Expungement

- In the common law legal system, an expungement proceeding is a type of lawsuit in which a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, thereby making the records unavailable through the state or Federal repositories. If successful, the records are said to be "expunged".
- While expungement deals with an underlying criminal record, it is a civil action in which the subject is the petitioner or plaintiff asking a court to declare that the records be expunged.
- There are two West Virginia statutes regarding expungements:
  - **W. Va. Code § 61-11-25** which provides that:
    - 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, may make a motion 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
    - The expungement motion shall be filed not sooner than **sixty days** following the order of acquittal or dismissal by the court
  - **W. Va. Code § 61-11-26** provides that:
    - The relief afforded by this subsection is only available to persons having **no other prior or subsequent convictions** other than minor traffic violations at the time the petition is filed. Additionally, the person seeking the expungement must be **between the ages of 18 and 26**. Provided, that at the time the petition is filed and during the time the petition is pending, petitioner may not be the subject of an arrest or any other pending criminal proceeding.
    - The expungement motion cannot be filed until **one year** after the conviction or until the completion of any sentence of incarceration or probation, whichever is later in time.

- Fees do apply to the expungement process:
  - $140 filing fee
  - $10 expungement packet fee

- However, our office can provide you with an expungement packet free of charge and can assist you in filling a fee waiver to alleviate this expense.
- If you have any further questions regarding expungements or would like us to assist you in filing one, please contact our office to schedule an appointment with one of our attorneys.

STUDENT LEGAL SERVICES
WEST VIRGINIA UNIVERSITY

Office of Student Life
G5 Elizabeth Moore Hall
304-293-4897