WEST VIRGINIA CODE: §17C-5-4

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

(a) Any person who drives a motor vehicle in this state is considered to have given his or her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary chemical test of either his or her 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.

(b) A preliminary breath analysis may be administered in accordance with the provisions of §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a 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 §17C-5-2 of this code.

(c) A secondary test of blood or breath is incidental to a lawful arrest and is to be 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

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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 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" 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.

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(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.

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