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HOUSE BILL NO. 631

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 19.2-392.2 and 23-7.4:1 of the Code of Virginia, relating to expungement of criminal records; unjust convictions.

Patron—O'Bannon (By Request)

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-392.2 and 23-7.4:1 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-392.2. Expungement of police and court records.

A. If a person is charged with the commission of a crime and

1. Is acquitted, or

2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, or

3. Is granted an absolute pardon for the commission of a crime for which he has been unjustly convicted, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

If the petition is granted on the grounds of subdivision 3 or a writ of actual innocence has been issued pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of this title and the petitioner has been confined to a state or local correctional facility for at least six months, the court shall attach an order entitling the petitioner to (i) waiver of tuition and other mandatory fees for any public institution of higher education in the Commonwealth not to exceed four years at a four-year institution and two years at a two-year institution, (ii) lifetime authorization to enter Virginia's state parks for up to seven days per year without having to pay an admittance or parking fee, (iii) assessment and guidance services including, but not limited to, aptitude testing, mental health assessment, substance abuse counseling and job placement service, to be provided by the appropriate state agency at no cost, (iv) lifetime membership to the Virginia Museum of Fine Arts, and (v) a transition assistance grant of \$15,000.

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section.

C. The petition with a copy of the warrant or indictment if reasonably available shall be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition within twenty-one days after it is served on him.

E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner.

F. After receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court shall enter an order of expungement.

G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the

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59 decision of the court may appeal, as provided by law in civil cases.

60 H. Notwithstanding any other provision of this section, when the charge is dismissed because the
61 court finds that the person arrested or charged is not the person named in the summons, warrant,
62 indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly
63 arrested or charged, enter an order requiring expungement of the police and court records relating to the
64 charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to
65 this subsection. Upon the entry of such order, it shall be treated as provided in subsection I hereof.

66 I. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order
67 to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations
68 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of
69 such records shall be effected.

70 J. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.

71 § 23-7.4:1. Waiver of tuition and required fees for certain students.

72 A. 1. All sums appropriated by law for the purpose of effecting the provisions of this subsection
73 shall be used for the sole purpose of providing for free tuition and required fees at the state-supported
74 institutions and institutional charges, general or college fees, or any charges by whatever term referred
75 to, board and room rent, and books and supplies at any education or training institution of collegiate or
76 secondary grade in the Commonwealth of Virginia approved in writing by the Commissioner of the
77 Department of Veterans Services for the use and benefit of the children not under 16 and not over 25
78 years of age either of whose parents was killed in action, is missing in action or a prisoner of war in
79 any armed conflict subsequent to December 6, 1941, while serving in the Army, Navy, Marine Corps,
80 Air Force or Coast Guard of the United States, or was or is or may hereafter become totally and
81 permanently disabled due to service during such periods if such parent (i) was a citizen of Virginia at
82 the time of entering such service; (ii) is and has been, for at least five years immediately prior to the
83 date on which application was submitted by or on behalf of such child for admission to any education
84 or training institution of collegiate or secondary grade in this Commonwealth, a citizen of Virginia; (iii)
85 is deceased, was a citizen of Virginia on the date of his or her death and had been a citizen of Virginia
86 for at least five years immediately prior to his or her death; or (iv) is deceased and the surviving parent
87 had been, at some time previous to marrying the deceased parent, a citizen of Virginia for at least five
88 years or is and has been a citizen of Virginia for at least five years immediately prior to the date on
89 which application was submitted by or on behalf of such child for admission to any education or
90 training institution of collegiate or secondary grade in this Commonwealth.

91 2. Such children, upon recommendation of the Commissioner of the Department of Veterans
92 Services, shall be admitted to state institutions of secondary or higher education, free of tuition and all
93 required fees. Each state-supported institution shall include in its catalogue or equivalent publication a
94 statement describing the benefits provided by this subsection.

95 3. The amounts that may be or may become due by reason of attendance at any such educational or
96 training institution, not in excess of the amount specified in subdivision 5, shall be payable on vouchers
97 approved by the Commissioner of the Department of Veterans Services.

98 4. The Commissioner of the Department of Veterans Services shall determine the eligibility of the
99 children who may make application for the benefits provided for in this subsection and shall satisfy
100 himself of the attendance and satisfactory progress of such children at such institution and of the
101 accuracy of the charge or charges submitted on account of the attendance of any such children at any
102 such institution. However, neither the Commissioner nor any employee of the Department of Veterans
103 Services shall receive any compensation for such services.

104 5. To carry out the provisions of this subsection, there may be expended such funds as shall be
105 appropriated for the purpose in the general appropriation acts. However, the maximum amount to be
106 expended for each such child shall not be more, when combined with any federal allowance which may
107 be made for such tuition, charges, fees, rent, books and supplies, than the actual amount of the benefits
108 provided for in this subsection.

109 6. For the purposes of this subsection, user fees, such as room and board charges, shall not be
110 included in this authorization to waive tuition and fees. However, all required fees, educational and
111 auxiliary, shall be waived along with tuition.

112 B. Any child between the ages of 16 and 25 whose parent or any person whose spouse has been
113 killed in the line of duty while employed or serving as a law-enforcement officer, firefighter, including a
114 special forest warden designated pursuant to § 10.1-1135, member of a rescue squad, sworn
115 law-enforcement officer, special agent of the Department of Alcoholic Beverage Control, state
116 correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, deputy sheriff,
117 or member of the Virginia National Guard while such member is serving in the Virginia National Guard
118 or as a member of the United States Armed Forces, shall be entitled to free undergraduate tuition and
119 required fees at any public institution of higher education in Virginia under the following conditions:

120 1. The chief administrative officer of the Alcoholic Beverage Control Board, emergency medical

services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer or a firefighter, including a special forest warden designated pursuant to § 10.1-1135, or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to a public institution of higher education. Any child or spouse who believes he is eligible shall apply to the public institution of higher education to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

B1. Any individual who has been (i) granted an absolute pardon for the commission of a crime for which he has been unjustly convicted or (ii) issued a writ of actual innocence pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of Title 19.2, shall be entitled to free undergraduate tuition and required fees at any public institution of higher education in Virginia under the following conditions:

1. The individual has been confined to a state or local correctional facility for at least six months;

2. The individual has been granted an order expunging the police and court records relating to the charge for which he was unjustly convicted; and

3. The individual shall have been offered admission to a public institution of higher education. Any person who believes he is eligible shall apply to the public institution of higher education to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

C. Senior citizens shall be entitled to free tuition and required fees pursuant to the provisions of Chapter 4.5 (§ 23-38.54 et seq.) of Title 23.

D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public institution of higher education through a student exchange program approved by such institution, provided the number of foreign students does not exceed the number of students paying full tuition and required fees to the institution under the provisions of the exchange program for a given three-year period.