

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4399**

By Delegates Nestor, Kump and Lewis

[Originating in the Committee on the Judiciary;

Reported on February 9, 2024]



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 for cases where charges have been  
4 dismissed following a full and successful completion of a pretrial diversion or deferred  
5 adjudication; relating to exceptions to the allowance to file a civil action 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; expungement of criminal records for those  
that have successfully completed all requirements of a deferred adjudication or  
pretrial diversion; exceptions.**

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. Any person whose charges have been dismissed following a full  
6 and successful completion of a pre-trial diversion pursuant to §61-11-22 of this code, or whose  
7 charges have been dismissed following the full and successful completion of a deferred  
8 adjudication pursuant to §61-11-22a of this code, may file a civil petition in the circuit court in which  
9 the dismissed charges were filed to expunge all records relating to the arrest, charges or other  
10 matters arising out of the arrest or charges: *Provided*, That no record in the Division of Motor  
11 Vehicles may be expunged by virtue of any order of expungement entered pursuant to §17C-5-2b  
12 of this code nor may any charges ultimately dismissed by way of full and successful completion of  
13 any deferred adjudication be expunged for violations of §61-2-28(a) or §61-2-28(b) of this code, or  
14 for violations of §61-2-9(a) and §61-2-9a, §61-2-9(b) or §61-2-9(c) of this code where the alleged  
15 victim is a family or household member as defined in §48-27-204: *Provided, further*, That any

16 person who has previously been convicted of a felony may not file a petition for expungement  
17 pursuant to this section. The term records as used in this section includes, but is not limited to,  
18 arrest records, fingerprints, photographs, index references or other data whether in documentary  
19 or electronic form, relating to the arrest, charge or other matters arising out of the arrest or charge.  
20 Criminal investigation reports and all records relating to offenses subject to the provisions of §15-  
21 12-1 *et seq.* of this code because the person was found not guilty by reason of mental illness,  
22 mental retardation or addiction are exempt from the provisions of this section.

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

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

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

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

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

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

NOTE: The purpose of this bill is to clarify procedures relating to expungement proceedings  
in cases resolved by deferred adjudication or pretrial diversion.

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