

13100917D

## SENATE BILL NO. 1002

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact §§ 19.2-392.2 and 19.2-392.4 of the Code of Virginia, relating to emergency protective orders; expungement.*

\_\_\_\_\_  
Patron—Marsden

\_\_\_\_\_  
Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-392.2 and 19.2-392.4 of the Code of Virginia are 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 is the subject of an emergency protective order issued pursuant to clause (i) of subsection B of § 16.1-253.4 or clause (ii) of subsection B of § 19.2-152.8, 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 or

3. An emergency protective order is issued pursuant to clause (i) of subsection B of § 16.1-253.4 or clause (ii) of subsection B of § 19.2-152.8 for which no criminal charge is issued or no preliminary protective order is obtained pursuant to § 16.1-253.1 or 19.2-152.9,

Such person may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge, including any protective order issued pursuant to clause (i) of subsection B of § 16.1-253.4 or clause (ii) of subsection B of § 19.2-152.8.

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 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 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. 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

INTRODUCED

SB1002

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

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

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

74 J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, 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 the order, it shall be treated as provided in subsection K hereof.

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

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

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

86 **§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state**  
87 **and local governments.**

88 A. An employer or educational institution shall not, in any application, interview, or otherwise,  
89 require an applicant for employment or admission to disclose information concerning any arrest or  
90 criminal charge against him *or any protective order issued against him* that has been expunged. An  
91 applicant need not, in answer to any question concerning any arrest or criminal charge that has not  
92 resulted in a conviction *or concerning a protective order issued against him*, include a reference to or  
93 information concerning arrests ~~or~~, charges, *or protective orders* that have been expunged.

94 B. Agencies, officials, and employees of the state and local governments shall not, in any  
95 application, interview, or otherwise, require an applicant for a license, permit, registration, or  
96 governmental service to disclose information concerning any arrest or criminal charge against him *or*  
97 *any protective order issued against him* that has been expunged. An applicant need not, in answer to  
98 any question concerning any arrest or criminal charge that has not resulted in a conviction *or concerning*  
99 *a protective order issued against him*, include a reference to or information concerning *arrests*, charges,  
100 *or protective orders* that have been expunged. Such an application may not be denied solely because of  
101 the applicant's refusal to disclose information concerning any arrest or criminal charge against him *or*  
102 *any protective order issued against him* that has been expunged.

103 C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.