

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5020

By Delegate Linville

(By Request of the Division of Motor Vehicles)

[Originating in the Committee on the Judiciary;

Reported on February 16, 2024]

1 A BILL to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended, relating
2 to deferred adjudication and pre-trial diversions for first offense DUI cases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.

1 (a) (1) Except as provided in subsection (f) of this section, the court, without entering a
2 judgment of guilt and with the consent of the accused, shall defer further proceedings and impose
3 probation, when:

4 (A) The person pleads to or is found guilty of ~~the~~ a misdemeanor offense defined in
5 §17C-5-2(e) or §17C-5-2(f) of this code;

6 (B) The person has not previously been convicted of any offense under this article or under
7 any statute of the United States or of any state relating to driving under the influence of alcohol,
8 any controlled substance, or any other drug; and

9 (C) The person notifies the court within 30 days of his or her arrest of his or her intention to
10 participate in a deferral pursuant to this section.

11 (2) If all the requirements in subdivision (1) of this subsection are met, the court, without
12 entering a judgment of guilt, shall defer further proceedings and place the person on probation, the
13 conditions of which shall include that he or she successfully completes the Motor Vehicle Alcohol
14 and Drug Test and Lock Program for the participation periods required for the offense committed
15 as provided in §17C-5A-3a of this code. ~~Participation therein shall be for a period of at least 165~~
16 ~~days after a 15-day suspension of his or her license to operate a motor vehicle and shall be~~
17 completed within one year thereafter.

18 (b) (1) If the prosecuting attorney files a motion alleging that the defendant during the
19 period of the Motor Vehicle Alcohol and Drug Test and Lock Program has been removed therefrom

20 by the Division of Motor Vehicles, or has failed to successfully complete the program before
21 making a motion for dismissal pursuant to subsection (c) of this section, the court may issue such
22 process as is necessary to bring the defendant before the court.

23 (2) A motion alleging a violation filed pursuant in subdivision (1) of this subsection must be
24 filed during the period of the Motor Vehicle Alcohol and Drug Test and Lock Program or, if filed
25 thereafter, must be filed within a reasonable time after the alleged violation was committed.

26 (3) When the defendant is brought before the court, the court shall afford the defendant an
27 opportunity to be heard. If the court finds that the defendant has been rightfully removed from the
28 Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may
29 order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of
30 guilt and proceed as otherwise provided.

31 (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol
32 and Drug Test and Lock Program, the defendant waives the appropriate statute of limitations and
33 the defendant's right to a speedy trial under any applicable federal or state constitutional
34 provisions, statutes, or rules of court during the period of enrollment in the program.

35 (c) When the defendant ~~shall have~~ has completed satisfactorily the Motor Vehicle Alcohol
36 Test and Lock Program and complied with its conditions, the defendant may move the court for an
37 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by
38 certification of the Division of Motor Vehicles that the defendant has successfully completed the
39 Motor Vehicle Alcohol and Drug Test and Lock Program. A copy of the motion shall be served on
40 the prosecuting attorney who shall within 30 days after service advise the judge of any objections
41 to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If
42 there are no objections filed within the 30-day period, the court shall thereafter dismiss the charges
43 against the defendant. If there are objections filed with regard to the dismissal of charges, the court
44 shall proceed as set forth in subsection (b) of this section.

45 (d) Except as provided herein, unless a defendant adjudicated pursuant to this subsection
46 is convicted of a subsequent violation of this article, discharge and dismissal under this section
47 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or
48 disabilities imposed by law upon conviction of a crime, except for those provided in §17C-5A-1 *et*
49 *seq.* of this code. Except as provided in §17C-5-2 of this code regarding subsequent offenses, the
50 effect of the dismissal and discharge shall be to restore the person in contemplation of law to the
51 status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge
52 have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise
53 giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest
54 or trial in response to any inquiry made of him or her for any purpose other than any inquiry made
55 in connection with any subsequent offense as provided in §17C-5-2 of this code.

56 (e) There may be only one discharge and dismissal under this section with respect to any
57 person.

58 (f) No person shall may be eligible for dismissal and discharge under this section: (1) In any
59 prosecution in which any felony violation of any other provision of this article has been charged; (2)
60 if the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the
61 person has previously had his or her license to operate a motor vehicle revoked for any offense
62 under a municipal ordinance of this state or any other state or a statute of the United States or of
63 any other state which has the same elements as an offense described in this article. ~~or (4) if a court~~
64 ~~entered an order finding that the person refused the secondary chemical test pursuant to~~
65 ~~§17C-5-7a of this code~~

66 (g) (1) After a period of not less than one year, which shall begin to run immediately upon
67 the expiration of a term of probation imposed upon any person under this section, the person may
68 apply to the court for an order to expunge all official records of his or her arrest, trial, and
69 conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles:

70 *Provided*, That any person who has previously been convicted of a felony may not make a motion
71 for expungement pursuant to this section.

72 (2) If the prosecuting attorney objects to the expungement, the objections shall be filed with
73 the court within 30 days after service of a motion for expungement, and copies of the objections
74 shall be served on the defendant or the defendant's attorney.

75 (3) If the objections are filed, the court shall hold a hearing on the objections, affording all
76 parties an opportunity to be heard. If the court determines after a hearing that the person during
77 the period of his or her probation and during the period of time prior to his or her application to the
78 court under this subsection has not been guilty of any serious or repeated violation of the
79 conditions of his or her probation, it shall order the expungement.

80 (h) A person prosecuted for an offense under §17C-5-2(e) of this code, whose case is
81 disposed of pursuant to the provisions of this section, shall be required to pay the amount of court
82 costs that could be assessed against a person convicted of the offense. Payment of such costs
83 may be made a condition of probation. The costs assessed pursuant to this subsection, whether
84 as a term of probation or not, shall be distributed as other court costs in accordance with §50-3-2 of
85 this code; §14-2A-4 of this code; §30-29-4 of this code; and §62-5-2, §62-5-7, and §62-5-10 of this
86 code.

87 ~~(i) The amendments made to this section during the 2020 regular session of the~~
88 ~~Legislature shall become effective on July 1, 2020~~

NOTE: The purpose of this bill is to make all first time misdemeanor DUI offenders and first time implied consent offenders eligible for deferred adjudication one time.

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