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HOUSE BILL NO. 1925

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact § 19.2-392.2 of the Code of Virginia, relating to expungement of nonviolent misdemeanor offenses after passage of five years.*

Patron—Ware, O.

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 *or a misdemeanor offense in Title 46.2*, 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, *or*

3. *Was convicted of a nonviolent crime more than five years prior to his petition as described in subsection C*, 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. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

C. *Any person who has been convicted of only one nonviolent misdemeanor offense that is not a violation of § 18.2-266 or an offense for which registration is required under § 9.1-902, when more than five years have passed from the date of conviction, all terms and conditions of probation have been satisfied and completed, and all fines, costs, and restitution have been paid, may file a petition with the proper district court in the jurisdiction where the conviction was obtained for relief pursuant to this section. Such person shall not be eligible to file a petition hereunder if he has criminal charges pending. For application of this subsection to the provisions of this section relating to the expungement of a charge by a court, a charge includes a conviction.*

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

The Department of State Police shall maintain a record of any expungement granted under this subsection, which shall be considered a conviction for purposes of prosecution of any subsequent offense when conviction of a subsequent such offense would result in statutorily enhanced punishment.

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 *or by conviction in the case of a nonviolent misdemeanor*, 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.~~ E. 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.~~ F. 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.~~ G. After receiving the criminal history record information from the CCRE, the court shall conduct

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59 a hearing on the petition. If the court finds that the continued existence and possible dissemination of
60 information relating to the arrest of the petitioner causes or may cause circumstances which constitute a
61 manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and
62 court records, including electronic records, relating to the charge. Otherwise, it shall deny the petition.
63 However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation,
64 the petitioner shall be entitled, in the absence of good cause shown to the contrary by the
65 Commonwealth, to expungement of the police and court records relating to the charge, and the court
66 shall enter an order of expungement.

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

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

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

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

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

91 ~~L. M.~~ Costs shall be as provided by § 17.1-275, but shall not be recoverable against the
92 Commonwealth.

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