

1 **H. B. 2923**

2  
3 (By Delegates Manchin, Longstreth, Caputo,  
4 Marshall, Varner, Iaquina, Stowers,  
5 L. Phillips, Evans and Reynolds)  
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7 [Introduced January 28, 2011; referred to the  
8 Committee on the Judiciary.]  
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12 A BILL to amend and reenact §61-11-26 of the Code of West Virginia,  
13 1931, as amended, relating to general provisions concerning  
14 crimes; expungement of certain criminal convictions of persons  
15 who were between the ages of eighteen and twenty-six years of  
16 age when the offense was committed; and reducing the time in  
17 which to petition for expungement for certain offenses  
18 committed between the ages of eighteen and twenty-two years of  
19 age involving purchase, possession or consumption of alcoholic  
20 liquors, wine or beer.

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

22 That §61-11-26 of the Code of West Virginia, 1931, as amended,  
23 be amended and reenacted to read as follows:

24 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

25 **§61-11-26. Expungement of certain criminal convictions;**  
26 **procedures; effect.**

27 (a) Any person convicted of a misdemeanor offense or offenses  
28 arising from the same transaction committed while he or she was

1 between the ages of eighteen and twenty-six, inclusive, may,  
2 pursuant to the provisions of this section, petition the circuit  
3 court in which the conviction or convictions occurred for  
4 expungement of the conviction or convictions and the records  
5 associated therewith. The clerk of the circuit court shall charge  
6 and collect in advance the same fee as is charged for instituting  
7 a civil action pursuant to subdivision (1), subsection (a), section  
8 eleven, article one, chapter fifty-nine of this code for a petition  
9 for expungement.

10 (b) Expungement ~~shall~~ is not available for any conviction of  
11 an offense listed in subsection (i) of this section. The relief  
12 afforded by this subsection is only available to persons having no  
13 other prior or subsequent convictions other than minor traffic  
14 violations at the time the petition is filed: *Provided*, That at  
15 the time the petition is filed and during the time the petition is  
16 pending, petitioner may not be the subject of an arrest or any  
17 other pending criminal proceeding. ~~No~~ A person shall be is not  
18 eligible for expungement pursuant to the provisions of subsection  
19 (a) of this section until one year after the conviction, completion  
20 of any sentence of incarceration or probation, whichever is later  
21 in time: *Provided, That a person, between the ages of eighteen and*  
22 *twenty-two years who is convicted of illegally purchasing,*  
23 *possessing or consuming any alcoholic liquors, beer or wine in*  
24 *violation of the provisions of section twenty-two-a, article three,*  
25 *section twelve-a, article twelve-a or section twenty-a, article*  
26 *eight, all of chapter sixty of this code, is eligible for*

1 expungement pursuant to the provisions of subsection (a) of this  
2 section six months after the conviction, completion of any sentence  
3 of incarceration or probation, whichever is later in time:  
4 Provided, however, That If the court determines after a hearing  
5 that the person during the period of time prior to his or her  
6 application to the court under this section has not been guilty of  
7 any serious or repeated violation it shall order the expungement.

8 (c) Each petition to expunge a conviction or convictions  
9 pursuant to this section shall be verified under oath and include  
10 the following information:

11 (1) Petitioner's current name and all other legal names or  
12 aliases by which petitioner has been known at any time;

13 (2) All of petitioner's addresses from the date of the offense  
14 or alleged offense in connection with which an expungement order is  
15 sought to date of the petition;

16 (3) Petitioner's date of birth and social security number;

17 (4) Petitioner's date of arrest, the court of jurisdiction and  
18 criminal complaint, indictment, summons or case number;

19 (5) The statute or statutes and offense or offenses for which  
20 petitioner was charged and of which petitioner was convicted;

21 (6) The names of any victim or victims, or that there were no  
22 identifiable victims;

23 (7) Whether there is any current order for restitution,  
24 protection, restraining order or other no contact order prohibiting  
25 the petitioner from contacting the victims or whether there has  
26 ever been a prior order for restitution, protection or restraining

1 order prohibiting the petitioner from contacting the victim. If  
2 there is such a current order, petitioner shall attach a copy of  
3 that order to his or her petition;

4 (8) The court's disposition of the matter and punishment  
5 imposed, if any;

6 (9) Why expungement is sought, such as, but not limited to,  
7 employment or licensure purposes, and why it should be granted;

8 (10) The steps the petitioner has taken since the time of the  
9 offenses toward personal rehabilitation, including treatment, work  
10 or other personal history that demonstrates rehabilitation;

11 (11) Whether petitioner has ever been granted expungement or  
12 similar relief regarding a criminal conviction by any court in this  
13 state, any other state or by any federal court; and

14 (12) Any supporting documents, sworn statements, affidavits or  
15 other information supporting the petition to expunge.

16 (d) A copy of the petition, with any supporting documentation,  
17 shall be served by petitioner pursuant to the rules of the trial  
18 court upon the superintendent of the State Police; the prosecuting  
19 attorney of the county of conviction; the chief of police or other  
20 executive head of the municipal police department wherein the  
21 offense was committed; the chief law-enforcement officer of any  
22 other law-enforcement agency which participated in the arrest of  
23 the petitioner; the superintendent or warden of any institution in  
24 which the petitioner was confined; the magistrate court or  
25 municipal court which disposed of the petitioner's criminal charge;  
26 and all other state and local government agencies whose records

1 would be affected by the proposed expungement. The prosecutorial  
2 office that had jurisdiction over the offense or offenses for which  
3 expungement is sought shall serve by first class mail the petition  
4 for expungement, accompanying documentation and any proposed  
5 expungement order to any identified victims.

6 (e) Upon receipt of a petition for expungement, the  
7 superintendent of the State Police; the prosecuting attorney of the  
8 county of conviction; the chief of police or other executive head  
9 of the municipal police department wherein the offense was  
10 committed; the chief law-enforcement officer of any other law-  
11 enforcement agency which participated in the arrest of the  
12 petitioner; the superintendent or warden of any institution in  
13 which the petitioner was confined; the magistrate court or  
14 municipal court which disposed of the petitioner's criminal charge;  
15 all other state and local government agencies whose records would  
16 be affected by the proposed expungement and any other interested  
17 individual or agency that desires to oppose the expungement shall,  
18 within thirty days of receipt of the petition, file a notice of  
19 opposition with the court with supporting documentation and sworn  
20 statements setting forth the reasons for resisting the petition for  
21 expungement. A copy of any notice of opposition with supporting  
22 documentation and sworn statements shall be served upon the  
23 petitioner in accordance with trial court rules. The petitioner  
24 may file a reply no later than ten days after service of any notice  
25 of opposition to the petition for expungement.

26 (f) The burden of proof shall be on the petitioner to prove by

1 clear and convincing evidence that: (1) The conviction or  
2 convictions for which expungement is sought are the only  
3 convictions against petitioner and that the conviction or  
4 convictions are not excluded from expungement by subsection (j) of  
5 this section; (2) that the requisite time period has passed since  
6 the conviction or convictions or end of the completion of any  
7 sentence of incarceration or probation; (3) petitioner has no  
8 criminal charges pending against him or her; (4) the expungement is  
9 consistent with the public welfare; (5) petitioner has, by his or  
10 her behavior since the conviction or convictions, evidenced that he  
11 or she has been rehabilitated and is law-abiding; and (6) any other  
12 matter deemed appropriate or necessary by the court to make a  
13 determination regarding the petition for expungement.

14 (g) Within sixty days of the filing of a petition for  
15 expungement the circuit court shall:

16 (1) Summarily grant the petition;

17 (2) Set the matter for hearing; or

18 (3) Summarily deny the petition if the court determines that  
19 the petition is insufficient or, based upon supporting  
20 documentation and sworn statements filed in opposition to the  
21 petition, the court determines that the petitioner, as a matter of  
22 law, is not entitled to expungement.

23 (h) If the court sets the matter for hearing, all interested  
24 parties who have filed a notice of opposition shall be notified.

25 At the hearing, the court may inquire into the background of the  
26 petitioner and shall have access to any reports or records relating

1 to the petitioner that are on file with any law-enforcement  
2 authority, the institution of confinement, if any, and parole  
3 authority or other agency which was in any way involved with the  
4 petitioner's arrest, conviction, sentence and post-conviction  
5 supervision, including any record of arrest or conviction in any  
6 other state or federal court. The court may hear testimony of  
7 witnesses and any other matter the court deems proper and relevant  
8 to its determination regarding the petition. The court shall enter  
9 an order reflecting its ruling on the petition for expungement with  
10 appropriate findings of fact and conclusions of law.

11 (i) No person shall be eligible for expungement of a  
12 conviction and the records associated therewith pursuant to the  
13 provisions of subsection (a) of this section for any violation  
14 involving the infliction of serious physical injury; involving the  
15 provisions of article eight-b of this chapter where the petitioner  
16 was eighteen years old, or older, at the time the violation  
17 occurred and the victim was twelve years of age, or younger, at the  
18 time the violation occurred; involving the use or exhibition of a  
19 deadly weapon or dangerous instrument; of the provisions of  
20 subsection (b) or (c), section nine, article two of this chapter  
21 where the victim was a spouse, a person with whom the person  
22 seeking expungement had a child in common or with whom the person  
23 seeking expungement ever cohabitated prior to the offense; any  
24 violation of the provisions of section twenty-eight of said  
25 article; a conviction for driving under the influence of alcohol,  
26 controlled substances or a conviction for a violation of section

1 three, article four, chapter seventeen-b of this code or section  
2 nineteen, article eight of this chapter.

3       (j) If the court grants the petition for expungement, it shall  
4 order the sealing of all records in the custody of the court and  
5 expungement of any records in the custody of any other agency or  
6 official, including law-enforcement records. Every agency with  
7 records relating to the arrest, charge or other matters arising out  
8 of the arrest or conviction that is ordered to expunge records  
9 shall certify to the court within sixty days of the entry of the  
10 expungement order that the required expungement has been completed.  
11 All orders enforcing the expungement procedure shall also be  
12 sealed. For the purposes of this section, "records" do not include  
13 the records of the Governor, the Legislature or the Secretary of  
14 State that pertain to a grant of pardon. Such records that pertain  
15 to a grant of pardon are not subject to an order of expungement.  
16 The amendment to this section during the fourth extraordinary  
17 session of the Legislature in the year 2009 is not for the purpose  
18 of changing existing law, but is intended to clarify the intent of  
19 the Legislature as to existing law regarding expungement.

20       (k) Upon expungement, the proceedings in the matter shall be  
21 deemed never to have occurred. The court and other agencies shall  
22 reply to any inquiry that no record exists on the matter. The  
23 person whose record is expunged shall not have to disclose the fact  
24 of the record or any matter relating thereto on an application for  
25 employment, credit or other type of application.

26       (l) Inspection of the sealed records in the court's possession

1 may thereafter be permitted by the court only upon a motion by the  
2 person who is the subject of the records or upon a petition filed  
3 by a prosecuting attorney that inspection and possible use of the  
4 records in question are necessary to the investigation or  
5 prosecution of a crime in this state or another jurisdiction. If  
6 the court finds that the interests of justice will be served by  
7 granting a petition to inspect the sealed record, it may be  
8 granted.

NOTE: The purpose of this bill is to reduce the time in which  
to petition for expungement of criminal convictions of persons for  
certain offenses committed between the ages of eighteen and twenty-  
two years of age, which offenses are otherwise considered "status"  
offenses involving purchase, possession or consumption of alcoholic  
liquors, wine or beer. The bill reduces the time for a petition  
from one year to six months after the conviction, completion of any  
sentence of incarceration or probation, whichever is later in time.

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