant to section two-b of this article.~~

12 ~~———(o) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e) or (f)~~
13 ~~of this section, or any person permitted to drive as described under subsection (g) or (h) of this~~
14 ~~section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not~~
15 ~~constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f), (g) or (h) of~~
16 ~~this section.~~

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

19 ~~———(q) The sentences provided in this section upon conviction for a violation of this article are~~
20 ~~mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the~~
21 ~~provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to~~
22 ~~a term of one year or less for a first offense under this section: *Provided further*, That the court may~~

1 ~~impose a term of conditional probation pursuant to section two-b of this article to persons~~
 2 ~~adjudicated thereunder. An order for home detention by the court pursuant to the provisions of~~
 3 ~~article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration~~
 4 ~~required by this section for a first or subsequent offense: *Provided, however,* That for any period of~~
 5 ~~home incarceration ordered for a person convicted of second offense under this section, electronic~~
 6 ~~monitoring shall be required for no fewer than five days of the total period of home confinement~~
 7 ~~ordered and the offender may not leave home for those five days notwithstanding the provisions of~~
 8 ~~section five, article eleven-b, chapter sixty-two of this code: *Provided further,* That for any period~~
 9 ~~of home incarceration ordered for a person convicted of a third or subsequent violation of this~~
 10 ~~section, electronic monitoring shall be included for no fewer than ten days of the total period of~~
 11 ~~home confinement ordered and the offender may not leave home for those ten days notwithstanding~~
 12 ~~section five, article eleven-b, chapter sixty-two of this code.~~

13 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES**

14 **§17C-5-2. Driving under the influence of alcohol, controlled substances or drugs; penalties.**

15 (a) Legislative findings and intent-

16 (1) Despite aggressive public campaigns and warnings of the dangers of driving under the
 17 influence of alcohol or drugs, the continued rise in impaired driving in this state possess a threat to
 18 the public utilizing the roads in this state.

19 (2) Given the public safety concerns, there is a compelling state interest to require appropriate
 20 legislative action and penalties to stem this continuing threat.

21 (3) In recognition and continued memory of the lives and families that have been so tragically
 22 affected by impaired driving in this state, this section shall hereafter be known as “Andrea and

1 Willy's Law".

2 (b) Definitions-

3 (1) "Impaired State" means a person:

4 (A) Is under the influence of alcohol;

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

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

7 (D) Is under the combined influence of alcohol and any controlled substance or any other

8 drug; or

9 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or

10 more, by weight.

11 (2) "Bodily Injury" means injury that causes substantial physical pain, illness or any
12 impairment of physical condition,

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

16 (c) Any person who drives a vehicle in this state while he or she is in an impaired state and
17 proximately causes the death of any person is guilty of a felony and, upon conviction thereof, shall
18 be imprisoned in a state correctional facility for not less than three nor more than fifteen years and
19 shall be fined not less than \$5,000 nor more than \$20,000: *Provided*, That any death charged under
20 this subsection must occur within one year of the offense and be proximately caused by the driver's
21 impaired state.

22 (d) Any person who drives a vehicle in this state while he or she is in an impaired state and

1 proximately causes serious bodily injury to any person other than himself or herself, is guilty of a
2 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less
3 than two nor more than ten years and shall be fined not less than \$2,000 nor more than \$15,000.

4 (e) Any person who drives a vehicle in this state while he or she is in an impaired state and
5 proximately causes a bodily injury to any person other than himself or herself, is guilty of a
6 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or
7 fined not less than \$1,000 nor more than \$5,000, or both.

8 (f) Any person who drives a vehicle in this state while he or she is in an impaired state, but
9 less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon
10 conviction thereof, shall be confined in jail for not less than two days nor more than six months and
11 shall be fined not less than \$200 nor more than \$1,000: *Provided*, That such jail term shall include
12 actual confinement of not less than twenty-four hours: *Provided, however*, That a person sentenced
13 pursuant to this subsection shall receive credit for any period of actual confinement he or she served
14 upon arrest for the subject offense.

15 (g) Any person who drives a vehicle in this state while he or she has an alcohol concentration
16 in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a
17 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months
18 nor more than nine months, and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*,
19 That such jail term shall include actual confinement of not less than forty-eight hours: *Provided,*
20 *however*, That a person sentenced pursuant to this subsection shall receive credit for any period of
21 actual confinement he or she served upon arrest for the subject offense.

1 (h) Any person who drives a vehicle in this state while he or she is in an impaired state and
2 has within the vehicle one or more other persons who are unemancipated minors who have not yet
3 reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be
4 confined in jail for not less than six months nor more than a year, and shall be fined not less than
5 \$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not
6 less than forty-eight hours: *Provided, however*, That a person sentenced pursuant to this subdivision
7 shall receive credit for any period of actual confinement he or she served upon arrest for the subject
8 offense.

9 (i) Any person who knowingly permits his or her vehicle to be driven in this state by any
10 other person in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be
11 confined in jail for not less than two days nor more than six months and shall be fined not less than
12 \$200 nor more than \$1,000.

13 (j) *Offenses by persons under the age of twenty-one-* (1) Any person under the age of
14 twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in
15 his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths
16 of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined
17 in jail for not less than two days nor more than six months and shall be fined not less than \$200 nor
18 more than \$1,000: *Provided*, That such jail term shall include actual confinement of not less than
19 twenty-four hours: *Provided, however*, That a person sentenced pursuant to this subsection shall
20 receive credit for any period of actual confinement he or she served upon arrest for the subject
21 offense.

1 (2) For a second or subsequent offense under this subsection, the person is guilty of a
2 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor
3 more than a year, and shall be fined not less than \$1,000 nor more than \$2,500: *Provided*, That such
4 jail term shall include actual confinement of not less than forty-eight hours: *Provided, however*, That
5 a person sentenced pursuant to this subdivision shall receive credit for any period of actual
6 confinement he or she served upon arrest for the subject offense.

7 (3) A person who is charged with a first offense under the provisions of this subsection may
8 move for a continuance of the proceedings, from time to time, to allow the person to participate in
9 the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of
10 this chapter. Upon successful completion of the program, the court shall dismiss the charge against
11 the person and expunge the person's record as it relates to the alleged offense. In the event the
12 person fails to successfully complete the program, the court shall proceed to an adjudication of the
13 alleged offense. A motion for a continuance under this subsection may not be construed as an
14 admission or be used as evidence.

15 (4) A person arrested and charged with an offense under subsection (a), (b), (c), (d), (e), (f),
16 (g) or (h) of this section may not also be charged with an offense under this subsection arising out
17 of the same transaction or occurrence.

18 (k) *Subsequent Offenses*- (1) Any person violating any provision of subsection (e), (f), (g),
19 (h) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and,
20 upon conviction thereof, and shall be confined in jail for not more than one year, and shall be fined
21 not less than \$2,500 nor more than \$5,000.

1 (2) A person violating any provision of subsection (e), (f), (g), (h) or (i) of this section, for
2 the third or any subsequent offense under this section, is guilty of a felony and, upon conviction
3 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five
4 years and the court may, in its discretion, impose a fine of not less than \$5,000 nor more than
5 \$10,000.

6 (3) For purposes of this subsection relating to second, third and subsequent offenses, the
7 following events shall be regarded as offenses under this section:

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

11 (ii) Any conviction under a municipal ordinance of this state or any other state or a statute
12 of the United States or of any other state of an offense which relates to the operation of a vehicle
13 while under the influence of alcohol or a controlled substance, and which offense occurred within
14 the ten-year period immediately preceding the date of arrest in the current proceeding; and,

15 (iii) Any period of conditional probation imposed pursuant section two-b of this article for
16 violation of subsection (f) of this article, which violation occurred within the ten-year period
17 immediately preceding the date of arrest in the current proceeding.

18 (l) A person may be charged in a warrant or indictment or information for a second or
19 subsequent offense under this section if the person has been previously arrested for or charged with
20 a violation of this section which is alleged to have occurred within the applicable time period for
21 prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for

1 the alleged previous offense. In that case, the warrant or indictment or information must set forth
2 the date, location and particulars of the previous offense or offenses. No person may be convicted
3 of a second or subsequent offense under this section unless the conviction for the previous offense
4 has become final, or the person has previously had a period of conditional probation imposed
5 pursuant to section two-b of this article.

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

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

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

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

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

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