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HOUSE BILL NO. 2440

Offered January 19, 2011

A *BILL to amend and reenact §§ 18.2-346 and 19.2-392.2 of the Code of Virginia, relating to forced prostitution; expungement.*

Patrons—Comstock, Ebbin, Bulova, Cole, Hugo, Keam, Kory, Plum and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-346 and 19.2-392.2 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-346. Being a prostitute or prostitution.

A. Any person who, for money or its equivalent, commits adultery, fornication or any act in violation of § 18.2-361, or offers to commit adultery, fornication or any act in violation of § 18.2-361 and thereafter does any substantial act in furtherance thereof, shall be guilty of being a prostitute, or prostitution, which shall be punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated above and thereafter does any substantial act in furtherance thereof shall be guilty of solicitation of prostitution and shall be guilty of a Class 1 misdemeanor.

C. *It shall be an affirmative defense to prosecution under this section that the person arrested or charged was induced to engage in prostitution through the use of force, intimidation, or deception by another.*

§ 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.

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. Such person shall not be required to pay any fees for the filing of a petition under this subsection.

C. *If any person is arrested, charged, or convicted of being a prostitute under § 18.2-346 and it is later discovered that at the time of the offense the person was induced to engage in prostitution through the use of force, intimidation, or deception by another, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection.*

D. 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.

DE. 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.

EF. 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.

FG. 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, including electronic records, relating to the charge. Otherwise, it shall deny the petition.

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59 However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation,
60 the petitioner shall be entitled, in the absence of good cause shown to the contrary by the
61 Commonwealth, to expungement of the police and court records relating to the charge, and the court
62 shall enter an order of expungement.

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

65 *HI.* 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 *L*.

71 *IJ.* 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 *L*.

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

82 *KL.* 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.

86 *LM.* Costs shall be as provided by § 17.1-275, but shall not be recoverable against the
87 Commonwealth.

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