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SENATE BILL NO. 1273

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 30, 2013)

(Patron Prior to Substitute—Senator Ebbin)

A BILL to amend the Code of Virginia by adding in Chapter 23.1 of Title 19.2 a section numbered 19.2-392.5, relating to forced prostitution; vacation of conviction and expungement of prostitution offenses.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 23.1 of Title 19.2 a section numbered 19.2-392.5 as follows:

§ 19.2-392.5. Vacation of conviction and expungement of certain police and court records relating to prostitution.

A. Any person charged with or charged with and convicted of the offense of being a prostitute under subsection A of § 18.2-346 may file a petition setting forth the relevant facts and requesting vacation of the conviction and expungement of the police records and the court records relating to the charge or charge and conviction if the petitioner demonstrates that:

1. The petitioner was a victim of abduction under clause (iii) of § 18.2-48; and

2. The offense underlying the charge or charge and conviction that the petitioner seeks to expunge occurred before the petitioner attained the age of 21 years.

B. 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 or where the charges were brought and any conviction was obtained 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 or charge and conviction to be expunged, the date of final disposition of the charge or conviction 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.

C. 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.

D. 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 vacation and 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.

E. 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 petitioner has proven, by a preponderance of the evidence, both of the conditions required in subsection A, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to have the conviction vacated and to have the police and court records relating to the charge or charge and conviction expunged, and the court shall enter an order vacating the conviction and ordering expungement of the police and court records relating to the charge or charge and conviction.

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

G. Upon the entry of an order vacating the conviction and ordering expungement, that order shall be treated as provided in subsection K of § 19.2-392.2.

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

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