

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 191

By Senators Trump and Hunt

[Introduced January 13, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-11C-9 of the Code of West Virginia, 1931, as amended, relating
2 to liability for payment of court costs as a condition of a pretrial diversion agreement; and
3 correcting a reference to a code section governing pretrial diversion agreements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-9. Use of community corrections programs for those not under court supervision.

1 (a) Subject to the availability of community corrections programs in the county, a written
2 pretrial diversion agreement, entered into pursuant to the provisions of section twenty-two, article
3 eleven, chapter sixty-one of this code, may require participation or supervision in a community
4 corrections program as part of the prosecution and resolution of charges.

5 (b) Any pretrial diversion program for a defendant charged with a violation of the provisions
6 of section twenty-eight, article two, chapter sixty-one of this code, subsection (b) or (c), section
7 nine of said article where the alleged victim is a family or household member or the provisions of
8 section two, article five, chapter seventeen-c of this code is to require the person charged to
9 appear before the presiding judge or magistrate and either acknowledge his or her understanding
10 of the terms of the agreement or tender a plea of guilty or nolo contendere to the charge or
11 charges. Upon the defendant's motion, the court shall continue the matter for the period of time
12 necessary for the person charged to complete the pretrial diversion program. If the person
13 charged successfully completes the pretrial diversion program, the matter is to be resolved
14 pursuant to the terms of the pretrial diversion agreement. If the person charged fails to
15 successfully complete the pretrial diversion program, the matter, if no plea of guilty or nolo
16 contendere has been tendered, is to be returned to the court's docket for resolution. If the person
17 charged has tendered a plea of guilty or nolo contendere and fails to successfully complete the
18 pretrial diversion program, the court shall accept the tendered plea of guilty or nolo contendere
19 and proceed to sentencing.

20 (c) No provision of this article may be construed to limit the prosecutor's discretion to

21 prosecute an individual who has not fulfilled the terms of a written pretrial diversion agreement by
22 not completing the required supervision or participation in a community corrections program.

23 (d) Notwithstanding any provision of this code to the contrary, any person whose case is
24 disposed of by entering into a pretrial diversion agreement, pursuant to the provisions of section
25 ~~twenty-two, article eleven of this chapter~~ §61-11-22 of this code shall be liable for any applicable
26 court costs. Payment of the court costs shall be made a condition of the pretrial diversion
27 agreement.

NOTE: The purpose of this bill is to correct an internal reference in this section to a West Virginia code section governing pretrial diversion agreements. This section requires persons whose criminal case is disposed of by entering a pretrial diversion agreement is liable for court costs.

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