

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 847

By Senator Rucker

[Introduced February 19, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-11-25 of the Code of West Virginia, 1931, as amended, relating
2 generally to expungement of criminal records for those found not guilty of crimes or against
3 whom charges have been dismissed; making expungement of records for certain
4 defendants acquitted of all criminal charges, or against whom charges were dismissed
5 with prejudice, eligible for expungement without any action by the person; clarifying that
6 persons with prior felony convictions are not eligible for expungement; and providing that if
7 a court enters an order of acquittal of all criminal charges against a person in a case, the
8 court shall order the record expunged upon the expiration of 30 days, unless the person
9 objects to the expungement.

Be it enacted by the Legislature of West Virginia:

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

14 from the provisions of this section.

15 (b) The expungement petition shall be filed not sooner than 60 days following the order of
16 acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform
17 the person who has been found not guilty or against whom charges have been dismissed of his or
18 her rights to file a petition for expungement pursuant to this section.

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

22 (d) If the court finds that there are no current charges or proceedings pending relating to
23 the matter for which the expungement is sought, the court may grant the petition and order the
24 sealing of all records in the custody of the court and expungement of any records in the custody of
25 any other agency or official including law enforcement records. Every agency with records relating
26 to the arrest, charge or other matters arising out of the arrest or charge, that is ordered to expunge
27 records, shall certify to the court within 60 days of the entry of the expungement order, that the
28 required expungement has been completed. All orders enforcing the expungement procedure
29 shall also be sealed.

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

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

39 (g) There shall may be no filing fees charged or costs assessed for filing an action pursuant

40 to this section.

41 (h) Upon the effective date of the amendments to this section enacted during the 2024
42 regular session of the Legislature, if a court enters an order of acquittal of all criminal charges
43 against a person in a case, the court shall order the record expunged upon the expiration of 30
44 days, unless the person objects to the expungement. The order expunging the records may not
45 require any action by the person.

NOTE: The purpose of this bill is to provide that if a court enters an order of acquittal of all criminal charges against a person in a case, the court shall order the record expunged upon the expiration of 30 days, unless the person objects to the expungement. The order expunging the records may not require any action by the person.

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