

FILED

2012 MAR 14 PM 5:32

WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

HB 3128

ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3128**

(By Delegate Frazier)

Passed March 6, 2012

To Take Effect Ninety Days From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3128

(BY DELEGATE FRAZIER)

FILED

2012 MAR 14 PM 5:32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

[Passed March 6, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §61-11-25 of the Code of West Virginia, 1931, as amended, relating to filing a civil petition for expungement of records relating to an arrest or charges relating to the arrest when found not guilty of the offense or charges have been dismissed; and providing that no filing fees or costs be charged for processing the action.

Be it enacted by the Legislature of West Virginia:

That §61-11-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 found

3 not guilty of the offense, or against whom charges have been
4 dismissed, and not in exchange for a guilty plea to another
5 offense, may file a civil petition in the circuit court in which
6 the charges were filed to expunge all records relating to the
7 arrest, charge or other matters arising out of the arrest or
8 charge: *Provided*, That no record in the Division of Motor
9 Vehicles may be expunged by virtue of any order of
10 expungement entered pursuant to section two-b, article five,
11 chapter seventeen-C of this code: *Provided, further*, That any
12 person who has previously been convicted of a felony may
13 not file a petition for expungement pursuant to this section.
14 The term records as used in this section includes, but is not
15 limited to, arrest records, fingerprints, photographs, index
16 references or other data whether in documentary or electronic
17 form, relating to the arrest, charge or other matters arising out
18 of the arrest or charge. Criminal investigation reports and all
19 records relating to offenses subject to the provisions of article
20 twelve, chapter fifteen of this code because the person was
21 found not guilty by reason of mental illness, mental
22 retardation or addiction are exempt from the provisions of
23 this section.

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

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

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

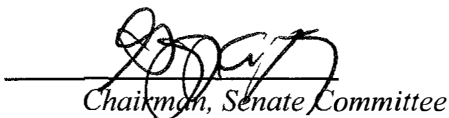
48 (e) Upon expungement, the proceedings in the matter
49 shall be deemed never to have occurred. The court and other
50 agencies shall reply to any inquiry that no record exists on the
51 matter. The person whose record is expunged shall not have
52 to disclose the fact of the record or any matter relating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

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

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

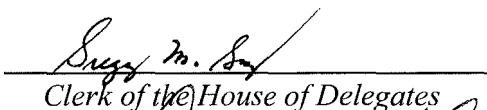
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

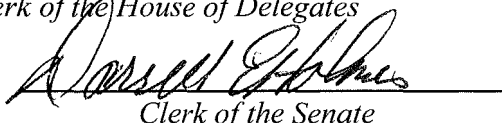

Chairman, House Committee


Chairman, Senate Committee

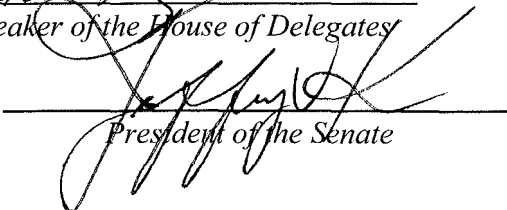
Originating in the House.

To take effect ninety days from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

FILED
2012 MAR 14 PM 5:32
OFFICE OF THE SECRETARY OF STATE
COMMONWEALTH OF VIRGINIA

The within is approved this the 14th
day of March, 2012.


Governor

PRESENTED TO THE GOVERNOR

MAR 12 2012

Time 10:25 am