

## State DUI Laws: West Virginia

**Legal Blood Alcohol Content Level: .08**

**Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes**

**Ignition Interlock Requirement upon Conviction: Yes**

**Felony Conviction for Repeat Offenses: Yes**

### West Virginia Code

#### **§ 17B-3-5. Grounds for mandatory revocation of license by department.**

The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final: Provided, That if the convicted driver had not reached his or her nineteenth birthday at the time of the conduct for which the license is revoked under this section, the license shall be revoked until the driver's nineteenth birthday, or the applicable statutory period of revocation, whichever is longer:

- (1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
- (2) Any felony in the commission of which a motor vehicle is used;
- (3) Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another;
- (4) Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twenty-four months;
- (6) Driving under the influence of alcohol, controlled substances or other drugs outside the state of West Virginia which conviction is under a municipal ordinance or statute of the United States or any other state of an offense which has the same elements as an offense described in section two [§ 17C-5-2], article five, chapter seventeen-c of this code; and
- (7) Nothing herein shall prohibit the department from exercising its authority to revoke or suspend a person's license to drive a motor vehicle in this state, as provided in chapter seventeen-c [§§ 17C-1-1 et seq.] of this code.

#### **§ 17B-3-6. Authority of division to suspend or revoke license; hearing.**

(a) The division is hereby authorized to suspend the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

- (1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;
  - (2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;
  - (3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
  - (4) Is an habitually reckless or negligent driver of a motor vehicle;
  - (5) Is incompetent to drive a motor vehicle;
  - (6) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;
  - (7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures or penalties imposed by a magistrate court or municipal court within ninety days, as required by section two-a [§ 50-3-2a], article three, chapter fifty or section two-a [§ 8-10-2a], article ten, chapter eight of this code;
  - (8) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a [§ 17B-3-3a] of this article;
  - (9) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school, as provided in section eleven [§ 18-8-11], article eight, chapter eighteen of this code; or
  - (10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in article five-a [§§ 48A-5A-1 et seq., repealed], chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.
- (b) The driver's license of any person having his or her license suspended shall be reinstated if:
- (1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable court has been made;
  - (2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section, and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or
  - (3) The license was suspended under the provisions of subdivision (10), subsection (a) of this section, and the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine [§ 17B-3-9] of this article.

(d) Upon suspending the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license. The provisions of this subsection (d) providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section.

**§ 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.**

(a) Except as otherwise provided in subsection (b) or (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 a county or regional jail for a period of ten days and, in addition to the mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for six months and, in addition to the mandatory jail sentence, 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 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 a county or regional jail for six months and in addition to the mandatory jail sentence, 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 a county or regional jail for a period of one year and, in addition to the mandatory jail sentence, 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 such person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license. 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 such person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license.

(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 a county or regional jail for twenty-four hours or shall be fined not less than fifty dollars nor more than five hundred dollars, or both.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b [ §§ 62-11B-1 et seq. ], chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

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

(a) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

(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) When so 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; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, 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 ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

(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) When so 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 the county or regional 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; or

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

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

(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) When so 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 the county or regional 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 dollars nor more than one thousand dollars.

(d) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

(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) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional 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.

(e) 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 the county or regional 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.

(f) 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; or

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

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

(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) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) 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 the county or regional 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 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 the county or regional 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 vehicle alcohol test and lock program as provided for in section three-a [§ 17C-5A-3a], 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 subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

(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 when so 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 the county or regional 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.

(j) 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 the county or regional 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.

(k) 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.

(l) For purposes of subsections (j) and (k) 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) or (f) 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) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(m) 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.

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

(o) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in chapter sixty-a [§§ 60A-1-101 et seq.] of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a [§§ 62-11A-1 et seq.], chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of article eleven-b [§§ 62-11B-1 et seq.] of said chapter may be used as an alternative sentence to any period of incarceration required by this section. An order for supervision or participation in a community corrections program created pursuant to article eleven-c [§§ 62-11C-1 et seq.], chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

**§ 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 article five-A [§§ 17C-5A-1 et seq.] of this chapter, 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.

(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 section two [§ 17C-5-2] of this article.

(c) From and after the effective date [September 1, 1981] of this section a warrant or indictment which charges or alleges an offense, prohibited by the provisions of section two [§ 17C-5-2] of this article, 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 him.

**§ 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 deemed 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, breath or

urine for the purposes of determining the alcoholic content of his or her blood.

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

(c) A secondary test of blood, breath or urine is incidental to a lawful arrest and is to be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person has committed an offense prohibited by section two [§ 17C-5-2] of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(d) The law-enforcement agency that employs the law-enforcement officer shall designate which type of secondary test is to be administered: Provided, That if the test designated is a blood test and the person arrested refuses to submit to the blood test, then the law-enforcement officer making the arrest shall designate either a breath or urine test to be administered. Notwithstanding the provisions of section seven [§ 17C-5-7] of this article, the refusal to submit to a blood test only may not result in the revocation of the arrested person's license to operate a motor vehicle in this state.

(e) Any person to whom a preliminary breath test is administered who is then arrested shall be given a written statement advising him or her that his or her refusal to submit to the secondary chemical test pursuant to subsection (d) of this section, will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least one year and up to life.

(f) Any law-enforcement officer who has been properly trained in the administration of any secondary chemical test authorized by this article, including, but not limited to, certification by the division of health in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the arrest is made: Provided, That the law-enforcement officer may conduct the test at the nearest available properly functioning secondary chemical testing device located outside the county in which the arrest was made, if (i) there is no properly functioning secondary chemical testing device located within the county the arrest was made or (ii) there is no magistrate available within the county the arrest was made for the arraignment of the person arrested. A law-enforcement officer who is directing that a secondary chemical test be conducted has the authority to transport the person arrested to where the secondary chemical testing device is located.

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

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

(i) For the purpose of this article, the term "law-enforcement officer" or "police officer" means: (1) Any member of the West Virginia state police; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two [§ 8-1-2], article one, chapter eight of this code; (4) any conservation officer of the division of natural resources; and (5) any special police officer appointed by the governor pursuant to the provisions

of section forty-one [§ 61-3-41], article three, chapter sixty-one of this code who has completed the course of instruction at a law-enforcement training academy as provided for under the provisions of section nine [§ 30-29-9], article twenty-nine, chapter thirty of this code.

(j) law-enforcement officer who has reasonable cause to believe that person has committed an offense prohibited by section eighteen, [§ 20-7-18] article seven, chapter twenty of this code, relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the provisions of this section in administering, or causing to be administered, a preliminary breath analysis and the secondary chemical test of the accused person's blood, breath or urine for the purpose of determining alcohol content of his or her blood.

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

When a law-enforcement officer has reason to believe a person has committed an offense prohibited by section two [§ 17C-5-2] of this article or by an ordinance of a municipality of this State which has the same elements as an offense described in said section two of this article, 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 department of health 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.

#### **§ 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 at the place of his employment, acting at the request and direction of the law-enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof. These limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood for the purpose of determining the alcoholic content 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 own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his employment, of his 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. 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 anywise 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.

#### **§ 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. Such 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 division of health 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 two hundredths 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 two hundredths of one percent, by weight, the child may not be taken into custody unless other grounds exist under subsection (b), section eight [§ 49-5-8], article five, chapter forty-nine of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood or urine may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood, breath or urine: Provided, That if the test so designated 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 section seven [§ 17C-5-7] of this article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath or urine, 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 thirty days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: Provided, That the breath test shall be administered in the presence of the official who took the child into custody. The results of such breath test may be used in evidence to the same extent and in the same manner as if such 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 West Virginia state police, the sheriff of the county wherein the child was taken into custody or any deputy of such 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 section six [§ 17C-5-6] of this article.

(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 section two [§ 17C-5-2] of this article 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 section eight [§ 17C-5-8] of this article.

(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 eight hundredths 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 section two [§ 17C-5-2] of this article 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 two hundredths of one percent or more, by weight, the child shall only be released to a parent or custodian, or to some other responsible adult.

**§ 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 [§ 17C-5-4] of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, That prior to such refusal, the person is given a written statement advising him that his refusal to submit to the secondary test finally designated will result in the revocation of his license to operate a motor vehicle in this state for a period of at least one year and up to life. If a person initially refuses to submit to the designated secondary chemical test after being informed in writing of the consequences of such refusal, he shall be informed orally and in writing that after fifteen minutes said refusal shall be deemed to be final and the arresting officer shall after said period of time expires have no further duty to provide the person with an opportunity to take the secondary test. The officer shall within forty-eight hours of such refusal, sign and submit to the commissioner of motor vehicles a written statement of the officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) such 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) such person refused to submit to the secondary chemical test finally designated in the manner provided in section four of this article; and (4) such person was given a written statement advising him that his license to operate a motor vehicle in this state would be revoked for a period of at least one year and up to life if he refused to submit to the secondary test finally designated in the manner provided in section four [§ 17C-5-4] of this article. The signing of the statement required to be signed by this section shall constitute an oath or affirmation by the person signing such statement that the statements contained therein are true and that any copy filed is a true copy. Such 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 such 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 such person's license to operate a motor vehicle in this state for a period of one year. 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 such 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 [§ 17C-5A-3], 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 such person's license

to operate a motor vehicle in this state for a period of life: Provided, That the license may be reissued in ten years in accordance with the provisions of section three [§ 17C-5A-3], article five-a of this chapter. A copy of each such order shall be forwarded to such 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. No such revocation shall become effective until ten days after receipt of the copy of such order. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn his consent for a test of his blood, breath or urine as provided in section four [§ 17C-5-4] of this article and the test may be administered although such person is not informed that his failure to submit to the test will result in the revocation of his license to operate a motor vehicle in this state for the period provided for in this section.

A revocation hereunder 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 [§ 17C-5-4] 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 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 [§ 17C-5-2] of this article, for conduct which occurred on or after June tenth, one thousand nine hundred eighty-three; and

(2) Any revocation under the provisions of section one or two [§ 17C-5A-1 or § 17C-5A-2], article five-a of this chapter, for conduct which occurred on or after June tenth, 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 [§ 17C-5A-2], article five-a of this chapter.

#### **§ 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, breath or urine, is admissible, if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged. The evidence gives rise to the following presumptions or has the following effect:

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

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

(3) Evidence that there was, at that time, eight hundredths 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.

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

- (1) The number of grams of alcohol per one hundred cubic centimeters of blood;
- (2) The number of grams of alcohol per two hundred ten liters of breath;
- (3) The number of grams of alcohol per sixty-seven milliliters of urine; or
- (4) The number of grams of alcohol per eighty-six milliliters of serum.

(c) A chemical analysis of a person's blood, breath or urine, in order to give rise to the presumptions or to have the effect provided for in subsection (a) of this section, must be performed in accordance with methods and standards approved by the state division of health. A chemical analysis of blood or urine to determine the alcohol content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the West Virginia state police.

(d) 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.

#### **§ 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 blood, breath or urine be taken within two 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.

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

A reasonable fee shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of section two [§ 17C-5-2] of this article, the county having venue of such charge shall pay said fee, and if said person 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 or whose urine was tested was arrested and charged with a violation of a similar ordinance of any municipality, said municipality shall pay said fee, and if said person 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.

#### **§ 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 [§ 8-12-5], article twelve, chapter eight of this Code, on and after the

first day of September, one thousand nine hundred eighty-three, 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 [§ 8-11-1], article eleven, chapter eight of this Code, on and after the first day of August, one thousand nine hundred eighty-three, 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.

**§ 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 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.

(b) Any law-enforcement officer arresting a person for an offense described in section two [§ 17C-5-2], 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 the name and address of the person so arrested. 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 shall constitute an oath or affirmation by the person signing the statement that the statements contained therein 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 shall determine that a person was arrested for an offense described in section two [§ 17C-5-2], 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 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 was arrested he or she was under the influence of alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking 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 for in section two [§ 17C-5-2] of this article. No revocation or suspension shall 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 [§ 17C-5-6a], 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 [§ 17C-5-2] 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 shall constitute an oath or affirmation by the person signing such statement that the statements contained therein are true and that any copy filed is a true copy. Such 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 tests 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) or (g), section two [§ 17C-5-2], 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) or (g) of said section 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 such 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. No suspension or revocation shall become effective until ten days after receipt of a copy of such order.

**§ 17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.**

(a) If a person is convicted for an offense defined in section two [§ 17C-5-2], 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 because the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the 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 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, and if the person does not act to appeal the conviction within the time periods described in subsection (b) of this section, the person's license to operate a motor vehicle in this state shall be revoked or suspended in accordance with the provisions of this section.

(b) The clerk of the court in which a person is convicted for an offense described in section two [§ 17C-5-2], 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 forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the transcript when the person convicted has not perfected an appeal within ten days from and after the date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(c) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted for an offense described in section two [§ 17C-5-2], 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 because the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the 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, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state. If the commissioner determines that the person was convicted 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 and enter an order suspending the person's license to operate a motor vehicle in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for in section two [§ 17C-5A-2] of this article. Further, the order shall give the procedures for requesting a hearing which is to be held in accordance with the provisions of said section. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner's order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

(d) The provisions of this section shall not apply if an order reinstating the operator's license of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction.

(e) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

#### **§ 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 [§ 17C-5A-1] of this article or section seven [§ 17C-5-7], 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 [§§ 29A-5-1 et seq.], chapter twenty-nine-a of this code shall apply. The hearing shall be held at an office of the division located

in or near the county wherein the arrest was made in this state or at some other suitable place in the county wherein the arrest was made if an office of the division is not available.

(b) Any such hearing shall be held within one hundred eighty days after the date upon which the commissioner received the timely written request therefor 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 such hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting the hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one [§ 29A-5-1], 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, shall constitute a subpoena to appear at the hearing without the necessity of payment of fees by the division of motor vehicles.

(c) 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.

(d) 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 [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, which rule 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, 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 such 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 such evidence. Any such 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.

(e) In the case of a hearing wherein 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 arresting 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 was lawfully placed under arrest for 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 [§§ 17C-5-1 et seq.] of this chapter.

(f) 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, but less than eight hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so 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 [§ 17C-5A-1] 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.

(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, the commissioner also finds by a preponderance of the evidence that the person when so 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 [§ 17C-5A-1] 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.

(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 so 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 [§ 17C-5A-1] 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 [§ 17C-5A-1] 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 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, or finds that the person, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, did drive a motor vehicle, 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: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one [§ 17C-5A-1] 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 [§ 17C-5A-1] 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, 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 so 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 [§ 17C-5A-1] 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) 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 so 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 [§ 17C-5A-1] 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 [§ 17C-5A-1] 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.

(l) 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 [§ 17C-5A-1] of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

(m) 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 so 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 [§ 17C-5A-1] 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 [§ 17C-5A-1] 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) 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 [§ 17C-5A-1] 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 [§ 17C-5A-2], article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(3) Any revocation under the provisions of section seven [§ 17C-5-7], article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(o) In the case of a hearing wherein 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 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) whether the person refused to submit to the secondary test finally designated in the manner provided in section four [§ 17C-5-4], 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 one year and up to life if the person refused to submit to the test finally designated in the manner provided in said section.

(p) If the commissioner finds by a preponderance of the evidence that: (1) 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) 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; 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 one year 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 [§ 17C-5-7], 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 [§ 17C-5A-1] of this article arising out of the same occurrence.

(q) 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 [§ 17C-5-7], 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 such 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 [§§ 29A-1-1 et seq.] of this code. The commissioner may not stay enforcement of the order. The court may grant a stay or supersedeas 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 supersedeas of the order exceed one hundred fifty days. Notwithstanding the provisions of section four [§ 29A-5-4], article five of said chapter, the commissioner may not be compelled to transmit a certified copy of the transcript of the hearing to the circuit court in less than sixty days.

(r) 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.

(s) Funds for this section's hearing and appeal process may be provided from the drunk driving prevention fund, as created by section forty-one [§ 15-2-41], article two, chapter fifteen of this code, upon application for such funds to the commission on drunk driving prevention.

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

(a) The division of motor vehicles, in cooperation with the department of health and human resources, the 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 [§§ 29A-1-1 et seq.] 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 [§ 17C-5-7], article five of this chapter, or subsection (6), section five [§ 17B-3-5(6)], article three, chapter seventeen-b of this code, and shall likewise establish the minimum qualifications for mental health facilities or other public agencies or private entities conducting the safety and treatment program: Provided, That the commissioner 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. 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.

(b)

(1) The division of motor vehicles, in cooperation with the department of health and human resources, the 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 [§ 17C-5-7], article five of this chapter, or subsection (6), section five [§ 17B-3-5(6)], 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) 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. The cost of the program shall be paid out of fees established by the commissioner of motor vehicles in cooperation with the department of health and human resources, division of alcohol and drug abuse. The program provider shall collect the established fee from each participant upon enrollment. The program provider shall also at the time of enrollment remit to the commissioner a portion of the collected fee established by the commissioner in cooperation with the department of health and human resources, which shall be deposited into an account designated the driver's rehabilitation fund, which was created by a prior enactment of this section and which is hereby continued, to be used for the administration of the program.

(2) 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 [§ 17C-5-7], article five of this chapter, or subsection (6), section five [§ 17B-3-5(6)], 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 years, the license to operate a motor vehicle in this state shall not be reissued until (i) at least one half of such 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.

(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 such person has successfully completed the program.

(c)

(1) The division of motor vehicles, in cooperation with 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 (l), section two [§ 17C-5A-2(l)], 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.

(d) A required component of the rehabilitation program provided for in subsection (b) and the education program provided for in subsection (c) 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 commissioner shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code to implement 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 such victims are not available, so as 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 such offenses on victims and offenders. The legislative rules proposed for promulgation by the commissioner 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.

Any rules promulgated pursuant to this subsection shall contain provisions which 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) 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 [§§ 17C-5-1 et seq.] of this chapter. Such 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. 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 [§§ 29A-1-1 et seq.] of this code for the purpose of implementing the provisions of this section. Such 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. 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, such person is determined to be under the influence of alcohol.

(b)

(1) Any person whose license has been revoked pursuant to this article or the provisions of article five [§§ 17C-5-1 et seq.] of this chapter is eligible to participate in the program when such person's minimum revocation period as specified by subsection (c) of this section has expired and such 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 no person whose license has been revoked pursuant to the provisions of section one-a [§ 17C-5A-1a] of this article for conviction of an offense defined in subsection (a) or (b), section two [§ 17C-5-2], article five of this chapter, or pursuant to the provisions of subsection (f) or (g), section two [§ 17C-5A-2] of this article, shall be eligible for participation in the program: Provided, however, That any person whose license is revoked pursuant to this article or pursuant to article five [§§ 17C-5-1 et seq.] of this chapter for an act which occurred either while participating in or after successfully completing the program shall not again be eligible to participate in such program.

(2) Any person whose license has been suspended pursuant to the provisions of subsection (l), section two [§ 17C-5A-2] 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 shall be 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 thereafter comply with the following conditions:

(A) If not already enrolled, the person will enroll in and complete the educational program provided for in subsection (c), section three [§ 17C-5A-3] 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 will 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, no person eligible to participate in the program shall operate a motor vehicle unless approved to do so by the commissioner.

(c) For purposes of this section, "minimum revocation period" means the portion which has actually expired of the period of revocation imposed by the commissioner pursuant to this article or the provisions of article five [§§ 17C-5-1 et seq.] of this chapter upon a person eligible for participation in the program 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 [§ 17C-5A-1a] of this article for conviction of an offense defined in section two [§ 17C-5-2], article five of this chapter, or pursuant to subsection (i), section two [§ 17C-5A-2] of this article, the minimum period of revocation before such person is eligible for participation in the test and lock program is thirty days, and the minimum period for the use of the ignition interlock device is five months, or that period described in subdivision (1), subsection (e) of this section, whichever period is greater;

(2) For a person whose license has been revoked for a first offense pursuant to section seven [§ 17C-5-7], article five of this chapter, refusal to submit to a designated secondary chemical test, the minimum period of revocation before such

person is eligible for participation in the test and lock program is thirty days, and the minimum period for the use of the ignition interlock device is nine months, or the period set forth in subdivision (1), subsection (e) of this section, whichever period is greater;

(3) For a person whose license has been revoked for a second offense pursuant to the provisions of section one-a [§ 17C-5A-1a] of this article for conviction of an offense defined in section two [§ 17C-5-2], article five of this chapter, or pursuant to section two [§ 17C-5A-2] of this article, the minimum period of revocation before such person is eligible for participation in the test and lock program is nine months, and the minimum period for the use of the ignition interlock device is eighteen months, or that period set forth in subdivision (2), subsection (e) of this section, whichever period is greater;

(4) For a person whose license has been revoked for any other period of time pursuant to the provisions of section one-a [§ 17C-5A-1a] of this article for conviction of an offense defined in section two [§ 17C-5-2], article five of this chapter, or pursuant to section two [§ 17C-5A-2] of this article or pursuant to section seven [§ 17C-5-7], article five of this chapter, the minimum period of revocation is eighteen months, and the minimum period for the use of the ignition interlock device is two years, or that period set forth in subdivision (3), subsection (e) of this section, whichever period is greater;

(5) An applicant for the test and lock program must not have been convicted of any violation of section three [§ 17B-4-3], article four, chapter seventeen-b of this code, for driving while the applicant's driver's license was suspended or revoked, within the two-year period preceding the date of application for admission to the test and lock program;

(6) The commissioner is hereby authorized to allow individuals in the test and lock program an additional device or devices if such is necessary for employment purposes.

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

(e) Any person who has completed the safety and treatment program and who has not violated the terms required by the commissioner of such person's participation in the motor vehicle alcohol test and lock program shall be entitled to the restoration of such person's driver's license upon the expiration of:

(1) One hundred eighty days of the full revocation period imposed by the commissioner for a person described in subdivision (1) or (2), subsection (c) of this section;

(2) The full revocation period imposed by the commissioner for a person described in subdivision (3), subsection (c) of this section;

(3) One year from the date a person described in subdivision (4), subsection (c) of this section is permitted to operate a motor vehicle by the commissioner.

(f) A person whose license has been suspended pursuant to the provisions of subsection (l), section two [§ 17C-5A-2] of this article who has completed the educational program, and who has not violated the terms required by the commissioner of such person's participation in the motor vehicle alcohol test and lock program shall be 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 shall be entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that such records have been expunged and by securely sealing and filing the records. Expungement shall have the legal effect as if the suspension never occurred. The records shall 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 such information does not divulge the identity of the person.

(g) 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 such 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 the county or regional 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 assists another person required by the terms of such other person's participation in the motor vehicle alcohol test and lock program to use a motor vehicle alcohol test and lock system in any effort to bypass the system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional 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 such is a condition of his or her employment.