

## INSTRUCTIONS

### PETITION FOR EXPUNGEMENT OF CRIMINAL RECORDS PROVIDED UNDER W.VA. CODE § 61-11-26

#### Petition Form

Carefully read the attached form to fill out your Petition for Expungement of Criminal Records Provided Under W.Va. Code § 61-11-26. All of the statements included on the Petition form must apply to you, and must be true, in order for you to be eligible for expungement under this Code section. At any subsequent hearing on your petition, you will have the burden of proof to demonstrate by clear and convincing evidence that the statements you provide on the Petition are true.

Legibly print or type your answers in the blanks provided for the caption (title) section and numbers 1 – 2 on the provided form.

Statements numbered 5 through 5g deal with specific offenses which are not be eligible for expungement. Note that all of the statements in the Petition must be true in your case in order for you to be eligible to Petition the Court for expungement. Also note that from the time you file your Petition and while the Petition is pending, you cannot be arrested or made subject to any pending criminal proceeding to stay eligible for expungement under this Petition.

Check your responses to 1 – 5g, sign the Petition, and move on to the Verification portion.

#### Verification Form

Legibly print or type your answers to fill in the blanks on numbers 1 – 6 of the Verification portion of the form.

Check the appropriate box to answer number 7, and if you answered “yes,” attach the requested copy of the Order(s) described.

Legibly print or type your answers to numbers 8 through 10, and check the appropriate box for your answer to number 11, and attach any supporting documentation as described in number 12.

#### Certificate of Service Portion

Fill out the caption (title) portion of the Certificate of Service, and indicate the boxes next to all applicable recipients, legibly printing or typing the appropriate addresses, and make as many copies of your petition and all attached documentation as necessary to serve all parties by the method you indicate. Under W.Va. Code § 61-11-26(e), any of the parties you serve may file a notice of opposition to the Court. If this should happen, you will be notified and will then have ten (10) days of being served of such notice to reply.



4. That one year has passed since the above listed and described conviction or completion of petitioner's sentence of incarceration or probation, whichever happened later in time. The applicable date is \_\_\_\_\_.

5. I allege and state that the above-noted charge(s) are eligible for expungement under this statute, because they do not involve any of the criteria that would render them ineligible under W.Va. Code § 61-11-26(i), including

5a. any violation involving the affliction of serious injury;

5b. any violation involving the provisions of W.Va. Code § 61-8B-1, *et.seq.* where petitioner was eighteen (18) or older and the victim was twelve (12) or younger at the time the violation occurred;

5c. the use or exhibition of a deadly weapon or dangerous instrument

5d. any violation of W.Va. Code § 61-2-9(b) or (c) where the victim was a spouse, a person with whom the petitioner had a child in common or with whom the petitioner ever cohabitated prior to the offense

5e. any violation of W.Va. Code § 61-2-28

5f. a conviction for driving under the influence of alcohol or controlled substances,

5g. any violation of W.Va. Code § 17B-4-3 or W.Va. Code § 61-8-19.

Wherefore, pursuant to W.Va. Code § 61-11-26 (2009), and subject to the attached verification and information, the petitioner respectfully requests that this Honorable Court expunge the conviction(s) and the records associated therewith.

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Signature of petitioner

**VERIFICATION**

I, \_\_\_\_\_, verify the above and foregoing under oath,  
and include the following as required under W.Va. Code § 61-11-26:

1. All petitioner's names, current and previous:

\_\_\_\_\_

2. All petitioner's addresses, in order, from the date of offense to current:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Date of birth: \_\_\_\_\_ / Social Security No. \_\_\_\_\_

4. Date of arrest: \_\_\_\_\_

Court of jurisdiction: \_\_\_\_\_

Complaint, indictment, summons or case no.:

\_\_\_\_\_

5. Statute and offense(s) of conviction(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Name(s) of victim(s), or statement of no identifiable victim(s):

\_\_\_\_\_  
\_\_\_\_\_

7. 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 victim(s)?

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

No

8. The Court's disposition of the matter, and punishment imposed, if any, was:

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9. Statement of reason for expungement request (ex. – employment or licensure purposes) and why it should be granted:

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10. Statement of steps petitioner has taken since the time of the offense toward personal rehabilitation, such as treatment, work, or other personal history that demonstrates rehabilitation:

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11. 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

12. I have attached any supporting documentation, sworn statements, affidavits, or other information supporting the petition to expunge.

Wherefore, pursuant to W.Va. Code § 61-11-26 (2009), I, the Petitioner, verify under oath that the foregoing is true in support of my Petition for Expungement of Criminal Records as Provided under W.Va. Code § 61-11-26.

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Petitioner's Signature



The Magistrate Court or Municipal Court which Disposed of the Criminal Charge at

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All other state and local government agencies whose records would be affected by an expungement (if applicable) at

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by the following method:

First Class Mail

Hand Delivery

Certified Mail – Return Receipt

Dated: \_\_\_\_\_

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(Signature of Petitioner)