

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **House Bill 3551**

By Delegate C. Pritt

[Introduced February 14, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §5-1-16a of the Code of West Virginia, 1931, as amended, relating to  
 2 restricting access to criminal history record information of individuals who have been  
 3 convicted of a crime and pardoned by the Governor; providing procedure for obtaining the  
 4 restriction; 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; restricting 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.

17 (b) The record expunged pursuant to the provisions of this section may not be considered  
 18 in an application to any educational institution in this state or an application for any licensure

19 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.

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

25 (e) No person shall may be eligible for expungement of a record of conviction of first  
26 degree murder, as defined in §61-2-1 of this code; treason, as defined in §61-1-1 of this code;  
27 kidnapping, as defined in §61-2-14a of this code; or any felony defined in §61-8B-1 *et seq.* of this  
28 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 pardon and for an  
31 offense that was not a serious violent felony, and that individual has not been convicted of any  
32 crime in any jurisdiction, excluding any conviction for a nonserious traffic offense, since the pardon  
33 was granted, and excluding any conviction for a nonserious traffic offense, since the pardon was  
34 granted, and provided, further, that he or she has no pending charged offenses, he or she may  
35 petition the court in which the conviction occurred to restrict access to criminal history record  
36 information in the same manner as provided for in subsection (a) of this section.

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

39 (2) If a hearing is requested on the issue of restricting access to the criminal history record  
40 information, the hearing shall be held within 90 days of the filing of the petition. The court shall hear  
41 evidence and shall grant an order restricting such criminal history record information if it  
42 determines that the harm otherwise resulting to the individual clearly outweighs the public's  
43 interest in the criminal history record information being publicly available the criminal history  
44 record information for his or her conviction shall be restricted.

45 (3) For criminal history record information maintained by the clerk of court, an individual  
46 who has been cited for a criminal offense but was not arrested and the charged offense was  
47 subsequently dismissed, or reduced to a violation of a local ordinance may petition the court with  
48 original jurisdiction over the offenses in the county where the clerk of court is located for an order to  
49 seal all criminal history record information maintained by the clerk of court for the individual's  
50 charged offense. Notice of the petition shall be sent to the clerk of court and the prosecuting  
51 attorney. A notice sent by registered or certified mail shall be sufficient notice.

52 (4) The court shall order all criminal history record information in the custody of the clerk of  
53 court, including within any index, to be restricted and unavailable to the public if the court finds by a  
54 preponderance of the evidence that:

55 (A) The criminal history record has been restricted pursuant to this section; or

56 (B) The criminal history record information has been restricted pursuant to this section; and

57 (C) The harm otherwise resulting to the privacy of the individual clearly outweighs the  
58 public interest in the criminal history record information being publicly available.

59 (5) Within 60 days of the court's order, the clerk of court shall cause every document,  
60 physical or electronic, in its custody, possession, or control to be restricted.

61 (g) Information restricted and sealed pursuant to this section shall always be available for  
62 inspection, copying, and use:

63 (1) For the purpose of imposing a sentence;

64 (2) By the Judicial Vacancy Advisory Commission created in §3-10-3a of this code;

65 (3) By an attorney representing an accused individual who submits a sworn affidavit to the  
66 clerk of court attesting that such information is relevant to a criminal proceeding;

67 (4) By a prosecuting attorney or a public defender;

68 (5) Pursuant to a court order;

69 (6) By an individual who is the subject of restricted criminal history record information or  
70 sealed court files; and

71 (7) By criminal justice agencies for law enforcement or criminal investigative purposes.

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.