

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **House Bill No. 3128**

5 (By Delegate Frazier)

6
7 [Passed March 6, 2012; in effect ninety days from passage.]

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10 AN ACT to amend and reenact §61-11-25 of the Code of West Virginia,
11 1931, as amended, relating to filing a civil petition for
12 expungement of records relating to an arrest or charges
13 relating to the arrest when found not guilty of the offense or
14 charges have been dismissed; and providing that no filing fees
15 or costs be charged for processing the action.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §61-11-25 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

20 **§61-11-25. Expungement of criminal records for those found not**
21 **guilty of crimes or against whom charges have been**
22 **dismissed.**

23 (a) Any person who has been charged with a criminal offense
24 under the laws of this state and who has been found not guilty of
25 the offense, or against whom charges have been dismissed, and not

1 in exchange for a guilty plea to another offense, may file a civil
2 petition in the circuit court in which the charges were filed to
3 expunge all records relating to the arrest, charge or other matters
4 arising out of the arrest or charge: *Provided*, That no record in
5 the Division of Motor Vehicles may be expunged by virtue of any
6 order of expungement entered pursuant to section two-b, article
7 five, chapter seventeen-C of this code: *Provided, further*, That any
8 person who has previously been convicted of a felony may not file
9 a petition for expungement pursuant to this section. The term
10 records as used in this section includes, but is not limited to,
11 arrest records, fingerprints, photographs, index references or
12 other data whether in documentary or electronic form, relating to
13 the arrest, charge or other matters arising out of the arrest or
14 charge. Criminal investigation reports and all records relating to
15 offenses subject to the provisions of article twelve, chapter
16 fifteen of this code because the person was found not guilty by
17 reason of mental illness, mental retardation or addiction are
18 exempt from the provisions of this section.

19 (b) The expungement petition shall be filed not sooner than
20 sixty days following the order of acquittal or dismissal by the
21 court. Any court entering an order of acquittal or dismissal shall
22 inform the person who has been found not guilty or against whom
23 charges have been dismissed of his or her rights to file a petition
24 for expungement pursuant to this section.

25 (c) Following the filing of the petition, the court may set a
26 date for a hearing. If the court does so, it shall notify the

1 prosecuting attorney and the arresting agency of the petition and
2 provide an opportunity for a response to the expungement petition.

3 (d) If the court finds that there are no current charges or
4 proceedings pending relating to the matter for which the
5 expungement is sought, the court may grant the petition and order
6 the sealing of all records in the custody of the court and
7 expungement of any records in the custody of any other agency or
8 official including law enforcement records. Every agency with
9 records relating to the arrest, charge or other matters arising out
10 of the arrest or charge, that is ordered to expunge records, shall
11 certify to the court within sixty days of the entry of the
12 expungement order, that the required expungement has been
13 completed. All orders enforcing the expungement procedure shall
14 also be sealed.

15 (e) Upon expungement, the proceedings in the matter shall be
16 deemed never to have occurred. The court and other agencies shall
17 reply to any inquiry that no record exists on the matter. The
18 person whose record is expunged shall not have to disclose the fact
19 of the record or any matter relating thereto on an application for
20 employment, credit or other type of application.

21 (f) Inspection of the sealed records in the court's possession
22 may thereafter be permitted by the court only upon a motion by the
23 person who is the subject of the records or upon a petition filed
24 by a prosecuting attorney that inspection and possible use of the
25 records in question are necessary to the investigation or
26 prosecution of a crime in this state or another jurisdiction. If

1 the court finds that the interests of justice will be served by
2 granting the petition, it may be granted.

3 (g) There shall be no filing fees charged or costs assessed
4 for filing an action pursuant to this section.