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## SENATE BILL NO. 725

Offered January 9, 2013

Prefiled December 4, 2012

A *BILL to amend and reenact § 19.2-392.2 of the Code of Virginia, relating to expungement of criminal records.*

\_\_\_\_\_  
Patron—Black

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-392.2 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-392.2. Expungement of police and court records.**

A. If a person is charged with the commission of a crime or any offense defined in Title 18.2; and ~~1.~~ *Is (i) the person is acquitted, or 2. A (ii) a nolle prosequi is taken, or (iii) the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.*

*A1. Any person who has been convicted of a misdemeanor may file a petition setting forth the relevant facts and requesting expungement of police records and court records relating to the charge and conviction after at least 10 years have passed since the person was convicted of the offense that he seeks to have expunged. The provisions of this subsection shall not apply to any person who has been convicted of (i) any criminal offense other than the conviction he seeks to have expunged; (ii) a violation of § 18.2-266, 29.1-738, or 46.2-341.24; (iii) any offense involving child abuse or neglect; (iv) any offense involving domestic violence for which a person is denied any firearm rights under 18 U.S.C. § 922(g); (v) any offense for which registration is required pursuant to § 9.1-902; (vi) any offense for which the person was given an active sentence of more than 30 days of incarceration; or (vii) any offense that resulted in serious bodily injury. In order to qualify under this subsection, the petitioner shall have no pending criminal charges and shall have no outstanding fines, costs, or restitution and shall have completed all terms of sentencing and probation, if any. The Department of State Police shall maintain a record of any expungement granted pursuant to this subsection. Any conviction that is expunged under this subsection shall be considered a prior conviction for purposes of prosecution of any subsequent offense for which such prior conviction statutorily enhances punishment. A court may issue an order allowing the records related to a conviction that has been expunged under this subsection to be entered into evidence in a case over which such court has jurisdiction, upon the motion of any prosecuting attorney or defendant, supported by an affidavit showing good cause. If a person whose conviction was expunged is later convicted of the same or a substantially similar offense, the court shall enter an order reinstating the first conviction. A conviction that is expunged under this subsection shall be considered a conviction in connection with an application to enlist in the armed forces.*

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 or indictment if reasonably available shall be filed in the circuit court of the county or city in which the *petitioner was convicted or 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, and date of conviction, if applicable.* Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge *or conviction* to be expunged, the date of final disposition of the charge 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 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

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SB725

59 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange  
60 (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to  
61 the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the  
62 CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the  
63 hearing, the court shall return the fingerprint card to the petitioner.

64 F. After receiving the criminal history record information from the CCRE, the court shall conduct a  
65 hearing on the petition. If the *petition requests expungement pursuant to subsection A and* the court  
66 finds that the continued existence and possible dissemination of information relating to the arrest of the  
67 petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it  
68 shall enter an order requiring the expungement of the police and court records, including electronic  
69 records, relating to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no  
70 prior criminal record and the arrest was for a misdemeanor violation, the petitioner shall be entitled, in  
71 the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police  
72 and court records relating to the charge, and the court shall enter an order of expungement.

73 *If the petition requests expungement of a conviction pursuant to subsection A1 and the court finds*  
74 *that the continued existence and possible dissemination of information relating to the arrest and*  
75 *conviction of the petitioner unduly prejudice the petitioner's opportunities for employment, education, or*  
76 *professional licensure, it shall enter an order requiring the expungement of the police and court records,*  
77 *including electronic records, relating to the charge and conviction and shall communicate the order to*  
78 *the Department of State Police. Otherwise it shall deny the petition.*

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

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

88 I. Notwithstanding any other provision of this section, when a person has been granted an absolute  
89 pardon for the commission of a crime that he did not commit, he may file in the circuit court of the  
90 county or city in which the conviction occurred a petition setting forth the relevant facts and requesting  
91 expungement of the police records and the court records relating to the charge and conviction, and the  
92 court shall enter an order requiring expungement of the police and court records relating to the charge  
93 and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this  
94 subsection. Upon the entry of such order, it shall be treated as provided in subsection K ~~hereof~~.

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

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

103 L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.

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