

1 **H. B. 4443**

2  
3 (By Delegates Eldridge, Hartman, Barrett,  
4 Campbell and Lynch)  
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6 [Introduced February 7, 2014; referred to the  
7 Committee on the Judiciary.]  
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10 A BILL to amend and reenact §61-11-26 of the Code of West Virginia,  
11 1931, as amended, relating to preventing certain current or  
12 former spouses, current or former sexual or intimate partners,  
13 parents, guardians and household members from seeking to have  
14 their criminal records expunged.

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

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

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

19 **§61-11-26. Expungement of certain criminal convictions;**  
20 **procedures; effect.**

21 (a) Any person convicted of a misdemeanor offense or offenses  
22 arising from the same transaction committed while he or she was  
23 between the ages of eighteen and twenty-six, inclusive, may,  
24 pursuant to ~~the provisions of~~ this section, petition the circuit

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

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

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

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

24 (2) All of petitioner's addresses from the date of the offense

1 or alleged offense in connection with which an expungement order is  
2 sought to date of the petition;

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

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

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

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

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

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

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

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

24 (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 magistrate court or  
14 municipal court which disposed of the petitioner's criminal charge;  
15 and all other state and local government agencies whose records  
16 would be affected by the proposed expungement. The prosecutorial  
17 office that had jurisdiction over the offense or offenses for which  
18 expungement is sought shall serve by first class mail the petition  
19 for expungement, accompanying documentation and any proposed  
20 expungement order to any identified 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

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

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

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

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

9 (1) Summarily grant the petition;

10 (2) Set the matter for hearing; or

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

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

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

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

1 controlled substances or a conviction for a violation of section  
2 three, article four, chapter seventeen-b of this code or section  
3 nineteen, article eight of this chapter.

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

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



1 of the record or any matter relating thereto on an application for  
2 employment, credit or other type of application.

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

NOTE: The purpose of this bill is to prevent certain current or former spouses, current or former sexual or intimate partners, parents, guardians and household members from seeking to have their criminal records expunged. The bill provides that the section on expungement is consistent with similar language in §61-2-9.

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