

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 328

BY SENATORS WELD, BOSO, CLINE, FERNS, AND BLAIR

[Introduced January 19, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-407 of the Code of West Virginia, 1931, as amended,
2 relating to requiring participation in a drug court program, under certain circumstances,
3 before a conditional discharge for first offense of possession of a controlled substance
4 may be granted.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-407. Conditional discharge for first offense of possession.

1 (a) Whenever any person who has not previously been convicted of any offense under
2 this chapter or under any statute of the United States or of any state relating to narcotic drugs,
3 marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of
4 possession of a controlled substance under §60A-4-401(c) of this code, the court, without entering
5 a judgment of guilt and with the consent of the accused, may defer further proceedings and place
6 him or her on probation upon terms and conditions. Upon violation of a term or condition, the court
7 may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the
8 terms and conditions, the court shall discharge the person and dismiss the proceedings against
9 him or her. Discharge and dismissal under this section shall be without adjudication of guilt and
10 is not a conviction for purposes of this section or for purposes of disqualifications or disabilities
11 imposed by law upon conviction of a crime, including the additional penalties imposed for second
12 or subsequent convictions under §60A-4-408 of this code. The effect of the dismissal and
13 discharge shall be to restore the person in contemplation of law to the status he or she occupied
14 prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall
15 be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by
16 reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any
17 inquiry made of him or her for any purpose. There may be only one discharge and dismissal under
18 this section with respect to any person.

19 (b) A final discharge and dismissal under this section, however, may not take place until

20 the defendant has been assessed for eligibility for the drug court treatment program under §62-
21 15-1 et seq. of this code. If the defendant is found to be an acceptable candidate and is accepted
22 into the drug court program, then his or her full compliance with the terms set forth by the drug
23 court program is required for a final discharge and dismissal under this section. Should the
24 defendant not fully comply with the terms of the drug court program, then the court may enter an
25 adjudication of guilt and proceed as otherwise provided.

26 (b) (c) After a period of not less than six months which shall begin to run immediately upon
27 the expiration of a term of probation imposed upon any person under this chapter, the person
28 may apply to the court for an order to expunge from all official records all recordations of his or
29 her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing
30 that the person during the period of his or her probation and during the period of time prior to his
31 or her application to the court under this section has not been guilty of any serious or repeated
32 violation of the conditions of his or her probation, it shall order the expungement.

33 ~~(e)~~ (d) (1) Notwithstanding any provision of this code to the contrary, any person
34 prosecuted pursuant to the provisions of this article whose case is disposed of pursuant to the
35 provisions of this section ~~shall be~~ is liable for any court costs assessable against a person
36 convicted of a violation of §60A-4-401(c) of this code. Payment of such costs may be made a
37 condition of probation.

38 (2) The costs assessed pursuant to this section, whether as a term of probation or not,
39 shall be distributed as other court costs in accordance with §50-3-2, §14-2A-4, §30-29-4, §62-5-
40 2, §62-5-7, §62-5-10 of this code.

NOTE: The purpose of this bill is to require participation in a drug court program, under certain circumstances, before a conditional discharge for first offense of possession of a controlled substance may be granted.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.