

20200911D

SENATE BILL NO. 5043

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on August 20, 2020)

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

*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.***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 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, a civil offense, 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; (iv) (a) the person is convicted of a violation of § 4.1-305 or 18.2-250.1 or subsection B of § 18.2-371.2, (b) the person was under 21 years of age on the date of the incident leading to the conviction, (c) all court costs and fines and all orders of restitution have been satisfied, and (d) five years have passed since the date of completion of all terms of sentencing and probation; (v) (a) the person was charged with a violation of § 4.1-305, 18.2-250, or 18.2-250.1 and such charge was discharged and dismissed as provided in § 4.1-305 or 18.2-251; (b) all court costs and fines and all orders of restitution have been satisfied; and (c) five years have passed since the date of completion of all terms of sentencing and probation; or (vi) the person is convicted and has received a simple pardon for the commission of the crime or offense for which he seeks expungement and (a) has been of good behavior for the five years preceding the filing of his petition and (b) the conviction is not for a violent felony as defined in subsection C of § 17.1-805 or § 19.2-297.1, or any crime ancillary to such conviction, or for a violation of § 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-255, 18.2-255.2, 18.2-258.02, or 24.2-1016, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge or conviction.~~

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

C. The petition with a copy of the warrant, summons, 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, civil offense, or conviction to be expunged, the date of final disposition of the charge or conviction as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is served on him.

E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to

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60 the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the
61 CCRE entry that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon
62 completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was
63 conducted, upon the entry of an order of expungement or an order denying the petition for
64 expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the
65 date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the
66 clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of
67 the fingerprint card.

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

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

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

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

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

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

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

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

112 N. *For purposes of this section, "simple pardon" means an act by the Governor on behalf of the*
113 *Commonwealth representing official forgiveness of a crime for which a person has been convicted.*

114 **§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state**
115 **and local governments.**

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

122 B. Agencies, officials, and employees of the state and local governments shall not, in any
123 application, interview, or otherwise, require an applicant for a license, permit, registration, or
124 governmental service to disclose information concerning any arrest ~~or~~, criminal charge against him, *or*
125 *conviction* that has been expunged. An applicant need not, in answer to any question concerning any
126 arrest ~~or~~, criminal charge that has not resulted in a conviction, *or conviction*, include a reference to or
127 information concerning *arrests*, charges, *or convictions* that have been expunged. Such an application
128 may not be denied solely because of the applicant's refusal to disclose information concerning any arrest
129 ~~or~~, criminal charge against him, *or conviction* that has been expunged.
130 C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.