

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4240

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MOORE, KESSINGER, HOLLEN, ATKINSON, AND SHOTT

[Introduced January 22, 2018; Referred
to the Committee on Roads and Transportation then
the Judiciary.]

1 A BILL to amend and reenact §17C-5-2b of the Code West Virginia, 1931, as amended, relating
 2 to expungement of the records associated with driving under the influence after completion
 3 of the deferral program.

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 (d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test
34 and Lock Program and complied with its conditions, the defendant may move the court for an
35 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by
36 certification of the Division of Motor Vehicles that the defendant has successfully completed the
37 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the
38 prosecuting attorney who shall within 30 days after service advise the judge of any objections to
39 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If
40 there are no objections filed within the 30 day period, the court shall thereafter dismiss the charges
41 against the defendant. If there are objections filed with regard to the dismissal of charges, the
42 court shall proceed as set forth in subsection (c) of this section.

43 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection
44 be convicted of a subsequent violation of this article, discharge and dismissal under this section

45 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or
46 disabilities imposed by law upon conviction of a crime except for those provided in article five-a
47 of this chapter. Except as provided in §17C-5-2(l), §17C-5-2(m) and §17C-5-2(n) of this code
48 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the
49 person in contemplation of law to the status he or she occupied prior to arrest and trial. No person
50 as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of
51 perjury, false swearing or otherwise giving a false statement by reason of his or her failure to
52 disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for
53 any purpose other than any inquiry made in connection with any subsequent offense as that term
54 is defined in §17C-5-2(n) of this code.

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

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

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

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

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

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

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

71 not make a motion for expungement pursuant to this section.

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

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

80 (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a
81 violation of §17C-5-2e of this code whose case is disposed of pursuant to the provisions of this
82 section shall be liable for any court costs assessable against a person convicted of a violation of
83 §17c-5-2(j) of this code. Payment of such costs may be made a condition of probation. The costs
84 assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed
85 as other court costs in accordance with §50-3-2; §14-2A-4; §30-29-4; §62-5-2; §62-5-7 and §62-
86 5-10 of this code.

NOTE: The purpose of this bill is to expunge the Division of Motor Vehicle records for a person who has completed the DUI deferral program.

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