

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 139

BY SENATOR OJEDA

[Introduced January 9, 2019; Referred
to the Committee on the Workforce; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-11B-2 and §61-11B-4 of the Code of West Virginia, 1931, as
 2 amended, all relating to changing the requisite period necessary to take advantage of
 3 criminal offense reduction; amending the definition to reduce the period and create a
 4 special period for honorably discharged veterans; adjusting the elements that a petitioner
 5 must prove accordingly; and making minor technical cleanup.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-2. Definitions.

1 (a) As used in this article, the following words and phrases shall have the meanings given
 2 to them in this section unless the context clearly indicates otherwise:

3 (1) "Criminal offense reduction" means the reduction of a qualifying felony offense to a
 4 misdemeanor offense pursuant to this article.

5 (2) "Excluded offense" means:

6 (A) An offense which involves the infliction of serious physical injury;

7 (B) A sexual offense, including, but not limited to, a violation of the felony provisions of
 8 §61-8-1 *et seq.* of this code, §61-8B-1 *et seq.* of this code, §61-8C-1 *et seq.* of this code or §61-
 9 8D-1 *et seq.* of this code;

10 (C) An offense which involves the use or exhibition of a deadly weapon or dangerous
 11 instrument;

12 (D) A felony violation of the provisions of §61-2-9 of this code;

13 (E) A felony violation of the provisions of §61-2-28 of this code;

14 (F) A felony violation of §17B-4-1 *et seq.* of this code; or

15 (G) A felony, the facts and circumstances of which the circuit court finds to be inconsistent
 16 with the purposes of this article.

17 (3) "Nonviolent felony" means a felony conviction in a circuit court of this state, which the
 18 circuit court finds is not: (i) An excluded offense as defined in ~~subdivision (2) of this article~~ this

19 section; and (ii) which does not involve violence or potential violence to another person or the
20 public.

21 (4) "Petitioner" means a person who has filed a petition seeking a criminal offense
22 reduction under the provisions of this article.

23 (5) "Qualifying felony offense" means a nonviolent felony offense that is not excluded from
24 relief under this article.

25 (6) "Reduced misdemeanor" means a legal status representing that a person previously
26 convicted of a nonviolent qualifying felony has successfully petitioned a circuit court to have the
27 felony conviction reduced to the status of a misdemeanor.

28 (7) "Requisite time period" means ~~ten~~ five years after completion of any sentence or period
29 of supervision or probation, whichever is later, during which time there has been no commission
30 and conviction for a violation of law by the petitioner other than for a minor traffic offense:
31 Provided, That the "requisite time period" is 42 months, rather than five years, if the person is a
32 United States Military veteran who received an honorable discharge, as proven by his or her DD
33 Form 214.

§61-11B-4. Petition for reduction.

1 (a) A person seeking a criminal offense reduction under this article shall file with the circuit
2 court a petition, in a form and manner set forth by the West Virginia Supreme Court of Appeals.

3 (b) Any person filing a petition pursuant to the provisions of this article shall pay the filing
4 fee set by the provisions of §59-1-11(a)(1) of this code: *Provided*, That in addition to the fee
5 required by the provisions of this subsection a petitioner shall pay a fee of \$100 which shall be
6 deposited into a nonappropriated special revenue account within the State Treasurer's office to
7 be known as the West Virginia State Police Criminal History Account, said fee to be used to offset
8 costs to the State Police for actions to facilitate the operation of this article.

9 (c) Each petition for criminal offense reduction filed pursuant to this section shall be verified
10 under oath and include the following information:

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

13 (2) All of petitioner's addresses from the date of the offense for which a criminal offense
14 reduction order is sought to the date of the filing of the petition;

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

16 (4) Petitioner's date of arrest, the court of jurisdiction and criminal case number;

17 (5) The offense or offenses with which petitioner was charged and of which petitioner was
18 convicted and the statutory citations therefor;

19 (6) The names of any victim or victims, or where there are no identifiable victims such shall
20 be stated;

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

26 (8) The court's disposition of the matter and sentence imposed;

27 (9) The reasons a criminal offense reduction is sought, such as, but not limited to,
28 employment or licensure purposes, and arguments in support thereof;

29 (10) The date upon which he or she completed any sentence or period of supervision or
30 probation;

31 (11) An express averment by the petitioner that he or she has neither committed nor been
32 convicted of a violation of law;

33 (12) The action the petitioner has taken since the time of the offense or offenses toward
34 personal rehabilitation, including treatment, work or other personal history that demonstrates
35 rehabilitation;

36 (13) Whether petitioner has ever been granted criminal offense reduction, expungement

37 or similar relief regarding a criminal conviction by any court in this state, any other state or by any
38 federal court; and

39 (14) Any supporting documents, sworn statements, affidavits or other information
40 supporting the petition to reduce criminal offense.

41 (d) A copy of the petition, with any supporting documentation, shall be served by petitioner
42 pursuant to the West Virginia Rules of Civil Procedure upon the superintendent of the State Police;
43 the prosecuting attorney of the county of conviction; the chief of police or other executive head of
44 the municipal police department wherein the offense was committed; the chief law-enforcement
45 officer of any other law-enforcement agency which participated in the arrest of the petitioner; the
46 circuit court of conviction, if the petition is filed in another circuit; the superintendent or warden of
47 any state correctional facility in which the petitioner was imprisoned; and any state and local
48 government agencies the records of which would be affected by the proposed criminal offense
49 reduction.

50 (e) The prosecuting attorney of the county in which the petition is filed shall serve by first
51 class mail the petition for criminal offense reduction, accompanying documentation and any
52 proposed criminal offense reduction order to any identified victims.

53 (f) Upon receipt of a petition for criminal offense reduction, the superintendent of the State
54 Police, the prosecuting attorney of the county of conviction, the chief of police or other executive
55 head of the municipal police department wherein the offense was committed, the chief law-
56 enforcement officer of any other law-enforcement agency which participated in the arrest of the
57 petitioner, the superintendent or warden of any institution in which the petitioner was confined,
58 the circuit court of conviction, if the petition is filed in another circuit, any state and local
59 government agencies the records of which would be affected by the proposed criminal offense
60 reduction and any interested individual or agency that desires to oppose the criminal offense
61 reduction shall, within thirty days of receipt of the petition, file a notice of opposition with the court
62 with supporting documentation and sworn statements setting forth the reasons for resisting the

63 petition for criminal offense reduction. A copy of any notice of opposition with supporting
64 documentation and sworn statements shall be served upon the petitioner or his or her counsel in
65 accordance with West Virginia Rules of Civil Procedure. The petitioner may file a reply no later
66 than 15 days after service of any notice of opposition to the petition for criminal offense reduction.

67 (g) The burden of proof ~~shall be~~ is on the petitioner to prove by clear and convincing
68 evidence: ~~that~~

69 (1) The conviction or convictions for which criminal offense reduction is sought are
70 qualifying offenses and are the only convictions against the petitioner;

71 (2) That the requisite time period has passed since the conviction or convictions or end of
72 the completion of any sentence of incarceration or probation;

73 (3) That the petitioner has neither committed nor been convicted of a violation of law in
74 the preceding ~~ten~~ five years: Provided, That a United States Military veteran who received an
75 honorable discharge, as proven by his or her DD Form 214, must prove that he or she has neither
76 committed nor been convicted of a violation of law in the preceding 42 months;

77 (4) That the petitioner has no criminal charges pending against him or her;

78 (5) That the criminal offense reduction is consistent with the public welfare;

79 (6) That the petitioner has, by his or her behavior since the conviction or convictions,
80 evidenced that he or she has been rehabilitated and has remained law-abiding; and

81 (7) Any other matter deemed appropriate or necessary by the court to make a
82 determination regarding the petition for criminal offense reduction.

83 (h) Within 180 days of the filing of a petition for criminal offense reduction or as soon
84 thereafter as is practicable the circuit court shall:

85 (1) Summarily grant the petition;

86 (2) Set the matter for hearing; or

87 (3) Summarily deny the petition, if the court determines that the petition is insufficient, or
88 based upon supporting documentation and sworn statements filed in opposition to the petition,

89 the court determines that the petitioner, as a matter of law, is not entitled to reduction.

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

100 (j) If the court grants the petition for criminal offense reduction, it shall order any records
101 in the custody of the court, and of any other agency or official, including law-enforcement records,
102 to reflect reduction of the felony offense to the status of reduced misdemeanor. Every agency with
103 records relating to the arrest, charge or other matters arising out of the arrest or conviction that is
104 ordered to reflect the criminal offense reduction in its records shall certify to the court within 90
105 days of the entry of the criminal offense reduction order that the required reduction has been
106 completed: *Provided*, That upon inquiry by a prospective employer or on an application for
107 employment, credit or other type of application, he or she shall disclose the existence of the
108 reduced misdemeanor and, acknowledgement of the prior conviction if asked about prior
109 convictions or crimes.

110 (k) Upon granting of criminal offense reduction, the person whose felony offense has been
111 reduced under the provisions of this article shall not have to disclose the fact of the record or any
112 matter relating thereto on an application for employment, credit or other type of application that
113 he or she has a felony conviction.

NOTE: The purpose of this bill is to expand access to criminal offense reduction, including by providing a shorter waiting period for persons who have an honorable discharge from the United States Military.

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