

# 2020 SPECIAL SESSION I

INTRODUCED

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## SENATE BILL NO. 5110

Offered August 18, 2020

A *BILL to amend and reenact §§ 19.2-389.3, 19.2-392.2, and 19.2-392.4 of the Code of Virginia, relating to expungement of certain charges and convictions; alcohol and marijuana-related offenses.*

Patron—McDougle

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389.3, 19.2-392.2, and 19.2-392.4 of the Code of Virginia are amended and reenacted as follows:

§ 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, *unless such records have been expunged pursuant to § 19.2-392.2*, (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) to the Virginia Criminal Sentencing Commission for research purposes; (viii) 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 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) 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) 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) 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) 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.

B. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, 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.

INTRODUCED

SB5110

59 C. Agencies, officials, and employees of the state and local governments shall not, in any  
60 application, interview, or otherwise, require an applicant for a license, permit, registration, or  
61 governmental service to disclose information concerning any arrest, criminal charge, or conviction  
62 against him when the record relating to such arrest, criminal charge, or conviction is not open for public  
63 inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any  
64 arrest, criminal charge, or conviction, include a reference to or information concerning any arrest,  
65 criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is  
66 not open for public inspection pursuant to subsection A. Such an application may not be denied solely  
67 because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or  
68 conviction.

69 D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor for each  
70 violation.

71 **§ 19.2-392.2. Expungement of police and court records.**

72 A. If a person is charged with the commission of a crime, a civil offense, or any offense defined in  
73 Title 18.2, and

74 1. Is (i) *the person is acquitted*; or

75 2. ~~A;~~ (ii) *a nolle prosequi is taken*; ~~or;~~ (iii) *the charge is otherwise dismissed, including dismissal by*  
76 *accord and satisfaction pursuant to § 19.2-151; or (iv) (a) the person is convicted of a violation of*  
77 *§ 4.1-305 or 18.2-250.1 or charged under either section and the charge is deferred and dismissed, (b)*  
78 *the person was under 21 years of age on the date of the incident leading to the conviction or dismissal,*  
79 *(c) all court costs and fines and all orders of restitution have been satisfied, and (d) five years have*  
80 *passed since the date of completion of all terms of sentencing and probation,* he may file a petition  
81 setting forth the relevant facts and requesting expungement of the police records and the court records  
82 relating to the charge *or conviction*.

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

89 C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be  
90 filed in the circuit court of the county or city in which the case was disposed of ~~by acquittal or being~~  
91 ~~otherwise dismissed~~ and shall contain, except where not reasonably available, the date of arrest and the  
92 name of the arresting agency. Where this information is not reasonably available, the petition shall state  
93 the reason for such unavailability. The petition shall further state the specific criminal charge, *conviction*,  
94 or civil offense to be expunged, the date of final disposition of the charge *or conviction* as set forth in  
95 the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

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

100 E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's  
101 fingerprints and shall provide that agency with a copy of the petition for expungement. The  
102 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange  
103 (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to  
104 the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the  
105 CCRE entry that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon  
106 completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was  
107 conducted, upon the entry of an order of expungement or an order denying the petition for  
108 expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the  
109 date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the  
110 clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of  
111 the fingerprint card.

112 F. After receiving the criminal history record information from the CCRE, the court shall conduct a  
113 hearing on the petition. If the court finds that the continued existence and possible dissemination of  
114 information relating to the arrest, *charge, or conviction* of the petitioner causes or may cause  
115 circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, it shall enter an order requiring  
116 the expungement of the police and court records, including electronic records, relating to the *arrest,*  
117 *charge, or conviction*. Otherwise, it shall deny the petition. However, if the petitioner has no prior  
118 criminal record and the arrest, *charge, or conviction* was for a misdemeanor violation or the charge was  
119 for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the contrary  
120 by the Commonwealth, to expungement of the police and court records relating to the *arrest, charge, or*

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

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

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

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

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

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

L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such costs paid by the petitioner. *Costs shall not be refunded to the petitioner for an order of expungement entered under clause (iv) of subsection A. In addition to the costs provided by § 17.1-275, an additional \$150 fee shall be assessed to the petitioner for an order of expungement entered under clause (iv) of subsection A, which shall be paid into the state treasury and credited to the Department of State Police.*

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

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

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

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

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