WEST virginia legislature

2023 regular session

Committee Substitute

for

Senate Bill 191

By Senators Trump and Hunt

[Originating in the Committee on the Judiciary; reported on February 15, 2023]

A BILL to amend and reenact §62-11C-9 of the Code of West Virginia, 1931, as amended, relating to liability for payment of court costs as a condition of a deferred adjudication agreement; correcting a reference to a code section governing deferred prosecution agreements; and declaring that financial inability to pay court costs cannot be a basis for denying a deferred adjudication.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-9. Use of community corrections programs for those not under court supervision.

(a) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges.

(b) Any ~~pretrial diversion program~~ deferred adjudication for a defendant charged with a violation of the provisions of §61-2-9b, §61-2-9c, or §61-2-28 of this code, where the alleged victim is a family or household member, or the provisions of §17C-5-2 of this code ~~is to~~ shall require the person charged to appear before the presiding judge or magistrate and either acknowledge his or her understanding of the terms of the agreement or tender a plea of guilty or nolo contendere to the charge or charges. Upon the defendants motion, the court shall continue the matter for the period of time necessary for the person charged to complete the ~~pretrial diversion program~~ period of deferred adjudication. If the person charged successfully completes the ~~pretrial diversion program~~ period of deferred adjudication, the matter is to be resolved pursuant to the terms of the ~~pretrial diversion~~ deferred adjudication agreement. If the person charged fails to successfully complete the ~~pretrial diversion program~~ period of deferred adjudication, the matter, if ~~no~~ a plea of guilty or nolo contendere has not been tendered~~, is to~~ shall be returned to the courts docket for resolution. If the person charged has tendered a plea of guilty or nolo contendere and fails to successfully complete the ~~pretrial diversion program~~ period of deferred adjudication, the court shall accept the tendered plea of guilty or nolo contendere and proceed to sentencing.

(c) No provision of this article may be construed to limit the prosecutors discretion to prosecute an individual who has not fulfilled the terms of a written ~~pretrial diversion~~ deferred adjudication agreement by not completing the required supervision or participation in a community corrections program.

(d) Notwithstanding any provision of this code to the contrary, any person whose case is disposed of by entering into a ~~pretrial diversion~~ deferred adjudication agreement, pursuant to the provisions of ~~section twenty-two, article eleven of this chapter~~ §61-11-22(a) of this code ~~shall be~~ is liable for any applicable court costs. Payment of the court costs shall be made a condition of the deferred adjudication ~~pretrial diversion~~ agreement: *Provided,* That financial inability to pay court costs may not be a basis for denying a person deferred adjudication.