WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 535

(Senators Foster, Jenkins, Kessler, Green, Hunter, Wells, Hall, McKenzie and White, original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 535

(SENATORS FOSTER, JENKINS, KESSLER, GREEN, HUNTER, WELLS, HALL, MCKENZIE AND WHITE, original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-4-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §17C-5-2 and §17C-5-7 of said code; and to amend and reenact
§17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code, all relating to modifications to administrative and criminal penalties for driving a motor vehicle under the influence of alcohol and/or drugs; reducing the criminal and administrative sanctions for driving a vehicle with a lawfully suspended or revoked license; providing for concurrent sentences for driving a vehicle with a lawfully suspended or revoked license; removing the mandatory 24-hour incarceration for first offense driving under the influence; creating an aggravated offense of driving with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; permitting participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; process for rejecting or modifying hearing examiner's proposed findings; law-enforcement officers excused from hearings unless presence is requested by party whose license is at issue; adoption of law-enforcement affidavit if officer does not attend hearing; mandating participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; providing enhanced administrative sanctions for persons operating a motor vehicle with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; making certain technical changes to administrative procedures; transferring primary authority of the Safety and Treatment Program to the Department of Health and Human Resources; providing for removal of the Driver's Rehabilitation Fund from the jurisdiction of the Division of Motor Vehicles and placing it under the jurisdiction of the Secretary of the Department of Health and Human Resources; requiring Department of Health and Human Resources to propose legislative rules; providing that a person whose driver's license is revoked for refusing to take a secondary chemical test is not eligible to reduce the
revocation period by completing the Safety and Treatment Program; removing requirement that victim impact panels be implemented pursuant to legislative rules; requiring the Commissioner of the Division of Motor Vehicles to propose legislative rules; reducing the minimum period of revocation for participation in the test and lock program; increasing minimum periods of participation in the ignition interlock device for aggravating offenses; and denying participation in the Motor Vehicle Alcohol Test and Lock Program for person whose driver's license is revoked for driving under the influence of drugs.

Be it enacted by the Legislature of West Virginia:

That §17B-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17C-5-2 and §17C-5-7 of said code be amended and reenacted; and that §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted, all to read as follows:

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) or 2 (d) of this section, any person who drives a motor
vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than ninety days and shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than thirty days nor more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year and shall be fined not less than one thousand dollars nor more than three thousand
dollars; for the third or any subsequent offense, the
person is guilty of a felony and, upon conviction
thereof, shall be imprisoned in a state correctional
facility for not less than one year nor more than three
years and, in addition to the mandatory prison
sentence, shall be fined not less than three thousand
dollars nor more than five thousand dollars.

(c) Upon receiving a record of the first or subsequent
conviction of any person under subsection (b) of this
section upon a charge of driving a vehicle while the
license of that person was lawfully suspended or
revoked, the division shall extend the period of the
suspension or revocation for an additional period of six
months which may be served concurrently with any
other suspension or revocation. Upon receiving a
record of the second or subsequent conviction of any
person under subsection (a) of this section upon a
charge of driving a vehicle while the license of that
person was lawfully suspended or revoked, the division
shall extend the period of the suspension or revocation
for an additional period of ninety days which may be
served concurrently with any other suspension or
revocation. (d) Any person who drives a motor
vehicle on any public highway of this state at a time
when his or her privilege to do so has been lawfully
suspended for driving while under the age of
twenty-one years with 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, is guilty of a misdemeanor and,
upon conviction thereof, shall be confined in jail for
twenty-four hours or shall be fined not less than fifty
dollars nor more than five hundred dollars, or both.
Upon receiving a record of a first or subsequent conviction under this subsection for a charge of driving a vehicle while the license of that person was lawfully suspended or revoked, the division shall extend the period of the suspension or revocation for an additional period of six months which may be served concurrently with any other suspension or revocation.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

(a) Any person who:

1 (1) Drives a vehicle in this state while he or she:

2 (A) Is under the influence of alcohol;

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

4 (C) Is under the influence of any other drug;

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

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

11 (2) While driving does any act forbidden by law or
12 fails to perform any duty imposed by law in the driving
13 of the vehicle, which act or failure proximately causes
14 the death of any person within one year next following
15 the act or failure; and

16 (3) Commits the act or failure in reckless disregard of
17 the safety of others and when the influence of alcohol,
18 controlled substances or drugs is shown to be a
19 contributing cause to the death, is guilty of a felony
20 and, upon conviction thereof, shall be imprisoned in a
21 state correctional facility for not less than two years nor
22 more than ten years and shall be fined not less than one
23 thousand dollars nor more than three thousand dollars.

24 (b) Any person who:

25 (1) Drives a vehicle in this state while he or she:

26 (A) Is under the influence of alcohol;

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

28 (C) Is under the influence of any other drug;

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

31 (E) Has an alcohol concentration in his or her blood of
32 eight hundredths of one percent or more, by weight;
33 and

34 (2) While driving does any act forbidden by law or
fails to perform any duty imposed by law in the driving
of the vehicle, which act or failure proximately causes
the death of any person within one year next following
the act or failure, is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for not less
than ninety days nor more than one year and shall be
fined not less than five hundred dollars nor more than
one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while he or she:

(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;

(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;
and

(2) While driving does any act forbidden by law or
fails to perform any duty imposed by law in the driving
of the vehicle, which act or failure proximately causes
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, which jail term is to
include actual confinement of not less than twenty-four
hours, and shall be fined not less than two hundred
Any person who:

(1) Drives a vehicle in this state while he or she:

(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;

(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, but less than fifteen hundredths of one percent, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

Any person who drives a vehicle 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 twenty-four hours, and shall be fined not less than two hundred
dollars nor more than one thousand dollars. A person
sentenced pursuant to this subdivision shall receive
credit for any period of actual confinement he or she
served upon arrest for the subject offense.

(f) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives
a vehicle 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
twenty-four hours, and shall be fined not less than one
hundred dollars nor more than five hundred dollars. A
person sentenced pursuant to this subdivision shall
receive credit for any period of actual confinement he
or she served upon arrest for the subject offense.

(g) Any person who:

(1) Knowingly permits his or her vehicle to be driven
in this state by any other person who:

(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;

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

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

(2) 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 one hundred dollars nor more than five hundred dollars.

(h) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine 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 one hundred dollars nor more than five hundred dollars.

(i) Any person under the age of twenty-one years who drives a vehicle 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 twenty-five dollars nor more than one hundred dollars. 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 twenty-four hours and shall be fined not less than one hundred dollars nor more than five hundred dollars. 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 Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. 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.

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

(j) Any person who:

(1) Drives a vehicle in this state while he or she:

(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;

(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;
and

(2) The person while driving has on or within the
motor vehicle one or more other persons who are
unemancipated minors who have not reached their
sixteenth birthday is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for not less
than two days nor more than twelve months, which jail
term is to include actual confinement of not less than forty-eight hours and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, 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 and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(l) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

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

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

(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 (a), (b), (c), (d), (e), (f), (g) or (h) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(n) A person may be charged in a warrant or indictment or information for a second or subsequent offense under 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.

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

(p) For purposes of this section, the term “controlled substance” has the meaning ascribed to it in chapter sixty-a of this code.
(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 article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less for a first offense under this section. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: Provided, however, That for any period of home incarceration ordered for a person convicted of 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 section five, article eleven-b, chapter sixty-two of this code: 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 no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.

§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 section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, that prior to the refusal, the person is given an oral
warning and a written statement advising him or her that his or her refusal to submit to the secondary test finally designated 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; and that after fifteen minutes following the warnings the refusal is considered final. The arresting officer after that period of time expires has no further duty to provide the person with an opportunity to take the secondary test. The officer shall, within forty-eight hours of the refusal, sign and submit to the Commissioner of Motor Vehicles a written statement of the officer that: (1) He or she had reasonable grounds 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 finally designated in the manner provided in section four of this article; and (4) the person was given a written statement advising him or her that his or her license to operate a motor vehicle in this state would be revoked for a period of at least forty-five days and up to life if he or she refused to submit to the secondary test finally designated in the manner provided in section four of this article. The signing of the statement required to be signed by this section constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false
swearing and is a misdemeanor. Upon receiving the statement the commissioner shall make and enter an order revoking the person’s license to operate a motor vehicle in this state for the period prescribed by this section.

For the first refusal to submit to the designated secondary chemical test, the commissioner shall make and enter an order revoking the person’s license to operate a motor vehicle in this state for a period of one year or forty-five days, with an additional one year of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a of this chapter: Provided, That a person revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be considered to be a waiver of the hearing provided in section two of said article. If the commissioner has previously revoked the person’s license under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, make and enter an order revoking the person’s license to operate a motor vehicle in this state for a period of ten years: Provided, That the license may be reissued in five years in accordance with the provisions of section three, article five-a of this chapter. If the commissioner has previously revoked the person’s license more than once under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, make and enter an order revoking the person’s license to operate a motor vehicle in this state for a period of life. A copy of each order...
shall be forwarded to the person by registered or
certified mail, return receipt requested, and shall
contain the reasons for the revocation and shall specify
the revocation period imposed pursuant to this section.
A revocation shall not become effective until ten days
after receipt of the copy of the order. 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, breath or urine as provided in
section four of this article 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.

A revocation under this section shall run concurrently
with the period of any suspension or revocation
imposed in accordance with other provisions of this
code and growing out of the same incident which gave
rise to the arrest for driving a motor vehicle while
under the influence of alcohol, controlled substances or
drugs and the subsequent refusal to undergo the test
finally designated in accordance with the provisions of
section four of this article.

(b) For the purposes of this section, where reference is
made to previous suspensions or revocations under this
section, the following types of suspensions or
revocations shall also be regarded as suspensions or
revocations under this section:

(1) Any suspension or revocation on the basis of a
state or a statute of the United States or of any other state or a statute of the United States or of any other
offense described in section two of this article for conduct which occurred on or after the tenth day of June, one thousand nine hundred eighty-three; and
(2) Any revocation under the provisions of section one or two, article five-a of this chapter for conduct which occurred on or after the tenth day of June, one thousand nine hundred eighty-three.

(c) A person whose license to operate a motor vehicle in this state has been revoked shall be afforded an opportunity to be heard, in accordance with the provisions of section two, article five-a of this chapter.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs or refusal to submit to secondary chemical test.

(a) Any person who is licensed to operate a motor vehicle in this state and who drives a motor vehicle in this state shall be deemed to have given his or her consent by the operation thereof, subject to the provisions of this article, to the procedure set forth in this article for the determination of whether his or her license to operate a motor vehicle in this state should be revoked because he or she did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or combined influence of alcohol
or controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, or did refuse to submit to any secondary chemical test required under the provisions of article five of this chapter or did drive a motor vehicle while under the age of twenty-one years with 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.

(b) Any law-enforcement officer investigating a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section shall report to the Commissioner of the Division of Motor Vehicles by written statement within forty-eight hours of the conclusion of the investigation the name and address of the person believed to have committed the offense. The report shall include the specific offense with which the person is charged and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. The signing of the statement required to be signed by this subsection constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(c) If, upon examination of the written statement of the officer and the tests results described in subsection
(b) of this section, the commissioner determines that a person committed an offense described in section two, article five of this chapter or an offense described in a municipal ordinance which has the same elements as an offense described in said section and that the results of any secondary test or tests indicate that at the time the test or tests were administered the person had, in his or her blood, an alcohol concentration of eight hundredths of one percent or more, by weight, or at the time the person committed the offense he or she was under the influence of alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking or suspending the person's license to operate a motor vehicle in this state. If the results of the tests indicate that at the time the test or tests were administered the person was under the age of twenty-one years and had 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, the commissioner shall make and enter an order suspending the person's license to operate a motor vehicle in this state. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested, and shall contain the reasons for the revocation or suspension and describe the applicable revocation or suspension periods provided in section two of this article. A revocation or suspension shall not become effective until ten days after receipt of a copy of the order.

(d) Any law-enforcement officer taking a child into custody under the provisions of section six-a, article five of this chapter who has reasonable cause to believe that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two
hundredths of one percent or more, by weight, or that the act of the child in driving the motor vehicle was such that it would provide grounds for arrest for an offense defined under the provisions of section two of said article if the child were an adult, shall report to the Commissioner of the Division of Motor Vehicles by written statement within forty-eight hours the name and address of the child.

(e) If applicable, the report shall include a description of the specific offense with which the child could have been charged if the child were an adult and a copy of the results of any secondary tests of blood, breath or urine. The signing of the statement required to be signed by this subsection constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(f) Upon examination of the written statement of the officer and any test results described in subsection (d) of this section, if the commissioner determines that the results of the test indicate that at the time the test or tests were administered the child had, in his or her blood, an alcohol concentration of two hundredths of one percent or more, by weight, but also determines that the act of the child in driving the motor vehicle was not such that it would provide grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (h), section two, article five of this chapter if the child were an adult, the
commissioner shall make and enter an order suspending
the child's license to operate a motor vehicle in this
state. If the commissioner determines that the act of
the child in driving the motor vehicle was such that it
would provide grounds for arrest for an offense defined
under the provisions of subsection (a), (b), (c), (d), (e),
(f), (g) or (h), section two, article five of this chapter if
the child were an adult, the commissioner shall make
and enter an order revoking the child's license to
operate a motor vehicle in this state. A copy of the
order shall be forwarded to the child by registered or
certified mail, return receipt requested, and shall
contain the reasons for the suspension or revocation
and describe the applicable suspension or revocation
periods provided for in section two of this article. A
suspension or revocation shall not become effective
until ten days after receipt of a copy of the order.

§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license
to operate a motor vehicle in this state has been revoked
or suspended under the provisions of section one of this
article or section seven, article five of this chapter, the
Commissioner of the Division of Motor Vehicles shall
stay the imposition of the period of revocation or
suspension and afford the person an opportunity to be
heard. The written request must be filed with the
commissioner in person or by registered or certified
mail, return receipt requested, within thirty calendar
days after receipt of a copy of the order of revocation or
suspension or no hearing will be granted. The hearing
shall be before the commissioner or a hearing examiner
retained by the commissioner who shall rule on
evidentiary issues and submit proposed findings of fact
and conclusions of law for the consideration of the commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply. The commissioner may reject or modify the hearing examiner's proposed findings of fact and conclusions of law, in writing, and only if:

1. There is an error of law;
2. They are clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
3. They are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) The hearing shall be held at an office of the division located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available.

(c) Any hearing shall be held within one hundred eighty days after the date upon which the commissioner received the timely written request for a hearing unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on the commissioner's own motion or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting the hearing and the policies shall be
enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner may issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, constitutes a subpoena to appear at the hearing without the necessity of payment of fees by the Division of Motor Vehicles.

(d) Any investigating officer who submits a statement pursuant to section one of this article that results in a hearing pursuant to this section shall not attend the hearing on the subject of that affidavit unless requested to do so by the party whose license is at issue in that hearing or by the commissioner. The hearing request form shall clearly and concisely inform a person seeking a hearing of the fact that the investigating officer will only attend the hearing if requested to do so and provide for a box to be checked requesting the investigating officer's attendance. The language shall appear prominently on the hearing request form. The Division of Motor Vehicles is solely responsible for causing the attendance of the investigating officers. Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time. If the party whose license is at issue does not request the investigating officer to attend the hearing, the commissioner shall consider the written statement, test results and any other information
submitted by the investigating officer pursuant to section one of this article in that officer's absence.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with 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.

The commissioner may propose a legislative rule in compliance with the provisions of article three, chapter twenty-nine-a of this code which may provide that if a person accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with 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, intends to challenge the results of any secondary chemical test of blood, breath or urine under section seven, article five of this chapter or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, the person shall, within an appropriate period of time prior to the hearing, notify the commissioner in
writing of his or her intention. The rule may provide that when there is a failure to comply with the notice requirement, the results of the secondary test, if any, shall be admissible as though the person and the commissioner had stipulated the admissibility of the evidence. Any rule shall provide that the rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the commissioner to the person establishing a time and place for the hearing also informed the person of the consequences of the person's failure to timely notify the commissioner of the person's intention to challenge the results of the secondary chemical test or cross-examine the individual or individuals who administered the test or performed the chemical analysis.

(f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with 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, the commissioner shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with 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; (2) whether the person committed an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test; and (3) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person’s blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the commissioner further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person’s license for a period of ten years: Provided, That if the commissioner has previously suspended or revoked the person’s license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of
(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.
immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: Provided, That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: Provided, however, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of
this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided further, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) (1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the commissioner also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of article three-a, article five-a, chapter seventeen-c of this code: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(2) If a person whose license is revoked pursuant to
(1) If, in addition to a finding that the person did drive
a motor vehicle while under the age of twenty-one years
with 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, the
commissioner also finds by a preponderance of the
evidence that the person when driving did an act
forbidden by law or failed to perform a duty imposed
by law, which act or failure proximately caused the
death of a person, and if the commissioner further finds
that the alcohol concentration in the blood was a
contributing cause to the death, the commissioner shall
revoke the person's license for a period of five years:
Provided, That if the commissioner has previously
suspended or revoked the person's license under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
revocation shall be for the life of the person.
arrest, the period of revocation shall be for the life of
the person.

(m) If, in addition to a finding that the person did
drive a motor vehicle while under the age of twenty-one
years with 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, the commissioner also finds by a preponderance
of the evidence that the person when driving did an act
forbidden by law or failed to perform a duty imposed
by law, which act or failure proximately caused bodily
injury to a person other than himself or herself, and if
the commissioner further finds that the alcohol
concentration in the blood was a contributing cause to
the bodily injury, the commissioner shall revoke the
person's license for a period of two years: Provided,
That if the commissioner has previously suspended or
revoked the person's license under the provisions of this
section or section one of this article within the ten years
immediately preceding the date of arrest, the period of
revocation shall be ten years: Provided, however, That
if the commissioner has previously suspended or
revoked the person's license more than once under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of
the person.

(n) If the commissioner finds by a preponderance of
the evidence that the person did drive a motor vehicle
while under the age of twenty-one years with 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, the commissioner
shall suspend the person's license for a period of sixty
days: Provided, That if the commissioner has previously
suspended or revoked the person's license under the
provisions of this section or section one of this article,
the period of revocation shall be for one year, or until
the person's twenty-first birthday, whichever period is
longer.

(o) If, in addition to a finding that the person did
drive a motor vehicle while under the influence of
alcohol, controlled substances or drugs, or did drive a
motor vehicle while having an alcohol concentration in
the person's blood of eight hundredths of one percent or
more, by weight, the commissioner also finds by a
preponderance of the evidence that the person when
driving did have on or within the motor vehicle another
person who has not reached his or her sixteenth
birthday, the commissioner shall revoke the person's
license for a period of one year: Provided, That if the
commissioner has previously suspended or revoked the
person's license under the provisions of this section or
section one of this article within the ten years
immediately preceding the date of arrest, the period of
revocation shall be ten years: Provided, however, That
if the commissioner has previously suspended or
revoked the person's license more than once under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of
the person.

(p) For purposes of this section, where reference is
made to previous suspensions or revocations under this
section, the following types of criminal convictions or
administrative suspensions or revocations shall also be
regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another 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 section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or

(3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.

(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the commissioner shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (4) whether the person had been given a written statement advising
the person that the person's license to operate a motor
vehicle in this state would be revoked for at least forty-five
days and up to life if the person refused to submit
to the test finally designated in the manner provided in
said section.

(r) If the commissioner finds by a preponderance of
the evidence that: (1) The investigating officer had
reasonable grounds 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 committed 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 finally
designated; and (4) the person had been given a written
statement advising the person that the person's license
to operate a motor vehicle in this state would be
revoked for a period of at least forty-five days and up
to life if the person refused to submit to the test finally
designated, the commissioner shall revoke the person's
license to operate a motor vehicle in this state for the
periods specified in section seven, article five of this
chapter. The revocation period prescribed in this
subsection shall run concurrently with any other
revocation period ordered under this section or section
one of this article arising out of the same occurrence.

(s) If the commissioner finds to the contrary with
respect to the above issues the commissioner shall
rescind his or her earlier order of revocation or shall
reduce the order of revocation to the appropriate period
of revocation under this section or section seven, article
five of this chapter. A copy of the commissioner's order
made and entered following the hearing shall be served
upon the person by registered or certified mail, return
receipt requested. During the pendency of any hearing,
the revocation of the person's license to operate a motor
vehicle in this state shall be stayed.

If the commissioner shall after hearing make and
enter an order affirming the commissioner's earlier
order of revocation, the person shall be entitled to
judicial review as set forth in chapter twenty-nine-a of
this code. The commissioner may not stay enforcement
of the order. The court may grant a stay or supersede as
of the order only upon motion and hearing, and a
finding by the court upon the evidence presented, that
there is a substantial probability that the appellant
shall prevail upon the merits and the appellant will
suffer irreparable harm if the order is not stayed:
Provided, That in no event shall the stay or supersede
as of the order exceed one hundred fifty days.
Notwithstanding the provisions of section four, article
five of said chapter, the commissioner may not be
compelled to transmit a certified copy of the file or the
transcript of the hearing to the circuit court in less than
sixty days.

(t) In any revocation or suspension pursuant to this
section, if the driver whose license is revoked or
suspended had not reached the driver's eighteenth
birthday at the time of the conduct for which the
license is revoked or suspended, the driver's license
shall be revoked or suspended until the driver's
eighteenth birthday or the applicable statutory period
of revocation or suspension prescribed by this section,
whichever is longer.

(u) Funds for this section's hearing and appeal process
may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.

§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code establishing a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code and shall also establish the minimum qualifications for mental health facilities or other public agencies or private entities conducting the safety and treatment program: Provided, That the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section.

(b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving or other safety driving instruction
and other programs designed to properly educate, train and rehabilitate the offender.

(c) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall contain the following: (A) A listing and evaluation of the offender's prior traffic record; (B) The characteristics and history of alcohol or drug use, if any; (C) His or her amenability to rehabilitation through the alcohol safety program; and (D) A recommendation as to treatment or rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

(2) The Department of Health and Human Resources shall establish a fee by legislative rule proposed pursuant to article three, chapter twenty-nine-a of this code to be collected from each offender enrolled in the safety and treatment program. The program provider shall collect the established fee from each participant upon enrollment unless the department has determined that the participant is an indigent based upon criteria established pursuant to subdivision (3) of this subsection. The Department of Health and Human Resources shall reimburse enrollment fees to program providers for each eligible indigent offender.

(3) The Department of Health and Human Resources
shall establish by legislative rule, proposed pursuant to article three, chapter twenty-nine-a of this code, criteria to determine the eligibility for the payment of safety and treatment services for indigent offenders. The rule shall include, but is not limited to, the development of a criteria for determining eligibility; promulgation of application forms; establishment of procedures for the review of applications; and the establishment of a mechanism for the payment for safety and training services for eligible offenders.

(4) On or before the fifteenth day of January, of each year, the Secretary of the Department of Health and Human Resources shall report to the Legislature on:

(A) The total number of offenders participating in the safety and treatment program during the prior year;

(B) The total number of indigent offenders participating in the safety and treatment program during the prior year;

(C) The total number of program providers during the prior year; and

(D) The total amount of reimbursements paid to program provider during the prior year.

(5) The commissioner after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which
shall include successful completion of the educational, 
treatment or rehabilitation program, subject to the 
following:

(A) When the period of revocation is six months, the 
license to operate a motor vehicle in this state shall not 
be reissued until: (i) At least ninety days have elapsed 
from the date of the initial revocation, during which 
time the revocation was actually in effect; (ii) the 
offender has successfully completed the program; (iii) 
all costs of the program and administration have been 
paid; and (iv) all costs assessed as a result of a 
revocation hearing have been paid;

(B) When the period of revocation is for a period of 
one year or for more than a year, the license to operate 
a motor vehicle in this state shall not be reissued until: 
(i) At least one half of the time period has elapsed from 
the date of the initial revocation, during which time the 
revocation was actually in effect; (ii) The offender has 
successfully completed the program; (iii) All costs of the 
program and administration have been paid; and (iv) 
All costs assessed as a result of a revocation hearing 
have been paid. Notwithstanding any provision in this 
code, a person whose license is revoked for refusing to 
take a chemical test as required by section seven, article 
five of this chapter for a first offense is not eligible to 
reduce the revocation period by completing the safety 
and treatment program.

(C) When the period of revocation is for life, the 
license to operate a motor vehicle in this state shall not 
be reissued until: (i) At least ten years have elapsed 
from the date of the initial revocation, during which 
time the revocation was actually in effect; (ii) the
offender has successfully completed the program; (iii) all costs of the program and administration have been paid; and (iv) all costs assessed as a result of a revocation hearing have been paid.

(D) Notwithstanding any provision of this code or any rule, any mental health facilities or other public agencies or private entities conducting the safety and treatment program when certifying that a person has successfully completed a safety and treatment program shall only have to certify that the person has successfully completed the program.

(d) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall provide for the preparation of an educational program for each person whose license has been suspended for sixty days pursuant to the provisions of subsection (n), section two, article five-a of this chapter. The educational program shall consist of not less than twelve nor more than eighteen hours of actual classroom time.

(2) When a sixty-day period of suspension has been ordered, the license to operate a motor vehicle shall not be reinstated until: (A) At least sixty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect; (B) the offender has successfully completed the educational program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(e) A required component of the rehabilitation
program provided in subsection (b) of this section and
the education program provided for in subsection (c) of
this section shall be participation by the violator with
a victim impact panel program providing a forum for
victims of alcohol and drug-related offenses and
offenders to share first-hand experiences on the impact
of alcohol- and drug-related offenses in their lives. The
Department of Health and Human Resources, Division
of Alcoholism and Drug Abuse, shall propose and
implement a plan for victim impact panels where
appropriate numbers of victims are available and
willing to participate and shall establish guidelines for
other innovative programs which may be substituted
where the victims are not available to assist persons
whose licenses have been suspended or revoked for
alcohol and drug-related offenses to gain a full
understanding of the severity of their offenses in terms
of the impact of the offenses on victims and offenders.
The plan shall require, at a minimum, discussion and
consideration of the following:

(A) Economic losses suffered by victims or offenders;

(B) Death or physical injuries suffered by victims or
offenders;

(C) Psychological injuries suffered by victims or
offenders;

(D) Changes in the personal welfare or familial
relationships of victims or offenders; and

(E) Other information relating to the impact of
alcohol and drug-related offenses upon victims or
offenders.
The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter or have been convicted under section two, article five of this chapter.

(2) The program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the Driver’s Rehabilitation Fund: Provided, That on and after the first day of July, two thousand seven, any unexpended balance remaining in the Driver’s Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

(3) Except where specified otherwise, the use of the term “program” in this section refers to the Motor Vehicle Alcohol Test and Lock Program. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the
provisions of this section. The rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system.

(4) For purposes of this section, a "motor vehicle alcohol test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, the person is determined to be under the influence of alcohol.

(5) The commissioner shall establish by legislative rule, proposed pursuant to article three, chapter twenty-nine-a of this code, criteria to determine the eligibility for the payment of the installation of ignition interlock devices in the vehicles of indigent offenders. The rule shall include, but is not limited to, the development of a criteria for determining eligibility; promulgation of application forms; establishment of procedures for the review of applications; and the establishment of a mechanism for the payment of installations for eligible offenders.

(6) On or before the fifteenth day of January, of each year, the commissioner of the division of motor vehicles shall report to the Legislature on:

(A) The total number of offenders participating in the program during the prior year;
(B) The total number of indigent offenders participating in the program during the prior year;

(C) The terms of any contracts with the providers of ignition interlock devices; and

(D) The total cost of the program to the state during the prior year.

(b)(1) Any person whose license is revoked for the first time pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when the person's minimum revocation period as specified by subsection (c) of this section has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: Provided, That anyone whose license is revoked for the first time pursuant to subsection (k), section two of this article must participate in the program when the person's minimum revocation period as specified by subsection (c) of this section has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended pursuant to the provisions of subsection (n), section two of this article for driving a motor vehicle while under the age of twenty-one years with 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, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect:

Provided, That in the case of a person under the age of eighteen, the person is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person’s eighteenth birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program provided in subsection (d), section three of this article at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under
subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (d) or (g), section two, article five of this chapter or pursuant to subsection (j), section two of this article, the minimum period of revocation for participation in the test and lock program is fifteen days and the minimum period for the use of the ignition interlock device is one hundred and twenty-five days;

(2) For a person whose license has been revoked for a first offense pursuant to section seven, article five of this chapter, the minimum period of revocation for participation in the test and lock program is forty-five days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense pursuant to section one-a of this article for conviction of an offense defined in subsection (e), section two, article five of this chapter or pursuant to subsection (j), section two of this article, the minimum period of revocation for participation in the test and lock program is forty-five days and the minimum period for the use of the ignition interlock device is two hundred seventy days;

(4) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in
subsection (a), section two, article five of this chapter or pursuant to subsection (f), section two of this article, the minimum period of revocation before the person is eligible for participation in the test and lock program is twelve months and the minimum period for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (b), section two, article five of this chapter or pursuant to subsection (g), section two of this article, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (c), section two, article five of this chapter or pursuant to subsection (h), section two of this article, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(7) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (j), section two, article five of this chapter or pursuant to subsection (m), section two of this article, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is ten months;

(d) Notwithstanding any provision of the code to the
contrary, a person shall participate in the program if the person is convicted under section two, article five of this chapter or the person's license is revoked under section two of this article or section seven, article five of this chapter and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past ten years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation of subsection (n), section two of this article or subsection (i), section two, article five of this chapter is two months and the minimum period of participation is one year.

The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two years to the minimum period for the use of the ignition interlock device if a person other than the driver is injured and the injuries result in that person's death. The division shall add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past ten years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e) Notwithstanding any other provision in this code,
a person whose license is revoked for driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program.

(f) An applicant for the test and lock program may not have been convicted of any violation of section three, article four, chapter seventeen-b of this code for driving while the applicant's driver's license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program unless such is necessary for employment purposes.

(g) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver's license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(h) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider.

(i) A person whose license has been suspended pursuant to the provisions of subsection (n), section two of this article who has completed the educational program and who has not violated the terms required by the commissioner of the person's participation in the program is entitled to the reinstatement of his or her
driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results and all other records pertaining to the suspension shall be expunged by operation of law: Provided, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.

(j) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during that person's participation in the Motor Vehicle Alcohol Test and Lock Program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and fined not less than one
hundred dollars nor more than one thousand dollars: Provided, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if the operation is a condition of his or her employment. For the purpose of this section, job site does not include any street or highway open to the use of the public for purposes of vehicular traffic.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of , 2008.

Governor