WEST VIRGINIA CODE CHAPTER 17C ARTICLE 5

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§17C-5-1. Vehicular homicide; aggravated vehicular homicide; vehicular homicide in a school zone; vehicular homicide in a construction zone; penalties; revocation of driving privileges upon conviction.

(a) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as the proximate result of injury caused by the driving of any motor vehicle anywhere in this state by any person in reckless disregard for the safety of others, the person operating the motor vehicle is guilty of vehicular homicide.

(b) Any person convicted of vehicular homicide is guilty of a misdemeanor and upon conviction, shall be fined not less than $1,000 nor more than $10,000, confined in the jail for not more than one year, or both fined and confined.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, when the death of a person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, occurs within one year as the proximate result of injury caused by the operation of any motor vehicle in this state in deliberate disregard for the safety of others, the person operating the motor vehicle is guilty of the offense of aggravated vehicular homicide and upon conviction he or she shall be fined not more than $20,000, or imprisoned in a state correctional facility for a definite term of years of not less than one nor more than five years, or both fined and imprisoned.

(d) For the purposes of this section, a person who acts with deliberate disregard for the safety of others if he or she has knowledge of facts or intentionally disregards facts that create high probability of injury to the safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to or the safety of others.

(e) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as the proximate result of injury caused by the driving of any vehicle in a school zone, as set forth in §17C-6-1 of this code, during school recess or while children are going to or leaving school during opening or closing hours, by any person in reckless disregard for the safety of others, the person operating the vehicle is guilty of vehicular homicide in a school zone.

(f) Any person convicted of vehicular homicide in a school zone is guilty of a felony and upon conviction, shall be fined not less than $2,500 nor more than $5,000, or imprisoned in a state correctional facility for a definite term of years of not less than two nor more than 10 years, or both fined and imprisoned.

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(g) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as the proximate result of injury caused by the driving of any vehicle where street or highway construction work is being performed consistent with the provisions of §17C-3-4b of this code, by any person in reckless disregard for the safety of others, the person operating the vehicle is guilty of vehicular homicide in a construction zone.

(h) Any person convicted of vehicular homicide in a construction zone shall be guilty of a felony and upon conviction, shall be fined not less than $2,500 nor more than $5,000, or imprisoned in a state correctional facility for a definite term of years of not less than two nor more than 10 years, or both fined and confined.

(i) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of any offense contained within this section.

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

(a) Definitions.

(1) "Impaired state" means a person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug or inhalant substance;

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

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

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

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

(4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

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

(b)(1) Any person who drives a vehicle in this state while he or she is in an impaired state and does so with deliberate disregard for the safety of others, as defined in §17C-5-1 of this code, and such impaired state and deliberate disregard for the safety of others proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 30 years and shall be fined not less than $2,000 nor more than $10,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life: Provided, That any death charged under this subdivision must occur within one year of the offense: Provided further, That upon conviction for a violation of this subdivision, the sentence is mandatory, and not eligible for suspension pursuant to the provisions of §25-4-6 of this code, or an order for home incarceration pursuant to the provisions of §62-11B-1 *et seq*. of this code. The amendments to this section enacted during the 2026 regular legislative session shall be known as “Baylea’s Law”.

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

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

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

(e) Any person who drives a vehicle on any public highway or private road in this state: (1)

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

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

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

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

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

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

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

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

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

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

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

(k) Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a

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misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than $200 nor more than $1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

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

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

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

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

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

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

(4) Any conviction under the provisions of §61-5-17(j) of this code or under a prior enactment of that subsection, for an offense which occurred within the 15-year period immediately preceding the date of arrest in the current proceeding.

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

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

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

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no fewer than 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

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

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

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

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§17C-5-2a. Definition of phrase "in this state"; phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.

(a) For purposes of this article and §17C-5A-1 *et seq*. of this code, the phrase "in this state" shall mean anywhere within the physical boundaries of this state, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel, but as used in §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h), §17C-5-2(i), §17C-5-2(j), and §17C-5-2(k) of this code, the term does not mean or include driving or operating a vehicle solely and exclusively on one's own property in an area not open to the use of the public for purposes of vehicular travel.

(b) When used in this code, the terms or phrases "driving under the influence of intoxicating liquor", "driving or operating a motor vehicle while intoxicated", "for any person who is under the influence of intoxicating liquor to drive any vehicle", or any similar term or phrase shall be construed to mean and be synonymous with the term or phrase "while under the influence of alcohol ... drives a vehicle" as the latter term or phrase is used in §17C-5-2 of this code.

(c) From and after the effective date of this section, a warrant or indictment which charges or alleges an offense, prohibited by §17C-5-2 of this code, and which warrant or indictment uses any of the terms or phrases set forth in subsection (b) of this section, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against said person.

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§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.

(a) (1) Except as provided in subsection (f) of this section, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and impose probation, when:

(A) The person pleads to or is found guilty of the offense defined in §17C-5-2(e) of this code;

(B) The person has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance, or any other drug; and

(C) The person notifies the court within 30 days of his or her arrest of his or her intention to participate in a deferral pursuant to this section.

(2) If all the requirements in subdivision (1) of this subsection are met, the court, without entering a judgment of guilt, shall defer further proceedings and place the person on probation, the conditions of which shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Participation therein shall be for a period of at least 165 days after a 15-day suspension of his or her license to operate a motor vehicle and shall be completed within one year thereafter.

(b) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (c) of this section, the court may issue such process as is necessary to bring the defendant before the court.

(2) A motion alleging a violation filed pursuant in subdivision (1) of this subsection must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes, or rules of court during the period of enrollment in the program.

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(c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within 30 days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the 30-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (b) of this section.

(d) Except as provided herein, unless a defendant adjudicated pursuant to this subsection is convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, except for those provided in §17C-5A-1 *et seq*. of this code. Except as provided in §17C-5-2 of this code regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as provided in §17C-5-2 of this code.

(e) There may be only one discharge and dismissal under this section with respect to any person.

(f) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the person has previously had his or her license to operate a motor vehicle revoked for any offense under a municipal ordinance of this state or any other state or a statute of the United States or of any other state which has the same elements as an offense described in this article; or (4) if a court entered an order finding that the person refused the secondary chemical test pursuant to §17C-5-7a of this code.

(g) (1) After a period of not less than one year, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge all official records of his or her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles: *Provided,* That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

(2) If the prosecuting attorney objects to the expungement, the objections shall be filed with

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the court within 30 days after service of a motion for expungement, and copies of the objections shall be served on the defendant or the defendant's attorney.

(3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(h) A person prosecuted for an offense under §17C-5-2(e) of this code, whose case is disposed of pursuant to the provisions of this section, shall be required to pay the amount of court costs that could be assessed against a person convicted of the offense. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with §50-3-2 of this code; §14-2A-4 of this code; §30-29-4 of this code; and §62-5-2, §62-5-7, and §62-5-10 of this code.

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

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§17C-5-3. Reckless driving; penalties.

(a) Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private, or upon the ways of any state institution, or upon the property of any county boards of education, or upon any property within the state park and public recreation system established by the Director of the Division of Natural Resources pursuant to §20-4-3 of this code in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) The provisions of subsection (a) of this section does not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Director of the Division of Natural Resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

(c) Every person convicted of reckless driving is guilty of a misdemeanor and, upon a first conviction thereof, shall be confined in jail for a period of not less than five days nor more than 90 days, or fined not less than $25 nor more than $500, or both fined and confined, and upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than 10 days nor more than six months, or fined not less than $50 nor more than $1,000, or both fined and confined.

(d) Notwithstanding the provisions of subsection (c) of this section, any person convicted of a violation of subsection (a) of this section who in doing so proximately causes another to suffer serious bodily injury shall, upon conviction, be confined in jail not less than 30 days nor more than one year or fined not less than $50 nor more than $1,000, or both fined and confined.

(e) For purposes of subsection (d) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

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§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 code.

(f) Any law-enforcement officer who has been properly trained in the administration of any

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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.

(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

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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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§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 §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, the law-enforcement officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer has a reasonable belief that the person has been driving while under the influence of alcohol, controlled substances or drugs. Any preliminary breath analysis required under this section must be administered with a device and in a manner approved by the West Virginia State Police Forensic Laboratory for that purpose. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis, the tests as hereinafter provided in this article shall be administered in accordance with the provisions thereof.

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§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.

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician, or any professional trained in phlebotomy at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof. These limitations shall not apply to the taking of a breath test. In withdrawing blood to determine the alcohol concentration in the blood, or the presence in the blood of a controlled substance, drug, or any combination thereof, only a previously unused and sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venapuncture. The person tested may, at his or her own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician, or any professional trained in phlebotomy at the place of his or her employment, of his or her own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him or her. No person who administers any such test upon the request of a law-enforcement officer as herein defined, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm or corporation by whom or with which such person is employed or is in any way associated, shall be in any way criminally liable for the administration of such test, or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

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

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

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor 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 .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 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 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-5-7a 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 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

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

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

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

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§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest, as specified in §17C-5-4 of this code, refuses to submit to a secondary chemical test, the test shall not be given.

(b) Upon requesting that a person submit to the secondary test, designated pursuant to §17C-5-4 of this code, the person shall be given the written and verbal warnings set forth in §17C-5-4(e) of this code. After the person under arrest is given the required written and verbal warnings, the person shall have the opportunity to submit to, or refuse to submit to, the secondary test. A refusal to submit to the secondary test is considered final after 15 minutes have passed since the refusal: *Provided,* That during the 15 minutes following the refusal, the arresting officers shall permit the person under arrest to revoke his or her refusal and shall provide the person with the opportunity to submit to the test upon request. After the 15 minutes have passed following a refusal to submit to the secondary test, the arresting officer has no further duty to provide the person with an opportunity to take the secondary test.

(c) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against the person pursuant to §17C-5-2 of this code, a written statement that: (1) He or she had probable cause to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances, or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances, or drugs; (3) the person refused to submit to the secondary chemical test designated in the manner provided in §17C-5-4 of this code; and (4) the person was given the verbal warnings and the written statement required by subsection (b) of this section and §17C-5-4 of this code. An officer, by signing the statement required by this subsection, makes an oath or affirmation that the information contained in the statement is true and that any copy of the statement that he or she files is a true copy. The form for the written statement required by this section shall contain, upon its face, a warning to the officer signing that to willfully sign a statement containing false information is false swearing and is a misdemeanor.

(d) Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his or her blood or breath as provided in §17C-5-4 of this code and the test may be administered although the person is not informed that his or her failure to submit to the test will result in the revocation of his or her license to operate a motor vehicle in this state for the period provided for in this section.

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

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§17C-5-7a. Suspension of license to operate a motor vehicle for refusal of secondary test; refusal review hearing.

(a) For the purposes of this section, the term "refusal review hearing" refers to a hearing to review a person's alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code.

(b) Subject to the provisions of this subsection, the court shall enter an order finding that a person charged with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test, as required by §17C-5-4 of this code.

(1) At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period provided in subsection (e) of this section, unless the person requests a refusal review hearing within 30 days following the first appearance.

(2) If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that the person charged with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test.

(3) If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order, as provided in subsection (c) of this section.

(c) Refusal review hearing. —

(1) The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code, requests the hearing within 30 days following his or her first appearance before the court. During the refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

(2) Pursuant to the provisions of §7-4-1 and §8-10-2 of this code, either the prosecuting attorney of the county with jurisdiction over the refusal review hearing or the legal representative of the municipality with jurisdiction over the refusal review hearing shall appear in and attend to all matters, actions, and proceedings of the refusal review hearing to protect the interests of the state.

(3) Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test if the court determines, by a preponderance of the evidence, that:

(A) The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation of §17C-5-2 of this code;

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(B) The law-enforcement officer requested the arrested person to submit to a chemical test designated pursuant to §17C-5-4 of this code;

(C) At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings required by §17C-5-4 and §17C-5-7 of this code; and

(D) The arrested person refused to submit to a chemical test as requested by the law-enforcement officer.

(4) If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed in subdivision (3) of this subsection did not occur, the court shall enter an order finding that the person did not refuse to submit to the secondary chemical test. If the court enters such an order, the Commissioner of the Division of Motor Vehicles may not revoke the person's license to operate a motor vehicle based on the alleged refusal to submit to a secondary chemical test.

(d) The clerk of the court in which the charges are pending shall immediately transmit any order entered pursuant to this section to the Commissioner of the Division of Motor Vehicles.

(e) Upon receipt of an order provided pursuant to this section finding that a person did refuse to submit to a secondary chemical test, the Commissioner of the Division of Motor Vehicles shall revoke the person's license to operate a motor vehicle as follows:

(1) For the first refusal to submit to the designated secondary chemical test, the commissioner shall enter an order revoking the person's license to operate a motor vehicle in this state for a period of one year or for a period of 45 days, with an additional one year of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of §17C-5A-3a of this code.

(2) If the person's license to operate a motor vehicle has previously been revoked under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in this state for a period of 10 years. The license may be reissued in five years in accordance with the provisions of §17C-5A-3 of this code.

(3) If the person's license to operate a motor vehicle has previously been revoked more than once under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in this state for a period of life.

(f) The commissioner shall forward a copy of each order entered pursuant to this section to the person by registered or certified mail, return receipt requested. An order shall contain the reasons for any revocation and shall specify the revocation period imposed.

(g) A revocation ordered pursuant to this section shall run concurrently with the period of any suspension or revocation imposed in accordance with §17C-5A-2 of this code.

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(h) The provisions of this section do not confer upon the Division of Motor Vehicles the status of a party to any refusal review proceeding. Nothing in this section shall be construed as requiring either the prosecuting attorney of the county with jurisdiction over the refusal review hearing or the legal representative of the municipality with jurisdiction over the refusal review hearing to act as counsel for the commissioner or the Division of Motor Vehicles.

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§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, .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 .05 of one percent and less than .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, .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 100 cubic centimeters of blood;

(2) The number of grams of alcohol per 210 liters of breath; or

(3) The number of grams of alcohol per 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;

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(5) Phencyclidine (PCP);

(6) Benzodiazepines;

(7) Methadone;

(8) Barbiturates; and

(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 West Virginia State Police Forensic Laboratory.

(A) The West Virginia State Police Forensic Laboratory shall prescribe, by legislative rules promulgated pursuant to §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 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 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 an accredited laboratory or by 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.

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(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.

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§17C-5-9. Right to demand test.

Any person lawfully arrested for driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs shall have the right to demand that a sample or specimen of his or her blood or breath to determine the alcohol concentration of his or her blood be taken within two hours from and after the time of arrest and a sample or specimen of his or her blood or breath to determine the controlled substance or drug content of his or her blood, be taken within four hours from and after the time of arrest, and that a chemical test thereof be made. The analysis disclosed by such chemical test shall be made available to such arrested person forthwith upon demand.

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

A reasonable fee shall be allowed to the person withdrawing a blood sample 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 was arrested and charged with a violation of §17C-5-2 of this code, the county having venue of such charge shall pay the fee, and if 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 contrary, into the General Fund of said county. If the person whose blood sample was withdrawn was arrested and charged with a violation of a similar ordinance of any municipality, said municipality shall pay the fee, and if 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 contrary, into the General Fund of said municipality.

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§17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

(a) Notwithstanding the provisions of section five, article twelve, chapter eight of this code, on and after September 1, 1983, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall be null and void and of no effect unless such ordinance defines such an offense in substantially similar terms as an offense defined under the provisions of this article and such offense contains the same elements as an offense defined herein.

(b) Notwithstanding the provisions of section one, article eleven, chapter eight of this code, on and after August 1, 1983, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall prescribe the same penalty for such offense as is prescribed for an offense under this article containing the same elements.

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§17C-5-12. Report to the Legislature.

On or before December 31, 2020, the Bureau for Public Health shall submit to the Joint Committee on Government and Finance a report that includes the following:

(1) Recommendations for the minimum levels of those drugs or controlled substances contained in §17C-5-8(d) of this code, that must be present in a person's blood in order for the test to be admitted as prima facie evidence that the person was under the influence of a controlled substance or drug in a prosecution for the offense of driving a motor vehicle in this state; and

(2) Recommendations for the minimum levels of those drugs or controlled substances contained in §17C-5-8(d) of this code, that laboratories approved to test blood for drug or controlled substance content can reliably identify and measure for the concentrations of drugs, controlled substances and their metabolites, in blood.

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