

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Senate Bill 726

BY SENATORS AZINGER, CAPUTO, GRADY, KARNES,
LINDSAY, MAYNARD, PHILLIPS, ROMANO, RUCKER, SMITH,
STOVER, TAKUBO, WELD, WOELFEL, AND TRUMP

[Passed March 12, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §61-11-22 and §61-11-22a of the Code of West Virginia, 1931, as
2 amended, all relating generally to pretrial diversion agreements and deferred prosecution
3 agreements; listing offenses for which pretrial diversion prohibited; listing offenses where
4 defendant is authorized under certain circumstances and with certain limitations; and
5 setting out procedures for deferred prosecutions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or a person acting as a special
2 prosecutor may enter into a pretrial diversion agreement with a person charged with an offense
3 against the State of West Virginia, when he or she considers it to be in the interests of justice.
4 The agreement is to be in writing and is to be executed in the presence of the person's attorney,
5 unless the person has executed a waiver of counsel.

6 (b) Any agreement entered into pursuant to the provisions of subsection (a) of this section
7 may not exceed 24 months in duration. The duration of the agreement must be specified in the
8 agreement. The terms of any agreement entered into pursuant to the provisions of this section
9 may include conditions similar to those set forth in §62-12-9 of this code relating to conditions of
10 probation. The agreement may require supervision by a probation officer of the circuit court, with
11 the consent of the court. An agreement entered into pursuant to this section must include a
12 provision that the applicable statute of limitations be tolled for the period of the agreement.

13 (c) A person who has entered into an agreement for pretrial diversion with a prosecuting
14 attorney and who has successfully complied with the terms of the agreement is not subject to
15 prosecution for the offense or offenses described in the agreement or for the underlying conduct
16 or transaction constituting the offense or offenses described in the agreement, unless the
17 agreement includes a provision that upon compliance the person agrees to plead guilty or nolo

18 contendere to a specific related offense, with or without a specific sentencing recommendation
19 by the prosecuting attorney.

20 (d) No person charged with a violation of the provisions of §17C-5-2 of this code may
21 participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in
22 accordance with §17C-5-2b of this code.

23 (e) No person is eligible for pretrial diversion programs if charged with:

24 (1) A felony crime of violence against the person where the alleged victim is a family or
25 household member as defined in §48-27-203 of this code;

26 (2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1
27 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

28 (3) A violation of §61-2-9a(a) of this code;

29 (4) A violation of §61-2-9d of this code;

30 (5) A violation of § 61-2-28 of this code; or

31 (6) A violation of §61-2-9 of this code where the alleged victim is a family or household
32 member as defined in §48-27-203 of this code.

§61-11-22a. Deferred adjudication.

1 (a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate
2 court of this state entered in compliance with the provisions of Rule 11 of the West Virginia Rules
3 of Criminal Procedure or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate
4 Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the
5 guilty plea and defer further adjudication thereon and release the defendant upon such terms and
6 conditions as the court deems just and necessary. Terms and conditions may include, but are not
7 limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in
8 programs offered under §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.

9 (b) If the offense to which the plea of guilty is entered is a felony, the circuit court may
10 defer adjudication for a period not to exceed three years. If the offense to which the plea of guilty

11 is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two
12 years.

13 (c) Unless otherwise specified by this section, a person is ineligible for a deferred
14 adjudication program if he or she is charged with;

15 (1) A felony crime of violence against the person where the alleged victim is a family or
16 household member as defined in §48-27-203 of this code;

17 (2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1
18 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

19 (3) A violation of §61-2-9a(a) of this code;

20 (4) A violation of §61-2-9d of this code;

21 (5) A violation of §61-2-28 prosecuted under the provisions of subsections (c) or (d) of that
22 section; or

23 (6) A violation of §61-2-9(a) of this code, or a violation of §61-2-9(b) or §61-2-9(c) of this
24 code prosecuted under the provisions of subsection (d) of that section, where the alleged victim
25 is a family or household member as defined in §48-27-203 of this code.

26 (7) A violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-28(a) or §61-2-28(b) of this
27 code where a weapon was used in the commission of the crime, the defendant has a prior
28 conviction of any of the offenses listed in subsection (c) of this section, the defendant has a prior
29 felony conviction, or the defendant has previously entered into a prior pretrial diversion or deferred
30 adjudication of crimes where the alleged victim is a family or household member as defined in
31 §48-27-203 of this code.

32 (d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not
33 previously been convicted of any of the offenses set forth in subsection (c) of this section, who
34 has no prior felony conviction, and who has not previously entered into a prior pretrial diversion
35 or deferred adjudication of crimes where the alleged victim is a family or household member as
36 defined in §48-27-203 of this code, is eligible to participate in a deferred adjudication program:

37 *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred
38 period.

39 (e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this
40 code or a violation of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or
41 household member as defined in §48-27-203 is eligible for deferred adjudication if agreed to by
42 the state and the defendant: *Provided*, That, for purposes of this section, “first offense violation”
43 means the person would not, due to any prior charges or convictions, be subject to the
44 enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d);

45 (2) In addition to terms and conditions authorized in subsection (a) of this section, a person
46 participating in a deferred adjudication program pursuant to this subsection may be required to
47 participate in compliance hearings and batterer intervention programs licensed under §48-26-402
48 of this code;

49 (3) Notwithstanding the provisions of subsection (b) of this section, a deferral under this
50 subsection shall be for a period of not less than 18 months nor more than three years; and

51 (4) A person may not participate in more than one deferred adjudication pursuant to this
52 subsection.

53 (f) If the defendant complies with the court-imposed terms and conditions he or she shall
54 be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed
55 upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

56 (g) In the event the defendant is alleged to have violated the terms and conditions imposed
57 upon him or her by the court during the period of deferral the prosecuting attorney may file a
58 motion to accept the defendant’s plea of guilty and, following notice, a hearing shall be held on
59 the matter.

60 (h) In the event the court determines that there is reasonable cause to believe that the
61 defendant violated the terms and conditions imposed at the time the plea was entered, the court
62 may accept the defendant’s plea to the original offense and impose a sentence in the court’s

63 discretion in accordance with the statutory penalty of the offense to which the plea of guilty was
64 entered or impose such other terms and conditions as the court deems appropriate.

65 (i) The procedures set forth in this section are separate and distinct from that set forth in
66 Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2022.

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Governor