

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### House Bill 4353

FISCAL  
NOTE

BY DELEGATES MAYNARD, AMBLER, R. ROMINE, CRISS,

PHILLIPS, STORCH, MOORE, HARSHBARGER AND

PAYNTER

[Introduced January 30, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating  
 2 to establishing a fee for the expungement of certain criminal convictions upon proper  
 3 petition.

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

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

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

1 (a) Any person convicted of a misdemeanor offense or offenses arising from the same  
 2 transaction committed while he or she was between the ages of 18 and 26, inclusive, may,  
 3 pursuant to the provisions of this section, petition the circuit court in which the conviction or  
 4 convictions occurred for expungement of the conviction or convictions and the records associated  
 5 therewith. The clerk of the circuit court shall charge and collect in advance the same fee as is  
 6 charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code for a petition for  
 7 expungement: Provided, That, in addition to the fee required by the provisions of this subsection,  
 8 a petitioner shall pay a fee of \$100 that shall be forwarded to the Superintendent of the West  
 9 Virginia State Police and deposited into a nonappropriated special revenue account within the  
 10 State Treasurer’s office to be known as the West Virginia State Police Criminal History Account.

11 (b) Expungement shall not be available for any conviction of an offense listed in subsection  
 12 (i) of this section. The relief afforded by this subsection is only available to persons having no  
 13 other prior or subsequent convictions other than minor traffic violations at the time the petition is  
 14 filed: *Provided, That* at the time the petition is filed and during the time the petition is pending,  
 15 petitioner may not be the subject of an arrest or any other pending criminal proceeding. No person  
 16 shall be eligible for expungement pursuant to the provisions of subsection (a) of this section until  
 17 one year after the conviction, completion of any sentence of incarceration or probation, whichever  
 18 is later in time.

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

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

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

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

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

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

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

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

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

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

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

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

43 (12) Any supporting documents, sworn statements, affidavits or other information  
44 supporting the petition to expunge.

45 (d) A copy of the petition, with any supporting documentation, shall be served by petitioner  
46 pursuant to the rules of the trial court upon the Superintendent of the State Police; the prosecuting

47 attorney of the county of conviction; the chief of police or other executive head of the municipal  
48 police department wherein the offense was committed; the chief law-enforcement officer of any  
49 other law-enforcement agency which participated in the arrest of the petitioner; the superintendent  
50 or warden of any institution in which the petitioner was confined; the magistrate court or municipal  
51 court which disposed of the petitioner's criminal charge; and all other state and local government  
52 agencies whose records would be affected by the proposed expungement. The prosecutorial  
53 office that had jurisdiction over the offense or offenses for which expungement is sought shall  
54 serve by first class mail the petition for expungement, accompanying documentation and any  
55 proposed expungement order to any identified victims.

56 (e) Upon receipt of a petition for expungement, the Superintendent of the State Police; the  
57 prosecuting attorney of the county of conviction; the chief of police or other executive head of the  
58 municipal police department wherein the offense was committed; the chief law-enforcement  
59 officer of any other law-enforcement agency which participated in the arrest of the petitioner; the  
60 superintendent or warden of any institution in which the petitioner was confined; the magistrate  
61 court or municipal court which disposed of the petitioner's criminal charge; all other state and local  
62 government agencies whose records would be affected by the proposed expungement and any  
63 other interested individual or agency that desires to oppose the expungement shall, within 30  
64 days of receipt of the petition, file a notice of opposition with the court with supporting  
65 documentation and sworn statements setting forth the reasons for resisting the petition for  
66 expungement. A copy of any notice of opposition with supporting documentation and sworn  
67 statements shall be served upon the petitioner in accordance with trial court rules. The petitioner  
68 may file a reply no later than 10 days after service of any notice of opposition to the petition for  
69 expungement.

70 (f) The burden of proof shall be on the petitioner to prove by clear and convincing evidence  
71 that: (1) The conviction or convictions for which expungement is sought are the only convictions  
72 against petitioner and that the conviction or convictions are not excluded from expungement by

73 subsection (j) of this section; (2) that the requisite time period has passed since the conviction or  
74 convictions or end of the completion of any sentence of incarceration or probation; (3) petitioner  
75 has no criminal charges pending against him or her; (4) the expungement is consistent with the  
76 public welfare; (5) petitioner has, by his or her behavior since the conviction or convictions,  
77 evidenced that he or she has been rehabilitated and is law-abiding; and (6) any other matter  
78 deemed appropriate or necessary by the court to make a determination regarding the petition for  
79 expungement.

80 (g) Within 60 days of the filing of a petition for expungement the circuit court shall:

81 (1) Summarily grant the petition;

82 (2) Set the matter for hearing; or

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

86 (h) If the court sets the matter for hearing, all interested parties who have filed a notice of  
87 opposition shall be notified. At the hearing, the court may inquire into the background of the  
88 petitioner and shall have access to any reports or records relating to the petitioner that are on file  
89 with any law-enforcement authority, the institution of confinement, if any, and parole authority or  
90 other agency which was in any way involved with the petitioner's arrest, conviction, sentence and  
91 post-conviction supervision, including any record of arrest or conviction in any other state or  
92 federal court. The court may hear testimony of witnesses and any other matter the court deems  
93 proper and relevant to its determination regarding the petition. The court shall enter an order  
94 reflecting its ruling on the petition for expungement with appropriate findings of fact and  
95 conclusions of law.

96 (i) No person shall be eligible for expungement of a conviction and the records associated  
97 therewith pursuant to the provisions of subsection (a) of this section for any violation involving the  
98 infliction of serious physical injury; involving the provisions of §61-8

99 B-1 *et seq.* of this code where the petitioner was 18 years old, or older, at the time the violation  
100 occurred and the victim was 12 years of age, or younger, at the time the violation occurred;  
101 involving the use or exhibition of a deadly weapon or dangerous instrument; of the provisions of  
102 §61-2-9(b) or §61-2-9(c) of this code where the victim was a spouse, a person with whom the  
103 person seeking expungement had a child in common or with whom the person seeking  
104 expungement ever cohabitated prior to the offense; any violation of the provisions of §61-2-28 of  
105 this code; a conviction for driving under the influence of alcohol, controlled substances or a  
106 conviction for a violation of §17B-4-3 of this code or §61-8-19 of this code.

107 (j) If the court grants the petition for expungement, it shall order the sealing of all records  
108 in the custody of the court and expungement of any records in the custody of any other agency  
109 or official, including law-enforcement records. Every agency with records relating to the arrest,  
110 charge or other matters arising out of the arrest or conviction that is ordered to expunge records  
111 shall certify to the court within 60 days of the entry of the expungement order that the required  
112 expungement has been completed. All orders enforcing the expungement procedure shall also  
113 be sealed. For the purposes of this section, "records" do not include the records of the Governor,  
114 the Legislature or the Secretary of State that pertain to a grant of pardon. Such records that pertain  
115 to a grant of pardon are not subject to an order of expungement. The amendment to this section  
116 during the fourth extraordinary session of the Legislature in the year 2009 is not for the purpose  
117 of changing existing law, but is intended to clarify the intent of the Legislature as to existing law  
118 regarding expungement.

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

123 (l) Inspection of the sealed records in the court's possession may thereafter be permitted  
124 by the court only upon a motion by the person who is the subject of the records or upon a petition

125 filed by a prosecuting attorney that inspection and possible use of the records in question are  
126 necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the  
127 court finds that the interests of justice will be served by granting a petition to inspect the sealed  
128 record, it may be granted.

NOTE: The purpose of this bill is to establish a fee for the expungement of certain criminal convictions upon proper petition.

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