

WEST VIRGINIA LEGISLATURE
2019 SECOND EXTRAORDINARY SESSION

Introduced
House Bill 212

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

BY REQUEST OF THE EXECUTIVE

[Introduced November 18, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-16-5 and §62-16-6 of the Code of West Virginia, 1931, as
 2 amended; relating to clarifying provisions of the Military Service Member Court relating to
 3 driving offenses; prohibiting participation in the court if the person has committed violations
 4 relating to driving under the influence of alcohol, controlled substances, or drugs with
 5 certain exceptions; authorizing Military Service Member Courts to utilize the Test and Lock
 6 and expungement process in certain driving under the influence cases; removing the
 7 authority to expunge convictions for all motor vehicle violations, except parking tickets for
 8 commercial drivers licensees; and removing the authority to expunge convictions for motor
 9 vehicle violations.

Be it enacted by the Legislature of West Virginia:

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) A felony violation of §17C-5-2(b) of this code; or~~
16 ~~(7) If he or she has previously been convicted in this state, another state, or in a federal~~
17 court for any of the offenses enumerated above; or

18 (7) A violation of §17C-5-2 of this code.

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

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

§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) The court may order an offender, who is eligible, to participate in the Motor Vehicle
18 Alcohol Test and Lock Program pursuant to §17C-5A-1 et seq. of this code and to seek
19 expungement of certain motor vehicle offenses pursuant to §17C-5-2b of this code. The court
20 may not expunge any drug or alcohol related motor vehicle offense except as provided in §17C-
21 5-2b of this code. Provided, That no record of conviction, revocation, suspension or
22 disqualification related to any type of motor vehicle traffic control offense, other than a parking
23 violation, of a commercial driver's license holder or a person operating a commercial motor vehicle
24 may be masked, expunged, deferred or be subject to any diversion program.

25 ~~(e)~~ (d) Mental health and substance abuse treatment. — The court may maintain a network
26 of mental health treatment programs and substance abuse treatment programs representing a
27 continuum of graduated mental health and substance abuse treatment options commensurate
28 with the needs of offenders; these shall include programs with the VA, the department, this state,
29 and community-based programs.

30 ~~(d)~~ (e) Violation. — The court may impose reasonable sanctions under the offender's
31 written agreement, including, but not limited to, imprisonment or dismissal of the offender from
32 the program. The court may reinstate criminal proceedings against him or her for a violation of
33 probation, conditional discharge, or supervision hearing, if the court finds from the evidence

34 presented, including, but not limited to, the reports or proffers of proof from the court's
35 professionals that:

36 (1) The offender is not performing satisfactorily in the assigned program;

37 (2) The offender is not benefitting from educational treatment or rehabilitation;

38 (3) The offender has engaged in criminal conduct rendering him or her unsuitable for the
39 program; or

40 (4) The offender has otherwise violated the terms and conditions of the program or his or
41 her sentence or is for any reason unable to participate.

42 ~~(e)~~ (f) Termination. — Upon successful completion of the terms and conditions of the
43 program, the court may dismiss the original charges against the offender, successfully terminate
44 the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or
45 otherwise discharge him or her from any further proceedings against him or her in the original
46 prosecution.

47 ~~(f) Notwithstanding any provision of this code to the contrary, upon successful completion~~
48 ~~of the terms and conditions of the program, or if the presiding judge determines the lack of the~~
49 ~~ability to operate a motor vehicle is preventing program success, the court may expunge any~~
50 ~~driving offenses that prevent the veteran offender from obtaining a West Virginia driver's license.~~

NOTE: The purpose of this bill is to limit the ability to expunge DUI offenses to those offenses that may be expunged by utilizing the process in W. Va. Code §17C-5-2b to comply with federal law; and to limit the ability to expunge driving offenses for any commercial driver's license to comply with federal law.

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