

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 430**

4 (By Senator Kessler (Acting President))

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 28, 2011.]
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11 A BILL to amend and reenact §61-11-25 of the Code of West Virginia,
12 1931, as amended, relating to filing a civil petition for
13 expungement of records relating to an arrest or charges
14 relating to the arrest when found not guilty of the offense or
15 charges have been dismissed; and providing that no filing fees
16 or costs be charged for processing the action.

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

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

20 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

21 **§61-11-25. Expungement of criminal records for those found not**
22 **guilty of crimes or against whom charges have been**
23 **dismissed.**

24 (a) Any person who has been charged with a criminal offense
25 under the laws of this state and who has been found not guilty of

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

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

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

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

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

24 (f) Inspection of the sealed records in the court's possession
25 may thereafter be permitted by the court only upon a motion by the
26 person who is the subject of the records or upon a petition filed

1 by a prosecuting attorney that inspection and possible use of the
2 records in question are necessary to the investigation or
3 prosecution of a crime in this state or another jurisdiction. If
4 the court finds that the interests of justice will be served by
5 granting the petition, it may be granted.

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

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