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SENATE BILL NO. 1037

Offered January 9, 2019

Prefiled November 15, 2018

A BILL to amend and reenact § 19.2-392.2 of the Code of Virginia, relating to expungement of certain alcohol offenses.

Patrons—Peake and Surovell

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, 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 charged with a violation of § 4.1-305 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 dismissal, (c) all court costs and fines and all orders of restitution have been satisfied, and (d) the person seeking the expungement is at least 21 years of age and has no other alcohol-related convictions*, 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. 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 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 information relating to the arrest *or charge* of the petitioner causes or may cause circumstances ~~which~~ *that* 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 *arrest or* charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest *or charge* 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 *arrest or* charge, and the court shall enter an order of expungement. If the attorney for the

Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written notice that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, the court may enter an order of expungement without conducting a hearing.

G. 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.

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

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

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

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

L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth. If the court enters an order of expungement *for an arrest or a charge*, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.

M. 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.