# WEST VIRGINIA CODE: §17C-5-2B

**§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.**

(a) (1) Except as provided in subsection (f) of this section, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and impose probation, when:

(A) The person pleads to or is found guilty of the offense defined in §17C-5-2(e) of this code;

(B) The person has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance, or any other drug; and

(C) The person notifies the court within 30 days of his or her arrest of his or her intention to participate in a deferral pursuant to this section.

(2) If all the requirements in subdivision (1) of this subsection are met, the court, without entering a judgment of guilt, shall defer further proceedings and place the person on probation, the conditions of which shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Participation therein shall be for a period of at least 165 days after a 15-day suspension of his or her license to operate a motor vehicle and shall be completed within one year thereafter.

(b) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (c) of this section, the court may issue such process as is necessary to bring the defendant before the court.

(2) A motion alleging a violation filed pursuant in subdivision (1) of this subsection must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test

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and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes, or rules of court during the period of enrollment in the program.

(c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within 30 days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the 30-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (b) of this section.

(d) Except as provided herein, unless a defendant adjudicated pursuant to this subsection is convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, except for those provided in §17C-5A-1 *et seq.* of this code. Except as provided in §17C-5-2 of this code regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as provided in §17C-5-2 of this code.

(e) There may be only one discharge and dismissal under this section with respect to any person.

(f) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the person has previously had his or her license to operate a motor vehicle revoked for any offense under a municipal ordinance of this state or any other state or a statute of the United States or of any other state which has the same elements as an offense described in this article; or (4) if a court entered an order finding that the person refused the secondary chemical test pursuant to §17C-5-7a of this code.

(g) (1) After a period of not less than one year, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge all official records of his or her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division of Motor



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Vehicles: *Provided,* That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

(2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within 30 days after service of a motion for expungement, and copies of the objections shall be served on the defendant or the defendant's attorney.

(3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(h) A person prosecuted for an offense under §17C-5-2(e) of this code, whose case is disposed of pursuant to the provisions of this section, shall be required to pay the amount of court costs that could be assessed against a person convicted of the offense. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with §50-3-2 of this code; §14-2A-4 of this code; §30-29-4 of this code; and §62-5-2, §62-5-7, and §62-5-10 of this code.

(i) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

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