

1 establishing a fee to offset State Police administrative costs
2 and to operate the Criminal Identification Bureau and other
3 criminal justice services; establishing a special revenue
4 account in the State Treasury for funds received; allowing
5 funds not to expire; defining terms; and expanding a sixty-day
6 time limit to ninety days.

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

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

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

11 **§61-11-26. Expungement of certain criminal convictions;**
12 **procedures; effect; exceptions; fund created.**

13 (a) Any person convicted of a misdemeanor or felony offense or
14 offenses arising from the same transaction ~~committed while he or~~
15 ~~she was between the ages of eighteen and twenty six, inclusive,~~
16 may, pursuant to ~~the provisions of~~ this section, petition the
17 circuit court in which the conviction or convictions occurred for
18 expungement of the conviction or convictions and the records
19 associated ~~therewith~~ with the conviction or convictions. The clerk
20 of the circuit court shall charge and collect in advance the same
21 fee as is charged for instituting a civil action pursuant to
22 subdivision (1), subsection (a), section eleven, article one,
23 chapter fifty-nine of this code for a petition for expungement.

1 (b) Expungement ~~shall not be~~ is not available for any
2 conviction of an offense listed in subsection (I) of this section.
3 The relief afforded by this subsection is only available to persons
4 having no other prior or subsequent convictions other than minor
5 traffic violations at the time the petition is filed: *Provided,*
6 That at the time the petition is filed and during the time the
7 petition is pending, petitioner may not be the subject of an arrest
8 or any other pending criminal proceeding. No person ~~shall be~~ is
9 eligible for expungement pursuant to ~~the provisions of~~ subsection
10 (a) of this section until one year after ~~the conviction~~ completion
11 of any sentence of incarceration or completion of any period of
12 supervision, whichever is later in time, and in the case of a
13 felony, five years after completion of any sentence of
14 incarceration or ~~probation~~ any period of supervision, whichever is
15 later in time.

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

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

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

24 (3) Petitioner's date of birth and social security number;

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

3 (5) The statute or statutes and offense or offenses for which
4 petitioner was charged and of which petitioner was convicted;

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

7 (7) Whether there is any current order for restitution,
8 protection, restraining order or other no contact order prohibiting
9 the petitioner from contacting the victims or whether there has
10 ever been a prior order for restitution, protection or restraining
11 order prohibiting the petitioner from contacting the victim. If
12 there is such a current order, petitioner shall attach a copy of
13 that order to his or her petition;

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

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

18 (10) The steps the petitioner has taken since the time of the
19 offenses toward personal rehabilitation, including treatment, work
20 or other personal history that demonstrates rehabilitation;

21 (11) Whether petitioner has ever been granted expungement or
22 similar relief regarding a criminal conviction by any court in this
23 state, any other state or by any federal court; and

24 (12) Any supporting documents, sworn statements, affidavits or

1 other information supporting the petition to expunge.

2 (d) A copy of the petition, with any supporting documentation,
3 shall be served by petitioner pursuant to the rules of the trial
4 court upon the Superintendent of the State Police; the prosecuting
5 attorney of the county of conviction; the chief of police or other
6 executive head of the municipal police department wherein the
7 offense was committed; the chief law-enforcement officer of any
8 other law-enforcement agency which participated in the arrest of
9 the petitioner; the superintendent or warden of any institution in
10 which the petitioner was confined; the ~~magistrate court or~~
11 ~~municipal~~ court which disposed of the petitioner's criminal charge;
12 and all other state and local government agencies whose records
13 would be affected by the proposed expungement. The prosecutorial
14 office that had jurisdiction over the offense or offenses for which
15 expungement is sought shall serve by first class mail the petition
16 for expungement, accompanying documentation and any proposed
17 expungement order to any identified victims.

18 (e) Upon receipt of a petition for expungement, the
19 Superintendent of the State Police; the prosecuting attorney of the
20 county of conviction; the chief of police or other executive head
21 of the municipal police department wherein the offense was
22 committed; the chief law-enforcement officer of any other
23 law-enforcement agency which participated in the arrest of the
24 petitioner; the superintendent or warden of any institution in

1 which the petitioner was confined; the ~~magistrate court or~~
2 ~~municipal~~ court which disposed of the petitioner's criminal charge
3 or charges; all other state and local government agencies whose
4 records would be affected by the proposed expungement and any other
5 interested individual or agency that desires to oppose the
6 expungement shall, within thirty days of receipt of the petition,
7 file a notice of opposition with the court with supporting
8 documentation and sworn statements setting forth the reasons for
9 resisting the petition for expungement. A copy of any notice of
10 opposition with supporting documentation and sworn statements shall
11 be served upon the petitioner in accordance with trial court rules.
12 The petitioner may file a reply no later than ten days after
13 service of any notice of opposition to the petition for
14 expungement.

15 (f) The burden of proof ~~shall be~~ is on the petitioner to prove
16 by clear and convincing evidence that:

17 (1) The conviction or convictions for which expungement is
18 sought are the only convictions against petitioner and that the
19 conviction or convictions are not excluded from expungement by
20 subsection ~~(j)~~ (I) of this section;

21 (2) ~~that~~ That the requisite time period has passed since the
22 conviction or convictions or end of the completion of any sentence
23 of incarceration or probation;

24 (3) ~~petitioner~~ Petitioner has no criminal charges pending

1 against him or her;

2 (4) ~~the~~ The expungement is consistent with the public welfare;

3 (5) ~~petitioner~~ Petitioner has, by his or her behavior since
4 the conviction or convictions, evidenced that he or she has been
5 rehabilitated and is law-abiding; and

6 (6) ~~any~~ Any other matter deemed appropriate or necessary by
7 the court to make a determination regarding the petition for
8 expungement.

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

11 (1) Summarily grant the petition;

12 (2) Set the matter for hearing; or

13 (3) Summarily deny the petition if the court determines that
14 the petition is insufficient or, based upon supporting
15 documentation and sworn statements filed in opposition to the
16 petition, the court determines that the petitioner, as a matter of
17 law, is not entitled to expungement.

18 (h) If the court sets the matter for hearing, all interested
19 parties who have filed a notice of opposition shall be notified.

20 At the hearing, the court may inquire into the background of the
21 petitioner and shall have access to any reports or records relating
22 to the petitioner that are on file with any law-enforcement
23 authority, the institution of confinement, if any, and parole
24 authority or other agency which was in any way involved with the

1 petitioner's arrest, conviction, sentence and post-conviction
2 supervision, including any record of arrest or conviction in any
3 other state or federal court. The court may hear testimony of
4 witnesses and any other matter the court deems proper and relevant
5 to its determination regarding the petition. The court shall enter
6 an order reflecting its ruling on the petition for expungement with
7 appropriate findings of fact and conclusions of law.

8 (I) No person ~~shall be~~ is eligible for expungement of a
9 conviction and the records associated ~~therewith~~ with the conviction
10 pursuant to ~~the provisions of~~ subsection (a) of this section for:
11 ~~any violation~~

12 (1) A felony crime of violence against the person or a
13 misdemeanor offense involving the infliction of serious physical
14 injury;

15 (2) A felony offense when the victim of the crime was a minor;
16 ~~involving the provisions~~

17 (3) A misdemeanor violation of article eight-b of this chapter
18 where the petitioner was eighteen years old, or older, at the time
19 the violation occurred and the victim was twelve years of age, or
20 younger, at the time the violation occurred; ~~involving the use or~~
21 ~~exhibition of~~

22 (4) An offense where the petitioner used or exhibited a deadly
23 weapon or dangerous instrument; ~~of the provisions~~

24 (5) A violation of section twenty-eight, article two of this

1 chapter or of subsection (b) or (c), section nine, article two of
2 this chapter where the victim was a spouse, a person with whom the
3 person seeking expungement had a child in common or with whom the
4 person seeking expungement ever cohabitated prior to the offense;
5 ~~any violation of the provisions of section twenty-eight of said~~
6 ~~article; a~~

7 (6) A conviction for driving under the influence of alcohol,
8 ~~controlled substances~~ or a controlled substance;

9 ~~or a~~ (7) A conviction for a violation of section three,
10 article four, chapter seventeen-b of this code; or and

11 (8) A violation of section nineteen, article eight of this
12 chapter.

13 As used in this section, a "felony crime of violence against
14 the person" means those felony offenses set forth in articles two,
15 three-e, eight-b and eight-d of this chapter, and "felony offenses
16 where the victim was a minor" means a felony violation of article
17 eight, eight-a, eight-c or eight-d of this chapter.

18 (j) If the court grants the petition for expungement, it shall
19 order the sealing of all records in the custody of the court and
20 expungement of any records in the custody of any other agency or
21 official, including law-enforcement records. Every agency with
22 records relating to the arrest, charge or other matters arising out
23 of the arrest or conviction that is ordered to expunge records
24 shall certify to the court within ~~sixty~~ ninety days of the entry of

1 the expungement order that the required expungement has been
2 completed. All orders enforcing the expungement procedure shall
3 also be sealed. For the purposes of this section, "records" do not
4 include the records of the Governor, the Legislature or the
5 Secretary of State that pertain to a grant of pardon. Such records
6 that pertain to a grant of pardon are not subject to an order of
7 expungement. The amendment to this section during the fourth
8 extraordinary session of the Legislature in the year 2009 is not
9 for the purpose of changing existing law, but is intended to
10 clarify the intent of the Legislature as to existing law regarding
11 expungement.

12 (k) Upon expungement, the proceedings in the matter shall be
13 deemed never to have occurred. The court and other agencies shall
14 reply to any inquiry that no record exists on the matter. The
15 person whose record is expunged shall not have to disclose the fact
16 of the record or any matter relating thereto on an application for
17 employment, credit or other type of application.

18 (l) Inspection of the sealed records in the court's possession
19 may thereafter be permitted by the court only upon a motion by the
20 person who is the subject of the records or upon a petition filed
21 by a prosecuting attorney that inspection and possible use of the
22 records in question are necessary to the investigation or
23 prosecution of a crime in this state or another jurisdiction. If
24 the court finds that the interests of justice will be served by

1 granting a petition to inspect the sealed record, it may be
2 granted.

3 (m) Nothing in this section may be construed to allow a person
4 obtaining relief pursuant to this section to be eligible for any
5 retirement or employment benefit which he or she lost or forfeited
6 due to the conviction or convictions expunged.

7 (n) Notwithstanding the provisions of this section to the
8 contrary, any person who has obtained relief pursuant to the
9 provisions of this section who is subsequently convicted of another
10 offense in a court of this state, another state or the United
11 States shall be subject to any sentencing enhancement based upon
12 having a prior conviction including, but not limited to, section
13 eighteen of this article. Notwithstanding any provisions of law or
14 rule to the contrary, should a person having received relief
15 pursuant to this section be prosecuted or convicted of another
16 offense subsequent to the records maintained by the West Virginia
17 State Police pursuant to section (o) of this section shall
18 constitute sufficient evidence of the prior conviction.

19 (o) Any court granting relief pursuant to this section shall
20 supply a copy of the order of expungement to the West Virginia
21 State Police along with information identifying the petitioner and
22 containing information regarding the offense expunged to be placed
23 in a confidential file accessible by prosecuting attorney and
24 judicial officers for the purpose of ensuring that relief may not

1 be afforded pursuant to this section more than once.

2 (p) In addition to any other fees or costs required by this
3 code, any person filing an action pursuant to this section shall
4 pay, upon filing, a fee of \$250, which shall be transferred to the
5 West Virginia State Police to assist in offsetting administrative
6 costs associated with this section and the maintaining of offender
7 registries.

8 (q) There is hereby created in the State Treasury a special
9 revenue account designated the West Virginia State Police Criminal
10 Justice Information Services Fund which shall consist of money
11 deposited into the fund from fees collected under this section and
12 moneys appropriated by the Legislature. Funds appropriated to the
13 West Virginia State Police Criminal Justice Information Services
14 Fund in accordance with this section that remain unallocated or
15 unexpended at the end of a fiscal year do not expire, but remain in
16 the line item to which they were originally appropriated and are
17 available in the next fiscal year to be used for the purpose of
18 operations and maintaining the West Virginia State Police Criminal
19 Identification Bureau and other criminal justice information
20 services registries operated by the State Police.

NOTE: The purpose of this bill is to permit expungement of certain felony convictions. The bill establishes the amount of time after conviction of a felony before expungement may be sought. The bill creates exceptions. The bill clarifies that retirement or employment benefits lost due to the conviction may not be

reinstated due to an expungement. The bill declares that information related to the conviction is to be kept confidential, accessible to certain officials to ensure that only one expungement may had per person. The bill declares that expungement does not preclude a person who has received an expungement from being subject to sentencing enhancements for second and subsequent violations. The bill declares that information in State Police database sufficient to prove existence of prior convictions. The bill establishes a fee to offset State Police administrative costs and to operate the Criminal Identification Bureau and other criminal justice services. The bill establishes a special revenue account in the State Treasury for funds received. The bill allows funds to not expire. The bill defines terms expands a sixty day time limit to ninety days.

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