

Senate Bill No. 373

(By Senators Plymale (By Request) and Kessler (Mr. President))

[Introduced February 26, 2013; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §61-11-26 of the Code of West Virginia,
1931, as amended, relating to modifying age-range requirement
for expungement of certain criminal convictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

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

(a) Any person convicted of a misdemeanor offense or offenses
arising from the same transaction committed while he or she was
between the ages of eighteen and ~~twenty-six~~ twenty-seven,
inclusive, may, pursuant to the provisions of this section,
petition the circuit court in which the conviction or convictions

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

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

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

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

23 (2) All of petitioner's addresses from the date of the offense
24 or alleged offense in connection with which an expungement order is

1 sought to date of the petition;

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

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

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

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

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

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

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

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

23 (11) Whether petitioner has ever been granted expungement or
24 similar relief regarding a criminal conviction by any court in this

1 state, any other state or by any federal court; and

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

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

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

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

16 (f) The burden of proof shall be on the petitioner to prove by
17 clear and convincing evidence that: (1) The conviction or
18 convictions for which expungement is sought are the only
19 convictions against petitioner and that the conviction or
20 convictions are not excluded from expungement by subsection (j) of
21 this section; (2) that the requisite time period has passed since
22 the conviction or convictions or end of the completion of any
23 sentence of incarceration or probation; (3) petitioner has no
24 criminal charges pending against him or her; (4) the expungement is

1 consistent with the public welfare; (5) petitioner has, by his or
2 her behavior since the conviction or convictions, evidenced that he
3 or she has been rehabilitated and is law-abiding; and (6) any other
4 matter deemed appropriate or necessary by the court to make a
5 determination regarding the petition for expungement.

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

8 (1) Summarily grant the petition;

9 (2) Set the matter for hearing; or

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

15 (h) If the court sets the matter for hearing, all interested
16 parties who have filed a notice of opposition shall be notified.
17 At the hearing, the court may inquire into the background of the
18 petitioner and shall have access to any reports or records relating
19 to the petitioner that are on file with any law-enforcement
20 authority, the institution of confinement, if any, and parole
21 authority or other agency which was in any way involved with the
22 petitioner's arrest, conviction, sentence and post-conviction
23 supervision, including any record of arrest or conviction in any
24 other state or federal court. The court may hear testimony of

1 witnesses and any other matter the court deems proper and relevant
2 to its determination regarding the petition. The court shall enter
3 an order reflecting its ruling on the petition for expungement with
4 appropriate findings of fact and conclusions of law.

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

23 (j) If the court grants the petition for expungement, it shall
24 order the sealing of all records in the custody of the court and

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

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

22 (l) Inspection of the sealed records in the court's possession
23 may thereafter be permitted by the court only upon a motion by the
24 person who is the subject of the records or upon a petition filed

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

NOTE: The purpose of this bill is to widen the age range in which a transaction must have occurred before certain criminal convictions can be expunged.

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