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# **EXPUNGEMENT INSTRUCTIONS**

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## **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.**