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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

SENATE BILL NO. 519

(By Senator Wootton, et al)



PASSED March 11, 2000

In Effect ninety days from Passage

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11-11-2000

ENROLLED

Senate Bill No. 519

(BY SENATORS WOOTON, BALL, DAWSON, DITTMAR,
FANNING, HUNTER, KESSLER, MCCABE, MINARD, MITCHELL,
REDD, ROSS, SNYDER, DEEM AND MCKENZIE)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to expungement of criminal records where a person is acquitted or where charges are dismissed.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-five, to read as follows:

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
2 offense under the laws of this state and who has been
3 found not guilty of the offense, or against whom charges
4 have been dismissed, and not in exchange for a guilty plea
5 to another offense, may make a motion in the circuit court
6 in which the charges were filed to expunge all records
7 relating to the arrest, charge or other matters arising out
8 of the arrest or charge: *Provided*, That any person who
9 has previously been convicted of a felony may not make a
10 motion for expungement pursuant to this section. The
11 term records as used in this section includes, but is not
12 limited to, arrest records, fingerprints, photographs, index
13 references or other data whether in documentary or
14 electronic form, relating to the arrest, charge or other
15 matters arising out of the arrest or charge. Criminal
16 investigation reports and all records relating to offenses
17 subject to the provisions of article twelve, chapter fifteen
18 of this code because the person was found not guilty by
19 reason of mental illness, mental retardation or addiction
20 are exempt from the provisions of this section.

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

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

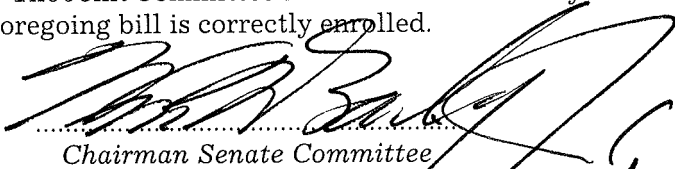
33 (d) If the court finds that there are no current charges or
34 proceedings pending relating to the matter for which the
35 expungement is sought, the court may grant the motion

36 and order the sealing of all records in the custody of the
37 court and expungement of any records in the custody of
38 any other agency or official including law-enforcement
39 records. Every agency with records relating to the arrest,
40 charge or other matters arising out of the arrest or charge,
41 that is ordered to expunge records, shall certify to the
42 court within sixty days of the entry of the expungement
43 order, that the required expungement has been completed.
44 All orders enforcing the expungement procedure shall also
45 be sealed.

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

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

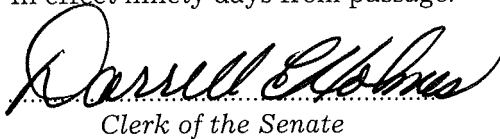
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

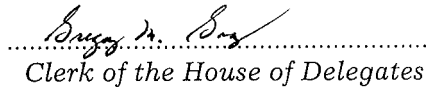

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Chairman Senate Committee

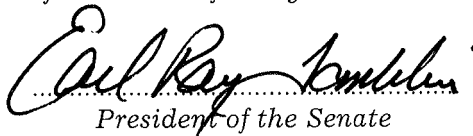

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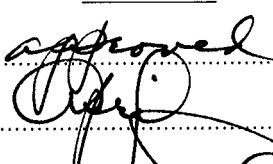

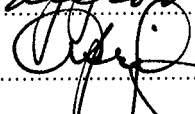
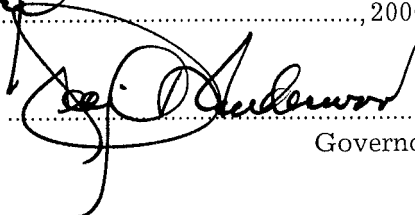
In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within.......... this the th
Day of....., 2000

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Governor

PRESENTED TO THE

GOVERNOR

Date

3/21/00

Time

4:08 pm