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SENATE BILL NO. 403

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 7, 2018)

(Patron Prior to Substitute— Senator McDougle)

A BILL to amend and reenact §§ 19.2-392.2 and 19.2-392.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-251.04, relating to expungement of certain offenses.

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 and that the Code of Virginia is amended by adding a section numbered 18.2-251.04 as follows:

§ 18.2-251.04. Heroin and Prescription Opioid Epidemic Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Heroin and Prescription Opioid Epidemic Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys received from fees imposed under subsection L of § 19.2-392.2 on orders of expungement entered under clause (iv) of subsection A shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year that are not appropriated by the General Assembly shall not revert to the general fund but shall remain in the Fund. All moneys in the Fund shall be subject to annual appropriation by the General Assembly to the Department of Criminal Justice Services to be used solely for prevention, treatment, and recovery services relating to the use of heroin and prescription opioid drugs. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Criminal Justice Services.

§ 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; or (iv) (a) the person is convicted of a violation of § 4.1-305 or 18.2-250.1 or charged under either section and the charge is deferred and dismissed, (b) the person was under 21 years of age on the date of the incident leading to the conviction or dismissal, (c) all court costs and fines and all orders of restitution have been satisfied, and (d) five years have passed since the date of completion of all terms of sentencing and probation, 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 or conviction.~~

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 ~~or 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.

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

60 hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon
61 the entry of an order of expungement or an order denying the petition for expungement, the court shall
62 cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order,
63 the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides
64 the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

65 F. After receiving the criminal history record information from the CCRE, the court shall conduct a
66 hearing on the petition. If the court finds that the continued existence and possible dissemination of
67 information relating to the arrest, *charge, or conviction* of the petitioner causes or may cause
68 circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, it shall enter an order requiring
69 the expungement of the police and court records, including electronic records, relating to the *arrest,*
70 *charge, or conviction.* Otherwise, it shall deny the petition. However, if the petitioner has no prior
71 criminal record and the arrest, *charge, or conviction* was for a misdemeanor violation, the petitioner
72 shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to
73 expungement of the police and court records relating to the *arrest, charge, or conviction,* and the court
74 shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in
75 which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not
76 object to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written
77 notice that the continued existence and possible dissemination of information relating to the arrest of the
78 petitioner causes or may cause circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner,
79 the court may enter an order of expungement without conducting a hearing.

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

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

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

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

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

104 L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.
105 If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such
106 costs paid by the petitioner. *Costs shall not be refunded to the petitioner for an order of expungement*
107 *entered under clause (iv) of subsection A. In addition to the costs provided by § 17.1-275, an additional*
108 *\$300 fee shall be assessed to the petitioner for an order of expungement entered under clause (iv) of*
109 *subdivision A, of which \$150 shall be paid into the Heroin and Prescription Opioid Epidemic Fund*
110 *established pursuant to § 18.2-251.04 and \$150 shall be paid into the state treasury and credited to the*
111 *Department of State Police.*

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

115 **§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state**
116 **and local governments.**

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

122 been expunged.

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

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

132 **2. That the provisions of this act shall become effective on January 1, 2019.**

133 **3. That the provisions of this act shall not become effective unless an appropriation effectuating**
134 **the purposes of this act is included in a general appropriation act passed in 2018 by the General**
135 **Assembly that becomes law.**