WEST VIRGINIA CODE CHAPTER 61 ARTICLE 11

WV Legislature

§61-11-1. Classification of offenses.

Offenses are either felonies or misdemeanors. Such offenses as are punishable by confinement in the penitentiary are felonies; all other offenses are misdemeanors.

The word “penitentiary” as used in this section shall mean and include any and all institutions provided by the state for the confinement of persons sentenced to confinement in the penitentiary, notwithstanding that transfers of such persons from any one of such institutions to another may be authorized.

WV Legislature

§61-11-1a. Sentence of female felons.

Upon conviction of a female for a felony and, subsequent sentence of confinement, the trial court shall sentence her to the custody of the state department of corrections.

WV Legislature

§61-11-2. Capital punishment abolished.

Capital punishment is hereby abolished for all offenses against the laws of the State of West Virginia, and no person heretofore or hereafter convicted of any offense in violation of said laws shall be executed, irrespective of whether the crime was committed, the conviction had, or the sentence imposed, before or after the enactment of this section.

WV Legislature

§61-11-3. Punishment for common-law offenses.

A common-law offense for which punishment is prescribed by statute shall be punished only in the mode so prescribed.

WV Legislature

§61-11-4. Corruption of blood and forfeiture of estate abolished.

No suicide or attainder of felony shall work corruption of blood or forfeiture of estate.

WV Legislature

§61-11-5. No merger of civil remedy by commission of felony.

The commission of a felony shall not stay or merge any civil remedy.

WV Legislature

§61-11-6. Punishment of principals in the second degree and accessories before and after the fact.

(a) In the case of every felony, every principal in the second degree and every accessory before the fact shall be punishable as if he or she were the principal in the first degree; and every accessory after the fact shall be confined in jail not more than one year and fined not exceeding $500. But no person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, shall aid or assist a principal felon, or accessory before the fact, to avoid or escape from prosecution or punishment shall be deemed an accessory after the fact.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who knowingly harbors, conceals, maintains or assists the principal felon after the commission of the underlying offense violating the felony provisions of sections one, four, or nine of article two of this chapter, or gives such offender aid knowing that he or she has committed such felony, with the intent that the offender avoid or escape detention, arrest, trial or punishment, shall be considered an accessory after the fact and, upon conviction, be guilty of a felony and, confined in a state correctional facility for a period not to exceed five years, or a period of not more than one half of the maximum penalty for the underlying felony offense, whichever is the lesser maximum term of confinement. But no person who is a person in the relation of husband and wife, parent, grandparent, child, grandchild, brother or sister, whether by consanguinity or affinity, or servant to the offender shall be considered an accessory after the fact.

WV Legislature

§61-11-7. Prosecution of accessories.

An accessory, either before or after the fact, may, whether the principal felon be convicted or not, or be amenable to justice or not, be indicted, convicted, and punished in the county in which he became accessory, or in which the principal felon might be indicted. Any such accessory before the fact may be indicted with such principal or separately.

WV Legislature

§61-11-8. Attempts; classification and penalties therefor.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall, where it is not otherwise provided, be punished as follows:

(1) If the offense attempted be punishable with life imprisonment, the person making such attempt shall be guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary not less than three nor more than fifteen years.

(2) If the offense attempted be punishable by imprisonment in the penitentiary for a term less than life, such person shall be guilty of a felony and, upon conviction, shall, in the discretion of the court, either be imprisoned in the penitentiary for not less than one nor more than three years, or be confined in jail not less than six nor more than twelve months, and fined not exceeding $500.

(3) If the offense attempted be punishable by confinement in jail, such person shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than six months, or fined not exceeding $100.

WV Legislature

§61-11-8a. Solicitation to commit certain felonies; classification; defenses.

(a) Any person who solicits another to commit a violation of the law which constitutes a felony crime of violence against the person is guilty of a felony and, upon conviction thereof, shall be:

(1) Confined in a state correctional facility for not less than three nor more than fifteen years if the offense solicited is punishable by life imprisonment;

(2) Imprisoned in the state correctional facility for not less than one nor more three years or fined not more than $5,000, or both, if the offense solicited is punishable by incarceration in the state correctional facility for a term of less than life imprisonment. In the circuit court's discretion a person so convicted may be ordered confined in jail for a term not to exceed one year in lieu of incarceration in a state correctional facility;

(b)(1) As used in this section, "solicitation" means the willful and knowing instigation or inducement of another to commit a felony crime of violence against the person of a third person; and

(2) As used in this section, "felony crime of violence against the person" means the felony offense set forth in sections one, nine, ten-b and twelve, article two of this chapter.

(c) In a prosecution under the provisions of this section, it is not a defense:

(1) That the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(2) That a person whom the defendant solicits could not be guilty of a crime that is the object of the solicitation.

(d) It is an affirmative and complete defense to a prosecution under the provisions of this section that the defendant under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a felony, prevented the commission of the crime.

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§61-11-9. Limitation of prosecution; lost indictment.

A prosecution for committing or procuring another person to commit perjury shall be commenced within three years next after the perjury was committed. A prosecution for a misdemeanor shall be commenced within one year after the offense was committed: Provided, That whenever the indictment in any case shall be stolen, lost or destroyed, a new indictment may be found for the same offense mentioned in the former indictment, at the first term of the court after such theft, loss or destruction is discovered, or at the next term thereafter, and as often as any such new indictment is stolen, lost or destroyed, another indictment for the same offense may be found at the first term of the court after such theft, loss or destruction is discovered, or at the next term thereafter; and the court shall, in every case where any such indictment has been stolen, lost or destroyed, enter such fact on its record. Whenever such new indictment is found, the clerk shall add to the entry of the finding thereof the following: "This is the second (or third, etc., as the case may be) indictment found against the said ..... for the same offense"; and the same proceedings shall be had in all respects on any such new indictment as might have been had on the first indictment if it had not been stolen, lost or destroyed. And if the offense mentioned in any such indictment is barred by the statute of limitations, the time between the finding of the first and last of such indictments shall not be computed or taken into consideration in the computation of the time in which any such indictment, after the first, should have been found.

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§61-11-10. Venue of offenses.

Prosecutions for offenses committed, wholly or in part, without, and made punishable within, this state, may be in any county in which the offender may be found, or to which he may be sent by any judge, justice, or court.

WV Legislature

§61-11-11. Offense committed on county boundary.

An offense committed on the boundary of any two counties may be alleged to have been committed, and may be prosecuted and punished, in either county.

WV Legislature

§61-11-12. Venue of offense committed in more than one county.

When an offense is committed partly in one county and partly in one or more other counties within this state, it may be alleged that the offense was committed and the accused may be tried in any one county in which any substantial element of the offense occurred.

WV Legislature

§61-11-13. Former acquittal on merits.

A person acquitted by the jury upon the facts and merits on a former trial may plead such acquittal in bar of a second prosecution for the same offense, notwithstanding any defect in the form or substance of the indictment or accusation on which he was acquitted.

WV Legislature

§61-11-14. Acquittal for variance or insufficient indictment.

A person acquitted of an offense, on the ground of a variance between the allegations and the proof of the indictment or other accusation, or upon an exception to the form or substance thereof, may be arraigned again upon a new indictment or other proper accusation, and tried and convicted for the same offense, notwithstanding such former acquittal.

WV Legislature

§61-11-15. Modes of conviction of felony.

No person shall be convicted of felony, unless by his confession in court, or by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

WV Legislature

§61-11-16. Term of imprisonment for felony; indeterminate sentence.

Every sentence to the penitentiary of a person convicted of a felony for which the maximum penalty prescribed by law is less than life imprisonment, except offenses committed by convicts in the penitentiary punishable under chapter sixty-two, article eight, section one of the code, shall be a general sentence of imprisonment in the penitentiary. In imposing this sentence, the judge may, however, designate a definite term, which designation may be considered by the board of probation and parole as the opinion of the judge under the facts and circumstances then appearing of the appropriate term recommended by him to be served by the person sentenced. Imprisonment under a general sentence shall not exceed the maximum term prescribed by law for the crime for which the prisoner was convicted, less such good time allowance as is provided by sections twenty-seven and twenty-seven-a, article five, chapter twenty-eight of this code, in the case of persons sentenced for a definite term. Every other sentence of imprisonment in the penitentiary shall be for a definite term or for life, as the court may determine. The term of imprisonment in jail, where that punishment is prescribed in the case of conviction for felony, shall be fixed by the court.

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§61-11-17. Court to fix imprisonment and fine for misdemeanor.

The term of confinement in jail of a person found guilty of a misdemeanor, where that punishment is prescribed, shall, unless otherwise provided, be ascertained by the court, and the amount of the fine, where the punishment is by fine, shall, except where it is otherwise provided, be assessed by the court, so far as the term of confinement and the amount of the fine are not fixed by law. In addition to or in lieu of any other punishment prescribed herein, the court may require the person found guilty of such misdemeanor to participate in the litter control program.

WV Legislature

§61-11-18. Punishment for second or third offense of felony.

(a) For purposes of this section, "qualifying offense" means any offense or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) §17C-5-1(c): Aggravated vehicular homicide;

(2) §17C-5-2(b): Driving under the influence causing death;

(3) §17C-5-2(c): Driving under the influence causing serious bodily injury;

(4) §17C-5-2(m): Third offense driving under the influence;

(5) §60A-4-401(a)(i) and §60A-4-401(a)(ii): Manufacturing or delivery of a Schedule ! or II controlled substance which is a narcotic drug or methamphetamine; manufacturing or delivery of any other Schedule I, II, or III drug;

(6) §60A-4-406: Distribution to persons under the age of 18 by persons over the age of 21; distribution by persons 18 or over in, on, or within 1,000 feet of, school or college; distribution by persons 18 or over in, on, or within 200 feet of a public library;

(7) §60A-4-409(b)(1), §60A-4-409(b)(2), §60A-4-409(c), §60A-4-409(d), and §60A-4-409(e): Prohibited acts relating to transportation of controlled substances into state;

(8) §60A-4-411: Operating or attempting to operate clandestine drug laboratories;

(9) §60A-4-414: Conspiracy;

(10) §60A-4-416(a): Drug delivery resulting in death;

(11) §60A-4-419: Drug kingpin;

(12) §61-2-1: First and second degree murder;

(13) §61-2-4: Voluntary manslaughter;

(14) §61-2-7: Attempt to kill or injure by poison;

(15) §61-2-9(a): Malicious assault; unlawful assault;

(16) §61-2-9a(d) and §61-2-9a(e): Second or subsequent offense stalking or harassment; stalking or harassment in violation of a protective order;

(17) §61-2-9b: Malicious or unlawful assault of a child near a school;

(18) §61-2-9c: Wanton endangerment involving the use of fire;

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(19) §61-2-9d: Strangulation, suffocation, and asphyxiation;

(20) §61-2-10: Assault during commission of or attempt to commit a felony;

(21) §61-2-10b(b) and §61-2-10b(c): Malicious and unlawful assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees and emergency medical service personnel;

(22) Felony provisions of §61-2-10b(d): Battery on a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer;

(23) §61-2-12: Robbery or attempted robbery;

(24) Felony provisions of §61-2-13: Extortion or attempted extortion by threats;

(25) §61-2-14: Abduction of person, kidnapping or concealing child;

(26) §61-2-14a(a) and §61-2-14a(d): Kidnapping;

(27) §61-2-14c: Threats to kidnap or demand ransom;

(28) §61-2-14d(a) and §61-2-14d(b): Concealment or removal of minor child from custodian or from person entitled to visitation;

(29) §61-2-14f: Penalties for abduction of a child near a school;

(30) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c): Purchase or sale of child;

(31) §61-2-16a(a) and §61-2-16a(b): Malicious assault and unlawful assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance;

(32) Felony provisions of §61-2-16a(c): Second offense battery on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance;

(33) §61-2-28(d): Domestic battery and assault, third or subsequent offense;

(34) §61-2-29(d) and §61-2-29(e): Abuse or neglect of an incapacitated adult;

(35) §61-2-29a: Death of an incapacitated adult by a caregiver;

(36) §61-3-1: Burning, etc., of a dwelling or outbuilding; first degree arson;

(37) §61-3-2: Burning, etc., of other buildings or structures; second degree arson;

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(38) §61-3-3: Burning personal property of another of the value of five hundred dollars or more; third degree arson;

(39) §61-3-4: Attempt to commit arson; fourth degree arson;

(40) §61-3-5: Burning, or attempting to burn, insured property;

(41) §61-3-6: Willfully, unlawfully and maliciously setting fire on lands;

(42) §61-3-7: Causing injuries during an arson-related crime;

(43) §61-3-11: Burglary; entry of dwelling or outhouse;

(44) Felony violation of §61-3-12: Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel;

(45) §61-3-13(a): Grand larceny;

(46) Felony violation of §61-3-18: Receiving or transferring stolen goods;

(47) Felony violation of §61-3-19: Bringing into this state, receiving or disposing of property stolen in another state;

(48) Felony violation of §61-3-20: Embezzlement;

(49) Felony violation of §61-3-20a: Embezzlement by misuse of power of attorney or other fiduciary relationship;

(50) Felony violation of §61-3-21: Embezzlement by carrier or other person;

(51) §61-3-22: Falsifying accounts;

(52) Felony violation of §61-3-24: Obtaining money, property and services by false pretenses; disposing of property to defraud creditors;

(53) Felony violation of §61-3-24a: Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services;

(54) §61-3-27: Malicious killing of animals by poison or otherwise;

(55) §61-3-54: Taking identity of another person;

(56) §61-3C-14b: Soliciting, etc. a minor via computer, soliciting a minor and traveling to engage the minor in prohibited sexual activity;

(57) §61-3E-5: Causing death or injury;

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(58) Felony violation of §61-5-10: Persons in custody of institutions or officers;

(59) Felony provisions of §61-5-17: Obstructing officer; fleeing from officer; making

false statements to officer; interfering with emergency communications;

(60) §61-5-17a: Obstructing a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, a deputy or assistant fire marshal, firefighter, or emergency medical service personnel causing death;

(61) §61-5-27: Intimidation of and retaliation against public officers and employees, jurors, and witnesses; fraudulent official proceedings and legal processes against public officials and employees; making public threats directed at inciting lawless action;

(62) §61-6-24: Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited;

(63) Felony provisions of §61-7-7: Persons prohibited from possessing firearms;

(64) §61-7-12: Wanton endangerment involving a firearm;

(65) §61-7-15: Persons prohibited from committing violent crime while wearing body armor;

(66) §61-7-15a: Use or presentation of a firearm during commission of a felony;

(67) §61-8-12: Incest;

(68) §61-8-19(b): Cruelty to animals;

(69) §61-8A-2: Distribution and display to minor of obscene matter;

(70) §61-8A-4: Use of obscene matter with intent to seduce minor;

(71) §61-8A-5: Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct;

(72) §61-8B-3: Sexual assault in the first degree;

(73) §61-8B-4: Sexual assault in the second degree;

(74) §61-8B-5: Sexual assault in the third degree;

(75) §61-8B-7: Sexual abuse in the first degree;

(76) §61-8B-10: Imposition of sexual acts on persons incarcerated, detained, or under supervision;

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(77) §61-8B-11b: Prohibiting sexual intercourse, sexual intrusion, or sexual contact, against students by school employees;

(78) §61-8C-2: Use of minors in filming sexually explicit conduct prohibited;

(79) §61-8C-3: Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct or computer-generated child pornography prohibited;

(80) §61-8C-3a: Prohibiting child erotica;

(81) §61-8D-2: Murder of a child by a parent, guardian or custodian or other person, or person in a position of trust in relation to a child, by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance;

(82) §61-8D-2a: Death of a child by a parent, guardian or custodian or other person or person in a position of trust in relation to a child, by child abuse;

(83) §61-8D-3: Child abuse resulting in injury; child abuse creating risk of injury;

(84) §61-8D-3a: Female genital mutilation;

(85) §61-8D-4: Child neglect resulting in injury; child neglect creating risk of injury;

(86) §61-8D-4a: Child neglect resulting in death;

(87) §61-8D-5: Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian;

(88) §61-8D-6: Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct;

(89) §61-10-31: Conspiracy;

(90) §61-11-8: Attempts;

(91) §61-11-8a: Solicitation to commit certain felonies; and

(92) §61-14-2: Human trafficking of an individual; aiding and abetting human trafficking.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to imprisonment in a state correctional facility for the qualifying offender and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or

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would be otherwise sentenced. Whenever in that case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under the sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that the person had been previously convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of this code, or has been so convicted under any law of the United States or any other state for an offense which has the same or substantially similar elements as any offense described in this subsection, the person shall be punished by imprisonment in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that the person has been twice previously convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility which has the same or substantially similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section*: Provided, however*, That the most recent previous qualifying offense which would otherwise constitute a qualifying offense for purposes of this subsection may not be considered if more than 20 years have elapsed between: (1) The release of the person from his or her term of imprisonment or period of supervision resulting from the most recent qualifying offense or the expiration of a period of supervised release resulting from the offense; and (2) the conduct underlying the current charge.

WV Legislature

§61-11-19. Procedure in trial of persons for second or third offense.

A prosecuting attorney, when he or she has knowledge of a former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary, may give information thereof to the court immediately upon conviction and before sentence. Said court shall, before expiration of the next term at which such person was convicted, cause such person or prisoner to be brought before it, and upon an information filed by the prosecuting attorney, setting forth the records of conviction and sentence, or convictions and sentences, as the case may be, and alleging the identity of the prisoner with the person named in each, shall require the prisoner to say whether he or she is the same person or not. If he or she says he or she is not, or remains silent, his or her plea, or the fact of his or her silence, shall be entered of record, and a jury shall be impaneled to inquire whether the prisoner is the same person mentioned in the several records. If the jury finds that he or she is not the same person, he or she shall be sentenced upon the charge of which he or she was convicted as provided by law; but if they find that he or she is the same, or after being duly cautioned if he or she acknowledged in open court that he or she is the same person, the court shall sentence him or her to such further confinement as is prescribed by §61-11-18 of this code on a second or third conviction as the case may be: *Provided,* That where the person is convicted pursuant to a plea agreement, the agreement shall address whether or not the provisions of this section and §61-11-18 of this code are to be invoked.

The clerk of such court shall transmit a copy of said information to the Commissioner of the Division of Corrections and Rehabilitation, together with the other papers required by the provisions of §62-8-10 of this code.

Nothing contained herein shall be construed as repealing the provisions of §62-8-4 of this code, but no proceeding shall be instituted by the warden, as provided therein, if the trial court has determined the fact of former conviction or convictions as provided herein.

WV Legislature

§61-11-20.

Repealed.

Acts, 2009 Reg. Sess., Ch. 66.

WV Legislature

§61-11-21. Cumulative sentences.

When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement, unless, in the discretion of the trial court, the second or any subsequent conviction is ordered by the court to run concurrently with the first term of imprisonment imposed.

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§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

(a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person charged with an offense against the State of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed 24 months in duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in §62-12-9 of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of §17C-5-2 of this code may participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in accordance with §17C-5-2b of this code.

(e) No person is eligible for pretrial diversion programs if charged with:

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-204 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq*. of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of § 61-2-28 of this code; or

(6) A violation of §61-2-9 of this code where the alleged victim is a family or household member as defined in §48-27-204 of this code.

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§61-11-22a. Deferred adjudication.

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of Rule 11 of the West Virginia Rules of Criminal Procedure or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary. Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed three years. If the offense to which the plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) Unless otherwise specified by this section, a person is ineligible for a deferred adjudication program if he or she is charged with;

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-204 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of §61-2-28 prosecuted under the provisions of subsections (c) or (d) of that section; or

(6) A violation of §61-2-9(a) of this code, or a violation of §61-2-9(b) or §61-2-9(c) of this code prosecuted under the provisions of subsection (d) of that section, where the alleged victim is a family or household member as defined in §48-27-204 of this code.

(7) A violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-28(a) or §61-2-28(b) of this code where a weapon was used in the commission of the crime, the defendant has a prior conviction of any of the offenses listed in subsection (c) of this section, the defendant has a prior felony conviction, or the defendant has previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-203 of this code.

(d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not previously been convicted of any of the offenses set forth in subsection (c) of this section,

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who has no prior felony conviction, and who has not previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-204 of this code, is eligible to participate in a deferred adjudication program: *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred period.

(e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this code or a violation of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-204 is eligible for deferred adjudication if agreed to by the state and the defendant: *Provided*, That, for purposes of this section, "first offense violation" means the person would not, due to any prior charges or convictions, be subject to the enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d);

(2) In addition to terms and conditions authorized in subsection (a) of this section, a person participating in a deferred adjudication program pursuant to this subsection may be required to participate in compliance hearings and abuse intervention programs licensed under §48-26-402 of this code;

(3) Notwithstanding the provisions of subsection (b) of this section, a deferral under this subsection shall be for a period of not less than 18 months nor more than three years; and

(4) A person may not participate in more than one deferred adjudication pursuant to this subsection.

(f) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

(g) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a motion to accept the defendant’s plea of guilty and, following notice, a hearing shall be held on the matter.

(h) In the event the court determines that there is reasonable cause to believe that the defendant violated the terms and conditions imposed at the time the plea was entered, the court may accept the defendant’s plea to the original offense and impose a sentence in the court’s discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.

(i) The procedures set forth in this section are separate and distinct from that set forth in Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

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§61-11-23. Punishment for juvenile convicted as an adult; eligibility for parole; factors to be considered prior to sentencing.

(a) Notwithstanding any other provision of law to the contrary, a sentence of life imprisonment without the possibility of parole may not be imposed on a person who:

(1) Is convicted of an offense punishable by life imprisonment; and

(2) Was less than 18 years of age at the time the offense was committed.

(b) Unless otherwise provided by this code, the provisions of §62-12-1 et seq. of this code governs the eligibility for parole of a person who is convicted of an offense and sentenced to confinement if he or she was less than 18 years of age at the time the offense was committed, except that a person who is convicted of one or more offenses for which the sentence or any combination of sentences imposed is for a period that renders the person ineligible for parole until he or she has served more than 15 years shall be eligible for parole after he or she has served 15 years if the person was less than 18 years of age at the time each offense was committed.

(c) In addition to other factors required by law to be considered prior to the imposition of a sentence, in determining the appropriate sentence to be imposed on a person who has been transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the following mitigating circumstances:

(1) Age at the time of the offense;

(2) Impetuosity;

(3) Family and community environment;

(4) Ability to appreciate the risks and consequences of the conduct;

(5) Intellectual capacity;

(6) The outcomes of a comprehensive mental health evaluation conducted by a mental health professional licensed to treat adolescents in the State of West Virginia: Provided, That no provision of this section may be construed to require that a comprehensive mental health evaluation be conducted;

(7) Peer or familial pressure;

(8) Level of participation in the offense;

(9) Ability to participate meaningfully in his or her defense;

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(10) Capacity for rehabilitation;

(11) School records and special education evaluations;

(12) Trauma history;

(13) Faith and community involvement;

(14) Involvement in the child welfare system; and

(15) Any other mitigating factor or circumstances.

(d)(1) Prior to the imposition of a sentence on a person who has been transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code, and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the outcomes of any comprehensive mental health evaluation conducted by an mental health professional licensed to treat adolescents in the State of West Virginia. The comprehensive mental health evaluation must include the following:

(A) Family interviews;

(B) Prenatal history;

(C) Developmental history;

(D) Medical history;

(E) History of treatment for substance use;

(F) Social history; and

(G) A psychological evaluation.

(2) The provisions of this subsection are only applicable to sentencing proceedings for convictions rendered after the effective date of this section and do not constitute sufficient grounds for the reconsideration of sentences imposed as the result of convictions rendered after the effective date of this section.

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§61-11-24. Offender may have credit for term of confinement before conviction.

Whenever any person is convicted of an offense in a court of this state having jurisdiction thereof, and sentenced to confinement in jail or the penitentiary of this state, or by a justice of the peace having jurisdiction of the offense, such person may, in the discretion of the court or justice, be given credit on any sentence imposed by such court or justice for the term of confinement spent in jail awaiting such trial and conviction.

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§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed; expungement of criminal records for those that have successfully completed all requirements of a deferred adjudication or pretrial diversion; exceptions.

(a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense resulting in a conviction, may file a civil petition in the circuit court in which the charges were filed to expunge all records relating to the arrest, charge, or other matters arising out of the arrest or charge. Any person whose charges have been dismissed following a full and successful completion of a pre-trial diversion pursuant to §61-11-22 of this code, or whose charges have been dismissed following the full and successful completion of a deferred adjudication pursuant to §61-11-22a of this code, may file a civil petition in the circuit court for expungement of all charges originally brought, provided that the charges sought to be expunged arose from the same transaction or occurrence, and all records relating to the arrest, charges, or other matters arising out of the arrest or charges may be expunged: *Provided*, That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to §17C-5-2b of this code nor may any charges ultimately dismissed by way of full and successful completion of any deferred adjudication be expunged for violations of §61-2-28(a), §61-2-28(b), §61-2-9(a), §61-2-9a, §61-2-9(b), or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-204 of this code: *Provided, further*, That any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references, or other data whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of §15-12-1 *et seq*. of this code because the person was found not guilty by reason of mental illness, intellectual disability, or addiction are exempt from the provisions of this section.

(b) The expungement petition shall be filed not sooner than 60 days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to file a petition for expungement pursuant to this section.

(c) Following the filing of the petition, the court may set a date for a hearing. If the court does so, it shall notify the prosecuting attorney and the arresting agency of the petition and provide an opportunity for a response to the expungement petition.

(d) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the petition and order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or

charge, that is ordered to expunge records, shall certify to the court within 60 days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

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

(f) Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question is necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting the petition, it may be granted.

(g) There shall be no filing fees charged or costs assessed for filing an action pursuant to this section.

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

(a) Eligibility for expungement. —

(1) Misdemeanors. —

Subject to the limitations set forth in this section, a person convicted of a misdemeanor offense or offenses may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(2) Nonviolent felonies. —

Subject to the limitations set forth in this section, a person convicted of a nonviolent felony offense or offenses arising from the same transaction or series of transactions may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(b) Temporal requirements. —

(1) Misdemeanor. — A person is not eligible for expungement pursuant to subdivision (1), subsection (a) of this section until one year after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) More than one misdemeanor. — A person is not eligible for expungement of multiple misdemeanors pursuant to subdivision (1), subsection (a) of this section until two years after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Nonviolent felonies. — A person is not eligible for expungement of a nonviolent felony pursuant to subdivision (2), subsection (a) of this section until five years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(c) Limitations on eligibility for expungement. — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:

(1) Any felony offense of violence against the person as defined in subdivision (2), subsection (p) of this section or any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer;

(2) Any felony offense in which the victim of the crime was a minor as defined in subdivision (3), subsection (p) of this section;

(3) Any violation of §61-8B-1 et seq. of this code;

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(4) Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;

(5) Any violation of §61-2-28 of this code, or any offense which violates §61-2-9(b) or §61-2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of §61-2-28(c) of this code;

(6) Any violation of §61-2-29 of this code;

(7) Any offense of driving under the influence of alcohol or a controlled substance;

(8) Any offense which violates §17B-4-3 of this code;

(9) Any offense which violates §61-8-12 or §61-8-19 of this code;

(10) Any violation of §61-2-9a of this code;

(11) Any violation of §61-8B-8 and §61-8B-9 of this code;

(12) Any violation of §61-3-11 of this code involving a structure regularly used as a dwelling;

(13) Any conviction for which the sentencing judge made a written finding that the offense was sexually motivated;

(14) Any offense which violates §17E-1-13(g) of this code; and

(15) Any offense of conspiracy or attempt to commit a felony set forth in subdivisions (1) through (11) and (13), inclusive, of this subsection.

Provided, That a conviction for driving under the influence of alcohol, controlled substances, or drugs shall not preclude expungement of an unrelated and otherwise expungable felony if the conviction for driving under the influence of alcohol, controlled substances, or drugs is at least five years old at the time the petition for expungement is filed.

(d) Content of petition for expungements. — Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information: Provided, That a petition for the expungement of multiple misdemeanors shall identify and group such information by circuit court, as applicable, from which expungement of a particular conviction or convictions is being sought:

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

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

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(3) The petitioner's date of birth and Social Security number;

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

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

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

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

(8) The disposition of the matter and sentence imposed, if any;

(9) The grounds on which expungement is sought, including, but not limited to, employment or licensure purposes;

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

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

(12) Any supporting documents, sworn statements, affidavits, or other information supporting the petition for expungement.

(e) Service of petition for expungement. — The petitioner shall serve a copy of the petition, with any supporting documentation, pursuant to the rules of the trial court upon the following persons or entities:

(1) The Superintendent of the State Police;

(2) The prosecuting attorney of the county or counties of conviction;

(3) The chief law-enforcement officer of the law-enforcement agency which arrested the petitioner;

(4) The superintendent, warden, or the Commissioner of Corrections of any institution in which the petitioner was confined or imprisoned pursuant to the conviction; and

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(5) The circuit court, magistrate court, or municipal court which disposed of the petitioner's criminal charge.

(f) The prosecuting attorney of the county in which expungement is sought shall serve the petition for expungement, accompanying documentation, and any proposed expungement order by first class mail to any identified victims.

(g) Notice of opposition. —

(1) Upon receipt of a petition for expungement, the persons and entities listed in subsection (e) of this section, and any other interested person or agency that desires to oppose the expungement may, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for expungement.

(2) A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner in accordance with trial court rules.

(3) The petitioner may file a reply to a notice of opposition no later than 30 days after service of any notice of opposition to the petition for expungement.

(h) Burden of proof. — The burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence:

(1) That the conviction or convictions for which expungement is sought are the only convictions for that specified offense or offenses against the petitioner in this state and that the conviction or convictions are not excluded from expungement by the provisions of this section;

(2) That the requisite time has passed since the conviction or convictions or the completion of any sentence of incarceration or period of supervision as set forth in subsection (b) of this section;

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

(4) That the expungement is consistent with the public welfare;

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

(6) Any other facts considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

(i) Court procedure for petition for expungement. — Within 60 days of the filing of a petition for expungement the circuit court shall:

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(1) Summarily grant the petition;

(2) Return the petition to the petitioner to supply incomplete information or correct obvious errors in order to permit consideration of the petition on its merits;

(3) Set the matter for hearing; or

(4) Summarily deny the petition if the court determines the petition discloses on its face or, based upon supporting documentation and sworn statements filed in opposition to the petition, discloses that the petitioner, as a matter of law, is not entitled to expungement.

(j) Hearing on petition for expungement. —

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

(k) Sealing of records. — If the court grants the petition for expungement, it shall order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official, including law-enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or conviction that is ordered to expunge records shall certify to the court within 60 days of the entry of the expungement order that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

(l) Disclosure of expunged matters. —

(1) Subject to the exceptions set forth in this section, upon expungement, the proceedings in the matter shall be considered, as a matter of law, never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating to the record on an application for employment, credit, or other type of application: Provided, That any person applying for a position in which he or she would be engaging in the prevention, detection, investigation, prosecution, or incarceration of persons for violations of the law shall disclose any and all convictions to his or her prospective employer, regardless of whether the conviction or convictions have been expunged pursuant to this section.

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(2) A person for whom an order of expungement has been entered pursuant to this section may not be found guilty of perjury or otherwise giving a false statement, under any provision of this code, because of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction, as long as the person is in compliance with subdivision (1) of this subsection.

(3) Notwithstanding any provisions of this code to the contrary, any person required by state or federal law to obtain a criminal history record check on a prospective employee are authorized to have knowledge of any convictions expunged under this section.

(m) Inspection of sealed records. — Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that there is a legitimate reason for access and the interests of justice will be served by granting a petition to inspect the sealed record, it may grant access under the terms and conditions determined by the court.

(n) Fees for filing petition for expungement and processing orders of expungement. — The clerk of the circuit court shall charge and collect in advance the same fee for a petition for expungement as is charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code. A person obtaining an order of expungement pursuant to the provisions of this section shall pay a fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement deposited into a special revenue account within the State Treasurer's office to be known as the West Virginia State Police Criminal History Account.

(o) Notwithstanding any provision of this code to the contrary, a person may only obtain the relief of expungement afforded by the provisions of this section and §61-11-26a of this code once.

(p) For the purposes of this section:

(1) "Court record" means an official record of a court about a proceeding that the clerk of the court or other court personnel maintains. "Court record" includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment.

(2) "Expungement" means the removal from all public records, other than those specifically exempted therefrom by the provisions of this section and §61-11-26a of this code, all evidence that a person has been charged or convicted of a crime.

(3) "Felony crime of violence against the person" means those felony offenses set forth in §61-2-1 et seq., §61-3E-1 et seq., §61-8B-1 et seq., and §61-8D-1 et seq. of this code.

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(4) “Felony offenses in which the victim was a minor” means felony violations of §61-3C-14b, §61-8-1 et seq., §61-8A-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code.

(5) “Nonviolent felony” means a felony that:

(A) Is not an offense listed in subsection (c) of this section;

(B) Is not an offense involving the intentional infliction of serious bodily injury;

(C) Is an offense the conviction of which is based on facts and circumstances of which the circuit court finds to be consistent with the purposes of this article; and

(D) Is an offense the conviction of which the circuit court finds does not involve violence or potential violence to another person or the public.

(6) “Records” do not include the records of the Governor, the Legislature, or the Secretary of State that pertain to a grant of pardon. Records that pertain to a grant of pardon are not subject to an order of expungement.

(7) “Seal” means removing information from public inspection in accordance with this section.

(8) “Sealing” means:

(A) For a record kept in a courthouse, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access;

(B) For electronic information about a proceeding on the website maintained by a magistrate court, circuit court, or the Supreme Court of Appeals, removing the record from the public website; and

(C) For a record maintained by any law-enforcement agency, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access.

(q) Statutory construction. — Nothing in this section may be construed to allow a person obtaining relief pursuant to this section to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the conviction or convictions expunged.

(r) The enactment of this section during the 2019 regular session of the Legislature includes the repeal of the provisions of §61-11B-1 et seq. of this code. Any person that had a sentence reduction pursuant to the provisions of §61-11B-1 et seq. of this code may petition the court of record to have the criminal offense reduction order converted into an order of expungement. Upon verification by the court that the petitioner qualifies, the court shall enter an order of expungement of the petitioner’s conviction.

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§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

(a) Notwithstanding any provisions of §61-11-26 of this code to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of §61-11-26 of this code and who: (1) Has a medically documented history of substance abuse and of successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health; or (2) graduates from a West Virginia Department of Education-approved job readiness adult training course, or both, if applicable, may petition the circuit court or circuit courts in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith as provided in §61-11-26 of this code as follows:

(1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is eligible for expungement pursuant to §61-11-26(a)(1) of this code upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved job readiness adult training course, or both, if applicable, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) Any person who has been convicted of multiple misdemeanors that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(1) of this code until one year after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(2) of this code until three years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(b) In addition to the required content of a petition for expungement as required by §61-11-26(d) of this code, any person petitioning for an expungement pursuant to the provisions of this section shall also include the following, if applicable:

(1) Documentation of compliance with an approved treatment or recovery and counseling program; and

(2) Certificate of graduation from an approved job readiness adult training course.

(c) The fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement required in §61-11-26(n) of this code is waived for

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petitions of expungement filed pursuant to the provisions of this section.

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§61-11-26b. Limitation on expungement for certain motor vehicle traffic control offenses.

(a) Notwithstanding the provisions of §61-11-26, §61-11-26a, and §62-16-1 et seq. of this code, no court or other tribunal has the authority to:

(1) Order the expungement of a conviction for a motor vehicle traffic control violation for a person who held a commercial driver's license or permit or who was operating a commercial motor vehicle at the time of the offense;

(2) Enter an order or take any action to mask a charge or conviction, divert a charge, or modify the records of a charge or conviction in a manner that would prevent an offense from appearing on an offender's commercial driving record; or

(3) Order the expungement of any conviction for driving under the influence of alcohol or controlled substances, as provided in §61-11-26 of this code.

(b) Notwithstanding any other provision of this code, no court or other tribunal may enter an order or take any other action related to a motor vehicle traffic control offense that violates any applicable federal law or regulation, including, but not limited to:

(1) The requirements or conditions contained in 23 U.S.C. §164 et seq. and 23 C.F.R. § 1275 et seq.; and

(2) The requirements or conditions contained in 49 U.S.C. § 31311 and 49 C.F.R. § 384 et seq.

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§61-11-27. Definition of law-enforcement officer.

For purposes of §61-2-10b, §61-5-17, and §61-5-17a, "law-enforcement officer" has the same definition as this term is defined in §30-29-1 and shall additionally include individuals defined as "chief executive", "law-enforcement official", and "pre-certified law-enforcement officer" in §30-29-1, and any person hired, elected, appointed, or otherwise authorized by this code to engage in or supervise the prevention, detection, or investigation of the criminal laws of this state.

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