WEST VIRGINIA CODE: §62-16-5

§62-16-5. Eligibility; written agreement.

(a) *Eligibility.* — A military service member offender, who is eligible for probation based upon the nature of the offense for which he or she has been charged, and in consideration of his or her criminal background, if any, may, upon application, be admitted into a court program only upon the agreement of the prosecutor and the offender. Additionally, the court must also determine whether the offense is in any way attributable to the offender's military service.

(b) A military service member offender may not participate in the court program if he or she has been charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a violation of the felony provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq*. of this code, or a criminal offense where the judge has made a written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

(3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

(4) A felony violation of §61-2-9b or §61-2-14 of this code;

(5) A felony violation of §61-2-28 of this code;

(6) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above; or

(7) A violation of §17C-5-2 of this code, except where the military service member is eligible to participate in the Motor Vehicle Test and Lock Program under §17C-5A-1 *et seq*. of this code.

(c) *Written agreement*. — Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This written agreement shall set forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. The offender shall execute a written agreement with the court as to his or her participation in the program and shall agree to all of the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failing to comply with the terms of the program.

(d) Upon successful completion of a court program, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding

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criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration: *Provided,* That a military service member court may not enter an order or take any action to mask a charge or conviction, divert a charge, or modify the records of a charge or conviction in a manner that would prevent an offense from appearing on an offender's commercial driving record.

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