

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5305

By Delegate Linville

(By Request of the Division of Motor Vehicles)

[Introduced January 29, 2024; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §61-11-22a of the Code of West Virginia, 1931, as amended, relating
2 to impaired driving not eligible for deferred adjudication under this code section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22a. Deferred adjudication.

1 (a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate
2 court of this state entered in compliance with the provisions of Rule 11 of the West Virginia Rules of
3 Criminal Procedure or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate
4 Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the
5 guilty plea and defer further adjudication thereon and release the defendant upon such terms and
6 conditions as the court deems just and necessary. Terms and conditions may include, but are not
7 limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in
8 programs offered under §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.

9 (b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer
10 adjudication for a period not to exceed three years. If the offense to which the plea of guilty is
11 entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

12 (c) Unless otherwise specified by this section, a person is ineligible for a deferred
13 adjudication program if he or she is charged with;

14 (1) A felony crime of violence against the person where the alleged victim is a family or
15 household member as defined in §48-27-203 of this code;

16 (2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et*
17 *seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

18 (3) A violation of §61-2-9a(a) of this code;

19 (4) A violation of §61-2-9d of this code;

20 (5) A violation of §61-2-28 prosecuted under the provisions of subsections (c) or (d) of that
21 section; or

22 (6) A violation of §61-2-9(a) of this code, or a violation of §61-2-9(b) or §61-2-9(c) of this
23 code prosecuted under the provisions of subsection (d) of that section, where the alleged victim is
24 a family or household member as defined in §48-27-203 of this code.

25 (7) A violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-28(a) or §61-2-28(b) of this
26 code where a weapon was used in the commission of the crime, the defendant has a prior
27 conviction of any of the offenses listed in subsection (c) of this section, the defendant has a prior
28 felony conviction, or the defendant has previously entered into a prior pretrial diversion or deferred
29 adjudication of crimes where the alleged victim is a family or household member as defined in §48-
30 27-203 of this code.

31 (8) A violation of §17C-5-2 of this code except that a court may defer proceedings in
32 accordance with §17C-5-2b of this code.

33 (d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not
34 previously been convicted of any of the offenses set forth in subsection (c) of this section, who has
35 no prior felony conviction, and who has not previously entered into a prior pretrial diversion or
36 deferred adjudication of crimes where the alleged victim is a family or household member as
37 defined in §48-27-203 of this code, is eligible to participate in a deferred adjudication program:
38 *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred
39 period.

40 (e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this
41 code or a violation of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or
42 household member as defined in §48-27-203 of this code is eligible for deferred adjudication if
43 agreed to by the state and the defendant: *Provided*, That, for purposes of this section, "first offense
44 violation" means the person would not, due to any prior charges or convictions, be subject to the
45 enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d) of this code;

46 (2) In addition to terms and conditions authorized in subsection (a) of this section, a person
47 participating in a deferred adjudication program pursuant to this subsection may be required to

48 participate in compliance hearings and batterer intervention programs licensed under §48-26-402
49 of this code;

50 (3) Notwithstanding the provisions of subsection (b) of this section, a deferral under this
51 subsection shall be for a period of not less than 18 months nor more than three years; and

52 (4) A person may not participate in more than one deferred adjudication pursuant to this
53 subsection.

54 (f) If the defendant complies with the court-imposed terms and conditions he or she shall
55 be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed
56 upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

57 (g) In the event the defendant is alleged to have violated the terms and conditions imposed
58 upon him or her by the court during the period of deferral the prosecuting attorney may file a
59 motion to accept the defendant's plea of guilty and, following notice, a hearing shall be held on the
60 matter.

61 (h) In the event the court determines that there is reasonable cause to believe that the
62 defendant violated the terms and conditions imposed at the time the plea was entered, the court
63 may accept the defendant's plea to the original offense and impose a sentence in the court's
64 discretion in accordance with the statutory penalty of the offense to which the plea of guilty was
65 entered or impose such other terms and conditions as the court deems appropriate.

66 (i) The procedures set forth in this section are separate and distinct from that set forth in
67 Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

NOTE: The purpose of this bill is to clarify existing law that §17C-5-2b is the operative statute for deferred adjudication for all eligible driving under the influence cases.

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