

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

### **SECOND ENGROSSMENT**

## **House Bill 2970**

By Delegates Nestor, Steele, Martin, Longanacre,  
Hott, C. Pritt, Honaker, Garcia, Fast, Kirby and  
Householder

[Introduced January 24, 2023; 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 general provisions concerning crimes; expungement of criminal records; and when a  
3 civil action may be filed to expunge criminal records, also relating to expungement of  
4 certain criminal records concerning crimes that have been addressed through deferred  
5 adjudication and pretrial diversion, also relating to excluding certain crimes from eligibility  
6 for expungement even though a deferred adjudication has been successfully completed.

*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; expungement of criminal  
records for those that have successfully completed all requirements of a  
deferred adjudication or pretrial diversion.**

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. Notwithstanding the provisions of subdivision (a), any person  
6 whose charges have been dismissed following a full and successful completion of a pretrial  
7 diversion pursuant to §61-11-22 of this code, or whose charges have been dismissed following the  
8 full and successful completion of a deferred adjudication pursuant to §61-11-22a of this code, may  
9 file a civil petition in the circuit court in which the dismissed charges were filed to expunge all  
10 records relating to the arrest, charges or other matters arising out of the arrest or charges:  
11 *Provided,* That no record in the Division of Motor Vehicles may be expunged by virtue of any order  
12 of expungement entered pursuant to §17C-5-2b of this code nor may any charges ultimately  
13 dismissed by way of full and successful completion of any deferred adjudication be expunged for

14 violations of §61-8B-1, et seq., §61-8D-1, et seq., §61-2-28(a) or §61-2-28(b) of this code, or for  
15 violations of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or household  
16 member as defined in §48-27-204: *Provided, further,* That any person who has previously been  
17 convicted of a felony may not file a petition for expungement pursuant to this section. The term  
18 records as used in this section includes, but is not limited to, arrest records, fingerprints,  
19 photographs, index references or other data whether in documentary or electronic form, relating to  
20 the arrest, charge or other matters arising out of the arrest or charge. Criminal investigation reports  
21 and all records relating to offenses subject to the provisions of §15-12-1 *et seq.* of this code  
22 because the person was found not guilty by reason of mental illness, mental retardation or  
23 addiction are exempt from the provisions of this section.

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

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

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

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

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

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

NOTE: The purpose of this bill is to provide for additional reasons for a civil action to be filed to expunge criminal records.

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