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HOUSE BILL NO. 748

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact §§ 16.1-306 and 19.2-392.2 of the Code of Virginia, relating to ineligibility for expungement of cases that are deferred and dismissed.*

Patron—Cline

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-306 and 19.2-392.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records, including electronic records, connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of 29. If the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be retained.

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. A person who has been the subject of a delinquency or traffic proceeding ~~and~~ (i) *who* has been found innocent thereof or (ii) *for whom* such proceeding was otherwise dismissed; may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency *or traffic proceeding, except that a case that is dismissed following the satisfaction of terms and conditions of a deferred judgment is not eligible for expungement pursuant to this section.* Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

D. Each person shall be notified of his rights under subsections A and C ~~of this section~~ at the time of his dispositional hearing.

E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

§ 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~~ (i) *the person is* acquitted, ~~or 2-~~ A (ii) a nolle prosequi is taken, or (iii) 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. *However, a case that is dismissed following the satisfaction of terms and conditions of a deferred judgment is not eligible for expungement pursuant to this section.*

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. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

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

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59 dismissed and shall contain, except where not reasonably available, the date of arrest and the name of
60 the arresting agency. Where this information is not reasonably available, the petition shall state the
61 reason for such unavailability. The petition shall further state the specific criminal charge to be
62 expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of
63 birth, and the full name used by the petitioner at the time of arrest.

64 D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or
65 county in which the petition is filed. The attorney for the Commonwealth may file an objection or
66 answer to the petition within 21 days after it is served on him.

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

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

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

85 H. Notwithstanding any other provision of this section, when the charge is dismissed because the
86 court finds that the person arrested or charged is not the person named in the summons, warrant,
87 indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly
88 arrested or charged, enter an order requiring expungement of the police and court records relating to the
89 charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to
90 this subsection and shall be accompanied by the complete set of the petitioner's fingerprints filed with
91 his petition. Upon the entry of such order, it shall be treated as provided in subsection K ~~hereof~~.

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

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

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

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

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