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HOUSE BILL NO. 1156

Offered January 13, 2016

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 expungement of protective orders.*

Patron—Cole (By Request)

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. Expungement of protective orders.

A. If a petition for a protective order filed pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10 has been denied or a protective order has been issued and such protective order is subsequently dissolved by the issuing court, the person against whom the protective order was issued may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the protective order or the petition for a protective order.

B. The petition, accompanied by a copy of the order denying the petition for a protective order or dissolving the protective order and, if any, a copy of the protective order shall be filed in the circuit court of the jurisdiction where the order denying the petition for a protective order or dissolving the protective order was issued. The petition shall contain the date of the denial of the petition for a protective order or the issuance of the protective order, the date of the issuance of the order dissolving the protective order, if any, the petitioner's date of birth, and the full name used by the petitioner at the time of the denial of the petition for a protective order or the issuance of the protective order.

C. A copy of the petition shall be served on the attorney for the Commonwealth and the law-enforcement agency for the jurisdiction 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. The law-enforcement agency shall provide a copy of the petitioner's criminal history record information to the court.

D. After receiving the criminal history record information, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the denial of the petition for a protective order or the issuance of the protective order causes or may cause circumstances that constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the protective order or the petition for the protective order. Otherwise, it shall deny the petition. If the attorney for the Commonwealth for the jurisdiction in which the petition is filed gives notice to the court pursuant to subsection C that he does not object to the petition, the court may enter an order of expungement without conducting a hearing.

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

F. Upon the entry of an order of expungement, the court in its order shall direct the manner by which the appropriate expungement or removal of such records shall be effected, which shall conform to the rules and regulations adopted pursuant to § 9.1-134. The clerk of the court shall cause a copy of such order to be forwarded to (i) the court that denied the petition for the protective order or issued the protective order, if different than the court hearing the petition for expungement; (ii) the primary law-enforcement agency for the jurisdiction where the order denying the petition for a protective order or dissolving the protective order was issued; and (iii) any other law-enforcement agency that the court finds has records related to the protective order.

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

H. 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, any protective order issued against him, or any petition for the issuance of

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59 *a protective order against him that has been denied* that has been expunged. An applicant need not, in
60 answer to any question concerning any arrest or criminal charge that has not resulted in a conviction,
61 *any protective order issued against him, or any petition for the issuance of a protective order*, include a
62 reference to or information concerning arrests ~~or~~, charges, *protective orders, or petitions for protective*
63 *orders* that have been expunged.

64 B. Agencies, officials, and employees of the state and local governments shall not, in any
65 application, interview, or otherwise, require an applicant for a license, permit, registration, or
66 governmental service to disclose information concerning any arrest or criminal charge against him, *any*
67 *protective order issued against him, or any petition for the issuance of a protective order* that has been
68 expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge
69 that has not resulted in a conviction, *any protective order issued against him, or any petition for the*
70 *issuance of a protective order*, include a reference to or information concerning *arrests, charges,*
71 *protective orders, or petitions for protective orders* that have been expunged. Such an application may
72 not be denied solely because of the applicant's refusal to disclose information concerning any arrest or
73 criminal charge against him, *any protective order issued against him, or any petition for the issuance of*
74 *a protective order* that has been expunged.

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