

FILED

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WEST VIRGINIA LEGISLATURE VIRGINIA
SECRETARY OF STATE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 547

(SENATORS WILLS, KLEMPA, STOLLINGS AND
KESSLER (MR. PRESIDENT), ORIGINAL SPONSORS)

[PASSED MARCH 10, 2012; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB547 (veto)

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**(SENATORS WILLS, KLEMPA, STOLLINGS AND
KESSLER (MR. PRESIDENT), *original sponsors*)**

[Passed March 10, 2012; 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 the expungement of certain criminal convictions generally; permitting expungement of certain felony convictions; establishing the amount of time after conviction of a felony before expungement may be sought; and creating exceptions.

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 or felony
- 2 offense or offenses arising from the same transaction com-
- 3 mitted may, pursuant to this section, petition the circuit
- 4 court in which the conviction or convictions occurred for

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (11) Whether petitioner has ever been granted
61 expungement or similar relief regarding a criminal convic-
62 tion by any court in this state, any other state or by any
63 federal court; and

64 (12) Any supporting documents, sworn statements,
65 affidavits or other information supporting the petition to
66 expunge.

67 (d) A copy of the petition, with any supporting documen-
68 tation, shall be served by petitioner pursuant to the rules of
69 the trial court upon the Superintendent of the State Police;
70 the prosecuting attorney of the county of conviction; the
71 chief of police or other executive head of the municipal
72 police department wherein the offense was committed; the
73 chief law-enforcement officer of any other law-enforcement
74 agency which participated in the arrest of the petitioner; the
75 superintendent or warden of any institution in which the

76 petitioner was confined; the court which disposed of the
77 petitioner's criminal charge; and all other state and local
78 government agencies whose records would be affected by the
79 proposed expungement. The prosecutorial office that had
80 jurisdiction over the offense or offenses for which
81 expungement is sought shall serve by first class mail the
82 petition for expungement, accompanying documentation and
83 any proposed expungement order to any identified victims.

84 (e) Upon receipt of a petition for expungement, the
85 Superintendent of the State Police; the prosecuting attorney
86 of the county of conviction; the chief of police or other
87 executive head of the municipal police department wherein
88 the offense was committed; the chief law-enforcement officer
89 of any other law-enforcement agency which participated in
90 the arrest of the petitioner; the superintendent or warden of
91 any institution in which the petitioner was confined; the
92 court which disposed of the petitioner's criminal charge or
93 charges; all other state and local government agencies whose
94 records would be affected by the proposed expungement and
95 any other interested individual or agency that desires to
96 oppose the expungement shall, within thirty days of receipt
97 of the petition, file a notice of opposition with the court with
98 supporting documentation and sworn statements setting
99 forth the reasons for resisting the petition for expungement.
100 A copy of any notice of opposition with supporting documen-
101 tation and sworn statements shall be served upon the
102 petitioner in accordance with trial court rules. The petitioner
103 may file a reply no later than ten days after service of any
104 notice of opposition to the petition for expungement.

105 (f) The burden of proof shall be on the petitioner to prove
106 by clear and convincing evidence that: (1) The conviction or
107 convictions for which expungement is sought are the only
108 convictions against petitioner and that the conviction or
109 convictions are not excluded from expungement by subsec-
110 tion (i) of this section; (2) that the requisite time period has
111 passed since the conviction or convictions or end of the
112 completion of any sentence of incarceration or probation; (3)
113 petitioner has no criminal charges pending against him or
114 her; (4) the expungement is consistent with the public

115 welfare; (5) petitioner has, by his or her behavior since the
116 conviction or convictions, evidenced that he or she has been
117 rehabilitated and is law abiding; and (6) any other matter
118 deemed appropriate or necessary by the court to make a
119 determination regarding the petition for expungement.

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

122 (1) Summarily grant the petition;

123 (2) Set the matter for hearing; or

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

129 (h) If the court sets the matter for hearing, all interested
130 parties who have filed a notice of opposition shall be noti-
131 fied. At the hearing, the court may inquire into the back-
132 ground of the petitioner and shall have access to any reports
133 or records relating to the petitioner that are on file with any
134 law-enforcement authority, the institution of confinement,
135 if any, and parole authority or other agency which was in
136 any way involved with the petitioner's arrest, conviction,
137 sentence and post-conviction supervision, including any
138 record of arrest or conviction in any other state or federal
139 court. The court may hear testimony of witnesses and any
140 other matter the court deems proper and relevant to its
141 determination regarding the petition. The court shall enter
142 an order reflecting its ruling on the petition for expungement
143 with appropriate findings of fact and conclusions of law.

144 (i) No person is eligible for expungement of a conviction
145 and the records associated there with pursuant to subsection
146 (a) of this section for:

147 (1) Any felony crime of violence against the person or any
148 misdemeanor offense involving the intentional infliction of
149 physical injury;

150 (2) Any felony offense when the victim of the crime was
151 a minor;

152 (3) Any misdemeanor violation of the provisions of article
153 eight-b of this chapter when the petitioner was eighteen
154 years of age or older and the victim was twelve years of age
155 or younger at the time the violation occurred;

156 (4) Any offense where the petitioner used or exhibited a
157 deadly weapon or dangerous instrument;

158 (5) Any violation of section twenty-eight, article two of
159 this chapter or subsections (b) or (c), section nine, article two
160 of this chapter where the victim was spouse, a person seeking
161 expungement had a child in common or with whom the
162 person seeking expungement ever cohabited prior to the
163 offense prior to the offense.

164 (6) Any conviction for driving under the influence of
165 alcohol or a controlled substance;

166 (7) Any conviction for a violation of section three, article
167 four, chapter seventeen-b of this code; and

168 (8) Any violation of section nineteen, article eight of this
169 chapter.

170 As used in this section a "felony crime of violence against
171 the person" means those felony offenses set forth in articles
172 two, three-e, eight-b, eight-d, chapter sixty-one of this code
173 and "felony offenses where the victim was a minor" means
174 felony violation of articles eight, eight-a, eight-c and eight-d.

175 (j) If the court grants the petition for expungement, it
176 shall order the sealing of all records in the custody of the
177 court and expungement of any records in the custody of any
178 other agency or official, including law-enforcement records.
179 Every agency with records relating to the arrest, charge or
180 other matters arising out of the arrest or conviction that is
181 ordered to expunge records shall certify to the court within
182 sixty days of the entry of the expungement order that the
183 required expungement has been completed. All orders

184 enforcing the expungement procedure shall also be sealed.
185 For the purposes of this section, "records" do not include the
186 records of the Governor, the Legislature or the Secretary of
187 State that pertain to a grant of pardon. Such records that
188 pertain to a grant of pardon are not subject to an order of
189 expungement. The amendment to this section during the
190 fourth extraordinary session of the Legislature in the year
191 2009 is not for the purpose of changing existing law, but is
192 intended to clarify the intent of the Legislature as to existing
193 law regarding expungement.

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

201 (l) Inspection of the sealed records in the court's posses-
202 sion may thereafter be permitted by the court only upon a
203 motion by the person who is the subject of the records or
204 upon a petition filed by a prosecuting attorney that inspec-
205 tion and possible use of the records in question are necessary
206 to the investigation or prosecution of a crime in this state or
207 another jurisdiction. If the court finds that the interests of
208 justice will be served by granting a petition to inspect the
209 sealed record, it may be granted.

FILED

Enr. Com. Sub. for S. B. No. 547]

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

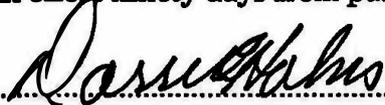
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.....
Chairman Senate Committee

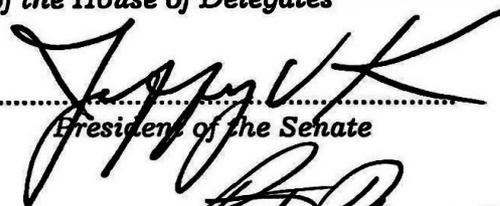

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within *is disapproved* this the *3rd*
Day of *April*, 2012.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 4:20 pm