

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 3302**

By Delegates Westfall, Burkhammer, Pinson, Capito,  
Kelly, Steele, Fast, Kimble, Martin, Kump and C. Pritt

[Introduced February 6, 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, and to  
2 amend and reenact §61-2-30 of said code; all relating to recognizing an embryo or fetus as  
3 a distinct unborn victim for certain DUI offenses; including an embryo or fetus as a distinct  
4 unborn victim for the offense of DUI causing death; including an embryo or fetus as a  
5 distinct unborn victim for the offense of DUI causing serious bodily injury; and clarifying that  
6 a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate  
7 and distinct victims as applied to the offenses of DUI causing death and DUI causing  
8 serious bodily injury.

*PREAMBLE: THIS LAW SHALL BE KNOWN AS LIAM'S LAW*

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

## **CHAPTER 17C. TRAFFIC REGULATIONS AND RULES OF THE ROAD.**

### **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 (b) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
19 such impaired state proximately causes the death of any person, including an embryo or fetus as  
20 defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be  
21 imprisoned in a state correctional facility for not less than three nor more than 15 years and shall  
22 be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a  
23 motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10  
24 years or for a period of time conditioned on participation in the test and lock program in  
25 accordance with §17C-5A-3a of this code: *Provided*, That any death charged under this  
26 subsection must occur within one year of the offense: *Provided, however*, That if the person has  
27 previously been convicted under this section, the person shall have his or her license to operate a  
28 motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period  
29 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of  
30 this code.

31 (c) Any person who drives a vehicle in this state while he or she is in an impaired state, and  
32 such impaired state proximately causes serious bodily injury to any person, including an embryo or  
33 fetus as defined in §61-2-30 of this code, other than himself or herself, is guilty of a felony and,  
34 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor  
35 more than 10 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have  
36 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor  
37 Vehicles for a period of five years or for a period of time conditioned on participation in the test and  
38 lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has

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

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

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

65 subsection shall receive credit for any period of actual confinement he or she served upon arrest  
66 for the subject offense.

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

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

85 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway  
86 or private road in this state by any other person who is in an impaired state is guilty of a  
87 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months  
88 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to  
89 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a

90 period of six months or for a period of time conditioned on participation in the test and lock program  
91 in accordance with §17C-5A-3a of this code.

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

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

116 successfully complete the program, the court shall proceed to an adjudication of the alleged  
117 offense. A motion for a continuance under this subsection may not be construed as an admission  
118 or be used as evidence.

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

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

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

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

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

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

142 pursuant to this subsection shall receive credit for any period of actual confinement he or she  
143 served upon arrest for the subject offense.

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

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

167 *Provided, however,* That this section does not apply to a third or subsequent conviction that is  
168 subject to a period of license revocation under subsection (j) of this section.

169 (n) For purposes of subsections (l) and (m) of this section relating to second, third, and  
170 subsequent offenses, the following events shall be regarded as offenses and convictions under  
171 this section:

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

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

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

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

191 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or (g)  
192 of this section, or any person permitted to drive as described under subsection (h) or (i) of this

193 section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not  
194 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i) of  
195 this section.

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

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

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

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

221 (u) The amendments made to this section during the 2020 regular session of the  
222 Legislature shall become effective on July 1, 2020.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 2. CRIMES AGAINST THE PERSON.

#### **§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.**

1 (a) This section may be known and cited as the Unborn Victims of Violence Act.

2 (b) For the purposes of this article, the following definitions shall apply: *Provided*, That  
3 these definitions only apply for purposes of prosecution of unlawful acts under this section and  
4 may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for  
5 purposes of argument in a civil cause of action, unless there has been a criminal conviction under  
6 this section.

7 (1) "Embryo" means the developing human in its early stages. The embryonic period  
8 commences at fertilization and continues to the end of the embryonic period and the beginning of  
9 the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last  
10 menstrual period.

11 (2) "Fetus" means a developing human that has ended the embryonic period and  
12 thereafter continues to develop and mature until termination of the pregnancy or birth.

13 (c) For purposes of enforcing the provisions of §61-2-1, §61-2-4, §61-2-7, §61-2-9(a), §61-  
14 2-9(c), §61-2-10, §61-2-10b, 61-2-28(a), and §17C-5-2(b) or §17C-5-2(c) of this code, a pregnant  
15 woman and the embryo or fetus she is carrying in the womb constitute separate and distinct  
16 victims.

17 (d) *Exceptions.* — The provisions of this section do not apply to:

18 (1) Acts committed during a legal abortion to which the pregnant woman, or a person  
19 authorized by law to act on her behalf, consented or for which the consent is implied by law;

20 (2) Acts or omissions by medical or health care personnel during or as a result of medical  
21 or health-related treatment or services, including, but not limited to, medical care, abortion,  
22 diagnostic testing or fertility treatment;

23 (3) Acts or omissions by medical or health care personnel or scientific research personnel  
24 in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

25 (4) Acts involving the use of force in lawful defense of self or another, but not an embryo or  
26 fetus; and

27 (5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is  
28 carrying.

29 (e) For purposes of the enforcement of the provisions of this section, a violation of the  
30 provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection  
31 afforded by the provisions of subdivision (1), subsection (d) of this section.

32 (f) *Other convictions not barred.* — A prosecution for or conviction under this section is not  
33 a bar to conviction of or punishment for any other crime committed by the defendant arising from  
34 the same incident.

NOTE: The purpose of this bill is to recognize an embryo or fetus as a distinct unborn victim for the offenses of DUI causing death and DUI causing serious bodily injury.

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