

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2003

FISCAL
NOTE

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[Introduced January 14, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating
 2 to extending expungement of certain criminal convictions beyond a misdemeanor offense;
 3 and, establishing a fee for the expungement of certain criminal convictions upon proper
 4 petition.

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~~ an offense while he or she was between the ages of 18 and 26, inclusive,
 3 may, 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.

6 (b) The clerk of the circuit court shall charge and collect in advance the same fee as is
 7 charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code for a petition for
 8 expungement: Provided, That in addition to the fee required by the provisions of this subsection,
 9 a petitioner shall pay a fee of \$200 that shall be forwarded to the Superintendent of the West
 10 Virginia State Police and deposited into a nonappropriated special revenue account within the
 11 State Treasurer's office to be known as the West Virginia State Police Criminal History Account.

12 (c) ~~(b)~~ Expungement shall not be available for any conviction of an offense listed in
 13 ~~subsection (i) of this section~~ §61-11-26(l) of this code. The relief afforded by this subsection is
 14 only available to persons having no other prior or subsequent convictions other than minor traffic
 15 violations at the time the petition is filed: *Provided, That at the time the petition is filed and during*
 16 *the time the petition is pending, petitioner may not be the subject of an arrest or any other pending*
 17 *criminal proceeding.*

18 (d) No person shall be eligible for expungement pursuant to the provisions of subsection
 19 (a) of this section until one year after the conviction, completion of any sentence of incarceration

20 or probation, whichever is later in time.

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

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

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

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

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

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

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

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

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

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

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

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

45 (12) Any supporting documents, sworn statements, affidavits or other information

46 supporting the petition to expunge.

47 (f) ~~(d)~~ A copy of the petition, with any supporting documentation, shall be served by
48 petitioner pursuant to the rules of the trial court upon:

49 (1) The Superintendent of the State Police;

50 (2) The prosecuting attorney of the county of conviction;

51 (3) The chief of police or other executive head of the municipal police department wherein
52 the offense was committed;

53 (4) The chief law-enforcement officer of any other law-enforcement agency which
54 participated in the arrest of the petitioner;

55 (5) The superintendent or warden of any institution in which the petitioner was confined;

56 (6) The magistrate court or municipal court which disposed of the petitioner's criminal
57 charge; and

58 (7) All other state and local government agencies whose records would be affected by the
59 proposed expungement.

60 (g) The prosecutorial office that had jurisdiction over the offense or offenses for which
61 expungement is sought shall serve by first class mail the petition for expungement, accompanying
62 documentation and any proposed expungement order to any identified victims.

63 (h) ~~(e)~~ Upon receipt of a petition for expungement, ~~the Superintendent of the State Police;~~
64 ~~the prosecuting attorney of the county of conviction; the chief of police or other executive head of~~
65 ~~the municipal police department wherein the offense was committed; the chief law enforcement~~
66 ~~officer of any other law enforcement agency which participated in the arrest of the petitioner; the~~
67 ~~superintendent or warden of any institution in which the petitioner was confined; the magistrate~~
68 ~~court or municipal court which disposed of the petitioner's criminal charge; all other state and local~~
69 ~~government agencies whose records would be affected by the proposed expungement~~ those
70 individuals identified in §61-11-26(f) of this code, and any other interested individual or agency
71 that desires to oppose the expungement shall, within 30 days of receipt of the petition, file a notice

72 of opposition with the court with supporting documentation and sworn statements setting forth the
73 reasons for resisting the petition for expungement. A copy of any notice of opposition with
74 supporting documentation and sworn statements shall be served upon the petitioner in
75 accordance with trial court rules. The petitioner may file a reply no later than 10 days after service
76 of any notice of opposition to the petition for expungement.

77 (i) ~~(f)~~ The burden of proof shall be on the petitioner to prove by clear and convincing
78 evidence that:

79 (1) The conviction or convictions for which expungement is sought are the only convictions
80 against petitioner and that the conviction or convictions are not excluded from expungement by
81 subsection (l) ~~(j)~~ of this section;

82 (2) ~~that~~ The requisite time period has passed since the date of conviction or convictions
83 or ~~end of the completion of the date~~ any sentence of incarceration or probation was ended or
84 completed;

85 (3) Petitioner has no criminal charges pending against him or her;

86 (4) The expungement is consistent with the public welfare;

87 (5) Petitioner has, by his or her behavior since the conviction or convictions, evidenced
88 that he or she has been rehabilitated and is law-abiding; and further,

89 (6) Prove by clear and convincing evidence any other matter deemed appropriate or
90 necessary by the court to make a determination regarding the petition for expungement.

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

92 (1) Summarily grant the petition;

93 (2) Set the matter for hearing; or

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

97 (k) ~~(h)~~ If the court sets the matter for hearing, all interested parties who have filed a notice

98 of opposition shall be notified. At the hearing, the court may inquire into the background of the
99 petitioner and shall have access to any reports or records relating to the petitioner that are on file
100 with any law-enforcement authority, the institution of confinement, if any, and parole authority or
101 other agency which was in any way involved with the petitioner's arrest, conviction, sentence and
102 post-conviction supervision, including any record of arrest or conviction in any other state or
103 federal court. The court may hear testimony of witnesses and any other matter the court deems
104 proper and relevant to its determination regarding the petition. The court shall enter an order
105 reflecting its ruling on the petition for expungement with appropriate findings of fact and
106 conclusions of law.

107 (l) ~~(j)~~ No person shall be eligible for expungement of a conviction and the records
108 associated therewith pursuant to the provisions of §61-11-26(a) of this code for any violation
109 involving:

110 (1) The infliction of serious physical injury; ~~involving~~

111 (2) The provisions of §61-8B-1, *et seq.* of this code where the petitioner was 18 years old,
112 or older, at the time the violation occurred, and the victim was 12 years of age, or younger, at the
113 time the violation occurred; ~~involving~~

114 (3) The use or exhibition of a deadly weapon or dangerous instrument; ~~or~~

115 (4) The provisions of §61-2-9(b) or §61-2-9(c) of this code where the victim was a spouse,
116 a person with whom the person seeking expungement had a child in common or with whom the
117 person seeking expungement ever cohabitated prior to the offense;

118 (5) Any violation of the provisions of §61-2-28 of this code;

119 (6) A conviction for driving under the influence of alcohol and, or controlled substances;

120 ~~or~~

121 (7) A conviction for a violation of §17B-4-3 of this code; or

122 (8) A conviction for a violation of §61-8-19 of this code.

123 (m) ~~(j)~~ If the court grants the petition for expungement, it shall order the sealing of all

124 records in the custody of the court and expungement of any records in the custody of any other
125 agency or official, including law-enforcement records. Every agency with records relating to the
126 arrest, charge or other matters arising out of the arrest or conviction that is ordered to expunge
127 records shall certify to the court within 60 days of the entry of the expungement order that the
128 required expungement has been completed. All orders enforcing the expungement procedure
129 shall also be sealed. For the purposes of this section, "records" do not include the records of the
130 Governor, the Legislature or the Secretary of State that pertain to a grant of pardon. Such records
131 that pertain to a grant of pardon are not subject to an order of expungement. The amendment to
132 this section during the fourth extraordinary session of the Legislature in the year 2009 is not for
133 the purpose of changing existing law, but is intended to clarify the intent of the Legislature as to
134 existing law regarding expungement.

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

139 (o) ~~(f)~~ Inspection of the sealed records in the court's possession may thereafter be
140 permitted by the court only upon a motion by the person who is the subject of the records or upon
141 a petition filed by a prosecuting attorney that inspection and possible use of the records in
142 question are necessary to the investigation or prosecution of a crime in this state or another
143 jurisdiction. If the court finds that the interests of justice will be served by granting a petition to
144 inspect the sealed record, it may be granted.

NOTE: The purpose of this bill is to expand offenses subject to expungement and establish a fee for the expungement of certain criminal convictions upon proper petition.

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