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## HOUSE BILL NO. 74

Offered January 13, 2016

Prefiled December 7, 2015

A BILL to amend and reenact §§ 19.2-392.1, 19.2-392.2, and 19.2-392.3 of the Code of Virginia, relating to expungement of misdemeanor drug offenses.

Patrons—Campbell and Rasoul; Senator: Carrico

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-392.1, 19.2-392.2, and 19.2-392.3 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, *or who have demonstrated their rehabilitation*, 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 or any offense defined in Title 18.2, and

1. Is acquitted, or

2. A nolle prosequi is taken or 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.

B. Any person who has been convicted of a misdemeanor offense of possession of a controlled substance under § 18.2-250 or possession of marijuana under § 18.2-250.1 may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge and conviction after at least 10 years have passed since the person was convicted of the offense he seeks to have expunged, provided that the person would have been eligible to have been placed on probation under § 18.2-251 for the offense he seeks to have expunged but was not offered the opportunity to proceed under § 18.2-251 for such offense. In order to qualify under this subsection, the petitioner shall have (i) no subsequent convictions under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; (ii) no pending charges; (iii) no outstanding fines, costs, or restitution; and (iv) completed all terms of sentencing and probation, including successful completion of any drug treatment program and be dependency free. The Department of State Police shall maintain a record of any expungement granted pursuant to this subsection, and any conviction that is expunged under this subsection shall be considered a prior conviction for purposes of applying § 18.2-251 in subsequent proceedings.

C. 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.~~ D. 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 the 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 *and conviction, if applicable*.

~~D.~~ E. 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.~~ F. 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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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. If no hearing was conducted, upon  
64 the entry of an order of expungement or an order denying the petition for expungement, the court shall  
65 cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order,  
66 the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides  
67 the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

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

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

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

92 ~~I.~~ *J.* Notwithstanding any other provision of this section, when a person has been granted an absolute  
93 pardon for the commission of a crime that he did not commit, he may file in the circuit court of the  
94 county or city in which the conviction occurred a petition setting forth the relevant facts and requesting  
95 expungement of the police records and the court records relating to the charge and conviction, and 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 such order, it shall be treated as provided in subsection ~~K~~ *L*.

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

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

107 ~~L.~~ *M.* Costs shall be as provided by § 17.1-275, but shall not be recoverable against the  
108 Commonwealth.

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

112 **§ 19.2-392.3. Disclosure of expunged records.**

113 ~~A.~~ *A.* It ~~shall be~~ *is* unlawful for any person having or acquiring access to an expunged court or police  
114 record to open or review it or to disclose to another person any information from it without an order  
115 from the court ~~which that~~ ordered the record expunged. *Expunged court records maintained pursuant to*  
116 *subsection B of § 19.2-392.2 may be disclosed to an attorney for the Commonwealth for purposes of*  
117 *determining whether a defendant has ever received an expungement for a prior conviction of a*  
118 *misdemeanor offense of possession of a controlled substance under § 18.2-250 or possession of*  
119 *marijuana under § 18.2-250.1 that would be considered a prior conviction for purposes of applying*  
120 *§ 18.2-251 in subsequent proceedings. All requests and disclosures for expunged court records*

121 *maintained pursuant to subsection B of § 19.2-392.2 shall be made in accordance with the procedures*  
 122 *established by the Department of State Police.*

123 B. Upon a verified petition filed by the attorney for the Commonwealth alleging that the record is  
 124 needed by a law-enforcement agency for purposes of employment application as an employee of a  
 125 law-enforcement agency or for a pending criminal investigation and that the investigation will be  
 126 jeopardized or that life or property will be endangered without immediate access to the record, the court  
 127 may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may  
 128 permit a review of the record, but may not permit a copy to be made of it.

129 C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.

130 **2. That the Department of State Police shall develop procedures to allow for the secure**  
 131 **dissemination of expunged criminal conviction records to attorneys for the Commonwealth in**  
 132 **accordance with the requirements of subsection A of § 19.2-392.3 of the Code of Virginia and any**  
 133 **rules or regulations adopted pursuant to § 9.1-134 of the Code of Virginia.**