

HB 3036

FILED

2009 APR 30 PM 4: 48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3036**

(By Delegate Scoen)



Passed April 10, 2009

In Effect Ninety Days from Passage

ENROLLED **FILED**

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COMMITTEE SUBSTITUTE

FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 3036

(BY DELEGATE SCHOEN)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating to removing the notice and publication requirements for expungement petitions.

Be it enacted by the Legislature of West Virginia:

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

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

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

- 1 (a) Any person convicted of a misdemeanor offense or
2 offenses arising from the same transaction committed while
3 he or she was between the ages of eighteen and twenty-six

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 (12) Any supporting documents, sworn statements,
62 affidavits or other information supporting the petition to
63 expunge.

64 (d) A copy of the petition, with any supporting
65 documentation, shall be served by petitioner pursuant to the
66 rules of the trial court upon the Superintendent of the State
67 Police; the prosecuting attorney of the county of conviction;
68 the chief of police or other executive head of the municipal
69 police department wherein the offense was committed; the
70 chief law-enforcement officer of any other law-enforcement
71 agency which participated in the arrest of the petitioner; the
72 superintendent or warden of any institution in which the
73 petitioner was confined; the magistrate court or municipal
74 court which disposed of the petitioner's criminal charge; and
75 all other state and local government agencies whose records
76 would be affected by the proposed expungement. The
77 prosecutorial office that had jurisdiction over the offense or
78 offenses for which expungement is sought shall serve by first
79 class mail the petition for expungement, accompanying
80 documentation and any proposed expungement order to any
81 identified victims.

82 (e) Upon receipt of a petition for expungement, the
83 Superintendent of the State Police; the prosecuting attorney
84 of the county of conviction; the chief of police or other
85 executive head of the municipal police department wherein
86 the offense was committed; the chief law-enforcement officer
87 of any other law-enforcement agency which participated in
88 the arrest of the petitioner; the superintendent or warden of
89 any institution in which the petitioner was confined; the
90 magistrate court or municipal court which disposed of the
91 petitioner's criminal charge; all other state and local
92 government agencies whose records would be affected by the
93 proposed expungement and any other interested individual or
94 agency that desires to oppose the expungement shall, within
95 thirty days of receipt of the petition, file a notice of
96 opposition with the court with supporting documentation and
97 sworn statements setting forth the reasons for resisting the
98 petition for expungement. A copy of any notice of
99 opposition with supporting documentation and sworn

100 statements shall be served upon the petitioner in accordance
101 with trial court rules. The petitioner may file a reply no later
102 than ten days after service of any notice of opposition to the
103 petition for expungement.

104 (f) The burden of proof shall be on the petitioner to prove
105 by clear and convincing evidence that: (1) The conviction or
106 convictions for which expungement is sought are the only
107 convictions against petitioner and that the conviction or
108 convictions are not excluded from expungement by
109 subsection (j) of this section; (2) that the requisite time period
110 has passed since the conviction or convictions or end of the
111 completion of any sentence of incarceration or probation; (3)
112 petitioner has no criminal charges pending against him or
113 her; (4) the expungement is consistent with the public
114 welfare; (5) petitioner has, by his or her behavior since the
115 conviction or convictions, evidenced that he or she has been
116 rehabilitated and is law-abiding; and (6) any other matter
117 deemed appropriate or necessary by the court to make a
118 determination regarding the petition for expungement.

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

121 (1) Summarily grant the petition;

122 (2) Set the matter for hearing; or

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

128 (h) If the court sets the matter for hearing, all interested
129 parties who have filed a notice of opposition shall be notified.
130 At the hearing, the court may inquire into the background of

131 the petitioner and shall have access to any reports or records
132 relating to the petitioner that are on file with any
133 law-enforcement authority, the institution of confinement, if
134 any, and parole authority or other agency which was in any
135 way involved with the petitioner's arrest, conviction,
136 sentence and post-conviction supervision, including any
137 record of arrest or conviction in any other state or federal
138 court. The court may hear testimony of witnesses and any
139 other matter the court deems proper and relevant to its
140 determination regarding the petition. The court shall enter an
141 order reflecting its ruling on the petition for expungement
142 with appropriate findings of fact and conclusions of law.

143 (i) No person shall be eligible for expungement of a
144 conviction and the records associated therewith pursuant to
145 the provisions of subsection (a) of this section for any
146 violation involving the infliction of serious physical injury;
147 involving the provisions of article eight-b of this chapter
148 where the petitioner was eighteen years old, or older, at the
149 time the violation occurred and the victim was twelve years
150 of age, or younger, at the time the violation occurred;
151 involving the use or exhibition of a deadly weapon or
152 dangerous instrument; of the provisions of subsection (b) or
153 (c), section nine, article two of this chapter where the victim
154 was a spouse, a person with whom the person seeking
155 expungement had a child in common or with whom the
156 person seeking expungement ever cohabitated prior to the
157 offense; any violation of the provisions of section
158 twenty-eight of said article; a conviction for driving under the
159 influence of alcohol, controlled substances or a conviction for
160 a violation of section three, article four, chapter seventeen-b
161 of this code or section nineteen, article eight of this chapter.

162 (j) If the court grants the petition for expungement, it
163 shall order the sealing of all records in the custody of the
164 court and expungement of any records in the custody of any
165 other agency or official, including law-enforcement records.

166 Every agency with records relating to the arrest, charge or
167 other matters arising out of the arrest or conviction that is
168 ordered to expunge records shall certify to the court within
169 sixty days of the entry of the expungement order that the
170 required expungement has been completed. All orders
171 enforcing the expungement procedure shall also be sealed.

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

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

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



Chairman Senate Committee



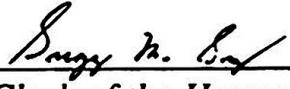
Chairman House Committee

Originating in the House.

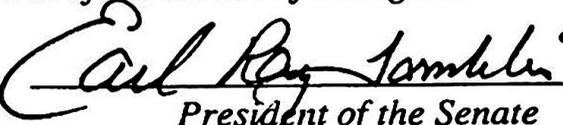
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 29 2009

Time 11:25 Am