

# WEST VIRGINIA CODE: §61-11-25

## **§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.**

(a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense resulting in a conviction, may file a civil petition in the circuit court in which the charges were filed to expunge all records relating to the arrest, charge, or other matters arising out of the arrest or charge. Any person whose charges have been dismissed following a full and successful completion of a pre-trial diversion pursuant to §61-11-22 of this code, or whose charges have been dismissed following the full and successful completion of a deferred adjudication pursuant to §61-11-22a of this code, may file a civil petition in the circuit court for expungement of all charges originally brought, provided that the charges sought to be expunged arose from the same transaction or occurrence, and all records relating to the arrest, charges, or other matters arising out of the arrest or charges may be expunged: *Provided*, That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to §17C-5-2b of this code nor may any charges ultimately dismissed by way of full and successful completion of any deferred adjudication be expunged for violations of §61-2-28(a), §61-2-28(b), §61-2-9(a), §61-2-9a, §61-2-9(b), or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-204 of this code: *Provided, further*, That any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references, or other data whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of §15-12-1 *et seq.* of this code because the person was found not guilty by reason of mental illness, intellectual disability, or addiction are exempt from the provisions of this section.

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

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

(d) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the petition and order

the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within 60 days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

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

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

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