

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

**Senate Bill 568**

BY SENATOR TRUMP

[Introduced February 16, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended, relating  
 2 to deferral of further proceedings for certain first offenses upon condition of participation  
 3 in Motor Vehicle Alcohol Test and Lock Program; and requiring completion of the program  
 4 within 12 months.

*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) Except as provided in subsection (g) of this section, whenever any person who has not  
 2 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 30 days of his or her arrest of his or her intention to participate  
 6 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 §17C-  
 8 5-2(e) of this code, the court, without entering a judgment of guilt and with the consent of the  
 9 accused, shall defer further proceedings and, notwithstanding any provisions of this code to the  
 10 contrary, place him or her on probation, which conditions shall include that he or she successfully  
 11 completes the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this  
 12 code. Participation therein shall be for a period of at least 165 days after he or she has served  
 13 the 15 days of license suspension imposed pursuant to §17C-5A-2 of this code.

14 (b) A defendant's election to participate in deferral under this section shall constitute a  
 15 waiver of his or her right to an administrative hearing as provided in §17C-5A-2 of this code.

16 (c) (1) If the prosecuting attorney files a motion alleging that the defendant during the  
 17 period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the

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

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

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

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

33 (5) A defendant participating in the Motor Vehicle Alcohol Test and Lock program pursuant  
34 to this section must complete the program within 12 months of the guilty plea or finding of guilt  
35 pursuant to subdivision (2), subsection (a) of this section. Any defendant who fails to complete  
36 the Motor Vehicle Alcohol Test and Lock program within the allotted time shall be called before  
37 the court upon motion of the prosecuting attorney or upon the court's sua sponte order. Should  
38 the court find that the defendant has failed to complete the Motor Vehicle Test and Lock program  
39 within the allotted time, the court shall order the deferral to be terminated, and the court shall  
40 proceed to enter an adjudication of guilt. The waiver set forth in subsection (c)(4) of this section  
41 shall apply to any defendant who fails to complete the Motor Vehicle Alcohol Test and Lock  
42 program within the time allotted by this subsection.

43 (d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test

44 and Lock Program and complied with its conditions, the defendant may move the court for an  
45 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by  
46 certification of the Division of Motor Vehicles that the defendant has successfully completed the  
47 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the  
48 prosecuting attorney who shall within 30 days after service advise the judge of any objections to  
49 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If  
50 there are no objections filed within the 30 day period, the court shall thereafter dismiss the charges  
51 against the defendant. If there are objections filed with regard to the dismissal of charges, the  
52 court shall proceed as set forth in subsection (c) of this section.

53 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection  
54 be convicted of a subsequent violation of this article, discharge and dismissal under this section  
55 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or  
56 disabilities imposed by law upon conviction of a crime except for those provided in article five-a  
57 of this chapter. Except as provided in §17C-5-2(l), §17C-5-2(m) and §17C-5-2(n) of this code  
58 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the  
59 person in contemplation of law to the status he or she occupied prior to arrest and trial. No person  
60 as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of  
61 perjury, false swearing or otherwise giving a false statement by reason of his or her failure to  
62 disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for  
63 any purpose other than any inquiry made in connection with any subsequent offense as that term  
64 is defined in §17C-5-2(n) of this code.

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

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

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

70 (2) if the person holds a commercial driver's license or operates commercial motor  
71 vehicle(s);

72 (3) if the person has previously had his or her driver's license revoked under §17C-5-2a  
73 of this code or under any statute of the United States or of any state relating to driving under the  
74 influence of alcohol, any controlled substance or any other drug; or

75 (4) if the person refused the secondary chemical test pursuant to §17C-5-7 of this code.

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

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

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

90 (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a  
91 violation of §17C-5-2e of this code whose case is disposed of pursuant to the provisions of this  
92 section shall be liable for any court costs assessable against a person convicted of a violation of  
93 §17C-5-2(j) of this code. Payment of such costs may be made a condition of probation. The costs  
94 assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed  
95 as other court costs in accordance with §50-3-2; §14-2A-4; §30-29-4; §62-5-2; §62-5-7 and §62-

96 5-10 of this code.

NOTE: The purpose of this bill is to require defendants participating in the Motor Vehicle Alcohol Test and Lock program to complete the program within 12 months.

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