

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3188

BY DELEGATES WALKER, PUSHKIN, FLEISCHAUER,

FLUHARTY, YOUNG, AND HANSEN

[Introduced March 16, 2021; 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 to expungement of criminal records; making expungement of records for certain
 3 defendants found not guilty or have had charges dismissed to occur without petitioning
 4 the court; and allowing the prosecutor to petition the court to object because of lack of
 5 eligibility for 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~~
 4 ~~in which the charges were filed to expunge~~ shall have expunged all records relating to the arrest,
 5 charge or other matters arising out of the arrest or charge: *Provided*, That no record in the Division
 6 of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to
 7 §17C-5-2b of this code: *Provided, further however*, That any person who has previously been
 8 convicted of a felony ~~may does not file a petition for~~ qualify for an expungement pursuant to this
 9 section. The term records as used in this section includes, but is not limited to, arrest records,
 10 fingerprints, photographs, index references or other data whether in documentary or electronic
 11 form, relating to the arrest, charge or other matters arising out of the arrest or charge. Criminal
 12 investigation reports and all records relating to offenses subject to the provisions of §15-12-1 *et*
 13 *seq.* of this code because the person was found not guilty by reason of mental illness, mental
 14 retardation or addiction are exempt from the provisions of this section.

15 (b) The expungement ~~petition~~ order shall be filed not sooner than 60 days following the
 16 order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal
 17 shall inform the person who has been found not guilty or against whom charges have been

18 ~~dismissed of his or her rights to file a petition for expungement~~ that his or her charges will be
19 expunged pursuant to this section: *Provided*, That within 30 days of the dismissal, the prosecuting
20 attorney and the arresting agency may notify the court that the person is not eligible to have his
21 or her records expunged pursuant to this section. ~~(e)~~ Following the filing of the a petition by the
22 prosecuting attorney, the court may set a date for a hearing. If the court does so, it shall notify the
23 ~~prosecuting attorney and the arresting agency of the petition and provide an opportunity for a~~
24 ~~response to the expungement petition~~ person subject to the expungement.

25 ~~(d)~~ (c) If the court finds that there are no current charges or proceedings pending relating
26 to the matter for which the expungement is sought and, if a hearing is conducted upon a petition
27 filed by the prosecutor pursuant to subsection (a) of this section and the court finds that the person
28 is eligible to have his or her records expunged pursuant to this section, the court ~~may~~ shall grant
29 ~~the petition and~~ order the sealing of all records in the custody of the court and expungement of
30 any records in the custody of any other agency or official including law enforcement records.
31 Every agency with records relating to the arrest, charge or other matters arising out of the arrest
32 or charge, that is ordered to expunge records, shall certify to the court within 60 days of the entry
33 of the expungement order, that the required expungement has been completed. All orders
34 enforcing the expungement procedure shall also be sealed.

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

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

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

NOTE: The purpose of this bill is to provide that when a defendant is found not guilty or his or her charges are dropped his or her records are automatically expunged if the defendant is otherwise qualified for expungement.

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