

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3038**

By Delegates Pinson, Westfall, Fast, W. Hall Kirby,  
Foggin, Honaker, Coop-Gonzalez, Ridenour, Kelly,  
and Hott

[Introduced January 25, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating  
 2 to driving a motor vehicle in an impaired state under the influence of alcohol, controlled  
 3 substances, or drugs causing death or serious bodily injury to any person or an to unborn  
 4 fetus; providing definition; creating the felony offense of driving in an impaired state  
 5 causing death to an unborn fetus; establishing criminal penalties; and increasing the  
 6 penalties for driving under the influence causing death; creating the felony offense of  
 7 driving in an impaired state causing serious bodily injury to an unborn fetus; establishing  
 8 penalties; and increasing penalties for driving in an impaired state causing serious bodily  
 9 injury.

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

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

1 (a) *Definitions.* —

2 (1) "Impaired state" means a person:

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 or inhalant substance;

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

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

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

12 (3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

13 (4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that  
 14 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or

15 impairment of the function of any bodily organ.

16 (5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established  
17 in §17C-5A-3a and administered by the Division of Motor Vehicles.

18 (6) "Unborn person" means an embryo or fetus as those terms are defined in §61-2-30 of  
19 this code.

20 (b) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
21 such impaired state proximately causes the death of any person or unborn person, is guilty of a  
22 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for ~~not less~~  
23 ~~than a definite term which is not less than~~ three ~~10~~ nor more than ~~45~~ 40 years and shall be fined  
24 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor  
25 vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10 years or  
26 for a period of time conditioned on participation in the test and lock program in accordance with  
27 §17C-5A-3a of this code: *Provided*, That any death charged under this subsection must occur  
28 within one year of the offense: *Provided, however*, That if the person has previously been  
29 convicted under this section, the person shall have his or her license to operate a motor vehicle  
30 revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time  
31 conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this  
32 code.

33 (c) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
34 such impaired state proximately causes serious bodily injury to any person or unborn person other  
35 than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a  
36 state correctional facility for not less than ~~two~~ three nor more than ~~40~~ 15 years and shall be fined  
37 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor  
38 vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of five years or  
39 for a period of time conditioned on participation in the test and lock program in accordance with  
40 §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this

41 section, the person shall have his or her license to operate a motor vehicle revoked by the  
42 Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on  
43 participation in the test and lock program in accordance with §17C-5A-3a of this code.

44 (d) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
45 such impaired state proximately causes a bodily injury to any person or unborn person other than  
46 himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail  
47 for not less than one day nor more than one year and shall be fined not less than \$200 nor more  
48 than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the  
49 Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time  
50 conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this  
51 code: *Provided*, That if the person has previously been convicted under this section, the person  
52 shall have his or her license to operate a motor vehicle revoked by the Commissioner of the  
53 Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and  
54 lock program in accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this  
55 subsection shall include actual confinement of not less than 24 hours: *Provided, however*, That a  
56 person sentenced pursuant to this subsection shall receive credit for any period of actual  
57 confinement he or she served upon arrest for the subject offense.

58 (e) Any person who drives a vehicle on any public highway or private road in this state: (1)  
59 while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an  
60 alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight,  
61 is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six  
62 months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license  
63 to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a  
64 period of six months or for a period of time conditioned on participation in the test and lock program  
65 in accordance with §17C-5A-3a of this code: *Provided*, That a person sentenced pursuant to this  
66 subsection shall receive credit for any period of actual confinement he or she served upon arrest

67 for the subject offense.

68 (f) Any person who drives a vehicle on any public highway or private road in this state while  
69 he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or  
70 more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail  
71 for not less than two days nor more than six months, which jail term is to include actual  
72 confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000,  
73 and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the  
74 Division of Motor Vehicles for a period of one year or for a period of time conditioned on  
75 participation in the test and lock program in accordance with §17C-5A-3a of this code. A person  
76 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he  
77 or she served upon arrest for the subject offense.

78 (g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any  
79 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a  
80 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor  
81 more than six months, which jail term is to include actual confinement of not less than 24 hours,  
82 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to  
83 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a  
84 period of six months. A person sentenced pursuant to this subsection shall receive credit for any  
85 period of actual confinement he or she served upon arrest for the subject offense.

86 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway  
87 or private road in this state by any other person who is in an impaired state is guilty of a  
88 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months  
89 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to  
90 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a  
91 period of six months or for a period of time conditioned on participation in the test and lock program  
92 in accordance with §17C-5A-3a of this code.

93 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway  
94 or private road in this state by any other person who is a habitual user of narcotic drugs or  
95 amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof,  
96 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more  
97 than \$500, and shall have his or her license to operate a motor vehicle revoked by the  
98 Commissioner of the Division of Motor Vehicles for a period of six months.

99 (j) (1) Any person under the age of 21 years who drives a vehicle on any public highway or  
100 private road in this state while he or she has an alcohol concentration in his or her blood of two  
101 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by  
102 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction  
103 thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate  
104 a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of  
105 60 days or for a period of time conditioned on participation in the test and lock program in  
106 accordance with §17C-5A-3a of this code. For a second or subsequent offense under this  
107 subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined  
108 in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his or  
109 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor  
110 Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or  
111 for a period of time conditioned on participation in the test and lock program in accordance with  
112 §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this  
113 subsection may move for a continuance of the proceedings, from time to time, to allow the person  
114 to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon  
115 successful completion of the program, the court shall dismiss the charge against the person and  
116 expunge the person's record as it relates to the alleged offense. In the event the person fails to  
117 successfully complete the program, the court shall proceed to an adjudication of the alleged  
118 offense. A motion for a continuance under this subsection may not be construed as an admission

119 or be used as evidence.

120 (2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her  
121 license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a  
122 period of time conditioned on participation in the test and lock program in accordance with  
123 §17C-5A-3a of this code, if the person:

124 (i) Has previously been convicted under this subsection and is subsequently convicted of  
125 an offense under another subsection of this section; or

126 (ii) Is convicted under this subsection and has previously been convicted of an offense  
127 under another subsection of this section.

128 (B) Nothing in this subdivision permits a shorter period of license revocation, license  
129 suspension, or participation in the test and lock program than is mandatory for the specific offense  
130 for which the person is convicted.

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

134 (k) Any person who drives a vehicle on any public highway or private road in this state  
135 while he or she is in an impaired state and has within the vehicle one or more other persons who  
136 are unemancipated minors who have not yet reached their 16th birthday is guilty of a  
137 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor  
138 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have  
139 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor  
140 Vehicles for a period of one year or for a period of time conditioned on participation in the test and  
141 lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall  
142 include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced  
143 pursuant to this subsection shall receive credit for any period of actual confinement he or she  
144 served upon arrest for the subject offense.

145 (l) A person convicted of an offense under this section, who has previously been convicted  
146 of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction  
147 thereof, shall be confined in jail for not less than six months nor more than one year, may be fined  
148 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor  
149 vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period  
150 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of  
151 this code: *Provided*, That if the second conviction is for an offense as described in subsections (b),  
152 (c), or (d) of this section and the subsection creating the offense requires a period of incarceration,  
153 period of license revocation, or fine that is greater than what is required for a conviction under this  
154 subsection, the greater period of incarceration, period of revocation, or fine shall be imposed:  
155 *Provided, however*, That this section does not apply to a second conviction that is subject to a  
156 period of license revocation under subsection (j) of this section.

157 (m) A person convicted of an offense under this section, who has previously been  
158 convicted of any offense under this section on two or more occasions, is guilty of a felony and,  
159 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor  
160 more than five years, shall have his or her license to operate a motor vehicle revoked by the  
161 Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on  
162 participation in the test and lock program in accordance with §17C-5A-3a of this code, and the  
163 court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided*,  
164 That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or  
165 (d) of this section and the subsection creating the offense requires a period of incarceration, period  
166 of license revocation, or fine that is greater than what is required for a conviction under this  
167 subsection, the greater period of incarceration, period of revocation, and fine shall be imposed:  
168 *Provided, however*, That this section does not apply to a third or subsequent conviction that is  
169 subject to a period of license revocation under subsection (j) of this section.

170 (n) For purposes of subsections (l) and (m) of this section relating to second, third, and



171 subsequent offenses, the following events shall be regarded as offenses and convictions under  
172 this section:

173 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of  
174 this section, or under a prior enactment of this section, for an offense which occurred within the  
175 10-year period immediately preceding the date of arrest in the current proceeding;

176 (2) Any conviction under a municipal ordinance of this state or any other state or a statute  
177 of the United States or of any other state of an offense which has the same elements as an offense  
178 described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred  
179 within the 10-year period immediately preceding the date of arrest in the current proceeding; and

180 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for  
181 violation of subsection (e) of this section, which violation occurred within the 10-year period  
182 immediately preceding the date of arrest in the current proceeding.

183 (o) A person may be charged in a warrant, indictment, or information for a second or  
184 subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has been  
185 previously arrested for, or charged with, a violation of this section which is alleged to have  
186 occurred within the applicable time period for prior offenses, notwithstanding the fact that there  
187 has not been a final adjudication of the charges for the alleged previous offense. In that case, the  
188 warrant or indictment or information must set forth the date, location, and particulars of the  
189 previous offense or offenses. No person may be convicted of a second or subsequent offense  
190 under this section unless the conviction for the previous offense has become final, or the person  
191 has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

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

197 (q)The sentences provided in this section upon conviction for a violation of this article are  
198 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the  
199 provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of one  
200 year or less for a first offense under this section: *Provided, however*, That the court may impose a  
201 term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated  
202 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*  
203 *seq.* of this code may be used as an alternative sentence to any period of incarceration required by  
204 this section for a first or subsequent offense: *Provided further*, That for any period of home  
205 incarceration ordered for a person convicted of a second offense under this section, electronic  
206 monitoring shall be required for no fewer than five days of the total period of home confinement  
207 ordered and the offender may not leave home for those five days notwithstanding the provisions of  
208 §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered for  
209 a person convicted of a third or subsequent violation of this section, electronic monitoring shall be  
210 included for no fewer than 10 days of the total period of home confinement ordered and the  
211 offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

212 (r) A person whose license to operate a motor vehicle has been revoked or suspended by  
213 the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a  
214 comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or  
215 her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

216 (s) For any offense for which an alternative revocation period is permitted conditioned upon  
217 participation in the test and lock program, an alternative sentence may not be imposed without the  
218 consent of the driver.

219 (t) Upon entering the order of conviction for an offense under this section, or the imposition  
220 of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall  
221 immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

222 (u) The amendments made to this section during the ~~2020~~ 2023 regular session of the

223 Legislature shall become effective on July 1, ~~2020~~ 2023.

NOTE: The purpose of this bill is to establish the felony offenses of driving a motor vehicle while impaired causing the death of an unborn fetus or causing serious bodily injury to an unborn fetus and prescribes penalties for the offenses; the bill also increases the penalties for the felony offenses of driving impaired causing death or causing serious bodily injury to any person.

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