

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]

1 A BILL to amend and reenact §62-11C-9 of the Code of West Virginia, 1931, as amended, relating
2 to liability for payment of court costs as a condition of a deferred adjudication agreement;
3 correcting a reference to a code section governing deferred prosecution agreements; and
4 declaring that financial inability to pay court costs cannot be a basis for denying a deferred
5 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.

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

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

18 successfully complete the ~~pretrial diversion program~~ period of deferred adjudication, the court
19 shall accept the tendered plea of guilty or nolo contendere and proceed to sentencing.

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

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