

COMMITTEE SUBSTITUTE

FOR

H. B. 3128

(BY DELEGATE FRAZIER)

(Originating in the Committee on the Judiciary)
[January 13, 2012]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

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

1 (a) Any person who has been charged with a criminal
2 offense under the laws of this state and who has been found
3 not guilty of the offense, or against whom charges have been
4 dismissed, and not in exchange for a guilty plea to another
5 offense, may ~~make a motion~~ file a civil petition in the circuit
6 court in which the charges were filed to expunge all records
7 relating to the arrest, charge or other matters arising out of
8 the arrest or charge: *Provided*, That no record in the Division
9 of Motor Vehicles may be expunged by virtue of any order
10 of expungement entered pursuant to section two-b, article
11 five, chapter seventeen-C of this code: *Provided, further*,
12 That any person who has previously been convicted of a
13 felony may not ~~make a motion~~ file a petition for
14 expungement pursuant to this section. The term records as
15 used in this section includes, but is not limited to, arrest
16 records, fingerprints, photographs, index references or other

17 data whether in documentary or electronic form, relating to
18 the arrest, charge or other matters arising out of the arrest or
19 charge. Criminal investigation reports and all records
20 relating to offenses subject to the provisions of article twelve,
21 chapter fifteen of this code because the person was found not
22 guilty by reason of mental illness, mental retardation or
23 addiction are exempt from the provisions of this section.

24 (b) The expungement ~~motion~~ petition shall be filed not
25 sooner than sixty days following the order of acquittal or
26 dismissal by the court. Any court entering an order of
27 acquittal or dismissal shall inform the person who has been
28 found not guilty or against whom charges have been
29 dismissed of his or her rights to ~~make a motion~~ file a petition
30 for expungement pursuant to this section.

31 (c) Following the filing of the ~~motion~~ petition, the court
32 may set a date for a hearing. If the court does so, it shall
33 notify the prosecuting attorney and the arresting agency of
34 the ~~motion~~ petition and provide an opportunity for a response
35 to the expungement ~~motion~~ petition.

36 (d) If the court finds that there are no current charges or
37 proceedings pending relating to the matter for which the
38 expungement is sought, the court may grant the ~~motion~~
39 petition and order the sealing of all records in the custody of
40 the court and expungement of any records in the custody of
41 any other agency or official including law enforcement
42 records. Every agency with records relating to the arrest,
43 charge or other matters arising out of the arrest or charge,
44 that is ordered to expunge records, shall certify to the court
45 within sixty days of the entry of the expungement order, that
46 the required expungement has been completed. All orders
47 enforcing the expungement procedure shall also be sealed.

48 (e) Upon expungement, the proceedings in the matter
49 shall be deemed never to have occurred. The court and other
50 agencies shall reply to any inquiry that no record exists on
51 the matter. The person whose record is expunged shall not
52 have to disclose the fact of the record or any matter relating
53 thereto on an application for employment, credit or other type
54 of application.

55 (f) Inspection of the sealed records in the court's
56 possession may thereafter be permitted by the court only
57 upon a motion by the person who is the subject of the records
58 or upon a petition filed by a prosecuting attorney that
59 inspection and possible use of the records in question are
60 necessary to the investigation or prosecution of a crime in
61 this state or another jurisdiction. If the court finds that the
62 interests of justice will be served by granting the petition, it
63 may be granted.

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

NOTE: The purpose of this bill is to amend the section so that a person seeking expungement of criminal records if found not guilty of the offense, or against whom charges have been dismissed, shall file a civil petition to expunge all records relating to the arrest, charge or other matters arising out of the arrest or charge.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.