

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 94

BY SENATOR RUCKER

[Introduced January 9, 2019; Referred
to the Committee on Health and Human Resources; and
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5A-3 of the Code of West Virginia, 1931, as amended, relating
 2 to the addition of grievance and appellate procedures and judicial review for individuals
 3 participating, or who have participated, in the Department of Health and Human
 4 Resources' safety and treatment program; and authorizing the Secretary of the
 5 Department of Health and Human Resources to promulgate a rule(s) to add such
 6 procedures and judicial review for participants of the safety and treatment program.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
 REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF
 ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.**

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

1 (a) The Department of Health and Human Resources, Division of Alcoholism and Drug
 2 Abuse shall administer a comprehensive safety and treatment program for persons whose
 3 licenses have been revoked under the provisions of this article or §17C-5-7 or §17B-3-5(6) and
 4 shall also establish the minimum qualifications for mental health facilities, day report centers,
 5 community correction centers or other public agencies or private entities conducting the safety
 6 and treatment program: *Provided*, That the Department of Health and Human Resources, Division
 7 of Alcoholism and Drug Abuse may establish standards whereby the division will accept or
 8 approve participation by violators in another treatment program which provides the same or
 9 substantially similar benefits as the safety and treatment program established pursuant to this
 10 section.

11 (b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and
 12 drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs
 13 as they relate to driving, defensive driving or other safety driving instruction and other programs
 14 designed to properly educate, train and rehabilitate the offender.

15 (c) The Department of Health and Human Resources, Division of Alcoholism and Drug
16 Abuse shall provide for the preparation of an educational and treatment ~~the~~ program for each
17 person whose license has been revoked under the provisions of this article, ~~or~~ §17C-5-7, or §17B-
18 3-5(6), which shall contain the following: (1) A listing and evaluation of the offender's prior traffic
19 record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability
20 to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or
21 rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall
22 be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

23 (d) There is hereby created a special revenue account within the State Treasury known
24 as the Department of Health and Human Resources Safety and Treatment Fund. The account
25 shall be administered by the Secretary of the Department of Health and Human Resources for
26 the purpose of administering the comprehensive safety and treatment program established by
27 subsection (a) of this section. The account may be invested, and all earnings and interest accruing
28 shall be retained in the account. The Auditor shall conduct an audit of the fund at least every three
29 fiscal years.

30 Effective July 1, 2010, the State Treasurer shall make a one-time transfer of \$250,000
31 from the Motor Vehicle Fees Fund into the Department of Health and Human Resources Safety
32 and Treatment Fund.

33 (e) (1) The program provider shall collect the established fee from each participant upon
34 enrollment unless the department has determined that the participant is an indigent based upon
35 criteria established pursuant to legislative rule authorized in this section.

36 (2) If the department determined that a participant is an indigent based upon criteria
37 established pursuant to the legislative rule authorized by this section, the department shall provide
38 the applicant with proof of its determination regarding indigence, which proof, the applicant shall
39 present to the interlock provider as part of the application process provided in section three-a of
40 this article and/or the rules promulgated pursuant thereto.

41 (3) Program providers shall remit to the Department of Health and Human Resources a
42 portion of the fee collected, which shall be deposited by the Secretary of the Department of Health
43 and Human Resources into the Department of Health and Human Resources Safety and
44 Treatment Fund. The Department of Health and Human Resources shall reimburse enrollment
45 fees to program providers for each eligible indigent offender.

46 (f) On or before January 15 of each year, the Secretary of the Department of Health and
47 Human Resources shall report to the Legislature on:

48 (1) The total number of offenders participating in the safety and treatment program during
49 the prior year;

50 (2) The total number of indigent offenders participating in the safety and treatment
51 program during the prior year;

52 (3) The total number of program providers during the prior year; and

53 (4) The total amount of reimbursements paid to program providers during the prior year.

54 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to
55 the program developed for the offender, shall prescribe the necessary terms and conditions for
56 the reissuance of the license to operate a motor vehicle in this state revoked under this article, ~~or~~
57 §17C-5-7, or §17B-3-5(6), which shall include successful completion of the educational,
58 treatment, or rehabilitation program, subject to the following:

59 (1) When the period of revocation is six months, the license to operate a motor vehicle in
60 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial
61 revocation, during which time the revocation was actually in effect; (B) the offender has
62 successfully completed the program; (C) all costs of the program and administration have been
63 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

64 (2) When the period of revocation is for a period of one year or for more than a year, the
65 license to operate a motor vehicle in this state may not be reissued until: (A) At least one half of
66 the ~~time~~ period has elapsed from the date of the initial revocation, during which time the revocation

67 was ~~actually~~ in effect; (B) the offender has successfully completed the program; (C) all costs of
68 the program and administration have been paid; and (D) all costs assessed as a result of a
69 revocation hearing have been paid. Notwithstanding any provision in this code, a person whose
70 license is revoked for refusing to take a chemical test as required by §17-5-7 of this code for a
71 first offense is not eligible to reduce the revocation period by completing the safety and treatment
72 program.

73 (3) When the period of revocation is for life, the license to operate a motor vehicle in this
74 state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial
75 revocation, during which time the revocation was ~~actually~~ in effect; (B) the offender has
76 successfully completed the program; (C) all costs of the program and administration have been
77 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

78 (4) Notwithstanding any provision of this code or any rule, any mental health facilities or
79 other public agencies or private entities conducting the safety and treatment program when
80 certifying that a person has successfully completed a safety and treatment program shall only
81 have to certify that the person has successfully completed the program.

82 (h) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug
83 Abuse shall provide for the preparation of an educational program for each person whose license
84 has been suspended for 60 days pursuant to the provisions of §17C-5A-2(n). The educational
85 program shall consist of not less than 12 nor more than 18 hours of ~~actual~~ classroom time.

86 (2) When a 60-day period of suspension has been ordered, the license to operate a motor
87 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial
88 suspension, during which time the suspension was ~~actually~~ in effect; (B) the offender has
89 successfully completed the educational program; (C) all costs of the program and administration
90 have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

91 (i) A required component of the treatment program provided in subsection (b) of this
92 section and the education program provided for in subsection (c) of this section shall be

93 participation by the violator with a victim impact panel program providing a forum for victims of
94 alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of
95 alcohol and drug-related offenses in their lives. The Department of Health and Human Resources,
96 Division of Alcoholism and Drug Abuse shall propose and implement a plan for victim impact
97 panels where appropriate numbers of victims are available and willing to participate and shall
98 establish guidelines for other innovative programs which may be substituted where the victims
99 are not available to assist persons whose licenses have been suspended or revoked for alcohol
100 and drug-related offenses to gain a full understanding of the severity of their offenses in terms of
101 the impact of the offenses on victims and offenders. The plan shall require, at a minimum,
102 discussion and consideration of the following:

- 103 (A) Economic losses suffered by victims or offenders;
- 104 (B) Death or physical injuries suffered by victims or offenders;
- 105 (C) Psychological injuries suffered by victims or offenders;
- 106 (D) Changes in the personal welfare or familial relationships of victims or offenders; and
- 107 (E) Other information relating to the impact of alcohol and drug-related offenses upon
108 victims or offenders.

109 The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse
110 shall ensure that any meetings between victims and offenders shall be nonconfrontational and
111 ensure the physical safety of the persons involved.

112 (j)(1) The Secretary of the Department of Health and Human Resources shall promulgate
113 a rule for legislative approval in accordance with ~~article three, chapter twenty-nine-a~~ §29A-3-1 et
114 seq. of this code to administer the provisions of this section and establish a fee to be collected
115 from each offender enrolled in the safety and treatment program. The rule shall include: (A) A
116 reimbursement mechanism to program providers of required fees for the safety and treatment
117 program for indigent offenders, criteria for determining eligibility of indigent offenders, and any
118 necessary application forms; and (B) program standards that encompass provider criteria

119 including minimum professional training requirements for providers, curriculum approval,
120 minimum course length requirements, and other items that may be necessary to properly
121 implement the provisions of this section.

122 (2) The Legislature finds that an emergency exists and, therefore, the secretary shall file
123 by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of §29A-
124 3-15.

125 (k) Nothing in this section may be construed to prohibit day report or community correction
126 programs, authorized pursuant to §62-11C-1 *et seq.* of this code, from administering a
127 comprehensive safety and treatment program pursuant to this section.

128 (l) The Department of Health and Human Resources shall provide fair, impartial, and
129 expeditious grievance and appellate procedures for participants of the safety and treatment
130 program who wish to challenge an adverse decision(s) by the agency or other entity conducting
131 the program that negatively affects, or unnecessarily delays, the participants' outcome in that
132 program. After all administrative remedies provided by this article or its related promulgated
133 rule(s) have been exhausted, participants who have been deemed unsuccessful in the program,
134 rendering them ineligible for license reinstatement, or whose outcomes in the program have been
135 unnecessarily delayed, are entitled to judicial review of the adverse decision(s), pursuant to § 29A-
136 5-4 of this code. The Secretary of the Department of Health and Human Resources is hereby
137 authorized to promulgate a rule(s) related to the grievance and appellate procedures referenced
138 in this subsection.

NOTE: The purpose of this bill is to add grievance and appellate procedures and judicial review for participants in the Department of Health and Human Resources' safety and treatment program. The bill also authorizes the Secretary of the Department of Health and Human Resources to promulgate a rule(s) to add such procedures and review for participants of the safety and treatment program.

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