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 section five of this article whenever a law-enforcement officer has reasonable cause to believe a person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(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 section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(d) The law-enforcement agency that employs the arresting law-enforcement officer shall designate the secondary tests to be administered: Notwithstanding the provisions of section seven of this article, 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 given a written statement advising him or her that his or her refusal to submit to the secondary chemical test pursuant to subsection (d) of this section will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least forty-five days and up to life.

(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 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: (I) There is no properly functioning secondary chemical testing device located within the county the arrest was made; or (ii) 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: (1) Any member of the West Virginia State Police; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; (4) any natural resources police officer of the Division of Natural Resources; and (5) any special police officer appointed by the Governor pursuant to the provisions of section forty-one, article three, chapter sixty-one of this code who has completed the course of instruction at a law-enforcement training academy as provided for under the provisions of section nine, article twenty-nine, chapter thirty of this code.

(2) In addition to standards promulgated by the Governor's Committee on Crime, Delinquency and Correction, pursuant to section three, article twenty-nine, chapter thirty 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 section three, article twenty-nine, chapter thirty 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) That after December 31, 2014, 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) or (3), may no longer 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 person has committed an offense prohibited by section eighteen, article seven, chapter twenty of this code, relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the provisions of this section in 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.