

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 691

By Senator Garcia

[Introduced March 4, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §61-11-27, relating to restricting public access to criminal history records of
3 certain individuals; establishing procedures to petition for the restriction of access to
4 criminal history records; defining offenses for which restriction of access to records is not
5 available; and setting exceptions for restriction of access to records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-27. Restrictions on access to criminal history records.

1 (a) Notwithstanding any provision of this code to the contrary, any person charged with and
2 convicted of a criminal offense under the laws of this state may petition the circuit court in the
3 county, where the conviction occurred, to restrict access to his or her criminal history records as
4 provided in this section, if the person:

5 (1) Has received, for the offense underlying the records sought to be restricted, a full and
6 unconditional pardon from the Governor pursuant to the provisions of §5-1-16a of this code;

7 (2) Has not been convicted of a criminal offense, excepting a nonserious traffic offense, in
8 any jurisdiction since the time the pardon was granted; and

9 (3) Has no pending charged criminal offenses under the laws of this state.

10 (b) A petition made under subsection (a) of this section shall be served upon the
11 prosecuting attorney of the county where the petition was filed. A person petitioning the court for
12 an order restricting access to his or her criminal history records shall publish a notice of the time
13 and place that the petition will be made, which notice shall be published as a Class I legal
14 advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication
15 area for the publication shall be the county where the petition is filed.

16 (c) The circuit court hearing a petition made under subsection (a) of this section shall, upon
17 verification of the act of pardon, hold a hearing within 90 days of the filing of the petition. The court
18 shall hear evidence and may grant an order restricting access to the petitioner's criminal history

19 records as provided in this section if it determines by a preponderance of the evidence that the
20 harm that would otherwise result to the petitioner would clearly outweigh the public's interest in the
21 petitioner's criminal history records being publicly available. Within 60 days of the court's order, the
22 court shall order every document relating to the criminal history records at issue, physical or
23 electronic, which are in the court's custody, possession, or control to be restricted from public
24 access.

25 (d) Any person cited for a criminal offense under the laws of this state, but who was not
26 arrested for the offense, and who subsequently had the charged offense dismissed or reduced to a
27 violation of a local ordinance, may petition the circuit court in the county where the offense
28 occurred to restrict access to his or her criminal history records as provided in this section. The
29 petition shall be served upon the prosecuting attorney of the county where the petition was filed.
30 The circuit court hearing a petition made under this subsection shall hold a hearing within 90 days
31 of the filing of the petition. The court shall hear evidence and may grant an order restricting access
32 to the petitioner's criminal history records as provided in this section if it determines by a
33 preponderance of the evidence that the harm that would otherwise result to the petitioner would
34 clearly outweigh the public's interest in the petitioner's criminal history records being publicly
35 available. Within 60 days of the court's order, the court shall order every document relating to the
36 criminal history records at issue, physical or electronic, which are in the court's custody,
37 possession, or control to be restricted from public access.

38 (e) No person may be eligible for a restriction of access to his or her criminal history
39 records under this section if convicted of a felony crime of violence against the person; a crime of
40 violence against an animal; or a felony for a controlled substance offense which involves actual or
41 threatened violence to a person, a felony offense involving the use of a firearm, or a felony offense
42 where the victim was a minor child.

43 (f) Criminal history records restricted under this section shall remain available for
44 inspection, copying, and use:

- 45 (1) For purposes of imposing a sentence;
46 (2) By the Judicial Vacancy Advisory Commission;
47 (3) By an attorney representing an accused individual who submits a sworn affidavit to the
48 clerk of court attesting that such records are relevant to a criminal proceeding;
49 (4) By a prosecuting attorney or a public defender;
50 (5) Pursuant to a court order;
51 (6) By criminal justice agencies for law enforcement or criminal investigative purposes; and
52 (7) By the West Virginia Supreme Court of Appeals and the Board of Law Examiners or
53 their designee for purposes of investigating an applicant for admittance to the practice of law.

NOTE: The purpose of this bill is to provide a procedure for restricting public access to certain criminal history records.

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