

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4726

BY DELEGATE PRITT

[Introduced February 15, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-11-26b, relating to providing for the automatic expungement of certain
3 criminal convictions and records that are eligible for expungement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26b. Automatic expungement of certain criminal convictions and records and juvenile adjudications.

1 (a) Notwithstanding any provision of this code to the contrary, criminal convictions and
2 records that are eligible for expungement under the following provisions of this code are eligible
3 for automatic expungement under this section:

4 (1) Expungement of criminal records for those found not guilty of crimes or against whom
5 charges have been dismissed pursuant to §61-11-25 of this code: *Provided*, That the provisions
6 for filing of and proceedings upon a civil petition therein are not applicable to an automatic
7 expungement pursuant to this section;

8 (2) Criminal convictions and records eligible for expungement pursuant to §61-11-26 of
9 this code: *Provided*, That the provisions of subsections (d), (e), (f), (g), (h), (i), and (j) of §61-11-
10 26 of this code are not applicable to an automatic expungement pursuant to this section;

11 (3) Criminal convictions and records eligible for expungement pursuant to §61-11-26a of
12 this code: *Provided*, That the provisions for filing of and proceedings upon a civil petition therein
13 are not applicable to an automatic expungement pursuant to this section; and

14 (4) Criminal convictions and records eligible for expungement upon a full and
15 unconditional pardon pursuant to §5-1-16a of this code.

16 (b) Beginning July 1, 2023, on a monthly basis, the Department of Homeland Security
17 shall identify cases that are eligible for automatic expungement and proceed pursuant to this
18 section to expunge the eligible convictions and records. The Department shall have access to
19 criminal and juvenile court records to accomplish the purposes of this section. Circuit clerks,

20 magistrate clerks, municipal court clerks, county prosecutors and law-enforcement agencies shall
21 cooperate with the Department and when requested by the Department, shall provide reasonable
22 assistance to the Department in identifying cases that are eligible for mandatory expungement.

23 (c)(1) If the Department determines that expungement of a criminal conviction or criminal
24 or juvenile records is mandated under this section, or receives an expungement order from a
25 court, it shall promptly notify all courts and law-enforcement agencies where records pertaining
26 to the case are located or maintained, and any court where the case was terminated, disposed
27 of, or concluded.

28 (2) A court or law-enforcement agency which receives a notice of expungement from the
29 Department shall provide the Department with written confirmation of the completion of the
30 expungement within 60 days of receipt of the notice: a court shall also provide the Department
31 with a certified copy of an order granting the expungement. Where an expungement of an
32 adjudication of delinquency is granted, all arrest records associated with any charge in that case
33 must also be expunged.

34 (d) Sealing of records. —The order of expungement shall also order the sealing of all
35 records in the custody of the court and expungement of any records in the custody of any other
36 agency or official, including law-enforcement records. Every agency with records relating to the
37 arrest, charge, or other matters arising out of the arrest or conviction that is ordered to expunge
38 records shall certify to the court within 60 days of the entry of the expungement order that the
39 required expungement has been completed. All orders enforcing the expungement procedure
40 shall also be sealed.

41 (e) Disclosure of expunged matters. —

42 (1) Subject to the exceptions set forth in this section, upon expungement, the proceedings
43 in the matter shall be considered, as a matter of law, never to have occurred. The court and other
44 agencies shall reply to any inquiry that no record exists on the matter. The person whose record
45 is expunged shall not have to disclose the fact of the record or any matter relating to the record

46 on an application for employment, credit, or other type of application: *Provided*, That any person
47 applying for a position in which he or she would be engaging in the prevention, detection,
48 investigation, prosecution, or incarceration of persons for violations of the law shall disclose any
49 and all convictions to his or her prospective employer, regardless of whether the conviction or
50 convictions have been expunged pursuant to this section.

51 (2) A person for whom an order of expungement has been entered pursuant to this section
52 may not be found guilty of perjury or otherwise giving a false statement under any provision of
53 this code because of that person's failure to recite or acknowledge the arrest, indictment,
54 information, trial, or conviction, as long as the person is in compliance with subdivision (1) of this
55 subsection.

56 (3) Notwithstanding any provisions of this code to the contrary, any person required by
57 state or federal law to obtain a criminal history record check on a prospective employee are
58 authorized to have knowledge of any convictions expunged under this section.

59 (f) Inspection of sealed records. — Inspection of the sealed records in a court's possession
60 may thereafter be permitted by the court only upon a motion by the person who is the subject of
61 the records or upon a petition filed by a prosecuting attorney that inspection and possible use of
62 the records in question are necessary to the investigation or prosecution of a crime in this state
63 or another jurisdiction. If the court finds that there is a legitimate reason for access and the
64 interests of justice will be served by granting a petition to inspect the sealed record, it may grant
65 access under the terms and conditions determined by the court.

66 (g) A court shall notify the Department of the entry of any expungement order. If an order
67 expunging part or all of a juvenile criminal history is granted by the court, all indicia of arrest,
68 including police and court records, and any electronic records relating to the arrest, and any other
69 items specified in the order shall, within 60 days of receipt of the order, shall be sealed, designated
70 to retain control over all expunged records, and who shall insure that the records or the information
71 contained therein is not released for any reason except as specified in this section. In response

72 to requests from nonlaw-enforcement officers for information or records on the person who was
73 arrested, law-enforcement officers and departments shall reply, with respect to the arrest and
74 proceedings which are the subject of the order, that there is no record. The Department shall
75 promptly notify the court if it is unable to comply with any order issued pursuant to this section.

76 (h) Nothing in this section precludes an individual from filing a petition for expungement of
77 records that are eligible for automatic expungement under this section if an automatic
78 expungement has not occurred.

79 (i) An individual does not have a cause of action for damages as a result of the failure to
80 identify an individual's case as eligible for automatic expungement.

81 (j) Nothing in this section may be construed to allow a person granted relief pursuant to
82 this section to be eligible for reinstatement of any retirement or employment benefit which he or
83 she lost or forfeited due to the conviction or convictions expunged.

84 (k) The Department of Homeland Security shall propose rules for legislative approval in
85 accordance with the provisions of §29A-3-1 et seq. of this code to carry out the provisions of this
86 section.

87 (l) As used in this section:

88 "Department" means the Department of Homeland Security; and

89 Words or terms that are defined in §61-11-26(p) of this code have the same meaning as
90 defined therein.

NOTE: The purpose of this bill is to provide for the automatic expungement of certain criminal convictions and records that are eligible for expungement.

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