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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.**

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. \_\_\_\_\_

Plaintiff(s) \_\_\_\_\_

Judge: \_\_\_\_\_

vs.

Days to Answer

Type of Service

Defendant(s) \_\_\_\_\_

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

II. TYPE OF CASE:

- General Civil, Mass Litigation, Adoption, Administrative Agency Appeal, etc.

III. JURY DEMAND: Yes No CASE WILL BE READY FOR TRIAL BY (Month/Year):

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS?

IF YES, PLEASE SPECIFY:

Yes No

- Wheelchair accessible hearing room, Reader or other auxiliary aid, etc.

Attorney Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Representing:

- Plaintiff Defendant, Cross-Defendant Cross-Complainant, 3rd-Party Plaintiff 3rd-Party Defendant

Proceeding Without an Attorney

Original and copies of complaint enclosed/attached.

Dated: / /

Signature: \_\_\_\_\_

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

Circuit Court Case No. \_\_\_\_\_

IN RE: Expungement of Record of:

Magistrate Court Case No. \_\_\_\_\_

Conviction Date: \_\_\_\_\_

Petitioner (First/Middle/Last) \_\_\_\_\_

Address: \_\_\_\_\_ DOB: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Phone No. \_\_\_\_\_

SSN: XXX-XX-\_\_\_\_\_

**PETITION FOR EXPUNGEMENT OF MISDEMEANOR VIOLATIONS AND TRAFFIC CITATIONS**

*W. Va. Code §61-11-26 and §61-11-26(a)*

Comes now the petitioner, pro se, pursuant to §61-11-26 and/or §61-11-26a to expunge the following misdemeanors 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 misdemeanor conviction or traffic citations(s), one year has passed since the completion of petitioner's sentence and any period of supervision. The date of eligibility is: \_\_\_\_\_.
  - For the expungement under WV Code §61-11-26 of multiple above listed and described misdemeanor convictions or traffic citation(s), two years have passed since any conviction and the completion of petitioner's sentence and any period of supervision. The date of eligibility is: \_\_\_\_\_.
  - For the expungement under WV Code §61-11-26 of a single above listed and described misdemeanor conviction or traffic citation(s), where the petitioner satisfies the requirements of §61-11-26a(1) or §61-11-26a(2), or both, if applicable, following the completion of petitioner's sentence and any period of supervision. The date of eligibility is: \_\_\_\_\_. **Petitioner must provide documentation required under §61-11-26a(b).**
  - For the expungement under WV Code §61-11-26 of multiple above listed and described misdemeanor convictions or traffic citation(s), where the petitioner satisfies the requirements of §61-11-26a(1) or §61-11-26a(2), or both, if applicable, one year has passed since any conviction and completion of petitioner's sentence and any period of supervision. The date of eligibility is: \_\_\_\_\_. **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 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

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### VERIFICATION

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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: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

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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 \_\_\_\_\_ COUNTY, WEST VIRGINIA

Circuit Court Case No. \_\_\_\_\_

IN RE: Expungement of Record of:

Magistrate Court Case No. \_\_\_\_\_

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

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### VERIFICATION

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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: \_\_\_\_\_.

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**CERTIFICATE OF SERVICE**

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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

# COURT ORDERED EXPUNGEMENT

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

IN RE:  
THE EXPUNGMENT OF RECORD OF:

Honorable: \_\_\_\_\_  
PETITION NO: \_\_\_\_\_  
CASE NO: \_\_\_\_\_  
BOUND OVER NO: \_\_\_\_\_  
CDR NO: \_\_\_\_\_  
CITATION NO: \_\_\_\_\_

\_\_\_\_\_  
PETITIONER/DEFENDANT (Full Name)

\_\_\_\_\_  
PETITIONER (AKA)

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security # \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Arresting/Charging Agency: \_\_\_\_\_

Date of Arrest: \_\_\_\_/\_\_\_\_/\_\_\_\_ Date of Offense \_\_\_\_/\_\_\_\_/\_\_\_\_ Date of Conviction/Dismissal \_\_\_\_/\_\_\_\_/\_\_\_\_

Charge(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Therefore, the Court found that pursuant to WV Code(s)*

PLEASE CHECK ALL THAT APPLY

§ 61-11-25  
(Dismissals/Not Guilty)

§ 61-11-26  
(Certain Convictions)

§ 15-2-24(h)  
(Dismissal No Prior Record)

§ 60A-4-407  
(1<sup>st</sup> Offense Possession)

§ \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Other: \_\_\_\_\_

GRANTED

DENIED

OTHER: \_\_\_\_\_