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SENATE BILL NO. 880

Offered January 10, 2007

Prefiled January 8, 2007

A *BILL to amend and reenact § 19.2-392.2 of the Code of Virginia, relating to expungement of police and court records.*

Patron—Deeds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-392.2 of the Code of Virginia is 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.

The court presiding over an acquittal or dismissal covered in subdivision 1 or 2 shall have the discretion to hear motions for expungement on oral motion immediately following the acquittal or dismissal and may enter an order requiring expungement of the police and court records relating to the charge. Upon entry of such order, it shall be treated as provided in subsection 1 hereof.

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~~ 21 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 decision of the court may appeal, as provided by law in civil cases.

H. Notwithstanding any other provision of this section, when the charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment or presentment, *or that the person convicted of the charge has been granted a writ of actual innocence*, the court dismissing the charge *or granting the writ* shall, upon motion of the person improperly arrested, ~~or~~ charged, *or convicted*, enter an order requiring expungement of the police and

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59 court records relating to the charge *or conviction* . Such order shall contain a statement that the
60 dismissal and expungement are ordered pursuant to this subsection. Upon the entry of such order, it
61 shall be treated as provided in subsection I hereof.

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

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