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**HOUSE BILL NO. 961**

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact § 19.2-392.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-392.2:1, relating to expungement of police and court records; victims of human trafficking.*

\_\_\_\_\_  
 Patron—Yancey

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 Referred to Committee for Courts of Justice

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

**1. That § 19.2-392.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-392.2:1 as follows:**

**§ 19.2-392.2:1. Expungement of police and court records; victims of human trafficking.**

**A. For purposes of this section:**

"Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

"Victim of human trafficking" means (i) any person who was induced to engage in a violation of § 18.2-47, 18.2-48, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 through the use of force, intimidation, or deception by another; (ii) any minor used in a violation of § 18.2-47, 18.2-48, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; or (iii) any person subjected to human trafficking as defined by federal law regardless of whether the perpetrator of the human trafficking has been charged with or convicted of an offense.

B. A person who has been charged with and convicted of any offense other than a violent felony offense as defined in § 17.1-805 while such person was a victim of human trafficking, and such offense was committed as part of a human trafficking scheme or at the direction of an operator of a human trafficking scheme, may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge and conviction. The petitioner shall file a petition only after the petitioner has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to the reasonable concerns for the safety of the petitioner, the petitioner's family, or other victims of human trafficking which may be jeopardized by the bringing of the petition. Official documentation of the petitioner's status as a victim of human trafficking creates a rebuttable presumption that his participation in the offense was a result of having been a victim of human trafficking.

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 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 and conviction to be expunged, the date of 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 charge and conviction.

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 or may give written notice to the court that he does not object 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. If no hearing was conducted, upon the entry of an order of expungement or an order denying the petition for expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

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

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59 information relating to the charge or conviction of the petitioner causes or may cause circumstances  
60 that constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of  
61 the police and court records, including electronic records, relating to the charge and conviction.  
62 Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the  
63 charge and conviction was for a misdemeanor violation, the petitioner shall be entitled, in the absence  
64 of good cause shown to the contrary by the Commonwealth, to expungement of the police and court  
65 records relating to the charge, and the court shall enter an order of expungement. If the attorney for the  
66 Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court  
67 pursuant to subsection D that he does not object to the petition and (ii) stipulates in such written notice  
68 that the continued existence and possible dissemination of information relating to the charge and  
69 conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the  
70 petitioner, the court may enter an order of expungement without conducting a hearing.

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

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

77 I. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.  
78 If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such  
79 costs paid by the petitioner.

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

83 **§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state**  
84 **and local governments.**

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

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

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