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HOUSE BILL NO. 268

Offered January 8, 2020

Prefiled December 30, 2019

A BILL to amend and reenact § 19.2-392.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-392.2:1, relating to petition for vacatur and expungement of convictions and police and court records of victims of human trafficking.

Patrons—Heretick, Delaney, Cole, M.L., Guy, Hope, Jenkins, Kory, Levine, Lindsey, Lopez, Murphy, Rasoul, Samirah, Simonds, Watts and Willett; Senator: Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-392.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-392.2:1 as follows:

§ 19.2-392.2:1. Petition for vacatur and expungement of convictions and police and court records of victims of human trafficking.

A. For the purposes of this section:

"Human trafficking" means sex trafficking or severe forms of trafficking in persons as defined in the federal Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq..

"Official documentation" means any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

"Victim of human trafficking" means (i) any person who was induced to engage in a violation of § 18.2-47, 18.2-48, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 through the use of force, intimidation, or deception of another; (ii) any minor used in a violation of § 18.2-47, 18.2-48, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; or (iii) any person subjected to human trafficking regardless of whether the perpetrator of the human trafficking has been charged with or convicted of an offense.

B. Any person may file a petition for vacatur and expungement setting forth the relevant facts and requesting (i) expungement of the police records and the court records relating to a charge or (ii) that the judgment of a conviction for an offense be vacated and expungement of the police records and the court records relating to such conviction, if at the time of offense leading to such charge or conviction such person was a victim of human trafficking and:

1. Such person is charged with and convicted of a violation of clause (i) or (ii) of subsection B of § 18.2-46.3; a violation of § 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-357.1, or 18.2-460; or any conspiracy or attempt to commit any offense specified in this subdivision, or any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States, and such offense was committed as part of a human trafficking scheme or at the direction of an operator of a human trafficking scheme; or

2. Such person is charged with and convicted of any misdemeanor, other than those specifically enumerated herein and (i) there is a finding by a court that the petitioner's participating in the misdemeanor offense was proximately caused by the petitioner's status as a victim of human trafficking and (ii) at the time of the filing of such petition, such person is no longer a victim of human trafficking or has sought services for victims of human trafficking; or

3. Such person is arrested for or charged with an offense, but not prosecuted for such offense, or a nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151.

C. A victim of human trafficking may file a petition under this section regardless of whether any other person, such as the person who made the petitioner a victim of human trafficking, has been arrested for, prosecuted for, charged with, or convicted of an offense.

D. There shall be a rebuttable presumption that a person's participation in an offense was a result of having been a victim of human trafficking if there is official documentation of the petitioner's status as a victim of human trafficking at the time of the offense.

E. The petition, with a copy of any warrants or indictments, if reasonably available, shall be filed in the circuit court of the county or city in which the conviction was obtained and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charges and convictions to be vacated and expunged, the date of any conviction as set forth in the petition, the petitioner's date of birth, and the full name used

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58 *by the petitioner at the time of the charges or convictions.*

59 *F. Upon request of the petitioner, all hearings conducted pursuant to this section shall be conducted*
60 *in camera, by two-way electronic audio-video communication in accordance with the standards*
61 *prescribed in subsection B of § 19.2-3.1, between the petitioner and the judge in lieu of personal*
62 *presence of the petitioner or the petitioner's attorney, from any location.*

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

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

79 *I. After receiving the criminal history record information from the CCRE, the court shall conduct a*
80 *hearing on the petition except as provided in this subsection. If the court finds that the continued*
81 *existence and possible dissemination of information relating to the charge or conviction of the petitioner*
82 *causes or may cause circumstances that constitute a manifest injustice to the petitioner, it shall enter an*
83 *order vacating the conviction and requiring the expungement of the police and court records related to*
84 *such conviction or charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior*
85 *criminal record and the conviction or charge was for a misdemeanor violation, the petitioner shall be*
86 *entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of*
87 *the police and court records relating to the conviction or charge, and the court shall enter an order of*
88 *expungement. If the attorney for the Commonwealth of the county or city in which the petition is filed (i)*
89 *gives written notice to the court pursuant to subsection G that he does not object to the petition and (ii)*
90 *stipulates in such written notice that the continued existence and possible dissemination of information*
91 *relating to the conviction or charge of the petitioner causes or may cause circumstances that constitute*
92 *a manifest injustice to the petitioner, the court may enter an order vacating the conviction and requiring*
93 *the expungement of the police and court records without conducting a hearing.*

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

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

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

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

106 *N. At the request of the petitioner or attorney for the Commonwealth, the court may place any*
107 *record or part of a proceeding related to a petition filed under this section under seal while the petition*
108 *is pending. The court may also keep any record or part of a proceeding related to a petition filed under*
109 *this section under seal if the petition is denied.*

110 **§ 19.2-392.4. Prohibited practices by employers, educational institutions, and agencies, etc., of**
111 **state and local governments.**

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

118 *B. Agencies, officials, and employees of the state and local governments shall not, in any*
119 *application, interview, or otherwise, require an applicant for a license, permit, registration, or*

120 governmental service to disclose information concerning any arrest or, criminal charge against him, or
121 conviction that has been *vacated or* expunged. An applicant need not, in answer to any question
122 concerning any arrest or criminal charge that has *or hasnot* resulted in a conviction, include a reference
123 to or information concerning *arrests, charges, or convictions* that have been *vacated or* expunged. Such
124 an application may not be denied solely because of the applicant's refusal to disclose information
125 concerning any arrest or, criminal charge against him, *or conviction* that has been *vacated or* expunged.
126 C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.