

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2665**

(BY DELEGATES FOLK, SKINNER, ESPINOSA,  
HOUSEHOLDER, FAIRCLOTH, OVERINGTON, UPSON,  
BLAIR, PERDUE, SOBONYA AND WAXMAN)

[Introduced January 13, 2016; referred to the  
Committee on Roads and Transportation  
then the Judiciary.]



1 A BILL to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended, relating  
 2 to participation in Motor Vehicle Alcohol Test and Lock Program; limiting eligibility for  
 3 participation in the program and for dismissal and discharge of charges.

*Be it enacted by the Legislature of West Virginia:*

1 That §17C-5-2b of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**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) Except as provided in subsections (g) of this section, whenever any person who has  
 2 not previously been convicted of any offense under this article or under any statute of the United  
 3 States or of any state relating to driving under the influence of alcohol, any controlled substance  
 4 or any other drug:

5 (1) Notifies the court within thirty days of his or her arrest of his or her intention to  
 6 participate in a deferral pursuant to this section; and

7 (2) Pleads guilty to or is found guilty of driving under the influence of alcohol under  
 8 paragraph (E), subdivision (1), subsection (d), section two of this article, and with an alcohol  
 9 concentration in his or her blood of twelve hundredths of one percent or less, the court, without  
 10 entering a judgment of guilt and with the consent of the accused, shall defer further proceedings  
 11 and, notwithstanding any provisions of this code to the contrary, place him or her on probation,  
 12 which conditions shall include, that he or she successfully completes the Motor Vehicle Alcohol  
 13 Test and Lock Program as provided in section three-a, article five-a of this chapter. Participation  
 14 ~~therein~~ in the program shall be for ~~a period of~~ at least one hundred and sixty five days after he or  
 15 she has served the fifteen days of license suspension imposed pursuant to section two, article  
 16 five-a of this chapter.

17 (b) A defendant's election to participate in deferral under this section ~~shall constitute~~ is a  
18 waiver of his or her right to an administrative hearing as provided in section two, article five-a of  
19 this chapter.

20 (c) (1) If the prosecuting attorney files a motion alleging that the defendant during the  
21 period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the  
22 Division of Motor Vehicles, or has failed to successfully complete the program before making a  
23 motion for dismissal pursuant to subsection (d) of this section, the court may issue ~~such~~ process  
24 ~~as is~~ necessary to bring the defendant before the court.

25 (2) A motion alleging ~~such~~ the violation filed pursuant to subdivision (1) of this subsection  
26 must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed  
27 ~~thereafter~~ after that, must be filed within a reasonable time after the alleged violation was  
28 committed.

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

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

38 (d) When the defendant ~~shall have~~ has completed satisfactorily the Motor Vehicle Alcohol  
39 Test and Lock Program and complied with its conditions, the defendant may move the court for  
40 an order dismissing the charges. This motion shall be supported by affidavit of the defendant and  
41 by certification of the Division of Motor Vehicles that the defendant has successfully completed  
42 the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the

43 prosecuting attorney who shall within thirty days after service advise the judge of any objections  
44 to the motion, serving a copy of ~~such~~ the objections on the defendant or the defendant's attorney.  
45 If there are no objections filed within the thirty-day period, the court shall thereafter dismiss the  
46 charges against the defendant. If there are objections filed with regard to the dismissal of charges,  
47 the court shall proceed as set forth in subsection (c) of this section.

48 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection  
49 ~~be is~~ convicted of a subsequent violation of this article, discharge and dismissal under this section  
50 ~~shall be is~~ without adjudication of guilt and is not a conviction for purposes of disqualifications or  
51 disabilities imposed by law upon conviction of a crime except for those provided in article five-a  
52 of this chapter. Except as provided in subsection (k), (l) and (m), section two of this article  
53 regarding subsequent offenses, the effect of the dismissal and discharge ~~shall be is~~ to restore the  
54 person in contemplation of law to the status he or she occupied prior to arrest and trial. No person  
55 as to whom a dismissal and discharge have been effected ~~shall~~ may be thereafter held to be guilty  
56 of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to  
57 disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for  
58 any purpose other than any inquiry made in connection with any subsequent offense as that term  
59 is defined in subsection (m), section two of this article.

60 (f) There may be only one discharge and dismissal under this section with respect to any  
61 person.

62 (g) No person ~~shall be is~~ eligible for dismissal and discharge under this section:

63 (1) In any prosecution in which any violation of any other provision of this article has been  
64 charged;

65 (2) If the person holds a commercial driver's license or operates commercial motor  
66 vehicle(s), or

67 (3) The person has previously had his or her driver's license revoked under section two-a  
68 of this article or under any statute of the United States or of any state relating to driving under the  
69 influence of alcohol, any controlled substance or any other drug;

70 (4) The person has previously been convicted of driving under the influence under any  
71 provision of section two of this article or under any statute of the United States or of any state  
72 relating to driving under the influence of alcohol, any controlled substance or any other drug; or

73 (5) The person refuses to consent to the designated secondary chemical test to determine  
74 the level of alcohol concentration in his or her blood.

75 (h) (1) After a period of not less than one year which ~~shall begin~~ begins to run immediately  
76 upon the expiration of a term of probation imposed upon any person under this section, the person  
77 may apply to the court for an order to expunge from all official records all recordations of his or  
78 her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division  
79 of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may  
80 not make a motion for expungement pursuant to this section.

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

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

89 (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a  
90 violation of subsection (d), section two, article five of this chapter whose case is disposed of  
91 pursuant to the provisions of this section ~~shall be~~ is liable for any court costs assessable against  
92 a person convicted of a violation of subsection (j), section two, article five of this chapter. Payment  
93 of ~~such~~ the costs may be made a condition of probation. The costs assessed pursuant to this  
94 subsection, whether as a term of probation or not, shall be distributed as other court costs in  
95 accordance with section two, article three, chapter fifty, section four, article two-a, chapter

96 fourteen, section four, article twenty-nine, chapter thirty and sections two, seven and ten, article  
97 five, chapter sixty-two of this code.

NOTE: The purpose of this bill is to eliminate existing loopholes in the Motor Vehicle Alcohol Test and Lock Program. It limits eligibility for participation in the program and for dismissal and discharge of charges.

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