

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **House Bill 4503**

**FISCAL  
NOTE**

BY DELEGATE LANE

[Introduced February 11, 2016; Referred  
to the Committee on Select Committee on Prevention  
and Treatment of Substance Abuse then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §61-8D-10, relating to substance abuse while pregnant; providing criminal  
 3 penalty; allowing drug court course of substance abuse education and treatment as  
 4 alternative to punishment and conviction; and authorizing expungement.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §61-8D-10, to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-10. Substance abuse while pregnant.**

1 (a) A mother who, during her pregnancy, abuses alcohol or uses drugs not administered  
 2 for medical treatment and, as a result, gives birth to an infant diagnosed with fetal alcohol  
 3 syndrome or with the presence of any amount of a controlled substance or a metabolite of a  
 4 controlled substance in his or her blood, urine or meconium and the presence is not the result of  
 5 medical treatment administered to the mother or the infant, is guilty of a misdemeanor and, upon  
 6 conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and be confined in jail  
 7 for not more than one year: *Provided*, That if the mother agrees to undergo a drug court course  
 8 of substance abuse education and treatment as prescribed in article fifteen, chapter sixty-two of  
 9 this code, or the substantial equivalent, she shall be accepted into the course.

10 (b) Upon fulfillment of the terms and conditions of the drug court course of substance  
 11 abuse education and treatment, the court shall discharge the person and dismiss the proceedings  
 12 against her.

13 (1) Discharge and dismissal under this section is without adjudication of guilt and is not a  
 14 conviction for purposes of this section, or for purposes of disqualifications or disabilities imposed  
 15 by law upon conviction of a crime.

16 (2) The effect of the discharge and dismissal is to restore the person in contemplation of  
 17 law to the status she occupied prior to arrest and trial.

18           (3) A person to whom a discharge and dismissal have been effected under this section  
19 may not be found guilty of perjury, false swearing or otherwise giving a false statement by reason  
20 of her failure to disclose or acknowledge her arrest or trial relating to a charge discharged and  
21 dismissed by this section in response to any inquiry made of her for any purpose.

22           (c) Upon fulfillment of the terms and conditions of the drug court course of substance  
23 abuse education and treatment, the person may apply to the court for an order to expunge from  
24 all official records all recordations of her arrest, trial and discharge pursuant to this section. If the  
25 court determines after a hearing that the person during the period of her participation in the  
26 substance abuse education and treatment and during the period prior to her application to the  
27 court under this subsection has not abused alcohol or used drugs not administered for medical  
28 treatment, it shall order the expungement.

NOTE: The purpose of this bill is to make substance abuse while pregnant a crime. The bill would allow a drug court course of substance abuse education and treatment as an alternative to punishment and conviction, and would authorize expungement of records under certain circumstances.

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