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HOUSE BILL NO. 320

Offered January 8, 2020

Prefiled December 31, 2019

A BILL to amend and reenact §§ 9.1-134 and 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 petition for reclassification or expungement of certain convictions and police and court records.

Patron—Levine

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-134 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 19.2-392.2:1 as follows:

§ 9.1-134. Sealing of criminal history record information.

The Board shall adopt procedures reasonably designed to (i) ensure prompt sealing*, reclassification,* or purging of criminal history record information when required by state or federal law, regulation or court order, and (ii) permit opening of sealed information under conditions authorized by law.

§ 19.2-392.2:1. Petition for reclassification or expungement of certain convictions and police and court records.

A. Any person who has been convicted of (i) a felony or misdemeanor offense that has been decriminalized or otherwise made lawful or (ii) a felony offense that has been statutorily reduced to a misdemeanor offense since the conviction of such person may file a petition for reclassification or expungement setting forth the relevant facts and requesting (a) expungement of the police records and the court records relating to any misdemeanor or felony offense that has been decriminalized or otherwise made lawful or (b) reclassification of the police records and the court records relating to a felony offense that has been statutorily reduced to a misdemeanor offense.

B. The petition, with a copy of any warrants or indictments, 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 convictions to be reclassified or 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 the convictions.

C. A copy of the petition shall be served on the attorney for the Commonwealth of the county or city 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.

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 reclassification or 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 reclassification or 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 reclassify or 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 reclassification or expungement or an order denying the petition for reclassification or 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.

E. After receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition except as provided in this subsection. If the court finds that the offense for which the person was convicted has since been decriminalized or otherwise made lawful, or has been statutorily reduced from a felony to a misdemeanor offense, the court shall enter an order reclassifying the offense, in the case of a felony offense that has been statutorily reduced to a misdemeanor offense, or requiring the expungement of the police and court records of an offense that has been decriminalized or otherwise made lawful. 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 C that he does not object to the petition and (ii) stipulates in such written notice that the offense for which the person was convicted

has since been decriminalized or otherwise made lawful, or has been statutorily reduced from a felony to a misdemeanor offense, the court shall enter an order reclassifying the offense, in the case of a felony offense that has been statutorily reduced to a misdemeanor offense, or requiring the expungement of the police and court records of an offense that has been decriminalized or otherwise made lawful, without conducting a hearing.

F. The Commonwealth shall be made a 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 of reclassification or 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 procedures adopted pursuant to § 9.1-134, direct the manner by which the appropriate reclassification or expungement of such records shall be effected.

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

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 reclassification or expungement contrary to law shall be voidable upon motion and notice made within three years of the entry of such order.

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

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

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

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