

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 568

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

Reported on February 23, 2018]

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; requiring completion of the program
4 within 12 months; requiring defendant who fails to complete program to appear before
5 court; requiring court to terminate deferral and enter an adjudication of guilt; and allowing
6 courts to extend the period for completion of the program for good cause shown.

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 §17C-5-2b(g) of this code, 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 §17C-5-2b(d) of this code, the court may issue such process as
20 is necessary to bring the defendant before the court.

21 (2) A motion alleging such violation filed pursuant to §17C-5-2b(c)(1) of this code must be
22 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) If the defendant fails to complete or be removed from the Motor Vehicle Alcohol Test
30 and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's
31 right to a speedy trial under any applicable federal or state constitutional provisions, statutes, or
32 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 §17C-5-2b(a)(2) of this code. Any defendant who fails to complete the Motor Vehicle
36 Alcohol Test and Lock Program within the allotted time shall be called before the court upon
37 motion of the prosecuting attorney or upon the court's sua sponte order. If the court finds that the
38 defendant has failed to complete the Motor Vehicle Test and Lock Program within the allotted
39 time, the court shall order the deferral to be terminated, and the court shall proceed to enter an
40 adjudication of guilt. The waiver set forth in §17C-5-2b(c)(4) of this code applies to any defendant
41 who fails to complete the Motor Vehicle Alcohol Test and Lock Program within the time allotted

42 by this subdivision: *Provided, That the court may for good cause shown grant an extension of*
43 *time for this defendant to complete the program.*

44 (d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test
45 and Lock Program and complied with its conditions, the defendant may move the court for an
46 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by
47 certification of the Division of Motor Vehicles that the defendant has successfully completed the
48 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the
49 prosecuting attorney who shall within 30 days after service advise the judge of any objections to
50 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If
51 there are no objections filed within the 30 day period, the court shall thereafter dismiss the charges
52 against the defendant. If there are objections filed with regard to the dismissal of charges, the
53 court shall proceed as set forth in §17C-5-2b(c) of this code.

54 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection
55 be convicted of a subsequent violation of this article, discharge and dismissal under this section
56 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or
57 disabilities imposed by law upon conviction of a crime except for those provided in §17C-5A-1 *et*
58 *seq.* of this code. Except as provided in §17C-5-2(l), §17C-5-2(m), and §17C-5-2(n) of this code
59 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the
60 person in contemplation of law to the status he or she occupied prior to arrest and trial. No person
61 as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of
62 perjury, false swearing or otherwise giving a false statement by reason of his or her failure to
63 disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for
64 any purpose other than any inquiry made in connection with any subsequent offense as that term
65 is defined in §17C-5-2(n) of this code.

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

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

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

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

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

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

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

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

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

91 (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a
92 violation of §17C-5-2e of this code whose case is disposed of pursuant to the provisions of this
93 section shall be liable for any court costs assessable against a person convicted of a violation of

94 §17C-5-2(j) of this code. Payment of such costs may be made a condition of probation. The costs
95 assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed
96 as other court costs in accordance with §50-3-2; §14-2A-4; §30-29-4; §62-5-2; §62-5-7; and §62-
97 5-10 of this code.

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