

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2494**

**2015 Carryover**

(BY DELEGATES WELD, FAST, SPONAUGLE, SKINNER

AND SHOTT)

[Introduced January 13, 2016;

referred to the Committee on the Judiciary.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §62-2-1b, relating to creating a provisional plea process in criminal cases; and  
3 making findings.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 section, designated §62-2-1b, to read as follows:

## **ARTICLE 2. PRESENTMENTS AND INDICTMENTS.**

### **§62-2-1b. Provisional pleas; findings.**

1 (a) The Legislature finds that there are certain circumstances wherein a person has  
2 committed a criminal offense and should be given the opportunity to be rehabilitated. Therefore,  
3 provisional pleas may be used in criminal cases in the courts of West Virginia.

4 (b) A “provisional plea” process is as follows:

5 (1) A criminal defendant who, after being apprised of his or her Constitutional, statutory,  
6 and procedural rights, enters a plea of guilty to a misdemeanor or felony offense.

7 (2) The court determines that the defendant has knowingly, voluntarily, and intelligently  
8 waived his or her rights.

9 (3) If the court determines that there is a factual basis for the guilty plea and that the plea  
10 agreement is in the best interest of justice the defendant shall be permitted to waive his or her  
11 rights and enter a plea of guilty. In that instance, the court shall defer accepting said plea and,  
12 instead, impose upon the defendant terms and conditions of a bond and a period of continuance.  
13 The bond may include incarceration and the continuance may not be longer than two years.

14 (4) In the event the defendant complies with the court imposed terms and conditions of  
15 the bond and continuance, he or she may be permitted to withdraw the plea and the matter shall  
16 either be dismissed with prejudice or the defendant may plead to a lesser offense or some other  
17 offense as may be agreed upon by the parties and the court.

18           (5) In the event the criminal defendant violates the terms and conditions imposed upon  
19 him or her by the court during the period of continuance the prosecuting attorney shall file a motion  
20 to accept the defendant's prior plea and, following notice, a hearing held on the matter.

21           (6) In the event the court finds by clear and convincing evidence that the defendant has  
22 violated the terms and conditions of bond imposed at the time the plea was entered, the court  
23 shall accept the defendant's plea to the original offense and will impose a sentence in the court's  
24 discretion and in accordance with the statutory penalty of the crime committed.

25           (c) The Legislature recognizes that Rule 11 of the West Virginia Rules of Criminal  
26 Procedure provides for the use of a conditional plea where a defendant would tender a plea to  
27 the court and reserve in writing his or her right to withdraw the plea and appeal a legal issue to  
28 the West Virginia Supreme Court. This type of plea is separate and distinct from the provisional  
29 plea statute established by this section. This section does not affect that rule or the use of  
30 conditional pleas.

NOTE: The purpose of this bill is to create a provisional plea process in criminal proceedings. The bill also sets forth legislative findings.

This section is new; therefore, it has been completely underscored.