

# **WEST VIRGINIA LEGISLATURE**

**SECOND REGULAR SESSION, 2012**



# **ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 3128**

(By Delegate Frazier)



Passed March 6, 2012

To Take Effect Ninety Days From Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 3128

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(BY DELEGATE FRAZIER)

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[Passed March 6, 2012; to take effect ninety days from passage.]

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

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

31 (c) Following the filing of the petition, the court may set  
32 a date for a hearing. If the court does so, it shall notify the  
33 prosecuting attorney and the arresting agency of the petition  
34 and provide an opportunity for a response to the  
35 expungement 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 petition and  
39 order the sealing of all records in the custody of the court and  
40 expungement of any records in the custody of any other  
41 agency or official including law enforcement records. Every  
42 agency with records relating to the arrest, charge or other  
43 matters arising out of the arrest or charge, that is ordered to  
44 expunge records, shall certify to the court within sixty days  
45 of the entry of the expungement order, that the required  
46 expungement has been completed. All orders enforcing the  
47 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 the  
51 matter. The person whose record is expunged shall not have  
52 to disclose the fact of the record or any matter relating thereto  
53 on an application for employment, credit or other type of  
54 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 this  
61 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.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*