

Circuit Court of Hampshire County

SONJA K. EMBREY, CLERK

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IMPORTANT NOTICE to ProSe Filers

- ▶ **READ ALL INSTRUCTIONS CAREFULLY.**
- ▶ The Circuit Clerks Office cannot assist you in completing the forms or provide legal advice.
- ▶ This packet includes the following Supreme Court of Appeals of West Virginia forms. The Circuit Clerk's Office cannot advise you on which form to complete for your specific situation:
 - Expungement Instructions
 - Petition for Expungement of Misdemeanor Violations and Traffic Citation
 - Petition for Expungement of Felony Violations
 - Motion for Expungement of Criminal Records Due to Acquittal or Dismissal for Reasons Other than Entry of a Plea
- ▶ Please fully complete forms submitted for filing, including notarization(s), if applicable.
 - Please note that a Notary Public is not available in the Hampshire County Circuit Clerk's Office.
- ▶ The Hampshire County Circuit Clerk's Office transitioned to WV e-File in January 2016. As a result of electronic filing, it is not necessary to make additional copies of the documents you are filing. Your original documents will be returned to you after filing.
- ▶ **Filing Fees:**
 - Petition for Expungement Filing Fee: \$200.00 (due at the time of filing)
 - Motion for Expungement Filing Fee: No filing fee
- ▶ **Accepted Forms of Payment:**
 - Cash (MUST be exact change)
 - Money Order
 - Credit Card (a service fee applies)
 - No personal checks accepted

Thank you,

Sonja K. Embrey Circuit Clerk

EXPUNGEMENT INSTRUCTIONS

MISDEMEANOR CONVICTIONS

Under West Virginia Code §61-11-26, a person may petition the circuit court in the county where the conviction or convictions occurred. A person is eligible for expungement one (1) year after the conviction and completion of any sentence of incarceration and any period of supervision. A person is eligible for expungement of multiple misdemeanor convictions two (2) years after the last conviction and completion of any sentence of incarceration and any period of supervision.

In some circumstances a person may be eligible for accelerated expungement. Under West Virginia Code §61-11-26a, a person who has a medically documented history of substance abuse and (1) successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health and Human Resources or (2) graduates from a West Virginia Department of Education approved job readiness adult training course, or both, if applicable, is eligible for early expungement. A single misdemeanor, may be expunged upon the completion of any sentence of incarceration and any period of supervision. Multiple misdemeanors, may be expunged under this code section, one (1) year after the last conviction, completion of any sentence of incarceration or completion of any period of supervision.

A person cannot have pending criminal charges against him or her when they file for expungement. A person can only request expungement of criminal records once under §§61-11-26 and 61-11-26a.

FELONY CONVICTIONS

Under West Virginia Code §61-11-26, only non-violent felony convictions may be expunged. An individual may petition the Court five (5) years after the completion of any sentence of incarceration and completion of supervision in the circuit court in the county where the conviction or convictions occurred. In some circumstances a person may be eligible for accelerated expungement. As provided above under West Virginia Code §61-11-26a, a person who has a medically documented history of substance abuse and (1) successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health and Human Resources or (2) graduates from a West Virginia Department of Education approved job readiness adult training course, or both, if applicable, is eligible for early expungement. A single felony conviction may be expunged three (3) years after the completion of any sentence of incarceration and of any period of supervision

Only a single felony offense or multiple felony offenses arising from the same transaction or a series of transactions may be expunged.

A person cannot have pending criminal charges against him or her when they file for expungement. A person can only request expungement of criminal records once under §§61-11-26 and 61-11-26a.

MISDEMEANOR OFFENSES NOT ELIGIBLE FOR EXPUNGEMENT

An individual is not eligible for expungement if convicted of the offenses provided in West Virginia Code §61-11-26(c) as follows:

1. Any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer;
2. Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;
3. Any offense of driving under the influence of alcohol or a controlled substance;
4. Any offense that violates West Virginia Code §61-2-9(b), assault, or §61-2-9(c), battery, 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;
5. Any conviction for which the sentencing Judge made a written finding that the offense was sexually motivated;
6. Any violation of West Virginia Code §61-2-9a, Stalking, harassment;
7. Any violation of West Virginia Code §61-2-28, Domestic Violence;
8. Any violation of West Virginia Code §61-2-29, Abuse or neglect of incapacitated adult;
9. Any offense which violates West Virginia Code §61-8-19, Cruelty to Animals;
10. Any violation of West Virginia Code §61-8B-1 *et. seq.*, Sexual Offenses;
11. Any violation of West Virginia Code §61-8B-8, Sexual abuse in the second degree;
12. Any violation of West Virginia Code §61-8B-9, Sexual abuse in the third degree;
13. Any violation of West Virginia Code §17B-4-3, Driving while license suspended or revoked;
14. Any offense which violates West Virginia Code §17E-13(g), Uniform Commercial Driver's License Act;
15. Any offense of conspiracy or attempt to commit a crime as set forth in 1 through 13 above.

FELONY OFFENSES NOT ELIGIBLE FOR EXPUNGEMENT

An individual is not eligible for expungement if convicted of the offenses provided in West Virginia Code §61-11-26(c) as follows:

1. Any felony offense of violence against a person. A crime of violence against a person means felony offenses set forth in West Virginia Code §§61-2-1 *et seq.*, Crimes against the person, 61-3E-1 *et seq.*, Crimes involving explosives, 61-8B-1 *et seq.*, Sexual Offenses, and 61-8D-1 *et seq.*, Child Abuse;
2. Any felony offense in which the victim of the crime was a minor. A crime against a minor means felony offense set forth in West Virginia Code §§61-3C-14b, Soliciting, etc. a minor via computer, 61-8-1 *et seq.*, Crimes against chastity, morality, and decency, 61-8A-1 *et seq.*, Preparation, distribution or exhibition of obscene matter to minors, 61-8C-1 *et seq.*, Filming of sexually explicit conduct of minors, and 61-8D-1 *et seq.*, Child Abuse;
3. Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;
4. Any offense of driving under the influence of alcohol or a controlled substance;
5. Any offense that violates West Virginia Code §61-2-9(b), assault, or §61-2-9(c), battery, 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;
6. Any conviction for which the sentencing Judge made a written finding that the offense was sexually motivated;
7. Any violation of West Virginia Code §61-2-9(a), Stalking, harassment;
8. Any violation of West Virginia Code §61-2-28, Domestic Violence;
9. Any violation of West Virginia Code §61-2-29, Abuse or neglect of incapacitated adult;
10. Any violation of West Virginia Code §61-3-11, Burglary, entry of dwelling or outhouse;
11. Any offense which violates West Virginia Code §61-8-12, Incest;
12. Any offense which violates West Virginia Code §61-8-19, Cruelty to Animals;
13. Any violation of West Virginia Code §61-8B-1 *et seq.*, Sexual Offenses;
14. Any violation of West Virginia Code §17B-4-3, Driving while license suspended or revoked;
15. Any offense which violates West Virginia Code §17E-13(g), Uniform Commercial Driver's License Act;
16. Any offense of conspiracy or attempt to commit a felony set forth in 1 through 14 above.

PETITION FORM

A Petition is available for both Misdemeanor Convictions and Felony Convictions. Make sure you are filling out the correct form. You are required to fill the form out completely and provide all documentation of your charges, convictions and successful completion of your sentence of incarceration and/ or supervision.

If applicable you are required to provide documentation of your graduation from a West Virginia Department of Education approved Job Readiness Adult Training course or documentation of your medical history of substance abuse and successful compliance with an approved substance abuse treatment and recovery and counseling program. You must be in compliance for a period of ninety (90) days with this approved program.

SERVICE

A certificate of service is provided. You must serve the Petition and all supporting documentation to the following individuals or entities:

1. The Superintendent of the State Police;
2. The prosecuting attorney of the county of conviction;
3. The chief of police or other executive head of the municipal police department where the offense occurred;
4. The chief law-enforcement officer of any other law-enforcement agency which participated in the arrest; and
5. The superintendent or warden of any institution where confined;
6. The circuit court, magistrate court, or municipal court which disposed of the criminal charges;

Any of the individuals or agency listed above or any victim(s) may file a notice of opposition to the Court within thirty (30) days of service of the Petition for expungement. A response to the notice of opposition may be filed thirty (30) days after service. The Court within sixty (60) days of the filing of the Petition may grant the Petition without a hearing, set the matter for a hearing, or deny the Petition.

FILING FEES

The filing fee is collected in advance and is \$200.00. Additional fees may be required such as, but are not limited to, service and copies at the time of filing.

OTHER FEES

A person granted expungement must pay a fee of \$100.00 to the records division of the West Virginia State Police for the cost of processing the expungement. This fee is waived if the petition is granted pursuant to the expedited procedure established for persons with a medically documented history of substance abuse.

IMPORTANT NOTICE

- (1) 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.**
- (2) Any person required by state or federal law to obtain a criminal history record check on a prospective employee is authorized to have knowledge of any convictions expunged.**
- (3) Expungement of your criminal conviction(s) does not automatically restore your rights to own or possess firearms.**

d. Petitioner's current name, previous names, and all aliases:

e. All of petitioner's addresses from the date of offense to current:

f. Date of arrest:

g. Petitioner was convicted on the following charges:

h. Name(s) of victim(s) if applicable:

i. Is there a current order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting victim(s)?

Yes (If yes, attach copy of order to this petition)

No

Was there a prior order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting victim(s)?

Yes

No

j. The Court's verdict and punishment imposed was:

k. Grounds for expungement request, including but not limited to employment or licensure purposes

(please explain in detail):

l. Steps petitioner has taken since the time of the offense towards personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation (please explain in detail):

m. Has petitioner ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, in any other state, or by any federal court?

Yes

No

n. Petitioner has attached any supporting documentation, sworn statements, affidavits, and/or other information supporting the petition to expunge.

Wherefore, pursuant to WV Code §61-11-26, the petitioner respectfully requests that this Honorable Court expunge the conviction(s), and the records associated therewith, as provided in this petition.

Signature of Petitioner

VERIFICATION

I, _____ after making an oath or affirmation to tell the truth, say that the facts I have stated in this Petition are true to the best of my personal knowledge and belief; and if I have provided information given to me by others, I believe that information to be true.

Signature of Petitioner

Date

This Verification was sworn to or affirmed before me on the _____ day of _____, 20_____.

Notary Public/Other Official

My commission expires: _____.

CERTIFICATE OF SERVICE

I, _____, do hereby certify that I have, on this _____ day of _____, 20_____, given a true and correct copy of the foregoing Petition For Expungement Of Criminal Records as Provided Under W.Va. Code § 61-11-26 and/or West Virginia Code §61-11-26(a) with all attached supporting documentation to:

1. The Superintendent of the State Police, at

2. The _____ County Prosecuting Attorney's Office, at

3. The Chief of Police (or other Executive Head of the Municipal Police Department where the offense(s) were committed, at

4. The Chief Law Enforcement Officer of any other Law Enforcement Agency which participated in the arrest (if applicable), at

5. The Superintendent or Warden of any institution in which Petitioner was confined (if applicable) at

6. The Circuit Court that disposed of the Petitioner's criminal charges (if applicable) at

7. The Magistrate Court that disposed of the Petitioner's criminal charges (if applicable) at

8. The Municipal Court that disposed of the Petitioner's criminal charges (if applicable) at

By the following method:

First Class Mail

Hand Delivery

Certified Mail - Return Receipt

Date

Signature of Petitioner

IN THE CIRCUIT COURT OF _____ HAMPSHIRE _____ COUNTY, WEST VIRGINIA

Magistrate Court Case No. _____

Circuit Court Case No. _____

IN RE: Expungement of Record of:

Conviction Date: _____

Petitioner (First/Middle/Last)

Address: _____ DOB: ____ / ____ / ____ Phone No. _____

SSN: XXX-XX-_____

PETITION FOR EXPUNGEMENT OF FELONY VIOLATIONS

W. Va. Code §61-11-26 and §61-11-26a

Comes now the petitioner, pro se, pursuant to §61-11-26 and/or §61-11-26a to expunge the following felonies in the above referenced case:

CHARGE: _____	CASE NO.: _____
CHARGE: _____	CASE NO.: _____
CHARGE: _____	CASE NO.: _____
CHARGE: _____	CASE NO.: _____

In Support of this Petition, the Petitioner states as follows:

- a. The charge(s) noted above are not excluded under §61-11-26(c).
- b. Petitioner has no pending charges at this time.
- c. Petitioner has completed eligibility requirements for expungement as prescribed by one of the below:
 - For the expungement under WV Code §61-11-26 of a single above listed and described felony conviction, five years have passed since the completion of petitioner's sentence and any period of supervision. The date of completion was: _____.
 - For the expungement under WV Code §61-11-26 of multiple above listed and described felony convictions, all the charges arose from the same transaction and five years have passed since any conviction and the completion of petitioner's sentence and any period of supervision. The date of completion was: _____.
 - For the expungement under WV Code §61-11-26a of a single above listed and described felony conviction, where the petitioner satisfies the requirements of §61-11-26a(a)(1) or §61-11-26a(a)(2), or both, if applicable, three years have passed following the completion of petitioner's sentence and any period of supervision. The date of completion was: _____
Petitioner must provide documentation required under §61-11-26a(b).
 - For the expungement under WV Code §61-11-26a of multiple above listed and described felony convictions, where the petitioner satisfies the requirements of §61-11-26a(a)(1) or §61-11-26a(a)(2), or both, if applicable, three years have passed since any conviction and completion of petitioner's sentence and any period of supervision. The date of completion was: _____
Petitioner must provide documentation required under §61-11-26a(b).

d. Petitioner's current name, previous names, and all aliases:

e. All of petitioner's addresses from the date of offense to current:

f. Date of arrest:

g. Petitioner was convicted on the following charges:

h. Name(s) of victim(s) if applicable:

i. Is there a current order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting victim(s)?

Yes (If yes, attach copy of order to this petition)

No

Was there a prior order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting victim(s)?

Yes

No

j. The Court's verdict and punishment imposed, was:

k. Grounds for expungement request, including but not limited to employment or licensure proposes (please explain in detail):

l. Steps petitioner has taken since the time of the offense towards personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation (please explain in detail):

m. Has petitioner ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, in any other state, or by any federal court?

Yes (If yes, attach copy of order to this petition)

No

n. Petitioner has attached any supporting documentation, sworn statements, affidavits, and/or other information supporting the petition to expunge.

Wherefore, pursuant to WV Code §61-11-26, the petitioner respectfully request that this Honorable Court expunge the conviction(s) and the records associated therewith as provided in this petition.

Signature of Petitioner

VERIFICATION

I, _____ after making an oath or affirmation to tell the truth, say that the facts I have stated in this Petition are true to the best of my personal knowledge and belief; and if I have provided information given to me by others, I believe that information to be true.

(Signature of Petitioner)

Date

This Verification was sworn to or affirmed before me on the _____ day of _____, 20_____.

Notary Public/Other Official

My commission expires: _____.

CERTIFICATE OF SERVICE

I, _____, do hereby certify that I have on this _____ day of _____, 20_____, given a true and correct copy of the foregoing Petition For Expungement Of Criminal Records as Provided Under W.Va. Code § 61-11-26 and/or West Virginia Code §61-11-26(a) with all attached supporting documentation to:

1. The Superintendent of the State Police, at

2. The _____ County Prosecuting Attorney Office, at

3. The Chief of Police (or other Executive Head of the Municipal Police Department where the Offense(s) were Committed, at

4. The Superintendent or Warden of any Institution in which Petitioner was confined (if applicable, at

5. The Circuit Court that disposed of the Petitioner's criminal charges (if applicable) at

6. The Magistrate Court that disposed of the Petitioner's criminal charges (if applicable) at

7. The Municipal Court that disposed of the Petitioner's criminal charges (if applicable) at

By the following method:

- First Class Mail
- Hand Delivery
- Certified Mail - Return Receipt

Date

Signature of Petitioner

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

IN RE: EXPUNGEMENT OF RECORD OF: _____ CIRCUIT COURT NO. _____

(Full Name of Movant) LOWER COURT NO. _____

**MOTION FOR EXPUNGEMENT OF CRIMINAL RECORDS
DUE TO ACQUITTAL OR DISMISSAL
FOR REASONS OTHER THAN ENTRY OF A PLEA**

Comes now the movant, pro se, and in support of his or her Motion for Expungement of Criminal Record does hereby allege and state as follows:

1. That on _____, the movant was cited by the
(Date of Arrest)
_____ for _____
(Arresting or Charging Law Enforcement Agency) (Charges or Offense(s))
_____.

2. That on _____, this matter was dismissed by the
(Date of Dismissal)
_____ Court of _____ County, due to
(Type of Court: Municipal, Magistrate, Circuit)

(Reason for Dismissal.)

3. I, _____, have never been convicted of a felony.
(Movant's Name)

4. That 60 days have elapsed since the above referenced dismissal and that same dismissal was not in exchange for a guilty plea to another offense.

5. There are no current charges or proceedings pending relating to the matter for which I am moving for expungement.

Wherefore, pursuant to W.Va. Code § 61-11-25 (2000), the movant respectfully requests that this Honorable Court expunge all records relating to the arrest, charge or other matters arising out of the arrest or charges, including but not limited to those records delineated in W.Va. Code § 61-11-25 (2000).

(Signature of Movant)

