

WEST VIRGINIA LEGISLATURE
2019 SECOND EXTRAORDINARY SESSION

Enrolled

Senate Bill 2002

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed November 18, 2019; in effect from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-11-26b; and to amend and reenact §62-16-5 and §62-16-6 of said code,
3 all relating generally to certain convictions or charges for motor vehicle traffic control
4 offenses and records thereof; providing that courts are without jurisdiction to expunge
5 convictions for motor vehicle traffic control offenses for any person who held a commercial
6 driver's license or permit or was operating a commercial motor vehicle at the time of the
7 offense; providing that a court or other tribunal may not enter an order or take any action
8 that will prevent a motor vehicle traffic control offense from appearing on an offender's
9 commercial driving record; clarifying that courts are without jurisdiction to expunge
10 convictions for offenses involving driving under the influence of alcohol or drugs; providing
11 that a court or other tribunal may not enter an order or take any action with regard to a
12 motor vehicle traffic control offense in violation of applicable federal laws and regulations;
13 providing that a person charged with any crime involving driving under the influence of
14 alcohol or drugs is not eligible to participate in a military service member court program,
15 except where the offender is eligible to participate in the Motor Vehicle Test and Lock
16 Program; clarifying that military service member courts may not enter an order or take any
17 action that will prevent a motor vehicle traffic control offense from appearing on an
18 offender's commercial driving record; limiting the authority of military service member
19 courts to expunge certain motor vehicle traffic offenses; and clarifying that a military
20 service member court may not enter an order or take any action with regard to a motor
21 vehicle traffic control offense in violation of applicable federal laws and regulations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26b. Limitation on expungement for certain motor vehicle traffic control offenses.

1 (a) Notwithstanding the provisions of §61-11-26, §61-11-26a, and §62-16-1 *et seq.* of this
2 code, no court or other tribunal has the authority to:

3 (1) Order the expungement of a conviction for a motor vehicle traffic control violation for a
4 person who held a commercial driver's license or permit or who was operating a commercial motor
5 vehicle at the time of the offense;

6 (2) Enter an order or take any action to mask a charge or conviction, divert a charge, or
7 modify the records of a charge or conviction in a manner that would prevent an offense from
8 appearing on an offender's commercial driving record; or

9 (3) Order the expungement of any conviction for driving under the influence of alcohol or
10 controlled substances, as provided in §61-11-26 of this code.

11 (b) Notwithstanding any other provision of this code, no court or other tribunal may enter
12 an order or take any other action related to a motor vehicle traffic control offense that violates any
13 applicable federal law or regulation, including, but not limited to:

14 (1) The requirements or conditions contained in 23 U.S.C. §164 *et seq.* and 23 C.F.R.
15 §1275 *et seq.*; and

16 (2) The requirements or conditions contained in 49 U.S.C. §31311 and 49 C.F.R. §384 *et*
17 *seq.*

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-5. Eligibility; written agreement.

1 (a) *Eligibility.* — A military service member offender, who is eligible for probation based
2 upon the nature of the offense for which he or she has been charged, and in consideration of his
3 or her criminal background, if any, may, upon application, be admitted into a court program only
4 upon the agreement of the prosecutor and the offender. Additionally, the court must also
5 determine whether the offense is in any way attributable to the offender's military service.

6 (b) A military service member offender may not participate in the court program if he or
7 she has been charged with any of the following offenses:

8 (1) A sexual offense, including, but not limited to, a violation of the felony provisions of
9 §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code, or a criminal
10 offense where the judge has made a written finding that the offense was sexually motivated;

11 (2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

12 (3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

13 (4) A felony violation of §61-2-9b or §61-2-14 of this code;

14 (5) A felony violation of §61-2-28 of this code;

15 (6) If he or she has previously been convicted in this state, another state, or in a federal
16 court for any of the offenses enumerated above; or

17 (7) A violation of §17C-5-2 of this code, except where the military service member is
18 eligible to participate in the Motor Vehicle Test and Lock Program under §17C-5A-1 *et seq.* of this
19 code.

20 (c) *Written agreement.* — Participation in a Military Service Members Court program, with
21 the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This
22 written agreement shall set forth all of the agreed upon provisions to allow the military service
23 member offender to proceed in the court. The offender shall execute a written agreement with the
24 court as to his or her participation in the program and shall agree to all of the terms and conditions
25 of the program, including, but not limited to, the possibility of sanctions or incarceration for failing
26 to comply with the terms of the program.

27 (d) Upon successful completion of a court program, the judge shall dispose of an
28 offender's case in the manner prescribed by the written agreement and by the applicable policies
29 and procedures adopted by the court. Disposition may include, but is not limited to, withholding
30 criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing,
31 split sentencing, or a reduced period of incarceration: *Provided,* That a military service member

32 court may not enter an order or take any action to mask a charge or conviction, divert a charge,
33 or modify the records of a charge or conviction in a manner that would prevent an offense from
34 appearing on an offender's commercial driving record.

§62-16-6. Procedure; mental health and substance abuse treatment; violation; termination.

1 (a) *Procedure.* — Upon application, the court shall order the offender to submit to an
2 eligibility screening, a mental health and drug/alcohol screening, and an assessment by the
3 Department of Veterans Affairs (VA) Veterans Justice Outreach to provide information on the
4 offender's mental health or military service member status. The assessment shall include a risks
5 assessment and be based, in part, upon the known availability of treatment resources available
6 to the court. The assessment shall also include recommendations for treatment of the conditions
7 which are indicating a need for treatment under the monitoring of the court and reflect a level of
8 risk assessed for the individual seeking admission. The court is not required to order an
9 assessment if a valid screening or assessment related to the present charge(s) pending against
10 the offender has been completed within the previous 60 days.

11 (b) The court may order the offender to complete substance abuse treatment in an
12 outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to
13 complete mental health counseling in an inpatient or outpatient basis, comply with all physician
14 recommendations regarding medications, and complete all follow-up treatment. The mental
15 health issues for which treatment may be provided include, but are not limited to, post-traumatic
16 stress disorder, traumatic brain injury, and depression.

17 (c) *Mental health and substance abuse treatment.* — The court may maintain a network
18 of mental health treatment programs and substance abuse treatment programs representing a
19 continuum of graduated mental health and substance abuse treatment options commensurate
20 with the needs of offenders; these shall include programs with the VA, the department, this state,
21 and community-based programs.

22 (d) *Violation.* — The court may impose reasonable sanctions under the offender’s written
23 agreement, including, but not limited to, imprisonment or dismissal of the offender from the
24 program. The court may reinstate criminal proceedings against him or her for a violation of
25 probation, conditional discharge, or supervision hearing, if the court finds from the evidence
26 presented, including, but not limited to, the reports or proffers of proof from the court’s
27 professionals that:

- 28 (1) The offender is not performing satisfactorily in the assigned program;
- 29 (2) The offender is not benefitting from educational treatment or rehabilitation;
- 30 (3) The offender has engaged in criminal conduct rendering him or her unsuitable for the
31 program; or
- 32 (4) The offender has otherwise violated the terms and conditions of the program or his or
33 her sentence or is for any reason unable to participate.

34 (e) *Termination.* — Upon successful completion of the terms and conditions of the
35 program, the court may dismiss the original charges against the offender, successfully terminate
36 the offender’s sentence, permit the offender to enter into a plea agreement to a lesser offense, or
37 otherwise discharge him or her from any further proceedings against him or her in the original
38 prosecution.

39 (f) Nothing in this article shall be construed to permit a military service member court or
40 any other court or tribunal to enter an order or take any other action that violates any applicable
41 federal law or regulation, including, but not limited to:

- 42 (1) The requirements or conditions contained in 23 U.S.C. §164 *et seq.* and 23 C.F.R.
43 §1275 *et seq.*; and
- 44 (2) The requirements or conditions contained in 49 U.S.C. 31311 and 49 C.F.R. §384 *et*
45 *seq.*

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2019.

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Governor