

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 191

By Senators Trump and Hunt

[Passed March 11, 2023; in effect 90 days from
passage]

1 AN ACT to amend and reenact §62-11C-9 of the Code of West Virginia, 1931, as amended,
2 relating to community corrections generally; making participation in a community
3 corrections program a possible condition of deferred adjudication; clarifying conditions of
4 deferred adjudication; clarifying terms of pretrial diversion agreements; clarifying that no
5 contest pleas may be a part of a pretrial diversion or deferred adjudication agreement;
6 setting forth offenses which require a defendant's actual appearance before a court in
7 deferred adjudication matters; clarifying judicial options where a defendant does not
8 successfully complete his or her program; and providing that inability to pay court costs or
9 and restitution is not a basis for denying a person 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.

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. A court ordered deferred adjudication proceeding,
5 pursuant to the provisions of §61-11-22a of this code, may require, through terms and conditions
6 imposed upon a defendant, participation or supervision in a community corrections program.

7 (b) Any pretrial diversion program for a defendant where the alleged victim is a family or
8 household member, shall require the person charged to appear before the presiding judge or
9 magistrate and acknowledge his or her understanding of the terms of the agreement to the charge
10 or charges. Upon the defendant's motion, the court shall continue the matter for the period of time
11 necessary for the person charged to complete the pretrial diversion program. If the person
12 charged successfully completes the pretrial diversion program, the matter is to be resolved
13 pursuant to the terms of the pretrial diversion agreement. If the person charged fails to
14 successfully complete the pretrial diversion program, the matter shall be returned to the court's

15 docket for resolution.

16 (c) No provision of this article may be construed to limit the prosecutor's discretion to
17 prosecute an individual who has not fulfilled the terms of a written pretrial diversion by not
18 completing the required supervision or participation in a community corrections program.

19 (d) Notwithstanding any provision of this code to the contrary, any person whose case is
20 disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of §61-11-
21 22 of this code is liable for any applicable court costs. Payment of the court costs shall be made a
22 condition of the pretrial diversion agreement: *Provided*, That financial inability to pay court costs
23 may not be a basis for denying a person a pretrial diversion.

24 (e) Subject to the availability of community corrections programs in the county, a written
25 pretrial diversion agreement, entered into pursuant to the provisions of §61-11-22 of this code,
26 may require participation or supervision in a community corrections program as part of the
27 prosecution and resolution of charges. A deferred adjudication proceeding, pursuant to the
28 provisions of §61-11-22a of this code, may require, through terms and conditions imposed upon a
29 defendant, participation or supervision in a community corrections program.

30 (f) Any deferred adjudication where the alleged victim is a family or household member, or
31 the provisions of §17C-5-2 of this code shall require the person charged to appear before the
32 presiding judge or magistrate and either acknowledge his or her understanding of the terms of the
33 agreement and tender a plea of guilty or nolo contendere to the charge or charges. Upon the
34 defendant's motion, the court shall continue the matter and defer adjudication for the period of time
35 necessary for the person charged to complete the period of deferred adjudication. If the person
36 charged successfully completes the period of deferred adjudication, the matter is to be resolved
37 pursuant to the terms and conditions of the deferred adjudication as outlined by the court. If it is
38 determined by the court that the defendant did not successfully complete the period of deferred
39 adjudication, the court may accept the tendered plea of guilty or nolo contendere and proceed to
40 sentencing or impose such other terms and conditions as the court deems appropriate, pursuant

41 to the provisions of §61-11-22a of this code.

42 (g) Notwithstanding any provision of this code to the contrary, any person whose case is
43 disposed of by entering into a deferred adjudication, pursuant to the provisions of §61-11-22a of
44 this code is liable for any applicable court costs. Payment of the court costs shall be made a term
45 and condition of the deferred adjudication. Payment of restitution may be made a term and
46 condition of the deferred adjudication: *Provided*, That financial inability to pay court costs and
47 restitution may not be a basis for denying a person deferred adjudication.