WEST virginia legislature

2022 regular session

Originating

House Bill 4522

By Delegates Capito, Fluharty, Garcia, D. Kelly, Nestor, L. Pack, Pritt, Pushkin, and Queen

[Originating in the Committee on Judiciary; reported on February 7, 2022]

A BILL to amend and reenact §61-11-25 of the Code of West Virginia, 1931, as amended, relating to expungement of criminal records; making expungement of records for certain defendants acquitted of all criminal charges or against whom charges were dismissed with prejudice eligible for expungement without any action by the person; providing for a petition for expungement of persons not eligible for expungement without action by the person; providing for a petition for expungement of persons charged with a felony offense no sooner than one year after the person is held to answer in circuit court without an indictment or information having been returned or filed; clarifying that persons found not guilty by reason of mental illness, mental retardation or addiction are exempt from the provisions of the section; and clarifying that persons with prior felony convictions are not eligible for expungement.

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

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

(a) ~~Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense, may file a civil petition in the circuit court in which the charges were filed to expunge all records relating to the arrest, charge or other matters arising out of the arrest or charge~~ Upon the effective date of this section, if a court enters an order of acquittal of all criminal charges against a person in a case, or enters an order dismissing with prejudice all criminal charges in a case against a person and not in exchange for a guilty plea to another charge, the court shall order the record expunged upon the expiration of thirty (30) days, unless the person objects to the expungement. The order expunging the records shall not require any action by the person: *Provided,* That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to ~~section two-b, article five, chapter seventeen-C~~ §17C-5-2b of this code*: Provided, further,* That any person who has previously been convicted of a felony ~~may~~ shall not ~~file a petition~~ be eligible for expungement pursuant to this subsection. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references or other data whether in documentary or electronic form, relating to the arrest, charge or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses ~~subject to the provisions of article twelve, chapter fifteen of this code because~~ where the person was found not guilty by reason of mental illness, mental retardation or addiction are exempt from the provisions of this section.

(b) A person whose criminal charges are not subject to expungement pursuant to subsection (a) of this section or against whom felony charges originally filed in a magistrate court have not resulted in an indictment by the grand jury or in an information filed by the prosecuting attorney with jurisdiction over the offense may petition the circuit court in which the charges were filed to dismiss and expunge all charges for which an indictment or information has not issued.

~~(b)~~(c) ~~The~~ For a petition filed pursuant to subsection (b) of this section, the expungement petition shall be filed not sooner than sixty days following the order of acquittal or dismissal by the court or no sooner than one year following the date of the magistrate court decision to hold the person to answer in circuit court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to file a petition for expungement pursuant to this section.

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

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

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

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

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

NOTE: The purpose of this bill is to provide a mechanism for nondiscretionary expungement of records in certain instances where a person is acquitted of criminal charges or against whom criminal charges were dismissed, to authorize a petition to expunge certain felony charges which do not result in the return of an indictment or the filing of an information, to clarify that persons with prior felony convictions are not eligible for expungement under the section, to clarify that persons found not guilty by reason of insanity are not eligible for expungement, and to make technical corrections.

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