WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3551

By Delegates C. Pritt, Crouse, Clark, Garcia,

Shamblin and Fluharty

[Originating in the Committee on the Judiciary;

Reported on February 21, 2023]

A BILL to amend and reenact §5-1-16a of the Code of West Virginia, 1931, as amended, relating to
 restricting access to criminal history record information of individuals who have been
 convicted of a crime and pardoned by the Governor and individuals who have been
 convicted of a crime; providing procedure for obtaining the restriction; outlining crimes for
 which criminal history restriction is not available; and exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. THE GOVERNOR. §5-1-16a. Expungement of criminal record upon full and unconditional pardon<u>; restricting</u> access to criminal history record information.

1 (a) Any person who has received a full and unconditional pardon from the Governor, 2 pursuant to the provisions of section eleven, article VII of the Constitution of West Virginia and §5-3 1-16 of this code, may petition the circuit court in the county where the conviction was had to have 4 the record of such conviction expunged. The petition shall be served upon the prosecuting 5 attorney of the county where the petition was filed. Any person petitioning the court for an order of 6 expungement shall publish a notice of the time and place that such petition will be made, which 7 notice shall be published as a Class I legal advertisement in compliance with the provisions of §59-8 3-1 et seq. of this code and the publication area for such publication shall be the county where the 9 petition is filed. The circuit court, upon verification of the act of pardon and after a hearing to 10 determine that good cause exists, may enter an order directing that all public record of the 11 petitioner's conviction be expunged. For the purposes of this section, "public record" or "record" 12 does not include the records of the Governor, the Legislature or the Secretary of State that pertain 13 to a grant of pardon. Such records that pertain to a grant of pardon are not subject to an order of 14 expungement. The amendment to this section during the fourth extraordinary session of the 15 Legislature in the year 2009 is not for the purpose of changing existing law, but is intended to 16 clarify the intent of the Legislature as to existing law regarding expungement.

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(b) The record expunged pursuant to the provisions of this section may not be considered
in an application to any educational institution in this state or an application for any licensure
required by any professional organization in this state.

20 (c) No person shall may be eligible for expungement pursuant to this section until one year
 21 after having been pardoned.

(d) No person shall may be eligible for expungement pursuant to this section until five
years after the discharge of his or her sentence upon the conviction for which he or she was
pardoned.

(e) No person shall may be eligible for expungement of a record of conviction of first
degree murder, as defined in §61-2-1 of this code; treason, as defined in §61-1-1 of this code;
kidnapping, as defined in §61-2-14a of this code; or any felony defined in §61-8B-1 *et seq.* of this
code.

29 (f) Notwithstanding any provision of this code to the contrary, when an individual was 30 convicted in this state of an offense for which that individual has been granted a conditional or 31 unconditional pardon or was convicted in this state of an offense, and that individual has not been 32 convicted of any crime in any jurisdiction, excluding any conviction for a nonserious traffic offense, 33 since the pardon was granted or conviction obtained, and , and provided, further, that he or she 34 has no pending charged offenses, he or she may petition the court in which the conviction 35 occurred to restrict access to criminal history record information in the same manner as provided 36 for in subsection (a) of this section. Provided, that no person will be eligible for criminal history 37 record restriction if convicted of a crime of violence against the person, crime of violence against 38 an animal, or felony for a controlled substance offense which involves actual or threatened 39 violence to a person, a felony offense involving the use of a firearm, or a felony offense where the 40 victim was a minor child.

41 (1) The circuit court in the county where the conviction was had shall maintain jurisdiction
42 over the case for this limited purpose and duration.

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43	(2) If a hearing is requested on the issue of restricting access to the criminal history record
44	information, the hearing shall be held within 90 days of the filing of the petition. The court shall hear
45	evidence and shall grant an order restricting such criminal history record information if it
46	determines by a preponderance of the evidence that the harm otherwise resulting to the individual
47	clearly outweighs the public's interest in the criminal history record information being publicly
48	available.
49	(3) For criminal history record information maintained by the clerk of court, an individual
50	who has been cited for a criminal offense but was not arrested and the charged offense was
51	subsequently dismissed, or reduced to a violation of a local ordinance may petition the court with
52	original jurisdiction over the offenses in the county where the clerk of court is located for an order to
53	seal all criminal history record information maintained by the clerk of court for the individual's
54	charged offense. Notice of the petition shall be sent to the clerk of court and the prosecuting
55	attorney. A notice sent by registered or certified mail shall be sufficient notice.
56	(4) Within 60 days of the court's order, the clerk of court shall cause every document,
57	physical or electronic, in its custody, possession, or control to be restricted.
58	(g) Information restricted and sealed pursuant to this section shall always be available for
59	inspection, copying, and use:
60	(1) For the purpose of imposing a sentence;
61	(2) By the Judicial Vacancy Advisory Commission created in §3-10-3a of this code;
62	(3) By an attorney representing an accused individual who submits a sworn affidavit to the
63	clerk of court attesting that such information is relevant to a criminal proceeding;
64	(4) By a prosecuting attorney or a public defender;
65	(5) Pursuant to a court order;
66	(6) By an individual who is the subject of restricted criminal history record information or
67	sealed court files;

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- 68 (7) By criminal justice agencies for law enforcement or criminal investigative purposes;
- 69 <u>and.</u>
- 70 (8) By the West Virginia Supreme Court of Appeals and the Board of Law Examiners, or
- 71 their designee for the purposes of investigating an applicant for admittance to the practice of law.
- 72 (h) The confidentiality of this information shall be maintained insofar as practicable.

NOTE: The purpose of this bill is to provide a procedure for restricting access to criminal history record information of individuals who have been convicted of a crime and pardoned by the Governor.

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