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HOUSE BILL NO. 2278

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 2.2-402 and 19.2-392.2 of the Code of Virginia, relating to expungement of police and court records; absolute pardon.*

Patron—Cole

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-402 and 19.2-392.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-402. Keeper of seals of Commonwealth; duties generally.

A. The Secretary of the Commonwealth shall (i) be keeper of the seals of the Commonwealth; (ii) keep a record of all executive acts, arrange and preserve all records and papers belonging to the executive branch of state government; (iii) be charged with the clerical duties of that department; and (iv) render to the Governor, in the dispatch of executive business, such services as he requires. The Secretary of the Commonwealth shall record or register all papers or documents required by law to be registered or recorded in his office, and, when required, furnish a copy of any record in his office under the seal of the Commonwealth.

B. The Secretary of the Commonwealth may authenticate records of any court of the Commonwealth and of any department of the government. He shall keep a register of all city, incorporated town, county, and district officers, and, when required, give a certificate of the election and qualification of any such officer.

C. The Secretary of the Commonwealth shall make an annual report to the Governor, identifying the following: (i) the governing boards of all public institutions of higher education, and other boards appointed by the Governor; (ii) all commissions issued under appointments made by the Governor, except commissions to notaries public; (iii) all departments, boards, councils, commissions, and other collegial bodies created in the executive branch of state government; and (iv) such other matters as the Governor requires.

The annual report shall also include:

1. An organizational chart of state government that (i) identifies each agency, department, and institution of state government and (ii) contains a brief description of the duties of each agency, department, and institution. The Secretary of the Commonwealth may include such other information in the organizational chart as the Secretary deems appropriate. Annually, the Secretary shall make such revisions to the organizational chart as are necessary to ensure its accuracy. The organizational chart shall be posted on the Commonwealth's website; and

2. Information and photographs of the members of the General Assembly; these materials shall be maintained for the Secretary's use in the annual report by the Clerks of the House of Delegates and the Senate.

The reports shall be transmitted by the Governor to the General Assembly, printed as other annual reports are printed, bound in a separate volume, and disposed of according to law.

D. The Secretary of the Commonwealth shall collect all fees described in § 2.2-409, and all other fees of office and commissions, accruing and pay them into the state treasury.

E. The Secretary of the Commonwealth shall, as soon as practicable, forward a copy of any absolute pardon granted by the Governor to a person for the commission of a crime that such person did not commit to the circuit court for the county or city in which such person was convicted of the crime for which the Governor granted the absolute pardon.

§ 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. 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

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59 law-enforcement agency.

60 C. The petition with a copy of the warrant or indictment if reasonably available shall be filed in the
61 circuit court of the county or city in which the case was disposed of by acquittal or being otherwise
62 dismissed and shall contain, except where not reasonably available, the date of arrest and the name of
63 the arresting agency. Where this information is not reasonably available, the petition shall state the
64 reason for such unavailability. The petition shall further state the specific criminal charge to be
65 expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of
66 birth, and the full name used by the petitioner at the time of arrest.

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

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

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

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

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

105 I. Notwithstanding any other provision of this section, ~~when a person has been granted upon~~
106 ~~receiving a copy pursuant to § 2.2-402 of an absolute pardon for the commission of a crime that he a~~
107 ~~person did not commit, he may file in the circuit court of the county or city in which the conviction~~
108 ~~occurred a petition setting forth the relevant facts and requesting expungement of the police records and~~
109 ~~the court records relating to the charge and conviction, and the court shall enter an order requiring~~
110 ~~expungement of the police and court records relating to the charge and conviction. Such order shall~~
111 ~~contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of such~~
112 ~~order, it shall be treated as provided in subsection K.~~

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

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

121 L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.
122 If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such
123 costs paid by the petitioner.
124 M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set
125 forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable
126 upon motion and notice made within three years of the entry of such order.

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