

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

House Bill 2494

(BY DELEGATES WELD, FAST, SPONAUGLE, SKINNER AND
SHOTT)

[Passed March 12, 2016; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
2 section, designated §61-11-22a, relating to codifying deferred adjudication
3 process for persons charged with felony and misdemeanor offenses in circuit and
4 magistrate court; authorizing courts, upon motion, to defer acceptance and
5 adjudication of entered guilty pleas for certain periods based upon severity of
6 offense; authorizing court to impose such conditions and terms as it deems just
7 and necessary as a condition of participation; authorizing periods of incarceration
8 and participation in referenced programs as conditions of participation in the
9 deferred adjudication process; authorizing acceptance of previously entered guilty

10 plea upon violation of the terms and conditions of deferral; authorizing court to
11 impose additional terms and conditions upon defendant if violation occurs; and
12 clarifying that procedure hereby authorized is distinct from conditional plea under
13 Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended, by adding thereto
2 a new section, designated §61-11-22a to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22a. Deferred adjudication.

1 (a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or
2 magistrate court of this state entered in compliance with the provisions of West Virginia
3 Rule of Criminal Procedure 11 or Rule 10 of the West Virginia Rules of Criminal Procedure
4 for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer
5 acceptance of the guilty plea and defer further adjudication thereon and release the
6 defendant upon such terms and conditions as the court deems just and necessary. Terms
7 and conditions may include, but are not limited to, periods of incarceration, drug and
8 alcohol treatment, counseling and participation in programs offered under articles eleven-
9 a, eleven-b and eleven-c, chapter sixty-two of this code.

10 (b) If the offense to which the plea of guilty is entered is a felony, the circuit court
11 may defer adjudication for a period not to exceed three years. If the offense to which the
12 plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period

13 not to exceed two years.

14 (c) If the defendant complies with the court-imposed terms and conditions he or
15 she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or,
16 as may be agreed upon by the court and the parties, enter a plea of guilty or no contest
17 to a lesser offense.

18 (d) In the event the defendant is alleged to have violated the terms and conditions
19 imposed upon him or her by the court during the period of deferral the prosecuting
20 attorney may file a motion to accept the defendant's plea of guilty and, following notice, a
21 hearing shall be held on the matter.

22 (e) In the event the court determines that there is reasonable cause to believe that
23 the defendant violated the terms and conditions imposed at the time the plea was entered,
24 the court may accept the defendant's plea to the original offense and impose a sentence
25 in the court's discretion in accordance with the statutory penalty of the offense to which
26 the plea of guilty was entered or impose such other terms and conditions as the court
27 deems appropriate.

28 (f) The procedures set forth in this section are separate and distinct from that set
29 forth in West Virginia Rule of Criminal Procedure 11(a)(2).