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HOUSE BILL NO. 91

Offered January 8, 2020

Prefiled December 10, 2019

A BILL to amend and reenact §§ 19.2-392.1, 19.2-392.2, and 19.2-392.4 of the Code of Virginia, relating to expungement of police and court records.

Patrons—Cole, M.L. and O'Quinn; Senator: Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.1, 19.2-392.2, and 19.2-392.4 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-392.1. Statement of policy.

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, an education, and to obtain credit. It further finds that the police and court records of those of its citizens who have been absolutely pardoned for crimes for which they have been unjustly convicted, *or who have demonstrated their rehabilitation*, can also be a hindrance. This chapter is intended to protect such persons from the unwarranted damage ~~which~~ *that* may occur as a result of being arrested and convicted.

§ 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, 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. Any person who has been convicted of an offense or charged with an offense which charge has been deferred and dismissed and who was under 21 years of age on the date of the incident leading to the conviction or dismissal may file a petition setting forth the relevant facts and requesting expungement of police records and court records relating to the charge and conviction after at least seven years have passed from (i) the date of dismissal of the charge; (ii) the date of conviction, if no active sentence of incarceration was imposed as a result of such conviction; or (iii) the date of completion of an active sentence of incarceration, if an active term of incarceration was imposed as a result of such conviction. A person's conviction for the following offenses are not eligible for expungement under this subsection: (a) a violent felony offense as defined in § 17.1-805 or (b) an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required under § 9.1-902 unless a court has ordered the removal of the person's name and information from the Registry pursuant to § 9.1-910. In order to qualify for expungement under this subsection, the petitioner shall have no pending charges, shall have no outstanding fines, costs, or restitution, and shall have completed all terms of sentencing and probation, including successful completion of any drug or alcohol program, and shall be dependency free. The Department of State Police shall maintain a record of any expungement granted pursuant to this subsection. Any conviction that is expunged under this subsection shall be considered a prior conviction for purposes of prosecution of any subsequent offense for which such prior conviction statutorily enhances punishment.

C. 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. D.~~ E. 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. E.~~ 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

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59 answer to the petition or may give written notice to the court that he does not object to the petition
60 within 21 days after it is served on him.

61 ~~E.~~ F. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's
62 fingerprints and shall provide that agency with a copy of the petition for expungement. The
63 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange
64 (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to
65 the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the
66 CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the
67 hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon
68 the entry of an order of expungement or an order denying the petition for expungement, the court shall
69 cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order,
70 the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides
71 the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

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

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

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

97 ~~I.~~ J. Notwithstanding any other provision of this section, upon receiving a copy pursuant to §
98 2.2-402 of an absolute pardon for the commission of a crime that a person did not commit, the court
99 shall enter an order requiring expungement of the police and court records relating to the charge and
100 conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
101 subsection. Upon the entry of such order, it shall be treated as provided in subsection ~~K~~ L.

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

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

110 ~~L.~~ M. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the
111 Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the
112 petitioner such costs paid by the petitioner.

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

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

118 A. An employer or educational institution shall not, in any application, interview, or otherwise,
119 require an applicant for employment or admission to disclose information concerning any arrest ~~or~~,
120 criminal charge against him, *or conviction* that has been expunged. An applicant need not, in answer to

121 any question concerning any arrest ~~or~~, criminal charge that has not resulted in a conviction, *or*
122 *conviction*, include a reference to or information concerning arrests ~~or~~, charges, *or convictions* that have
123 been expunged.

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

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