

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 76

SENATORS JEFFRIES, ROMANO, MILLER, OJEDA,
WOELFEL, BEACH, GAUNCH, FACEMIRE AND STOLLINGS,
original sponsors

[Passed April 8, 2017; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4 and §61-11B-5, all relating to
3 establishment of a criminal offense reduction program; creating the criminal offense
4 classification of reduced misdemeanor; setting forth legislative intent; setting forth
5 definitions; allowing persons convicted of certain criminal felony offenses to petition under
6 specified circumstances for reduction of the felony to misdemeanor status; setting forth
7 limitations; providing for reduced offense status to be reflected on criminal records;
8 expressly providing that reduction of felony offense means person shall not be deemed
9 as being convicted of a felony for certain legal purposes or restrictions; clarifying that a
10 reduced misdemeanor may not be expunged; clarifying that criminal offense reduction is
11 in the discretion of the circuit court; establishing procedures for petition to the court;
12 requiring payment of a filing fee when filing petition; directing a fee be paid to the State
13 Police to offset costs associated with facilitating the purposes of this article; setting forth
14 information to be included on the petition; providing for notification of petition to certain
15 persons; requiring prosecuting attorney to contact identified victims; providing for notice
16 of opposition to the petition by certain persons; establishing burden and standard of proof
17 for petitions; providing for a hearing and setting forth procedures; providing for entry of an
18 order by the court; authorizing court to enter an order directing certain records to reflect
19 reduction of a felony offense to the status of reduced misdemeanor; requiring certification
20 of compliance to the court; providing for disclosure requirements; and granting employers
21 limited civil immunity for hiring of convicted felons and persons in reduced misdemeanor
22 status and exceptions thereto.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4 and §61-11B-5, all to read as
3 follows:

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-1. Legislative intent.

1 It is the Legislature's intention in enacting this article to establish a procedure whereby
2 individuals convicted of certain criminal offenses may, pursuant to the provisions of this article,
3 obtain a reduced offense of conviction. In enacting this article, it is also the Legislature's intent to
4 improve the employment possibilities of certain persons while allowing the public notice of their
5 actual conduct and prior transgressions without further penalty or diminution of employment
6 opportunities.

§61-11B-2. Definitions.

1 (a) As used in this article, the following words and phrases shall have the meanings given
2 to them in this section unless the context clearly indicates otherwise:

3 (1) "Criminal offense reduction" means the reduction of a qualifying felony offense to a
4 misdemeanor offense pursuant to this article.

5 (2) "Excluded offense" means:

6 (A) An offense which involves the infliction of serious physical injury;

7 (B) A sexual offense, including, but not limited to, a violation of the felony provisions of
8 article eight, eight-b, eight-c or eight-d of this chapter;

9 (C) An offense which involves the use or exhibition of a deadly weapon or dangerous
10 instrument;

11 (D) A felony violation of the provisions of section nine, article two of this chapter;

12 (E) A felony violation of the provisions of section twenty-eight, article two of this chapter;

13 (F) A felony violation of article four, chapter seventeen-b of this code; or

14 (G) A felony, the facts and circumstances of which the circuit court finds to be inconsistent
15 with the purposes of this article.

16 (3) "Nonviolent felony" means a felony conviction in a circuit court of this state, which the
17 circuit court finds is not: (i) An excluded offense as defined in subdivision (2) of this article; and
18 (ii) which does not involve violence or potential violence to another person or the public.

19 (4) "Petitioner" means a person who has filed a petition seeking a criminal offense
20 reduction under the provisions of this article.

21 (5) "Qualifying felony offense" means a nonviolent felony offense that is not excluded from
22 relief under this article.

23 (6) "Reduced misdemeanor" means a legal status representing that a person previously
24 convicted of a nonviolent qualifying felony has successfully petitioned a circuit court to have the
25 felony conviction reduced to the status of a misdemeanor.

26 (7) "Requisite time period" means ten years after completion of any sentence or period of
27 supervision or probation, whichever is later, during which time there has been no commission and
28 conviction for a violation of law by the petitioner other than for a minor traffic offense.

§61-11B-3. Criminal offense reduction.

1 (a) Subject to the limitations and procedures set forth in this article, a person convicted of
2 a nonviolent felony offense may seek a criminal offense reduction by petition to the circuit court.
3 If granted, the petitioner's felony conviction shall be vacated and the petitioner's status will
4 thereafter be designated on all records relating to the offense as a "reduced misdemeanor". The
5 petitioner's criminal record shall also reflect that he or she be granted such legal status as is
6 associated with being convicted of a misdemeanor and, except as provided by the provisions of
7 this article, the person shall not be deemed to have been convicted of a felony for any legal
8 purpose or restriction.

9 (b) Notwithstanding any provision of law to the contrary, the reduced misdemeanor
10 provided for under this article may not be expunged as part of this petition or by subsequent legal
11 proceeding or petition.

12 (c) There shall be no entitlement to a criminal offense reduction and the granting of the
13 petition shall remain in the discretion of the circuit court.

14 (d) Nothing in the section may be construed to allow a person obtaining relief pursuant to
15 this article to be eligible for reinstatement of any retirement or employment benefit which he or
16 she lost or forfeited due to the felony conviction or convictions vacated and reduced to the status
17 of a misdemeanor.

§61-11B-4. Petition for reduction.

1 (a) A person seeking a criminal offense reduction under this article shall file with the circuit
2 court a petition, in a form and manner set forth by the West Virginia Supreme Court of Appeals.

3 (b) Any person filing a petition pursuant to the provisions of this article shall pay the filing
4 fee set by the provisions of subdivision (1), subsection (a), section eleven, article one, chapter
5 fifty-nine of this code: *Provided*, That in addition to the fee required by the provisions of this
6 subsection a petitioner shall pay a fee of \$100 which shall be deposited into a nonappropriated
7 special revenue account within the State Treasurer's office to be known as the West Virginia State
8 Police Criminal History Account, said fee to be used to offset costs to the State Police for actions
9 to facilitate the operation of this article.

10 (c) Each petition for criminal offense reduction filed pursuant to this section shall be verified
11 under oath and include the following information:

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

14 (2) All of petitioner's addresses from the date of the offense for which a criminal offense
15 reduction order is sought to the date of the filing 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 criminal case number;

18 (5) The offense or offenses with which petitioner was charged and of which petitioner was
19 convicted and the statutory citations therefor;

20 (6) The names of any victim or victims, or where there are no identifiable victims such shall
21 be stated;

22 (7) Whether there is any current order for restitution, protection, restraining order or other
23 no-contact order prohibiting the petitioner from contacting the victims or whether there has ever
24 been a prior order for restitution, protection or restraining order prohibiting the petitioner from
25 contacting the victim. If there is such a current order, petitioner shall attach a copy of that order
26 to his or her petition;

27 (8) The court's disposition of the matter and sentence imposed;

28 (9) The reasons a criminal offense reduction is sought, such as, but not limited to,
29 employment or licensure purposes, and arguments in support thereof;

30 (10) The date upon which he or she completed any sentence or period of supervision or
31 probation;

32 (11) An express averment by the petitioner that he or she has neither committed nor been
33 convicted of a violation of law;

34 (12) The action the petitioner has taken since the time of the offense or offenses toward
35 personal rehabilitation, including treatment, work or other personal history that demonstrates
36 rehabilitation;

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

40 (14) Any supporting documents, sworn statements, affidavits or other information
41 supporting the petition to reduce criminal offense.

42 (d) A copy of the petition, with any supporting documentation, shall be served by petitioner
43 pursuant to the West Virginia Rules of Civil Procedure upon the Superintendent of the State
44 Police; the prosecuting attorney of the county of conviction; the chief of police or other executive
45 head of the municipal police department wherein the offense was committed; the chief law-

46 enforcement officer of any other law-enforcement agency which participated in the arrest of the
47 petitioner; the circuit court of conviction, if the petition is filed in another circuit; the superintendent
48 or warden of any state correctional facility in which the petitioner was imprisoned; and any state
49 and local government agencies the records of which would be affected by the proposed criminal
50 offense reduction.

51 (e) The prosecuting attorney of the county in which the petition is filed shall serve by first
52 class mail the petition for criminal offense reduction, accompanying documentation and any
53 proposed criminal offense reduction order to any identified victims.

54 (f) Upon receipt of a petition for criminal offense reduction, the Superintendent of the State
55 Police, the prosecuting attorney of the county of conviction, the chief of police or other executive
56 head of the municipal police department wherein the offense was committed, the chief law-
57 enforcement officer of any other law-enforcement agency which participated in the arrest of the
58 petitioner, the superintendent or warden of any institution in which the petitioner was confined,
59 the circuit court of conviction, if the petition is filed in another circuit, any state and local
60 government agencies the records of which would be affected by the proposed criminal offense
61 reduction and any interested individual or agency that desires to oppose the criminal offense
62 reduction shall, within thirty days of receipt of the petition, file a notice of opposition with the court
63 with supporting documentation and sworn statements setting forth the reasons for resisting the
64 petition for criminal offense reduction. A copy of any notice of opposition with supporting
65 documentation and sworn statements shall be served upon the petitioner or his or her counsel in
66 accordance with West Virginia Rules of Civil Procedure. The petitioner may file a reply no later
67 than fifteen days after service of any notice of opposition to the petition for criminal offense
68 reduction.

69 (g) The burden of proof shall be on the petitioner to prove by clear and convincing evidence
70 that:

71 (1) The conviction or convictions for which criminal offense reduction is sought are
72 qualifying offenses and are the only convictions against petitioner;

73 (2) That the requisite time period has passed since the conviction or convictions or end of
74 the completion of any sentence of incarceration or probation;

75 (3) That the petitioner has neither committed nor been convicted of a violation of law in
76 the preceding ten years;

77 (4) That petitioner has no criminal charges pending against him or her;

78 (5) That the criminal offense reduction is consistent with the public welfare;

79 (6) That petitioner has, by his or her behavior since the conviction or convictions,
80 evidenced that he or she has been rehabilitated and has remained law-abiding; and

81 (7) Any other matter deemed appropriate or necessary by the court to make a
82 determination regarding the petition for criminal offense reduction.

83 (h) Within one hundred eighty days of the filing of a petition for criminal offense reduction
84 or as soon thereafter as is practicable the circuit court shall:

85 (1) Summarily grant the petition;

86 (2) Set the matter for hearing; or

87 (3) Summarily deny the petition, if the court determines that the petition is insufficient, or
88 based upon supporting documentation and sworn statements filed in opposition to the petition,
89 the court determines that the petitioner, as a matter of law, is not entitled to reduction.

90 (i) If the court sets the matter for hearing, all interested parties who have filed a notice of
91 opposition shall be notified. At the hearing, the court may inquire into the background of the
92 petitioner and shall have access to any reports or records relating to the petitioner that are on file
93 with any law-enforcement authority, the institution of confinement, if any, and parole authority or
94 other agency which was in any way involved with the petitioner's arrest, conviction, sentence and
95 post-conviction supervision, including any record of arrest or conviction in any other state or
96 federal court. The court may hear testimony of witnesses and evidence of any other matter the

97 court deems proper and relevant to its determination regarding the petition. The court shall enter
98 an order reflecting its ruling on the petition for criminal offense reduction with appropriate findings
99 of fact and conclusions of law.

100 (j) If the court grants the petition for criminal offense reduction, it shall order any records
101 in the custody of the court, and of any other agency or official, including law-enforcement records,
102 to reflect reduction of the felony offense to the status of reduced misdemeanor. Every agency with
103 records relating to the arrest, charge or other matters arising out of the arrest or conviction that is
104 ordered to reflect the criminal offense reduction in its records shall certify to the court within ninety
105 days of the entry of the criminal offense reduction order that the required reduction has been
106 completed: *Provided*, That upon inquiry by a prospective employer or on an application for
107 employment, credit or other type of application, he or she shall disclose the existence of the
108 reduced misdemeanor and acknowledgement of the prior conviction if asked about prior
109 convictions or crimes.

110 (k) Upon granting of criminal offense reduction, the person whose felony offense has been
111 reduced under the provisions of this article shall not have to disclose the fact of the record or any
112 matter relating thereto on an application for employment, credit or other type of application that
113 he or she has a felony conviction.

§61-11B-5. Employer protections.

1 (a) A cause of action may not be brought against an employer, general contractor,
2 premises owner or other third party solely based on the employer, general contractor, premises
3 owner or other third party employing a person or independent contractor who has been convicted
4 of a nonviolent, nonsexual offense or a person who has had his or her conviction reduced
5 pursuant to this article.

6 (b) In a negligent hiring action against an employer, general contractor, premises owner
7 or other third party for the acts of an employee or independent contractor that is based on a theory
8 of liability other than that described by subsection (a) of this section, the fact that the employee

9 or independent contractor was convicted of a nonviolent, nonsexual offense or had his or her
10 conviction reduced pursuant to this article before the employee or independent contractor's
11 employment or contractual obligation with the employer, general contractor, premises owner or
12 other third party, as applicable, may not be introduced into evidence.

13 (c) This section does not preclude any existing cause of action for failure of an employer
14 or other person to provide adequate supervision of an employee or independent contractor,
15 except that the fact that the employee or independent contractor has been convicted of a
16 nonviolent, nonsexual criminal offense or had his or her conviction reduced pursuant to this article
17 may be introduced into evidence in the suit only if the employer:

18 (1) Knew of the conviction or was grossly negligent in not knowing of the conviction or
19 reduced offense; and

20 (2) The conviction or reduced offense was directly related to the nature of the employee's
21 or independent contractor's work and the conduct that gave rise to the alleged injury that is the
22 basis of the suit.

23 (d) This section shall not be interpreted as implying a cause of action exists for negligent
24 hiring of a person based upon his or her criminal record in factual situations not covered by the
25 provisions of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2017.

.....
Governor