

# **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]





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 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.

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;

68 (7) By criminal justice agencies for law enforcement or criminal investigative purposes;

69 and.

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.