

E N G R O S S E D

H. B. 2664

(BY DELEGATE(S) SOBONYA, BUTLER, MCCUSKEY,
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WESTFALL, MARCUM AND BYRD)

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

A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,
1931, as amended, relating to creating “Andrea and Willy’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.~~

- 1 ~~(a) Any person who:~~
- 2 ~~(1) Drives a vehicle in this state while he or she:~~
- 3 ~~(A) Is under the influence of alcohol;~~
- 4 ~~(B) Is under the influence of any controlled substance;~~
- 5 ~~(C) Is under the influence of any other drug;~~
- 6 ~~(D) Is under the combined influence of alcohol and any~~
- 7 ~~controlled substance or any other drug; or~~
- 8 ~~(E) Has an alcohol concentration in his or her blood of eight~~
- 9 ~~hundredths of one percent or more, by weight, and~~
- 10 ~~(2) While driving does any act forbidden by law or fails to~~
- 11 ~~perform any duty imposed by law in the driving of the vehicle;~~
- 12 ~~which act or failure proximately causes the death of any person~~
- 13 ~~within one year next following the act or failure; and~~
- 14 ~~(3) Commits the act or failure in reckless disregard of the~~
- 15 ~~safety of others and when the influence of alcohol, controlled~~
- 16 ~~substances or drugs is shown to be a contributing cause to the~~
- 17 ~~death, is guilty of a felony and, upon conviction thereof, shall be~~

18 ~~imprisoned in a state correctional facility for not less than two~~
19 ~~years nor more than ten years and shall be fined not less than~~
20 ~~\$1,000 nor more than \$3,000.~~

21 ~~(b) Any person who:~~

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

23 ~~(A) Is under the influence of alcohol;~~

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

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

26 ~~(D) Is under the combined influence of alcohol and any~~
27 ~~controlled substance or any other drug;~~

28 ~~(E) Has an alcohol concentration in his or her blood of eight~~
29 ~~hundredths of one percent or more, by weight, and~~

30 ~~(2) While driving does any act forbidden by law or fails to~~
31 ~~perform any duty imposed by law in the driving of the vehicle,~~
32 ~~which act or failure proximately causes the death of any person~~
33 ~~within one year next following the act or failure, is guilty of a~~
34 ~~misdemeanor and, upon conviction thereof, shall be confined in~~
35 ~~jail for not less than ninety days nor more than one year and shall~~
36 ~~be fined not less than \$500 nor more than \$1,000.~~

37 ~~(c) Any person who:~~

- 38 ~~(1) Drives a vehicle in this state while he or she:~~
- 39 ~~(A) Is under the influence of alcohol;~~
- 40 ~~(B) Is under the influence of any controlled substance;~~
- 41 ~~(C) Is under the influence of any other drug;~~
- 42 ~~(D) Is under the combined influence of alcohol and any~~
- 43 ~~controlled substance or any other drug; or~~
- 44 ~~(E) Has an alcohol concentration in his or her blood of eight~~
- 45 ~~hundredths of one percent or more, by weight; and~~
- 46 ~~(2) While driving does any act forbidden by law or fails to~~
- 47 ~~perform any duty imposed by law in the driving of the vehicle;~~
- 48 ~~which act or failure proximately causes bodily injury to any~~
- 49 ~~person other than himself or herself; is guilty of a misdemeanor~~
- 50 ~~and, upon conviction thereof, shall be confined in jail for not less~~
- 51 ~~than one day nor more than one year, which jail term is to~~
- 52 ~~include actual confinement of not less than twenty-four hours;~~
- 53 ~~and shall be fined not less than \$200 nor more than \$1,000.~~
- 54 ~~(d) Any person who:~~
- 55 ~~(1) Drives a vehicle in this state while he or she:~~
- 56 ~~(A) Is under the influence of alcohol;~~
- 57 ~~(B) Is under the influence of any controlled substance;~~

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

59 ~~(D) Is under the combined influence of alcohol and any~~
60 ~~controlled substance or any other drug; or~~

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

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

70 ~~(e) Any person who drives a vehicle in this state while he or~~
71 ~~she has an alcohol concentration in his or her blood of fifteen~~
72 ~~hundredths of one percent or more, by weight, is guilty of a~~
73 ~~misdemeanor and, upon conviction thereof, shall be confined in~~
74 ~~jail for not less than two days nor more than six months, which~~
75 ~~jail term is to include actual confinement of not less than~~
76 ~~twenty-four hours, and shall be fined not less than \$200 nor more~~
77 ~~than \$1,000. A person sentenced pursuant to this subdivision~~

78 ~~shall receive credit for any period of actual confinement he or~~
79 ~~she served upon arrest for the subject offense.~~

80 ~~(f) Any person who, being an habitual user of narcotic drugs~~
81 ~~or amphetamine or any derivative thereof, drives a vehicle in this~~
82 ~~state is guilty of a misdemeanor and, upon conviction thereof,~~
83 ~~shall be confined in jail for not less than one day nor more than~~
84 ~~six months, which jail term is to include actual confinement of~~
85 ~~not less than twenty-four hours, and shall be fined not less than~~
86 ~~\$100 nor more than \$500. A person sentenced pursuant to this~~
87 ~~subdivision shall receive credit for any period of actual~~
88 ~~confinement he or she served upon arrest for the subject offense.~~

89 ~~(g) Any person who:~~

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

92 ~~(A) Is under the influence of alcohol;~~

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

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

95 ~~(D) Is under the combined influence of alcohol and any~~
96 ~~controlled substance or any other drug;~~

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

109 (2) ~~Is guilty of a misdemeanor and, upon conviction thereof,~~
110 ~~shall be confined in jail for not more than six months and shall~~
111 ~~be fined not less than \$100 nor more than \$500.~~

112 (h) ~~Any person who knowingly permits his or her vehicle to~~
113 ~~be driven in this state by any other person who is an habitual~~
114 ~~user of narcotic drugs or amphetamine or any derivative thereof~~
115 ~~is guilty of a misdemeanor and, upon conviction thereof, shall be~~
116 ~~confined in jail for not more than six months and shall be fined~~
117 ~~not less than \$100 nor more than \$500.~~

118 (i) ~~Any person under the age of twenty-one years who drives~~
119 ~~a vehicle in this state while he or she has an alcohol~~
120 ~~concentration in his or her blood of two hundredths of one~~
121 ~~percent or more, by weight, but less than eight hundredths of one~~
122 ~~percent, by weight, for a first offense under this subsection is~~
123 ~~guilty of a misdemeanor and, upon conviction thereof, shall be~~
124 ~~fined not less than \$25 nor more than \$100. For a second or~~
125 ~~subsequent offense under this subsection, the person is guilty of~~
126 ~~a misdemeanor and, upon conviction thereof, shall be confined~~

117 in jail for twenty-four hours and shall be fined not less than \$100
118 nor more than \$500. A person who is charged with a first offense
119 ~~under the provisions of this subsection may move for a~~
120 ~~continuance of the proceedings, from time to time, to allow the~~
121 ~~person to participate in the Motor Vehicle Alcohol Test and~~
122 ~~Lock Program as provided in section three-a, article five-a of this~~
123 ~~chapter. Upon successful completion of the program, the court~~
124 ~~shall dismiss the charge against the person and expunge the~~
125 ~~person's record as it relates to the alleged offense. In the event~~
126 ~~the person fails to successfully complete the program, the court~~
127 ~~shall proceed to an adjudication of the alleged offense. A motion~~
128 ~~for a continuance under this subsection may not be construed as~~
129 ~~an admission or be used as evidence. A person arrested and~~
130 ~~charged with an offense under the provisions of this subsection~~
131 ~~or subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section~~
132 ~~may not also be charged with an offense under this subsection~~
133 ~~arising out of the same transaction or occurrence.~~

134 (j) Any person who:

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

136 (A) Is under the influence of alcohol;

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

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

139 ~~(D) Is under the combined influence of alcohol and any~~
140 ~~controlled substance or any other drug; or~~

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

143 ~~(2) The person while driving has on or within the motor~~
144 ~~vehicle one or more other persons who are unemancipated~~
145 ~~minors who have not reached their sixteenth birthday is guilty of~~
146 ~~a misdemeanor and, upon conviction thereof, shall be confined~~
147 ~~in jail for not less than two days nor more than twelve months;~~
148 ~~which jail term is to include actual confinement of not less than~~
149 ~~forty-eight hours and shall be fined not less than \$200 nor more~~
150 ~~than \$1,000.~~

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

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

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

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

172 ~~(2) Any conviction under a municipal ordinance of this state~~
173 ~~or any other state or a statute of the United States or of any other~~
174 ~~state of an offense which has the same elements as an offense~~
175 ~~described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this~~
176 ~~section, which offense occurred within the ten-year period~~

177 ~~immediately preceding the date of arrest in the current~~
178 ~~proceeding; and,~~

179 ~~(3) Any period of conditional probation imposed pursuant~~
180 ~~section two-b of this article for violation of subsection (d) of this~~
181 ~~article, which violation occurred within the ten-year period~~
182 ~~immediately preceding the date of arrest in the current~~
183 ~~proceeding.~~

184 ~~(n) A person may be charged in a warrant or indictment or~~
185 ~~information for a second or subsequent offense under this section~~
186 ~~if the person has been previously arrested for or charged with a~~
187 ~~violation of this section which is alleged to have occurred within~~
188 ~~the applicable time period for prior offenses, notwithstanding the~~
189 ~~fact that there has not been a final adjudication of the charges for~~
190 ~~the alleged previous offense. In that case, the warrant or~~
191 ~~indictment or information must set forth the date, location and~~
192 ~~particulars of the previous offense or offenses. No person may~~
193 ~~be convicted of a second or subsequent offense under this section~~
194 ~~unless the conviction for the previous offense has become final,~~
195 ~~or the person has previously had a period of conditional~~
196 ~~probation imposed pursuant to section two-b of this article.~~

197 ~~(o) The fact that any person charged with a violation of~~
198 ~~subsection (a), (b), (c), (d), (e) or (f) of this section, or any~~
199 ~~person permitted to drive as described under subsection (g) or~~
200 ~~(h) of this section, is or has been legally entitled to use alcohol;~~
201 ~~a controlled substance or a drug does not constitute a defense~~
202 ~~against any charge of violating subsection (a), (b), (c), (d), (e);~~
203 ~~(f), (g) or (h) of this section.~~

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

207 ~~(q) The sentences provided in this section upon conviction~~
208 ~~for a violation of this article are mandatory and are not subject~~
209 ~~to suspension or probation: *Provided*, That the court may apply~~
210 ~~the provisions of article eleven-a, chapter sixty-two of this code~~
211 ~~to a person sentenced or committed to a term of one year or less~~
212 ~~for a first offense under this section: *Provided further*, That the~~
213 ~~court may impose a term of conditional probation pursuant to~~
214 ~~section two-b of this article to persons adjudicated thereunder.~~
215 ~~An order for home detention by the court pursuant to the~~
216 ~~provisions of article eleven-b of said chapter may be used as an~~

217 ~~alternative sentence to any period of incarceration required by~~
218 ~~this section for a first or subsequent offense: *Provided, however,*~~
219 ~~That for any period of home incarceration ordered for a person~~
220 ~~convicted of second offense under this section, electronic~~
221 ~~monitoring shall be required for no fewer than five days of the~~
222 ~~total period of home confinement ordered and the offender may~~
223 ~~not leave home for those five days notwithstanding the~~
224 ~~provisions of section five, article eleven-b, chapter sixty-two of~~
225 ~~this code: *Provided further,* That for any period of home~~
226 ~~incarceration ordered for a person convicted of a third or~~
227 ~~subsequent violation of this section, electronic monitoring shall~~
228 ~~be included for no fewer than ten days of the total period of~~
229 ~~home confinement ordered and the offender may not leave home~~
230 ~~for those ten days notwithstanding section five, article eleven-b,~~
231 ~~chapter sixty-two of this code.~~

ARTICLE 5. SERIOUS TRAFFIC OFFENSES

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

- 1 (a) Legislative findings and intent-
- 2 (1) Despite aggressive public campaigns and warnings of the
- 3 dangers of driving under the influence of alcohol or drugs, the

4 continued rise in impaired driving in this state possess a threat to
5 the public utilizing the roads in this state.

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

9 (3) In recognition and continued memory of the lives and
10 families that have been so tragically affected by impaired driving
11 in this state, this section shall hereafter be known as “Andrea and
12 Willy’s Law”.

13 (b) Definitions-

14 (1) “Impaired State” means a person:

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
19 controlled substance or any other drug; or

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

22 (2) “Bodily Injury” means injury that causes substantial
23 physical pain, illness or any impairment of physical condition,

24 (3) “Serious Bodily Injury” means bodily injury which
25 creates a substantial risk of death, which causes serious or
26 prolonged disfigurement, prolonged impairment of health or
27 prolonged loss or impairment of the function of any bodily
28 organ.

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

37 (d) Any person who drives a vehicle in this state while he or
38 she is in an impaired state and proximately causes serious bodily
39 injury to any person other than himself or herself, is guilty of a
40 felony and, upon conviction thereof, shall be imprisoned in a
41 state correctional facility for not less than two nor more than ten
42 years and shall be fined not less than \$2,000 nor more than
43 \$15,000.

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

50 (f) Any person who drives a vehicle in this state while he or
51 she is in an impaired state, but less than fifteen hundredths of
52 one percent by weight, is guilty of a misdemeanor and, upon
53 conviction thereof, shall be confined in jail for not less than two
54 days nor more than six months and shall be fined not less than
55 \$200 nor more than \$1,000: *Provided*, That such jail term shall
56 include actual confinement of not less than twenty-four hours:
57 *Provided, however*, That a person sentenced pursuant to this
58 subsection shall receive credit for any period of actual
59 confinement he or she served upon arrest for the subject offense.

60 (g) Any person who drives a vehicle in this state while he or
61 she has an alcohol concentration in his or her blood of fifteen
62 hundredths of one percent or more, by weight, is guilty of a
63 misdemeanor and, upon conviction thereof, shall be confined in

64 jail for not less than three months nor more than nine months,
65 and shall be fined not less than \$1,000 nor more than \$5,000:
66 *Provided, That such jail term shall include actual confinement of*
67 *not less than forty-eight hours: Provided, however, That a person*
68 *sentenced pursuant to this subsection shall receive credit for any*
69 *period of actual confinement he or she served upon arrest for the*
70 *subject offense.*

71 (h) Any person who drives a vehicle in this state while he or
72 she is in an impaired state and has within the vehicle one or more
73 other persons who are unemancipated minors who have not yet
74 reached their sixteenth birthday is guilty of a misdemeanor and,
75 upon conviction thereof, shall be confined in jail for not less than
76 six months nor more than a year, and shall be fined not less than
77 \$1,000 nor more than \$5,000: *Provided, That such jail term shall*
78 *include actual confinement of not less than forty-eight hours:*
79 *Provided, however, That a person sentenced pursuant to this*
80 *subdivision shall receive credit for any period of actual*
81 *confinement he or she served upon arrest for the subject offense.*

82 (i) Any person who knowingly permits his or her vehicle to
83 be driven in this state by any other person in an impaired state is

84 guilty of a misdemeanor and, upon conviction thereof, shall be
85 confined in jail for not less than two days nor more than six
86 months and shall be fined not less than \$200 nor more than
87 \$1,000.

88 (j) Offenses by persons under the age of twenty-one- (1) Any
89 person under the age of twenty-one years who drives a vehicle
90 in this state while he or she has an alcohol concentration in his
91 or her blood of two hundredths of one percent or more, by
92 weight, but less than eight hundredths of one percent, by weight,
93 is guilty of a misdemeanor and, upon conviction thereof, shall be
94 confined in jail for not less than two days nor more than six
95 months and shall be fined not less than \$200 nor more than
96 \$1,000: *Provided*, That such jail term shall include actual
97 confinement of not less than twenty-four hours: *Provided*,
98 *however*, That a person sentenced pursuant to this subsection
99 shall receive credit for any period of actual confinement he or
100 she served upon arrest for the subject offense.

101 (2) For a second or subsequent offense under this subsection,
102 the person is guilty of a misdemeanor and, upon conviction
103 thereof, shall be confined in jail for not less than six months nor

104 more than a year, and shall be fined not less than \$1,000 nor
105 more than \$2,500: *Provided*, That such jail term shall include
106 actual confinement of not less than forty-eight hours: *Provided*,
107 *however*, That a person sentenced pursuant to this subdivision
108 shall receive credit for any period of actual confinement he or
109 she served upon arrest for the subject offense.

110 (3) A person who is charged with a first offense under the
111 provisions of this subsection may move for a continuance of the
112 proceedings, from time to time, to allow the person to participate
113 in the Motor Vehicle Alcohol Test and Lock Program as
114 provided in section three-a, article five-a of this chapter. Upon
115 successful completion of the program, the court shall dismiss the
116 charge against the person and expunge the person's record as it
117 relates to the alleged offense. In the event the person fails to
118 successfully complete the program, the court shall proceed to an
119 adjudication of the alleged offense. A motion for a continuance
120 under this subsection may not be construed as an admission or
121 be used as evidence.

122 (4) A person arrested and charged with an offense under
123 subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section may

124 not also be charged with an offense under this subsection arising
125 out of the same transaction or occurrence.

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

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

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

142 (i) Any conviction under the provisions of subsection (c),
143 (d), (e), (f),(g) or (h) of this section or under a prior enactment

144 of this section for an offense which occurred within the ten-year
145 period immediately preceding the date of arrest in the current
146 proceeding;

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

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

159 (l) A person may be charged in a warrant or indictment or
160 information for a second or subsequent offense under this section
161 if the person has been previously arrested for or charged with a
162 violation of this section which is alleged to have occurred within
163 the applicable time period for prior offenses, notwithstanding the

164 fact that there has not been a final adjudication of the charges for
165 the alleged previous offense. In that case, the warrant or
166 indictment or information must set forth the date, location and
167 particulars of the previous offense or offenses. No person may
168 be convicted of a second or subsequent offense under this section
169 unless the conviction for the previous offense has become final,
170 or the person has previously had a period of conditional
171 probation imposed pursuant to section two-b of this article.

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

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

182 (o) The sentences provided in this section upon conviction
183 for a violation of this article are mandatory and are not subject

184 to suspension or probation: *Provided*, That the court may apply
185 the provisions of article eleven-a, chapter sixty-two of this code
186 to a person sentenced or committed to a term of one year or less
187 for a first offense under this section: *Provided, however*, That the
188 court may impose a term of conditional probation pursuant to
189 section two-b of this article to persons adjudicated thereunder.
190 An order for home detention by the court pursuant to the
191 provisions of article eleven-b of said chapter may be used as an
192 alternative sentence to any period of incarceration required by
193 this section for a first or subsequent offense: *Provided, further*,
194 That for any period of home incarceration ordered for a person
195 convicted of second offense under this section, electronic
196 monitoring shall be required for no fewer than five days of the
197 total period of home confinement ordered and the offender may
198 not leave home for those five days notwithstanding the
199 provisions of section five, article eleven-b, chapter sixty-two of
200 this code: *And provided further*, That for any period of home
201 incarceration ordered for a person convicted of a third or
202 subsequent violation of this section, electronic monitoring shall
203 be included for no fewer than ten days of the total period of

- 204 home confinement ordered and the offender may not leave home
205 for those ten days notwithstanding section five, article eleven-b,
206 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.