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SENATE BILL NO. 1289

Offered January 14, 2009

Prefiled January 14, 2009

A *BILL to amend and reenact § 19.2-392.2 of the Code of Virginia, relating to expungement of criminal convictions.*

Patron—McEachin

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 or any offense defined in Title 18.2, 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, 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.

A1. Any person who has been convicted of a criminal offense may file a petition setting forth the relevant facts and requesting expungement of police records and court records relating to the charge and conviction after at least five years have passed since the person was convicted of the offense he seeks to have expunged. The provisions of this subsection shall not apply to any person who has been convicted of (i) any felony or Class 1 misdemeanor within the period between the date of the conviction he seeks to have expunged and the petition; (ii) a violation of § 18.2-36, 18.2-54, 18.2-266, or 46.2-341.24; (iii) an offense listed in § 17.1-805 or 19.2-297.1; (iv) any offense involving domestic violence for which a person is denied any firearm rights under 18 U.S.C. § 922(g); or (v) any offense for which registration is required pursuant to § 9.1-902. The Department of Criminal Justice Services shall maintain a record of any expungement granted pursuant to this subsection, and any conviction that is expunged under this subsection shall be considered a prior conviction for purposes of prosecution of any subsequent offense for which such prior conviction aggravates punishment.

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 *petitioner resides, in which the petitioner was convicted, or 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 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 (i) the arrest of the petitioner ~~causes or may cause circumstances which constitute a manifest injustice to the petitioner~~ or (ii) the arrest and conviction of the petitioner in the case of a petition filed pursuant to the provisions of subsection A1, *prejudice the petitioner's opportunities for employment, education, or professional licensure*, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the charge *and communicate the order to the Department of Criminal Justice Services*. Otherwise, it shall deny the petition. However, if

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59 the petitioner has no prior criminal record and the ~~arrest was for a misdemeanor violation~~ *petitioner was*
60 *arrested for but not convicted of a criminal offense*, the petitioner shall be entitled, in the absence of
61 good cause shown to the contrary by the Commonwealth, to expungement of the police and court
62 records relating to the charge, and the court shall enter an order of expungement.

63 G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the
64 decision of the court may appeal, as provided by law in civil cases.

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

71 I. Notwithstanding any other provision of this section, when a person has been granted an absolute
72 pardon for the commission of a crime that he did not commit, he may file in the circuit court of the
73 county or city in which the conviction occurred a petition setting forth the relevant facts and requesting
74 expungement of the police records and the court records relating to the charge and conviction, and the
75 court shall enter an order requiring expungement of the police and court records relating to the charge
76 and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
77 subsection. Upon the entry of such order, it shall be treated as provided in subsection K hereof.

78 J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the
79 court shall enter an order requiring expungement of the police and court records relating to the charge
80 and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
81 subsection. Upon the entry of the order, it shall be treated as provided in subsection K hereof.

82 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such
83 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations
84 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of
85 such records shall be effected. *Any person whose criminal records are expunged may lawfully reply to*
86 *any inquiry regarding his criminal record that he has not been charged with or convicted of the*
87 *criminal offense that was the subject of the expungement.*

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

89 M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set
90 forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable
91 upon motion and notice made within three years of the entry of such order.