

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2567

BY DELEGATES HANSHAW, MR. SPEAKER, AND MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 21, 2019; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating
2 to allowing an individual to petition a circuit court for the expungement of misdemeanor
3 offenses; requiring that the petition may be filed not fewer than 90 consecutive days after
4 the successful compliance with a West Virginia Department of Health and Human
5 Resources approved substance abuse treatment and counseling program and graduation
6 from a West Virginia Department of Education approved Job Readiness Adult Training
7 course, and entering into an agreement with the Department of Health and Human
8 Resources to undergo random drug screenings if required by an employer for a period not
9 to exceed 24 months, with no subsequent violations or random drug test failures after the
10 petitioner began the rehabilitation and counseling program and the adult training course;
11 setting forth what the petition must contain; limiting the number of expungements; and
12 setting forth a fee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

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

1 (a) Any person convicted of a misdemeanor offense or offenses arising from the same
2 transaction committed while he or she was between the ages of 18 and 26, inclusive, may,
3 pursuant to the provisions of this section, petition the circuit court in which the conviction or
4 convictions occurred for expungement of the conviction or convictions and the records associated
5 therewith. The clerk of the circuit court shall charge and collect in advance the same fee as is
6 charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code for a petition for
7 expungement.

8 (b) Any person convicted of a misdemeanor offense or offenses, regardless of the age of
9 that person when the offense or offenses were committed, may, upon not less than 90 consecutive
10 days of successful compliance with a substance abuse treatment and counseling programs
11 approved by the Secretary of the Department of Health and Human Resources, graduation from

12 a West Virginia Department of Education approved Job Readiness Adult Training course, and
13 execution of an agreement with the Department of Health and Human Resources to undergo
14 random drug screenings if required by an employer for a period not to exceed 24 months, pursuant
15 to the provisions of this section, petition the circuit court or circuit courts in which the conviction
16 or convictions occurred for expungement of the conviction or convictions and the records
17 associated therewith: *Provided*, That no subsequent offenses or failure of random drug tests occur
18 during the time since the petitioner began the rehabilitation and counseling program and the adult
19 training course. The clerk(s) of the circuit court or circuit courts shall charge and collect in advance
20 the same fee as is charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code for
21 a petition for expungement. A person may file only one petition for expungement, to the circuit
22 court or circuit courts as applicable, pursuant to the provisions of this subsection.

23 The Department of Health and Human Resources shall pay for random drug screenings
24 of the petitioner employee at a frequency agreed to by the employer and the department for up to
25 24 months from the date of receipt of the Job Readiness Adult Training certificate. If the petitioner
26 employee refuses to submit to drug screening or fails a drug screening, the Department of Health
27 and Human Resources shall notify the petitioner's employer who may discharge the employee.

28 ~~(b)~~ (c) Expungement shall not be available for any conviction of an offense listed in
29 subsection ~~(i)~~ (j) of this section The relief afforded by this subsection is only available to persons
30 having no other prior or subsequent convictions other than minor traffic violations at the time the
31 petition is filed: *Provided*, That at the time the petition is filed and during the time the petition is
32 pending, petitioner may not be the subject of an arrest or any other pending criminal proceeding.
33 No person shall be eligible for expungement pursuant to the provisions of subsection (a) of this
34 section until one year after the conviction, completion of any sentence of incarceration or
35 probation, whichever is later in time.

36 ~~(e)~~ (d) Each petition to expunge a conviction or convictions pursuant to this section shall
37 be verified under oath and include the following information: *Provided*, That for the purposes of a

38 petition for expungement filed pursuant to subsection (b) of this section, the petition shall identify
39 and group such information by circuit court, as applicable, from which expungement of a particular
40 conviction or convictions is being sought:

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

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

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

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

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

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

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

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

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

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

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

63 (12) Documentation of compliance from the approved treatment and counseling program,

64 if applicable;

65 (13) Certificate of graduation from the Adult Training Job Readiness Course, if applicable;

66 (14) Executed agreement with the Department of Health and Human Resources to submit

67 to random drug tests for up to 24 months from the completion date of the Job Readiness Adult

68 Training Certificate, if applicable; and

69 ~~(d)~~ (15) Any supporting documents, sworn statements, affidavits or other information

70 supporting the petition to expunge.

71 ~~(d)~~ (e) A copy of the petition, with any supporting documentation, shall be served by

72 petitioner pursuant to the rules of the trial court upon the Superintendent of the State Police; the

73 prosecuting attorney of the county of conviction; the chief of police or other executive head of the

74 municipal police department wherein the offense was committed; the chief law-enforcement

75 officer of any other law-enforcement agency which participated in the arrest of the petitioner; the

76 superintendent or warden of any institution in which the petitioner was confined; the magistrate

77 court or municipal court which disposed of the petitioner's criminal charge; and all other state and

78 local government agencies whose records would be affected by the proposed expungement. The

79 prosecutorial office that had jurisdiction over the offense or offenses for which expungement is

80 sought shall serve by first class mail the petition for expungement, accompanying documentation

81 and any proposed expungement order to any identified victims.

82 ~~(e)~~ (f) Upon receipt of a petition for expungement, the Superintendent of the State Police;

83 the prosecuting attorney of the county of conviction; the chief of police or other executive head of

84 the municipal police department wherein the offense was committed; the chief law-enforcement

85 officer of any other law-enforcement agency which participated in the arrest of the petitioner; the

86 superintendent or warden of any institution in which the petitioner was confined; the magistrate

87 court or municipal court which disposed of the petitioner's criminal charge; all other state and local

88 government agencies whose records would be affected by the proposed expungement and any

89 other interested individual or agency that desires to oppose the expungement shall, within 30

90 days of receipt of the petition, file a notice of opposition with the court with supporting
91 documentation and sworn statements setting forth the reasons for resisting the petition for
92 expungement. A copy of any notice of opposition with supporting documentation and sworn
93 statements shall be served upon the petitioner in accordance with trial court rules. The petitioner
94 may file a reply no later than 10 days after service of any notice of opposition to the petition for
95 expungement.

96 ~~(f)~~ (g) The burden of proof shall be on the petitioner to prove by clear and convincing
97 evidence that: (1) The conviction or convictions for which expungement is sought are the only
98 convictions against petitioner and that the conviction or convictions are not excluded from
99 expungement by subsection ~~(j)~~ (k) of this section; (2) that the requisite time period has passed
100 since the conviction or convictions or end of the completion of any sentence of incarceration or
101 probation; (3) petitioner has no criminal charges pending against him or her; (4) the expungement
102 is consistent with the public welfare; (5) petitioner has, by his or her behavior since the conviction
103 or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and (6) any
104 other matter deemed appropriate or necessary by the court to make a determination regarding
105 the petition for expungement.

106 ~~(g)~~ (h) Within 60 days of the filing of a petition for expungement the circuit court shall:

107 (1) Summarily grant the petition;

108 (2) Set the matter for hearing; or

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

112 ~~(h)~~ (i) If the court sets the matter for hearing, all interested parties who have filed a notice
113 of opposition shall be notified. At the hearing, the court may inquire into the background of the
114 petitioner and shall have access to any reports or records relating to the petitioner that are on file
115 with any law-enforcement authority, the institution of confinement, if any, and parole authority or

116 other agency which was in any way involved with the petitioner's arrest, conviction, sentence and
117 post-conviction supervision, including any record of arrest or conviction in any other state or
118 federal court. The court may hear testimony of witnesses and any other matter the court deems
119 proper and relevant to its determination regarding the petition. The court shall enter an order
120 reflecting its ruling on the petition for expungement with appropriate findings of fact and
121 conclusions of law.

122 (†) (j) No person shall be eligible for expungement of a conviction and the records
123 associated therewith pursuant to the provisions of subsection (a) of this section for any violation
124 involving the infliction of serious physical injury; involving the provisions of §61-8B-1 *et seq.* of
125 this code where the petitioner was 18 years old, or older, at the time the violation occurred and
126 the victim was 12 years of age, or younger, at the time the violation occurred; involving the use
127 or exhibition of a deadly weapon or dangerous instrument; of the provisions of §61-2-9(b) or §61-
128 2-9(c) of this code where the victim was a spouse, a person with whom the person seeking
129 expungement had a child in common or with whom the person seeking expungement ever
130 cohabitated prior to the offense; any violation of the provisions of §61-2-28 of this code; a
131 conviction for driving under the influence of alcohol, controlled substances or a conviction for a
132 violation of §17B-4-3 or §61-8-19 of this code.

133 (†) (k) If the court grants the petition for expungement, it shall order the sealing of all
134 records in the custody of the court and expungement of any records in the custody of any other
135 agency or official, including law-enforcement records. Every agency with records relating to the
136 arrest, charge or other matters arising out of the arrest or conviction that is ordered to expunge
137 records shall certify to the court within 60 days of the entry of the expungement order that the
138 required expungement has been completed. All orders enforcing the expungement procedure
139 shall also be sealed. For the purposes of this section, "records" do not include the records of the
140 Governor, the Legislature or the Secretary of State that pertain to a grant of pardon. Such records
141 that pertain to a grant of pardon are not subject to an order of expungement. The amendment to

142 this section during the fourth extraordinary session of the Legislature in the year 2009 is not for
143 the purpose of changing existing law, but is intended to clarify the intent of the Legislature as to
144 existing law regarding expungement.

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

149 ~~(j)~~ (m) Inspection of the sealed records in the court's possession may thereafter be
150 permitted by the court only upon a motion by the person who is the subject of the records or upon
151 a petition filed by a prosecuting attorney that inspection and possible use of the records in
152 question are necessary to the investigation or prosecution of a crime in this state or another
153 jurisdiction. If the court finds that the interests of justice will be served by granting a petition to
154 inspect the sealed record, it may be granted.

NOTE: The purpose of this bill is to allow an individual to petition a circuit court for the expungement of misdemeanor offenses. The bill requires that the petition may be filed not fewer than 90 consecutive days after the successful compliance with a West Virginia Department of Health and Human Resources approved substance abuse treatment and counseling program and graduation from a Department of Education approved Job Readiness Adult Training course, and entering into an agreement with the Department of Health and Human Resources to undergo random drug screenings if required by an employer for a period not to exceed 24 months, with no subsequent violations or random drug test failures after the petitioner began the rehabilitation and counseling program and the adult training course. The bill sets forth what the petition must contain. The bill limits the number of expungements. The bill sets forth a fee.

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