

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 547**

5 (SENATORS WILLS, KLEMPA, STOLLINGS AND KESSLER (MR. PRESIDENT), *original*
6 *sponsors*)

7 _____
8 [Passed March 10, 2012; in effect ninety days from passage.]
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13 AN ACT to amend and reenact §61-11-26 of the Code of West Virginia,
14 1931, as amended, relating to the expungement of certain
15 criminal convictions generally; permitting expungement of
16 certain felony convictions; establishing the amount of time
17 after conviction of a felony before expungement may be sought;
18 and creating exceptions.

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

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

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

23 **§61-11-26. Expungement of certain criminal convictions;**
24 **procedures; effect.**

25 (a) Any person convicted of a misdemeanor or felony offense or

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

9 (b) Expungement shall not be available for any conviction of
10 an offense listed in subsection (i) of this section. The relief
11 afforded by this subsection is only available to persons having no
12 other prior or subsequent convictions other than minor traffic
13 violations at the time the petition is filed: *Provided*, That at the
14 time the petition is filed and during the time the petition is
15 pending, petitioner may not be the subject of an arrest or any
16 other pending criminal proceeding. No person shall be eligible for
17 expungement pursuant to subsection (a) of this section until one
18 year after completion of any sentence of incarceration or
19 completion of any period of supervision, whichever is later in
20 time, and in the case of a felony, three years after completion of
21 any sentence of incarceration or any period of supervision,
22 whichever is later in time.

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

26 (1) Petitioner's current name and all other legal names or

1 aliases by which petitioner has been known at any time;

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

5 (3) Petitioner's date of birth and Social Security number;

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

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

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

12 (7) Whether there is any current order for restitution,
13 protection, restraining order or other no contact order prohibiting
14 the petitioner from contacting the victims or whether there has
15 ever been a prior order for restitution, protection or restraining
16 order prohibiting the petitioner from contacting the victim. If
17 there is such a current order, petitioner shall attach a copy of
18 that order to his or her petition;

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

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

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

26 (11) Whether petitioner has ever been granted expungement or

1 similar relief regarding a criminal conviction by any court in this
2 state, any other state or by any federal court; and

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

5 (d) A copy of the petition, with any supporting documentation,
6 shall be served by petitioner pursuant to the rules of the trial
7 court upon the Superintendent of the State Police; the prosecuting
8 attorney of the county of conviction; the chief of police or other
9 executive head of the municipal police department wherein the
10 offense was committed; the chief law-enforcement officer of any
11 other law-enforcement agency which participated in the arrest of
12 the petitioner; the superintendent or warden of any institution in
13 which the petitioner was confined; the court which disposed of the
14 petitioner's criminal charge; and all other state and local
15 government agencies whose records would be affected by the proposed
16 expungement. The prosecutorial office that had jurisdiction over
17 the offense or offenses for which expungement is sought shall serve
18 by first class mail the petition for expungement, accompanying
19 documentation and any proposed expungement order to any identified
20 victims.

21 (e) Upon receipt of a petition for expungement, the
22 Superintendent of the State Police; the prosecuting attorney of the
23 county of conviction; the chief of police or other executive head
24 of the municipal police department wherein the offense was
25 committed; the chief law-enforcement officer of any other law-
26 enforcement agency which participated in the arrest of the

1 petitioner; the superintendent or warden of any institution in
2 which the petitioner was confined; the court which disposed of the
3 petitioner's criminal charge or charges; all other state and local
4 government agencies whose records would be affected by the proposed
5 expungement and any other interested individual or agency that
6 desires to oppose the expungement shall, within thirty days of
7 receipt of the petition, file a notice of opposition with the court
8 with supporting documentation and sworn statements setting forth
9 the reasons for resisting the petition for expungement. A copy of
10 any notice of opposition with supporting documentation and sworn
11 statements shall be served upon the petitioner in accordance with
12 trial court rules. The petitioner may file a reply no later than
13 ten days after service of any notice of opposition to the petition
14 for expungement.

15 (f) The burden of proof shall be on the petitioner to prove by
16 clear and convincing evidence that: (1) The conviction or
17 convictions for which expungement is sought are the only
18 convictions against petitioner and that the conviction or
19 convictions are not excluded from expungement by subsection (i) of
20 this section; (2) that the requisite time period has passed since
21 the conviction or convictions or end of the completion of any
22 sentence of incarceration or probation; (3) petitioner has no
23 criminal charges pending against him or her; (4) the expungement is
24 consistent with the public welfare; (5) petitioner has, by his or
25 her behavior since the conviction or convictions, evidenced that he
26 or she has been rehabilitated and is law abiding; and (6) any other

1 matter deemed appropriate or necessary by the court to make a
2 determination regarding the petition for expungement.

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

5 (1) Summarily grant the petition;

6 (2) Set the matter for hearing; or

7 (3) Summarily deny the petition if the court determines that
8 the petition is insufficient or, based upon supporting
9 documentation and sworn statements filed in opposition to the
10 petition, the court determines that the petitioner, as a matter of
11 law, is not entitled to expungement.

12 (h) If the court sets the matter for hearing, all interested
13 parties who have filed a notice of opposition shall be notified.
14 At the hearing, the court may inquire into the background of the
15 petitioner and shall have access to any reports or records relating
16 to the petitioner that are on file with any law-enforcement
17 authority, the institution of confinement, if any, and parole
18 authority or other agency which was in any way involved with the
19 petitioner's arrest, conviction, sentence and post-conviction
20 supervision, including any record of arrest or conviction in any
21 other state or federal court. The court may hear testimony of
22 witnesses and any other matter the court deems proper and relevant
23 to its determination regarding the petition. The court shall enter
24 an order reflecting its ruling on the petition for expungement with
25 appropriate findings of fact and conclusions of law.

26 (i) No person is eligible for expungement of a conviction and

1 the records associated there with pursuant to subsection (a) of
2 this section for:

3 (1) Any felony crime of violence against the person or any
4 misdemeanor offense involving the intentional infliction of
5 physical injury;

6 (2) Any felony offense when the victim of the crime was a
7 minor;

8 (3) Any misdemeanor violation of the provisions of article
9 eight-b of this chapter when the petitioner was eighteen years of
10 age or older and the victim was twelve years of age or younger at
11 the time the violation occurred;

12 (4) Any offense where the petitioner used or exhibited a
13 deadly weapon or dangerous instrument;

14 (5) Any violation of section twenty-eight, article two of this
15 chapter or subsections (b) or (c), section nine, article two of
16 this chapter where the victim was spouse, a person seeking
17 expungement had a child in common or with whom the person seeking
18 expungement ever cohabited prior to the offense prior to the
19 offense.

20 (6) Any conviction for driving under the influence of alcohol
21 or a controlled substance;

22 (7) Any conviction for a violation of section three, article
23 four, chapter seventeen-b of this code; and

24 (8) Any violation of section nineteen, article eight of this
25 chapter.

26 As used in this section a "felony crime of violence against

1 the person" means those felony offenses set forth in articles two,
2 three-e, eight-b, eight-d, chapter sixty-one of this code and
3 "felony offenses where the victim was a minor" means felony
4 violation of articles eight, eight-a, eight-c and eight-d.

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

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

1 employment, credit or other type of application.

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