

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 547**

(SENATORS WILLS, KLEMPA, STOLLINGS AND  
KESSLER (MR. PRESIDENT), *original sponsors*)

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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating to the expungement of certain criminal convictions generally; permitting expungement of certain felony convictions; establishing the amount of time after conviction of a felony before expungement may be sought; and creating exceptions.

*Be it enacted by the Legislature of West Virginia:*

That §61-11-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

**§61-11-26. Expungement of certain criminal convictions; procedures; effect.**

1       (a) Any person convicted of a misdemeanor or felony  
2 offense or offenses arising from the same transaction com-  
3 mitted may, pursuant to this section, petition the circuit  
4 court in which the conviction or convictions occurred for

5 expungement of the conviction or convictions and the  
6 records associated therewith. The clerk of the circuit court  
7 shall charge and collect in advance the same fee as is  
8 charged for instituting a civil action pursuant to subdivision  
9 (1), subsection (a), section eleven, article one, chapter fifty-  
10 nine of this code for a petition for expungement.

11 (b) Expungement shall not be available for any convic-  
12 tion of an offense listed in subsection (i) of this section. The  
13 relief afforded by this subsection is only available to persons  
14 having no other prior or subsequent convictions other than  
15 minor traffic violations at the time the petition is filed:  
16 *Provided*, That at the time the petition is filed and during the  
17 time the petition is pending, petitioner may not be the  
18 subject of an arrest or any other pending criminal proceed-  
19 ing. No person shall be eligible for expungement pursuant to  
20 subsection (a) of this section until one year after completion  
21 of any sentence of incarceration or completion of any period  
22 of supervision, whichever is later in time, and in the case of  
23 a felony, three years after completion of any sentence of  
24 incarceration or any period of supervision, whichever is later  
25 in time.

26 (c) Each petition to expunge a conviction or convictions  
27 pursuant to this section shall be verified under oath and  
28 include the following information:

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

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

34 (3) Petitioner's date of birth and Social Security number;

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

38 (5) The statute or statutes and offense or offenses for  
39 which petitioner was charged and of which petitioner was  
40 convicted;

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

43 (7) Whether there is any current order for restitution,  
44 protection, restraining order or other no contact order  
45 prohibiting the petitioner from contacting the victims or  
46 whether there has ever been a prior order for restitution,  
47 protection or restraining order prohibiting the petitioner  
48 from contacting the victim. If there is such a current order,  
49 petitioner shall attach a copy of that order to his or her  
50 petition;

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

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

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

60 (11) Whether petitioner has ever been granted  
61 expungement or similar relief regarding a criminal convic-  
62 tion by any court in this state, any other state or by any  
63 federal court; and

64 (12) Any supporting documents, sworn statements,  
65 affidavits or other information supporting the petition to  
66 expunge.

67 (d) A copy of the petition, with any supporting documen-  
68 tation, shall be served by petitioner pursuant to the rules of  
69 the trial court upon the Superintendent of the State Police;  
70 the prosecuting attorney of the county of conviction; the  
71 chief of police or other executive head of the municipal  
72 police department wherein the offense was committed; the  
73 chief law-enforcement officer of any other law-enforcement  
74 agency which participated in the arrest of the petitioner; the  
75 superintendent or warden of any institution in which the

76 petitioner was confined; the court which disposed of the  
77 petitioner's criminal charge; and all other state and local  
78 government agencies whose records would be affected by the  
79 proposed expungement. The prosecutorial office that had  
80 jurisdiction over the offense or offenses for which  
81 expungement is sought shall serve by first class mail the  
82 petition for expungement, accompanying documentation and  
83 any proposed expungement order to any identified victims.

84 (e) Upon receipt of a petition for expungement, the  
85 Superintendent of the State Police; the prosecuting attorney  
86 of the county of conviction; the chief of police or other  
87 executive head of the municipal police department wherein  
88 the offense was committed; the chief law-enforcement officer  
89 of any other law-enforcement agency which participated in  
90 the arrest of the petitioner; the superintendent or warden of  
91 any institution in which the petitioner was confined; the  
92 court which disposed of the petitioner's criminal charge or  
93 charges; all other state and local government agencies whose  
94 records would be affected by the proposed expungement and  
95 any other interested individual or agency that desires to  
96 oppose the expungement shall, within thirty days of receipt  
97 of the petition, file a notice of opposition with the court with  
98 supporting documentation and sworn statements setting  
99 forth the reasons for resisting the petition for expungement.  
100 A copy of any notice of opposition with supporting documen-  
101 tation and sworn statements shall be served upon the  
102 petitioner in accordance with trial court rules. The petitioner  
103 may file a reply no later than ten days after service of any  
104 notice of opposition to the petition for expungement.

105 (f) The burden of proof shall be on the petitioner to prove  
106 by clear and convincing evidence that: (1) The conviction or  
107 convictions for which expungement is sought are the only  
108 convictions against petitioner and that the conviction or  
109 convictions are not excluded from expungement by subsec-  
110 tion (i) of this section; (2) that the requisite time period has  
111 passed since the conviction or convictions or end of the  
112 completion of any sentence of incarceration or probation; (3)  
113 petitioner has no criminal charges pending against him or  
114 her; (4) the expungement is consistent with the public

115 welfare; (5) petitioner has, by his or her behavior since the  
116 conviction or convictions, evidenced that he or she has been  
117 rehabilitated and is law abiding; and (6) any other matter  
118 deemed appropriate or necessary by the court to make a  
119 determination regarding the petition for expungement.

120 (g) Within sixty days of the filing of a petition for  
121 expungement the circuit court shall:

122 (1) Summarily grant the petition;

123 (2) Set the matter for hearing; or

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

129 (h) If the court sets the matter for hearing, all interested  
130 parties who have filed a notice of opposition shall be noti-  
131 fied. At the hearing, the court may inquire into the back-  
132 ground of the petitioner and shall have access to any reports  
133 or records relating to the petitioner that are on file with any  
134 law-enforcement authority, the institution of confinement,  
135 if any, and parole authority or other agency which was in  
136 any way involved with the petitioner's arrest, conviction,  
137 sentence and post-conviction supervision, including any  
138 record of arrest or conviction in any other state or federal  
139 court. The court may hear testimony of witnesses and any  
140 other matter the court deems proper and relevant to its  
141 determination regarding the petition. The court shall enter  
142 an order reflecting its ruling on the petition for expungement  
143 with appropriate findings of fact and conclusions of law.

144 (i) No person is eligible for expungement of a conviction  
145 and the records associated there with pursuant to subsection  
146 (a) of this section for:

147 (1) Any felony crime of violence against the person or any  
148 misdemeanor offense involving the intentional infliction of  
149 physical injury;

150 (2) Any felony offense when the victim of the crime was  
151 a minor;

152 (3) Any misdemeanor violation of the provisions of article  
153 eight-b of this chapter when the petitioner was eighteen  
154 years of age or older and the victim was twelve years of age  
155 or younger at the time the violation occurred;

156 (4) Any offense where the petitioner used or exhibited a  
157 deadly weapon or dangerous instrument;

158 (5) Any violation of section twenty-eight, article two of  
159 this chapter or subsections (b) or (c), section nine, article two  
160 of this chapter where the victim was spouse, a person seeking  
161 expungement had a child in common or with whom the  
162 person seeking expungement ever cohabited prior to the  
163 offense prior to the offense.

164 (6) Any conviction for driving under the influence of  
165 alcohol or a controlled substance;

166 (7) Any conviction for a violation of section three, article  
167 four, chapter seventeen-b of this code; and

168 (8) Any violation of section nineteen, article eight of this  
169 chapter.

170 As used in this section a “felony crime of violence against  
171 the person” means those felony offenses set forth in articles  
172 two, three-e, eight-b, eight-d, chapter sixty-one of this code  
173 and “felony offenses where the victim was a minor” means  
174 felony violation of articles eight, eight-a, eight-c and eight-d.

175 (j) If the court grants the petition for expungement, it  
176 shall order the sealing of all records in the custody of the  
177 court and expungement of any records in the custody of any  
178 other agency or official, including law-enforcement records.  
179 Every agency with records relating to the arrest, charge or  
180 other matters arising out of the arrest or conviction that is  
181 ordered to expunge records shall certify to the court within  
182 sixty days of the entry of the expungement order that the  
183 required expungement has been completed. All orders

184 enforcing the expungement procedure shall also be sealed.  
185 For the purposes of this section, “records” do not include the  
186 records of the Governor, the Legislature or the Secretary of  
187 State that pertain to a grant of pardon. Such records that  
188 pertain to a grant of pardon are not subject to an order of  
189 expungement. The amendment to this section during the  
190 fourth extraordinary session of the Legislature in the year  
191 2009 is not for the purpose of changing existing law, but is  
192 intended to clarify the intent of the Legislature as to existing  
193 law regarding expungement.

194 (k) Upon expungement, the proceedings in the matter  
195 shall be deemed never to have occurred. The court and other  
196 agencies shall reply to any inquiry that no record exists on  
197 the matter. The person whose record is expunged shall not  
198 have to disclose the fact of the record or any matter relating  
199 thereto on an application for employment, credit or other  
200 type of application.

201 (l) Inspection of the sealed records in the court’s posses-  
202 sion may thereafter be permitted by the court only upon a  
203 motion by the person who is the subject of the records or  
204 upon a petition filed by a prosecuting attorney that inspec-  
205 tion and possible use of the records in question are necessary  
206 to the investigation or prosecution of a crime in this state or  
207 another jurisdiction. If the court finds that the interests of  
208 justice will be served by granting a petition to inspect the  
209 sealed record, it may be granted.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

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*Governor*