

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENGROSSED

House Bill 5406

By Delegates Akers, Funkhouser, Kimble, Mallow,
Flanigan, Jennings, Marple, Shamblin, Zatezalo,
Phillips, and Heckert

[By the request of the Department of Homeland Security – West Virginia State Police]

[Introduced February 10, 2026; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5-4, §17C-5-5, §17C-5-6, §17C-5-6a, §17C-5-8, and §17C-5-
2 10 of the Code of West Virginia, 1931, as amended, relating to driving under the influence;
3 making the West Virginia State Police Forensic Laboratory the certifying entity for
4 secondary chemical tests, method and administration of secondary chemical tests, and
5 approval of preliminary breath analysis devices and use; eliminating rule-making authority
6 of the Bureau of Public Health; providing rule-making authority for the State Police;
7 correcting blood alcohol levels related to juveniles; removing propoxyphene from the list of
8 substances tested for in a chemical analysis of blood; eliminating outdated references to
9 urine collection and analysis; permitting those trained in phlebotomy to draw blood; and
10 making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer;
designation of type of test; definition of "law-enforcement officer".**

1 (a) Any person who drives a motor vehicle in this state is considered to have given his or
2 her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary
3 chemical test of either his or her blood or breath to determine the alcohol concentration in his or
4 her blood, or the concentration in the person's body of a controlled substance, drug, or any
5 combination thereof.

6 (b) A preliminary breath analysis may be administered in accordance with the provisions of
7 §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a
8 person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a
9 municipality of this state which has the same elements as an offense described in §17C-5-2 of this
10 code.

11 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be
12 administered at the direction of the arresting law-enforcement officer having probable cause to

believe the person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in said section: *Provided*, That absent written consent of the person, a secondary test of blood may not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

(d) The law-enforcement agency that employs the arresting law-enforcement officer shall designate the secondary tests to be administered. Notwithstanding §17C-5-7a of this code, the refusal to submit to a blood test only may not result in the revocation of the arrested person's license to operate a motor vehicle in this state.

(e) Any person to whom a preliminary breath test is administered who is arrested shall be advised verbally and given a written statement advising him or her of the following:

(1) That the person's refusal to submit to the secondary chemical test, designated pursuant to subsection (d) of this section, will result in the revocation of his or her license to operate a motor vehicle for a period of at least 45 days and up to life;

(2) That, if a designated secondary chemical test is taken, the results of the test may be used against him or her in court as evidence of violating §17C-5-2 of this code or an ordinance of a municipality of this state which has the same elements as an offense described in said section; and

(3) That, if the person first submits to the requested secondary chemical test, the person has the right to have a test or tests of his or her blood performed as provided in §17C-5-9 of this code.

(f) Any law-enforcement officer who has been properly trained in the administration of any secondary chemical test authorized by this article, including, but not limited to, certification by the ~~Bureau for Public Health~~ West Virginia State Police Forensic Laboratory in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the arrest is made: *Provided*, That the law-enforcement officer may conduct the test at the nearest available properly functioning secondary chemical testing device

located outside the county in which the arrest was made, if: (1) There is no properly functioning secondary chemical testing device located within the county the arrest was made; or (2) There is no magistrate available within the county the arrest was made for the arraignment of the person arrested. A law-enforcement officer who is directing that a secondary chemical test be conducted has the authority to transport the person arrested to where the secondary chemical testing device is located.

(g) If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test. The results of a test conducted pursuant to this subsection may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer.

(h) Only the person actually administering or conducting a test conducted pursuant to this article is competent to testify as to the results and the veracity of the test.

(i) (1) For the purpose of this article, the term "law-enforcement officer" or "police officer" means: (A) Any member of the West Virginia State Police; (B) any sheriff and any deputy sheriff of any county; (C) any member of a police department in any municipality as defined in §8-1-2 of this code; (D) any Natural Resources police officer of the Division of Natural Resources; and (E) any special police officer appointed by the Governor pursuant to the provisions of §61-3-41 of this code who has completed the course of instruction at a law-enforcement training academy as provided for under the provisions of §30-29-9 of this code shall have the same meaning as the term "law-enforcement officer" is defined pursuant to §30-29-1 of this code.

(2) In addition to standards promulgated by the Governor's Committee on Crime, Delinquency, and Correction, pursuant to §30-29-3 of this code, governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula, the Governor's

Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a minimum of not less than six hours of training in the recognition of impairment in drivers who are under the influence of controlled substances or drugs other than alcohol.

(3) In addition to standards promulgated by the Governor's Committee on Crime, Delinquency, and Correction, pursuant to §30-29-3 of this code, establishing standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula, the Governor's Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a minimum of not less than six hours of training in the recognition of impairment in drivers who are under the influence of controlled substances or drugs other than alcohol.

(4) A law-enforcement officer who has not satisfactorily completed the minimum number of hours of training in the recognition of impairment in drivers who are under the influence of controlled substances or drugs other than alcohol, required by subdivisions (2) and (3) of this subsection, may not require any person to submit to secondary chemical test of his or her blood for the purposes of determining the concentration in the person's body of a controlled substance, drug, or any combination thereof.

(j) A law-enforcement officer who has reasonable cause to believe that a person has committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat, jet ski, or other motorized vessel, shall follow the provisions of this section when administering, or causing to be administered, a preliminary breath analysis and, incidental to a lawful arrest, a secondary chemical test of the accused person's blood or breath to determine the alcohol concentration in his or her blood, or the concentration in the person's body of a controlled substance, drug, or any combination thereof.

§17C-5-5. Preliminary analysis of breath to determine alcoholic content of blood.

When a law-enforcement officer has reason to believe a person has committed an offense prohibited by ~~section two of this article~~ §17C-5-2 of this code or by an ordinance of a municipality of

3 this state which has the same elements as an offense described in ~~said section two of this article~~
4 §17C-5-2 of this code, the law-enforcement officer may require such person to submit to a
5 preliminary breath analysis for the purpose of determining such person's blood alcohol content.
6 Such breath analysis must be administered as soon as possible after the law-enforcement officer
7 has a reasonable belief that the person has been driving while under the influence of alcohol,
8 controlled substances or drugs. Any preliminary breath analysis required under this section must
9 be administered with a device and in a manner approved by the ~~department of health~~ West Virginia
10 State Police Forensic Laboratory for that purpose. The results of a preliminary breath analysis
11 shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be
12 made. When a driver is arrested following a preliminary breath analysis, the tests as hereinafter
13 provided in this article shall be administered in accordance with the provisions thereof.

**§17C-5-6. How blood test administered; additional test at option of person tested; use of
test results; certain immunity from liability incident to administering test.**

1 Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician,
2 or any professional trained in phlebotomy at the place of his or her employment, acting at the
3 request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol
4 concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any
5 combination thereof. These limitations shall not apply to the taking of a breath test. In withdrawing
6 blood to determine the alcohol concentration in the blood, or the presence in the blood of a
7 controlled substance, drug, or any combination thereof, only a previously unused and sterile
8 needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with
9 accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to
10 venapuncture. The person tested may, at his or her own expense, have a doctor of medicine or
11 osteopathy, or registered nurse, or trained medical technician, or any professional trained in
12 phlebotomy at the place of his or her employment, of his or her own choosing, administer a
13 chemical test in addition to the test administered at the direction of the law-enforcement officer.

14 Upon the request of the person who is tested, full information concerning the test taken at the
15 direction of the law-enforcement officer shall be made available to him or her. No person who
16 administers any such test upon the request of a law-enforcement officer as herein defined, no
17 hospital in or with which such person is employed or is otherwise associated or in which such test
18 is administered, and no other person, firm or corporation by whom or with which such person is
19 employed or is in any way associated, shall be in any way criminally liable for the administration of
20 such test, or civilly liable in damages to the person tested unless for gross negligence or willful or
21 wanton injury

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

1 (a) A preliminary breath analysis may be administered to a child whenever a law-
2 enforcement official has reasonable cause to believe the child to have been driving a motor vehicle
3 with any amount of alcohol in his or her blood for the purpose of determining the child's blood
4 alcohol content. The breath analysis must be administered as soon as possible after the law-
5 enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle
6 with any amount of alcohol in his or her blood. Any preliminary breath analysis administered
7 pursuant to this subsection must be administered with a device and in a manner approved by the
8 ~~division of health~~ West Virginia State Police Forensic Laboratory for that purpose. If a preliminary
9 breath analysis is administered, the results shall be used solely for the purpose of guiding the
10 officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol
11 concentration in his or her blood of ~~.0002~~ .02 of one percent or more, by weight, and should,
12 therefore, be taken into custody to administer a secondary test in accordance with the provisions
13 of this section.

14 (b) A child may be taken into custody by a law-enforcement official without a warrant or
15 court order if the official has reasonable grounds to believe the child to have been driving a motor
16 vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is

administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than ~~.0002~~ .02 of one percent, by weight, the child may not be taken into custody unless other grounds exist under §49-4-705(b) of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood ~~or urine~~ may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood ~~breath, or urine~~ or breath: *Provided*, That if the test is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of ~~§17C-5-7~~ §17C-5-7a of this code, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood ~~breath, or urine~~ or breath, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at least 30 days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: *Provided*, That the breath test shall be administered in the

42 presence of the official who took the child into custody. The results of the breath test may be used
43 in evidence to the same extent and in the same manner as if the test had been conducted by the
44 law-enforcement official who took the child into custody. The qualified person administering the
45 breath test must be a member of the ~~West Virginia state police~~ State Police, the sheriff of the
46 county where the child was taken into custody, or any deputy of the sheriff or a law-enforcement
47 official of another municipality within the county wherein the child was taken into custody. Only the
48 person actually administering the secondary breath test is competent to testify as to the results
49 and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in
50 accordance with the provisions of §17C-5-6 of this code.

51 (e) After taking the child into custody, if the law-enforcement official has reasonable cause
52 to believe that the act of the child in driving the motor vehicle is such that it would provide grounds
53 for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an
54 adult, then the official shall proceed to treat the child in the same manner as any other child taken
55 into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of this
56 code.

57 (f) If the results of any secondary test administered pursuant to this section indicate that the
58 child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of
59 ~~.0008~~ .08 of one percent or less, by weight, and if the law-enforcement official does not have
60 reasonable cause to believe that the act of the child in driving the motor vehicle is such that it
61 would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this
62 code if the child were an adult, then the official shall release the child: *Provided*, That if the results
63 of any secondary test administered pursuant to this section indicate that the child, at the time of
64 driving the motor vehicle, had an alcohol concentration in his or her blood of ~~.0002~~ .02 of one
65 percent or more, by weight, the child shall only be released to a parent or custodian, or to some
66 other responsible adult.

§17C-5-8. Interpretation and use of chemical test.

(a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood or breath, is admissible, if the sample or specimen was taken within the time period provided in subsection (g).

(b) The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:

(1) Evidence that there was, at that time, ~~five hundredths~~ .05 of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

(2) Evidence that there was, at that time, more than ~~five hundredths~~ .05 of one percent and less than ~~eight hundredths~~ .08 of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

(3) Evidence that there was, at that time, ~~eight hundredths~~ .08 of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

(c) A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of:

(1) The number of grams of alcohol per ~~one hundred~~ 100 cubic centimeters of blood;

(2) The number of grams of alcohol per ~~two hundred ten~~ 210 liters of breath; or

(3) The number of grams of alcohol per ~~eighty-six~~ 86 milliliters of serum.

(d) A chemical analysis of blood for the purpose of determining the controlled substance or drug concentration of a person's blood, must include, but is not limited to, the following drugs or classes of drugs:

- (1) Marijuana metabolites;
- (2) Cocaine metabolites;
- (3) Amphetamines;
- (4) Opiate metabolites;
- (5) Phencyclidine (PCP);
- (6) Benzodiazepines;
- ~~(7) Propoxyphene;~~
- ~~(8)~~ (7) Methadone;
- ~~(9)~~ (8) Barbiturates; and
- ~~(10)~~ (9) Synthetic narcotics.

(e) (1) A chemical analysis of a person's blood or breath, in order to give rise to the presumptions or to have the effect provided for in this section, must be performed in accordance with methods and standards approved by the ~~state Bureau for Public Health~~ West Virginia State Police Forensic Laboratory.

(A) The ~~Bureau for Public Health~~ West Virginia State Police Forensic Laboratory shall prescribe, by legislative rules promulgated pursuant to ~~article three, chapter twenty-nine-a~~ §29A-3-1 et seq. of this code, methods and standards for the chemical analysis of a person's blood or breath.

(B) Legislative rules proposed by the ~~Bureau for Public Health~~ West Virginia State Police Forensic Laboratory must specify the test or tests that are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community, and must provide an approved method of administration which must be followed in all such tests given under this section.

(C) ~~The bureau~~ West Virginia State Police Forensic Laboratory shall review prescribed standards and methods at least every two years to ensure that the methods and standards are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community.

(2) A chemical analysis of blood to determine the alcohol content or the controlled substance or drug content of blood shall be conducted by ~~a qualified~~ an accredited laboratory or by the ~~State Police scientific laboratory of the~~ West Virginia State Police Forensic Laboratory.

(f) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

(g) For the purposes of the admissibility of a chemical test under subsection (a):

(1) A sample or specimen taken to determine the alcohol concentration of a person's blood, must be taken within two hours from the time of the person's arrest; or

(2) For a sample or specimen to determine the controlled substance or drug content of a person's blood, must be taken within four hours of the person's arrest.

(h) The results of any test administered pursuant to this section for the purpose of detecting the concentration of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

§17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.

A reasonable fee shall be allowed to the person withdrawing a blood sample or ~~administering a urine test~~ at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or ~~whose urine was tested~~ was arrested and charged with a violation of ~~section two of this article~~ §17C-5-2 of this code, the county having venue of such charge shall pay ~~said~~ the fee, and if ~~said~~ the person arrested is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the

8 contrary, into the General Fund of said county. If the person whose blood sample was withdrawn or
9 ~~whose urine was tested~~ was arrested and charged with a violation of a similar ordinance of any
10 municipality, said municipality shall pay ~~said~~ the fee, and if ~~said~~ the person arrested is
11 subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the
12 criminal proceeding and shall be paid, notwithstanding any other provision of this code to the
13 contrary, into the General Fund of said municipality.