WEST VIRGINIA CODE: §61-11-22A

§61-11-22a. Deferred adjudication.

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

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

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

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-204 of this code;

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

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

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

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

(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 code prosecuted under the provisions of subsection (d) of that section, where the alleged victim is a family or household member as defined in §48-27-204 of this code.

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

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(d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not previously been convicted of any of the offenses set forth in subsection (c) of this section, who has no prior felony conviction, and who has not previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-204 of this code, is eligible to participate in a deferred adjudication program: *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred period.

(e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this 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 household member as defined in §48-27-204 is eligible for deferred adjudication if agreed to by the state and the defendant: *Provided*, That, for purposes of this section, "first offense violation" means the person would not, due to any prior charges or convictions, be subject to the enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d);

(2) In addition to terms and conditions authorized in subsection (a) of this section, a person participating in a deferred adjudication program pursuant to this subsection may be required to participate in compliance hearings and abuse intervention programs licensed under §48-26-402 of this code;

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

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

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

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

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

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

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