

# **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]



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

1 ~~(a) Any person who has been charged with a criminal offense under the laws of this state~~  
2 ~~and who has been found not guilty of the offense, or against whom charges have been dismissed,~~  
3 ~~and not in exchange for a guilty plea to another offense, may file a civil petition in the circuit court~~  
4 ~~in which the charges were filed to expunge all records relating to the arrest, charge or other~~  
5 ~~matters arising out of the arrest or charge~~ Upon the effective date of this section, if a court enters  
6 an order of acquittal of all criminal charges against a person in a case, or enters an order  
7 dismissing with prejudice all criminal charges in a case against a person and not in exchange for  
8 a guilty plea to another charge, the court shall order the record expunged upon the expiration of  
9 thirty (30) days, unless the person objects to the expungement. The order expunging the records  
10 shall not require any action by the person: *Provided*, That no record in the Division of Motor  
11 Vehicles may be expunged by virtue of any order of expungement entered pursuant to ~~section~~  
12 ~~two b, article five, chapter seventeen C~~ §17C-5-2b of this code: *Provided, further*, That any

13 person who has previously been convicted of a felony ~~may~~ shall not ~~file a petition~~ be eligible for  
14 expungement pursuant to this subsection. The term records as used in this section includes, but  
15 is not limited to, arrest records, fingerprints, photographs, index references or other data whether  
16 in documentary or electronic form, relating to the arrest, charge or other matters arising out of the  
17 arrest or charge. Criminal investigation reports and all records relating to offenses ~~subject to the~~  
18 ~~provisions of article twelve, chapter fifteen of this code because~~ where the person was found not  
19 guilty by reason of mental illness, mental retardation or addiction are exempt from the provisions  
20 of this section.

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

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

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

35 ~~(d)(e)~~ If the court finds that there are no current charges or proceedings pending relating  
36 to the matter for which the expungement is sought, the court may grant the petition and order the  
37 sealing of all records in the custody of the court and expungement of any records in the custody  
38 of any other agency or official including law enforcement records. Every agency with records

39 relating to the arrest, charge or other matters arising out of the arrest or charge, that is ordered to  
40 expunge records, shall certify to the court within sixty days of the entry of the expungement order,  
41 that the required expungement has been completed. All orders enforcing the expungement  
42 procedure shall also be sealed.

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

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

53 ~~(g)~~(h) There shall be no filing fees charged or costs assessed for filing an action pursuant  
54 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.