

20201239D

## SENATE BILL NO. 5043

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on September 22, 2020)

(Patrons Prior to Substitute—Senators Deeds, Norment [SB 5006], Peake [SB 5009], and McDougale [SB 5110])

*A BILL to amend and reenact §§ 9.1-101, 17.1-293.1, 17.1-323, 17.1-413, 17.1-502, 19.2-72, 19.2-74, 19.2-310.7, 19.2-389.3, and 19.2-390 of the Code of Virginia and to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered 19.2-392.5 through 19.2-392.14, relating to automatic expungement of criminal records.*

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

**1. That §§ 9.1-101, 17.1-293.1, 17.1-323, 17.1-413, 17.1-502, 19.2-72, 19.2-74, 19.2-310.7, 19.2-389.3, and 19.2-390 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered 19.2-392.5 through 19.2-392.14, as follows:**

**§ 9.1-101. Definitions.**

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Automatic expungement" means to (i) restrict dissemination of criminal history record information contained in the Central Criminal Records Exchange to the purposes set forth in subsection C of § 19.2-392.12 and (ii) prohibit dissemination of court records, unless such dissemination is authorized by a court order for one of the purposes set forth in subsection C of § 19.2-392.12.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia Criminal Sentencing Commission.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by

60 using electronic computers or other automated data processing equipment.

61 "Department" means the Department of Criminal Justice Services.

62 "Dissemination" means any transfer of information, whether orally, in writing, or by electronic  
63 means. The term shall not include access to the information by officers or employees of a criminal  
64 justice agency maintaining the information who have both a need and right to know the information.

65 "Law-enforcement officer" means any full-time or part-time employee of a police department or  
66 sheriff's office which is a part of or administered by the Commonwealth or any political subdivision  
67 thereof, or any full-time or part-time employee of a private police department, and who is responsible  
68 for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of  
69 the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control  
70 Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia  
71 Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement  
72 division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the  
73 security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and  
74 Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement  
75 division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection  
76 police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under  
77 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit  
78 designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal  
79 behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations  
80 authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the  
81 Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer  
82 employed by a private police department. Part-time employees are those compensated officers who are  
83 not full-time employees as defined by the employing police department, sheriff's office, or private police  
84 department.

85 "Private police department" means any police department, other than a department that employs  
86 police agents under the provisions of § 56-353, that employs private police officers operated by an entity  
87 authorized by statute or an act of assembly to establish a private police department or such entity's  
88 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized  
89 to operate a private police department or represent that it is a private police department unless such  
90 entity has been authorized by statute or an act of assembly or such entity is the successor in interest of  
91 an entity that has been authorized pursuant to this section, provided it complies with the requirements  
92 set forth herein. The authority of a private police department shall be limited to real property owned,  
93 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous  
94 property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the  
95 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The  
96 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum  
97 of understanding with the private police department that addresses the duties and responsibilities of the  
98 private police department and the chief law-enforcement officer in the conduct of criminal investigations.  
99 Private police departments and private police officers shall be subject to and comply with the  
100 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police  
101 departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721,  
102 and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable  
103 to private police departments. Any person employed as a private police officer pursuant to this section  
104 shall meet all requirements, including the minimum compulsory training requirements, for  
105 law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits  
106 under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a  
107 "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of  
108 the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an  
109 employee of the Commonwealth or any locality. An authorized private police department may use the  
110 word "police" to describe its sworn officers and may join a regional criminal justice academy created  
111 pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in  
112 existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and  
113 whose status as a private police department was recognized by the Department at that time is hereby  
114 validated and may continue to operate as a private police department as may such entity's successor in  
115 interest, provided it complies with the requirements set forth herein.

116 "School resource officer" means a certified law-enforcement officer hired by the local  
117 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary  
118 and secondary schools.

119 "School security officer" means an individual who is employed by the local school board or a private  
120 or religious school for the singular purpose of maintaining order and discipline, preventing crime,  
121 investigating violations of the policies of the school board or the private or religious school, and

detaining students violating the law or the policies of the school board or the private or religious school on school property, school buses, or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

"Unapplied criminal history record information" means information pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

**§ 17.1-293.1. Online case information system.**

A. The Executive Secretary shall make available a publicly viewable online case information system of certain nonconfidential information entered into the case management system for criminal cases in the circuit courts participating in the Executive Secretary's case management system and in the general district courts. Such system shall be searchable by defendant name across all participating courts, and search results shall be viewable free of charge.

*B. Upon entry of an automatic expungement order pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11, the Executive Secretary shall not make any offense that was ordered to be automatically expunged available for online public viewing in an appellate court, circuit court, or district court case management system maintained by the Executive Secretary.*

*C. Upon entry of an automatic expungement order pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11, any circuit court clerk who maintains a viewable online case management or case information system shall not make any offense that was ordered to be automatically expunged available for online public viewing.*

**§ 17.1-323. Clerk to deliver opinions to Reporter.**

A. In those cases ~~which~~ that the Reporter is directed to report, copies of the reasons stated in writing, under Section 6 of Article VI of the Constitution of Virginia, shall be delivered by the clerk of the Court to the Reporter.

*B. If an offense is ordered to be automatically expunged pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11 and a published or unpublished decision or order of the Supreme Court exists in relation to that offense, the clerk shall redact the name of the person charged with the offense that was ordered to be automatically expunged from any decision or order of the Supreme Court that references such offense, unless such decision or order also includes offenses that were not ordered to be automatically expunged.*

**§ 17.1-413. Opinions; reporting, printing and electronic publication.**

A. The Court of Appeals shall state in writing the reasons for its decision (i) rejecting a petition for appeal or (ii) deciding a case after hearing. Subject to rules promulgated under § 17.1-403 the Court in its discretion may render its decision by order or memorandum opinion. All orders and opinions of the Court of Appeals shall be preserved with the record of the case. Opinions designated by the Court of Appeals as having precedential value or as otherwise having significance for the law or legal system shall be expeditiously reported in separate Court of Appeals Reports in the same manner as the decisions and opinions of the Supreme Court. The clerk of the Court of Appeals shall retain in the clerk's office a list and brief summary of the case for all unpublished decisions and opinions of the Court of Appeals. The list of cases and summary shall be made available to any person upon request.

*B. If an offense is ordered to be automatically expunged pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11 and a published or unpublished decision or order of the Court of Appeals exists in relation to that offense, the clerk of the Court of Appeals shall redact the name of the person charged with the offense that was ordered to be automatically expunged from any decision or order of the Court of Appeals that references such offense, unless such decision or order also includes offenses that were not ordered to be automatically expunged.*

C. The Executive Secretary of the Supreme Court shall contract for the printing of the reports of the Supreme Court and the Court of Appeals and for the advance sheets of each court. He shall select a printer for the reports and prescribe such contract terms as will ensure issuance of the reports as soon as practicable after a sufficient number of opinions are filed. He shall make such contracts after consultation with the Department of General Services and shall distribute these reports in accordance with the applicable provisions of law. He shall also provide for the electronic publication on the Internet of the opinions of the Supreme Court and Court of Appeals subject to conditions and restrictions established by each court regarding the electronic publication of its opinions.

*D. Upon redaction of any published or unpublished decision or order of the Supreme Court or the Court of Appeals pursuant to subsection B or to subsection B of § 17.1-323, the Executive Secretary of the Supreme Court shall remove the decision or order published on Virginia's Judicial System website and replace such decision or order with the redacted version of the decision or order.*

**§ 17.1-502. Administrator of circuit court system.**

A. The Executive Secretary of the Supreme Court shall be the administrator of the circuit court system, which includes the operation and maintenance of a case management system and financial management system and related technology improvements.

B. Any circuit court clerk may establish and maintain his own case management system, financial management system, or other independent technology using automation or technology improvements provided by a private vendor or the locality. Any data from the clerk's independent system may be provided directly from such clerk to designated state agencies. The data from the clerk's independent system may also be provided to designated state agencies through an interface with the technology systems operated by the Executive Secretary.

*B1. If the data from a case management system established under subsection B is not provided to the Executive Secretary of the Supreme Court through an interface, such data shall be provided to the Department of State Police through an interface for purposes of complying with §§ 19.2-392.7, 19.2-392.10, and 19.2-392.11. The parameters of such interface shall be determined by the Department of State Police. The costs of designing, implementing, and maintaining such interface shall be the responsibility of the circuit court clerk.*

C. The Executive Secretary shall provide an electronic interface with his case management system, financial management system, or other technology improvements upon written request of any circuit court clerk. The circuit court clerk and the clerk's designated application service provider shall comply with the security and data standards established by the Executive Secretary for any such electronic interface. The Executive Secretary shall establish security and data standards for such electronic interfaces on or before June 30, 2013, and such standards shall be consistent with the policies, standards, and guidelines established pursuant to § 2.2-2009.

D. The costs of designing, implementing, and maintaining any such interface with the systems of the Executive Secretary shall be the responsibility of the circuit court clerk. Prior to incurring any costs, the Office of the Executive Secretary shall provide the circuit court clerk a written explanation of the options for providing such interfaces and provide the clerk with a proposal for such costs and enter into a written contract with the clerk to provide such services.

E. The Executive Secretary shall assist the chief judges in the performance of their administrative duties. He may employ such staff and other assistants, from state funds appropriated to him for the purpose, as may be necessary to carry out his duties, and may secure such office space as may be requisite, to be located in an appropriate place to be selected by the Executive Secretary.

**§ 19.2-72. When it may issue; what to recite and require.**

On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. A written complaint shall be required if the complainant is not a law-enforcement officer; however, if no arrest warrant is issued in response to a written complaint made by such complainant, the written complaint shall be returned to the complainant. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest, except that no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer. *If a warrant is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, the warrant shall reference the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code.* The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or town)," and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in which he serves and in any city or town surrounded thereby and effect an arrest in any city or town surrounded thereby as a result of a criminal act committed during the execution of such warrant. A jail officer as defined in § 53.1-1 employed at a regional jail or jail farm is authorized to execute a warrant of arrest upon an accused in his jail. The venue for the prosecution of such criminal act shall be the jurisdiction in which the offense occurred.

**§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance**

**of summons by special conservators of the peace.**

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. *If the summons is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, the summons shall reference the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code.*

**§ 19.2-310.7. Expungement when DNA taken for a conviction.**

A. A person whose DNA profile has been included in the data bank pursuant to § 19.2-310.2 may request expungement on the grounds that the conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. Provided that the person's DNA profile is not otherwise required to be included in the data bank pursuant to § 9.1-903, 16.1-299.1, 19.2-310.2, or 19.2-310.2:1, the Department of Forensic Science shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

B. *Entry of an automatic expungement order pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11 shall not serve as grounds for expungement of a person's DNA profile or any records in the data bank relating to that DNA profile.*

**§ 19.2-389.3. Marijuana possession; limits on dissemination of criminal history record**

**information; prohibited practices by employers, educational institutions, and state and local governments; penalty.**

A. Records relating to the arrest, criminal charge, or conviction of a person for a violation of § 18.2-250.1, including any violation charged under § 18.2-250.1 that was deferred and dismissed pursuant to § 18.2-251, maintained in the Central Criminal Records Exchange shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9; a pre-sentence or post-sentence investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department, or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii) (iii) to the Virginia Criminal Sentencing Commission for research purposes; ~~(viii)~~ (iv) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with, *or to be a volunteer with*, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; ~~(ix)~~ (v) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; ~~(x)~~ (vi) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; ~~(xi)~~ (vii) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; ~~and (xii)~~ (viii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration; (ix) *to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions;* (x) *to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President;* (xi) *to any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § 19.2-349 for purposes of collecting such court costs, fines, or restitution;* (xii) *to administer and utilize the DNA Analysis and Data Bank set forth in Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18;* (xiii) *to publish decisions of the Supreme Court and Court of Appeals, subject to the provisions of subsection B of § 17.1-323 and subsections B and D of § 17.1-413;* (xiv) *to any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the Office of the Executive Secretary;* (xv) *to any employer or prospective employer or its designee where this Code requires the employer to inquire about prior criminal charges or convictions; and (xvi) to the person arrested, charged, or convicted of the offense that was automatically expunged.*

B. ~~An employer or~~ Except as provided in subsection C, agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and educational ~~institution~~ institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any

question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A.

*C. The provisions of subsection B shall not apply if:*

*1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;*

*2. This Code requires the employer to make such an inquiry;*

*3. Federal law requires the employer to make such an inquiry; or*

*4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President.*

*D. 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, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.*

*E. No person, as defined in § 36-96.1:1, shall, in any application for the sale or rental of a dwelling, as defined in § 36-96.1:1, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.*

~~D. F.~~ A person who willfully violates subsection B ~~or~~ C, D, or E is guilty of a Class 1 misdemeanor for each violation.

**§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.**

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, for each charge when any person is arrested on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1;

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

e. (Effective until July 1, 2021) Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.

e. (Effective July 1, 2021) Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 22.1-289.041, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, or 63.2-1509.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and

photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

*Law-enforcement agencies and clerks of court shall only submit reports to the Central Criminal Records Exchange for those offenses enumerated in this subsection. Only reports received for those offenses enumerated in this subsection shall be included in the Central Criminal Records Exchange.*

2. For persons arrested and released on summonses in accordance with subsection B of § 19.2-73 or § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed for each charge after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

3. For persons arrested on a *capias* for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

4. For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is found to be in violation of the terms or conditions of a suspended sentence or probation for such felony offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

5. If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense.

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias* to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. For offenses not charged on a summons in accordance with subsection B of § 19.2-73 or

§ 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action that may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with subsection B of § 19.2-73 or § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. ~~In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722.~~ Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases that he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of ~~arrest or~~ confinement submitted to it by any ~~law-enforcement agency or any~~ correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

I. As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of

counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

#### CHAPTER 23.2.

#### AUTOMATIC EXPUNGEMENT OF CRIMINAL RECORDS.

##### **§ 19.2-392.5. Automatic expungement defined; effect of automatic expungement.**

A. As used in this chapter, unless the context requires a different meaning, "automatic expungement" means to (i) restrict dissemination of criminal history record information contained in the Central Criminal Records Exchange to the purposes set forth in subsection C of § 19.2-392.12 and (ii) prohibit dissemination of court records, unless such dissemination is authorized by a court order for one of the purposes set forth in subsection C of § 19.2-392.12.

B. Records relating to an arrest, criminal charge, or conviction that has been automatically expunged may only be disseminated for purposes set forth in subsection C of § 19.2-392.12. The court and any law-enforcement agency shall reply to any inquiry that no record exists with respect to an arrest, criminal charge, or conviction that has been automatically expunged, unless such information is permitted to be disclosed pursuant to subsection C of § 19.2-392.12. A clerk of any court and the Executive Secretary of the Supreme Court shall be immune from any cause of action arising from the production of expunged court records, including electronic records, absent gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any cause of action accruing prior to July 1, 2024.

C. Except as provided in subsection D, upon entry of an order for automatic expungement, the person who was arrested, criminally charged, or convicted of the offense that was ordered to be automatically expunged may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, criminal charge, or conviction occurred. No person as to whom an order for automatic expungement has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning an arrest, criminal charge, or conviction that has been automatically expunged, unless such denial or failure to disclose is in response to a query from an employer under subsection D.

D. The person who was the subject of the order of automatic expungement may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be automatically expunged if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry; or

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President.

E. An order to automatically expunge an arrest, criminal charge, or conviction entered pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11 shall not relieve the person who was arrested, criminally charged, or convicted of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense that was ordered to be automatically expunged.

F. The provisions of this chapter shall only apply to adults who were arrested, charged, or convicted of a criminal offense and to juveniles who were tried in circuit court pursuant to § 16.1-269.1.

##### **§ 19.2-392.6. Automatic expungement of offenses resulting in a deferred and dismissed disposition or conviction.**

A. If a person was charged with an offense in violation of § 4.1-305, 18.2-250, or 18.2-250.1, and such offense was deferred and dismissed as provided in § 4.1-305 or 18.2-251, such offense shall be ordered to be automatically expunged in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D.

B. If a person was convicted of a violation of any of the following sections, such conviction shall be ordered to be automatically expunged in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D: § 4.1-305, 18.2-57.01, 18.2-60, 18.2-86, 18.2-94, 18.2-96, 18.2-104, 18.2-119,

18.2-120, 18.2-121.3, 18.2-126, 18.2-127, 18.2-132.1, 18.2-134, 18.2-136, 18.2-137, 18.2-138, 18.2-144.2, 18.2-145.1, 18.2-146, 18.2-147, 18.2-147.2, 18.2-151, 18.2-151.1, 18.2-152.3:1, 18.2-152.7:1, 18.2-152.7:2, 18.2-152.15, 18.2-152.17, 18.2-156, 18.2-159, 18.2-160.1, 18.2-162.1, 18.2-163, 18.2-164, 18.2-165.1, 18.2-165.2, 18.2-250, 18.2-250.1, 18.2-251, 18.2-251.4, 18.2-255.1, 18.2-265.5, 18.2-265.7, 18.2-265.18, 18.2-265.21, 18.2-313.1, 18.2-313.2, 18.2-323.01, 18.2-323.02, 18.2-324, 18.2-326, 18.2-328, 18.2-329, 18.2-330, 18.2-331, 18.2-340, 18.2-371.3, 18.2-403.4, 18.2-404, 18.2-409, 18.2-410, 18.2-414.1, 18.2-415, 18.2-427, 18.2-428, 18.2-431.1, 18.2-462, 18.2-468, 18.2-471.1, 18.2-477.2, 18.2-487, 18.2-488, 18.2-499, 18.2-505, or 18.2-511.1.

C. Subject to the provisions of subsection D, any offense listed under subsection A and any conviction listed under subsection B shall be ordered to be automatically expunged if:

1. For an offense that was deferred and dismissed as provided in subsection A, eight years have passed since the date of the dismissal and the person charged with the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

2. For a misdemeanor conviction of an offense listed in subsection B, eight years have passed since the date of the conviction and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

3. For a felony conviction of an offense listed in subsection B, eight years have passed since the date of the conviction or release from incarceration, whichever date occurred later, and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

D. No offense listed under subsection A shall be automatically expunged if, on the date of the deferral or dismissal, the person was convicted of another offense that is not eligible for automatic expungement under subsection A or B. No conviction listed under subsection B shall be automatically expunged if, on the date of the conviction, the person was convicted of another offense that is not eligible for automatic expungement under subsection A or B.

**§ 19.2-392.7. Process for automatic expungement of offenses resulting in a conviction or deferred disposition.**

A. On a monthly basis, the Department of State Police shall determine which offenses in the Central Criminal Records Exchange meet the criteria for automatic expungement set forth in § 19.2-392.6.

B. After reviewing the offenses provided under subsection A, the Department of State Police shall provide an electronic list of all offenses that meet the criteria for automatic expungement set forth in § 19.2-392.6 to the Executive Secretary of the Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502.

C. Upon receipt of the electronic list from the Department of State Police provided under subsection B, on at least a monthly basis the Executive Secretary of the Supreme Court shall provide an electronic list of all offenses that meet the criteria for automatic expungement set forth in § 19.2-392.6 to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the Executive Secretary.

D. Upon receipt of the electronic list provided under subsection B or C, on at least a monthly basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses that meet the criteria for automatic expungement set forth in § 19.2-392.6 be automatically expunged under the process described in § 19.2-392.12. Such order shall contain the names of the persons charged with or convicted of such offenses.

E. The clerk of each circuit court shall provide an electronic copy of any order entered under subsection D to the Department of State Police on at least a monthly basis. Upon receipt of such order, the Department of State Police shall proceed as set forth in § 19.2-392.12.

F. If an offense is automatically expunged contrary to law, the automatic expungement of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically expunge such offense.

**§ 19.2-392.8. Automatic expungement of offenses resulting in acquittal, nolle prosequi, or dismissal.**

A. If a person is charged with the commission of a criminal offense, excluding traffic infractions under Title 46.2, and (i) the person is acquitted, (ii) a nolle prosequi is entered, or (iii) the charge is otherwise dismissed, excluding any charge that is deferred and dismissed after a finding of facts

675 sufficient to justify a finding of guilt, the court disposing of the matter shall, at the time the acquittal,  
676 nolle prosequi, or dismissal is entered, order that the charge be automatically expunged under the  
677 process described in § 19.2-392.12, unless the attorney for the Commonwealth or any other person  
678 advises the court at the time the acquittal, nolle prosequi, or dismissal is entered that:

679 1. The charge is ancillary to another charge that resulted in a conviction or a finding of facts  
680 sufficient to justify a finding of guilt;

681 2. A nolle prosequi is entered or the charge is dismissed as part of a plea agreement;

682 3. Another charge arising out of the same facts and circumstances is pending against the person;

683 4. The Commonwealth intends to reinstitute the charge or any other charge arising out of the same  
684 facts and circumstances within three months;

685 5. Good cause exists, as established by the Commonwealth by a preponderance of the evidence, that  
686 such charge should not be automatically expunged; or

687 6. The person charged with the offense objects to the automatic expungement.

688 B. If the court enters an order pursuant to subsection A, the court shall advise the person charged  
689 that the offense has been ordered to be automatically expunged.

690 C. If an offense is automatically expunged contrary to law, the automatic expungement of that  
691 particular offense shall be voidable upon motion and notice made within two years of the entry of the  
692 order to automatically expunge such offense.

693 **§ 19.2-392.9. Automatic expungement for mistaken identity or unauthorized use of identifying**  
694 **information.**

695 A. If (i) a person was charged or arrested as a result of mistaken identity or (ii) a person's name or  
696 other identification were used without his consent or authorization by another person who was charged  
697 or arrested using such name or identification, and a nolle prosequi is entered or the charge is otherwise  
698 dismissed, the attorney for the Commonwealth or any other person requesting the nolle prosequi or  
699 dismissal shall notify the court of the mistaken identity or unauthorized use of identifying information at  
700 the time such request is made. Upon such notification, the court disposing of the matter shall, at the  
701 time the nolle prosequi or dismissal is entered, order that the charge be automatically expunged under  
702 the process described in § 19.2-392.12, unless the person who was charged or arrested as a result of  
703 the mistaken identity or unauthorized use of identifying information objects to such automatic  
704 expungement.

705 B. If the court enters an order pursuant to subsection A, the court shall advise the person charged  
706 that the offense has been ordered to be automatically expunged.

707 C. If an offense is automatically expunged contrary to law, the automatic expungement of that  
708 particular offense shall be voidable upon motion and notice made within two years of the entry of the  
709 order to automatically expunge such offense.

710 **§ 19.2-392.10. Process for automatic expungement of offenses resulting in acquittal, nolle**  
711 **prosequi, or dismissal.**

712 A. On at least a monthly basis, the Executive Secretary of the Supreme Court and any circuit court  
713 clerk who maintains a case management system that interfaces with the Department of State Police  
714 under subsection B1 of § 17.1-502 shall provide an electronic list of all offenses in such case  
715 management system to the Department of State Police that were ordered to be automatically expunged  
716 pursuant to §§ 19.2-392.8 and 19.2-392.9.

717 B. Upon receipt of the electronic lists under subsection A, the Department of State Police shall  
718 proceed as set forth in § 19.2-392.12.

719 **§ 19.2-392.11. Automatic expungement of offenses resulting in acquittal, nolle prosequi, or**  
720 **dismissal for persons with no convictions or deferred and dismissed offenses on their criminal history**  
721 **record.**

722 A. On at least an annual basis, the Department of State Police shall review the Central Criminal  
723 Records Exchange and identify all persons with finalized case dispositions that resulted in (i) an  
724 acquittal, (ii) a nolle prosequi, or (iii) a dismissal, excluding any charge that was deferred and  
725 dismissed after a finding of facts sufficient to justify a finding of guilt, where the criminal history record  
726 of such person contains no convictions for any criminal offense, excluding traffic infractions under Title  
727 46.2. For purposes of this subsection, any offense on the person's criminal history record that has  
728 previously been ordered to be automatically expunged shall not be deemed a conviction.

729 B. Upon identification of the finalized case dispositions under subsection A, the Department of State  
730 Police shall provide an electronic list of such offenses to the Executive Secretary of the Supreme Court  
731 and to any circuit court clerk who maintains a case management system that interfaces with the  
732 Department of State Police under subsection B1 of § 17.1-502.

733 C. Upon receipt of the electronic list from the Department of State Police provided under subsection  
734 B, on at least an annual basis the Executive Secretary of the Supreme Court shall provide an electronic  
735 list of such offenses to the clerk of each circuit court in the jurisdiction where the case was finalized, if  
736 such circuit court clerk participates in the case management system maintained by the Executive

Secretary.

D. Upon receipt of the electronic list provided under subsection B or C, on at least an annual basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses be automatically expunged under the process described in § 19.2-392.12. Such order shall contain the names of the persons charged with such offenses.

E. The clerk of each circuit court shall provide an electronic copy of any order entered under subsection D to the Department of State Police on at least an annual basis. Upon receipt of such order, the Department of State Police shall proceed as set forth in § 19.2-392.12.

F. If an offense is automatically expunged contrary to law, the automatic expungement of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically expunge such offense.

G. If an offense is automatically expunged pursuant to the procedure set forth in this section and such offense was not ordered to be automatically expunged at the time of acquittal, nolle prosequi, or dismissal for one or more of the reasons set forth in § 19.2-392.8, the automatic expungement of such offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically expunge such offense.

**§ 19.2-392.12. Disposition of records when an offense is automatically expunged; permitted uses of automatically expunged records.**

A. Upon electronic notification that a court order for automatic expungement has been entered pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11, the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange that relates to the arrest, criminal charge, or conviction that was ordered to be automatically expunged, except for purposes set forth in subsection C. Upon receipt of such electronic notification, the Department of State Police shall electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be automatically expunged and may only be disseminated for purposes set forth in subsection C.

B. Upon entry of a court order for automatic expungement pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11, the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 shall:

1. Ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing as directed by subsections B and C of § 17.1-293.1; and

2. Not disseminate any court record of such arrest, criminal charge, or conviction to the public, except as provided in subsections D and E.

C. Records relating to an arrest, criminal charge, or conviction that was ordered to be automatically expunged pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, or 19.2-392.11 shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System; (iii) to the Virginia Criminal Sentencing Commission for research purposes; (iv) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (v) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (vi) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; (vii) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (viii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (x) to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with,

or statute or regulation of, the United States or any Executive Order of the President; (xi) to any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § 19.2-349 for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize the DNA Analysis and Data Bank set forth in Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18; (xiii) to publish decisions of the Supreme Court and Court of Appeals, subject to the provisions of subsection B of § 17.1-323 and subsections B and D of § 17.1-413; (xiv) to any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the Office of the Executive Secretary; (xv) to any employer or prospective employer or its designee where this Code requires the employer to inquire about prior criminal charges or convictions; and (xvi) to the person arrested, charged, or convicted of the offense that was automatically expunged.

D. Upon request from any person to access a court record, the clerk of court shall determine whether such record is open to public access and inspection. If the clerk of court determines that a court record has been automatically expunged, such record shall not be provided to the requestor without an order from the court that entered the order to automatically expunge the court record. Any order from a court that allows access to a court record that has been automatically expunged shall only be issued for one or more of the purposes set forth in subsection C. Such order to access a court record that has been automatically expunged shall allow the requestor to photocopy such court record. No fee shall be charged to any person filing a motion to access a court record that has been automatically expunged if the person filing such motion is the same person who was arrested, criminally charged, or convicted of the offense that was automatically expunged.

E. If a pleading or case document in a court record that was automatically expunged is included among other court records that have not been ordered to be automatically expunged, the clerk of court shall ensure that such pleading or case document that was ordered to be automatically expunged is redacted from the court record prior to allowing public access to such court record.

F. No charge or conviction that has been automatically expunged may be used to impeach the credibility of a testifying witness at any hearing or trial.

**§ 19.2-392.13. Disclosure of automatically expunged records; penalty.**

A. It is unlawful for any person having or acquiring access to an automatically expunged criminal history or court record, except for a news organization or newsperson engaged in journalism as those terms are defined in § 19.2-271.5, to disclose such record or any information from such record to another person, except for the purposes authorized in subsection C of § 19.2-392.12.

B. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.

**§ 19.2-392.14. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments; penalty.**

A. Except as provided in subsection B, agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and educational institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged.

B. The provisions of subsection A shall not apply if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry; or

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President.

C. Agencies, officials, and employees of 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, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged.

D. No person, as defined in § 36-96.1:1, shall, in any application for the sale or rental of a

dwelling, as defined in § 36-96.1:1, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged.

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

F. If any entity or person listed under subsection A, C, or D includes a question about a prior criminal charge or conviction in an application for one or more of the purposes set forth in such subsections, such application shall include a notice to the applicant that a charge or conviction that has been automatically expunged does not have to be disclosed in the application. Such notice need not be included on any application for one or more of the purposes set forth in subsection B.

2. That the provisions of §§ 19.2-72, 19.2-74, and 19.2-390 of the Code of Virginia, as amended by this act, shall become effective on July 1, 2021.

3. That the Department of State Police shall delete all records from the Central Criminal Records Exchange that were not required to be reported to the Exchange under subdivision A 1 of § 19.2-390 of the Code of Virginia, as amended by this act, by July 1, 2021.

4. That the Attorney General, after consultation with the Committee on District Courts, the Superintendent of State Police, and the Commissioner of the Department of Motor Vehicles, shall amend the uniform summons described in § 46.2-388 of the Code of Virginia to reflect the amendments to the provisions of subsection C of § 19.2-74 of the Code of Virginia, as amended by this act, by July 1, 2021.

5. That the provisions of §§ 9.1-101, 17.1-293.1, 17.1-323, 17.1-413, 17.1-502, and 19.2-310.7 of the Code of Virginia, as amended by this act, and Chapter 23.2 (§ 19.2-392.5 et seq.) of Title 19.2 of the Code of Virginia, as created by this act, shall become effective on July 1, 2024.

6. That the Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 of the Code of Virginia, as amended by this act, shall automate systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, and 19.2-392.11 of the Code of Virginia, as created by this act, by July 1, 2024.

7. That the Executive Secretary of the Supreme Court of Virginia shall develop a form for requesting and authorizing access to an automatically expunged court record as set forth in section D of § 19.2-392.12 of the Code of Virginia, as created by this act, by July 1, 2024.

8. That the Department of State Police shall purchase Criminal History, Expungement, Master Name Index, Rap Back, Civil Commitment, Applicant Tracking, and such other solutions or services as may be necessary to implement this act. The purchase of these solutions or services shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).

9. That the Virginia State Crime Commission shall consult with stakeholders to determine and recommend methods to educate the public on the automatic expungement process and the effects of an order to automatically expunge an arrest, criminal charge, or conviction and shall report on such recommended methods by December 15, 2021.

10. That the Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 of the Code of Virginia, as amended by this act, shall each provide a report to the Virginia State Crime Commission on the progress of implementing automated systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, and 19.2-392.11 of the Code of Virginia, as created by this act, by November 1, 2021, and by November 1 of each year thereafter until the automated systems have been fully implemented.

11. That the Department of State Police shall determine the feasibility and cost of implementing an automated system to review out-of-state criminal history records and report to the Virginia State Crime Commission by November 1, 2021, and by November 1 of each year thereafter until such determination has been made.

12. That the Virginia State Crime Commission shall examine methods to regulate or restrict the dissemination of criminal history record information by private entities and provide a report by January 12, 2021.

13. That the Virginia Court Clerks' Association shall determine the necessary staffing and technology costs of implementing the provisions of this act and report to the Virginia State Crime Commission by November 1, 2021, and by November 1 of each year thereafter until such

921 determination has been made.

922 14. That the provisions of this act may result in a net increase in periods of imprisonment or  
923 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the  
924 necessary appropriation cannot be determined for periods of imprisonment in state adult  
925 correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the  
926 Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant  
927 to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0  
928 for periods of commitment to the custody of the Department of Juvenile Justice.