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SENATE BILL NO. 1339

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact §§ 9.1-128, 9.1-134, 17.1-502, and 19.2-392.1 through 19.2-392.4 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 1-229.1 and 8.01-40.5, by adding in Article 1 of Chapter 2 of Title 17.1 a section numbered 17.1-205.1, by adding sections numbered 19.2-392.1:1, 19.2-392.2:1, 19.2-392.2:2, 19.2-392.2:3, 19.2-392.3:1, and 19.2-392.4:1, and by adding in Chapter 23.1 of Title 19.2 sections numbered 19.2-392.5 and 19.2-392.6, relating to expungement and sealing of police and court records; Expungement Fee Fund created; protection of public record information; penalties.

Patrons—Surovell, Lucas and Morrissey; Delegates: Hope and Kory

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-128, 9.1-134, 17.1-502, and 19.2-392.1 through 19.2-392.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 1-229.1 and 8.01-40.5, by adding in Article 1 of Chapter 2 of Title 17.1 a section numbered 17.1-205.1, by adding sections numbered 19.2-392.1:1, 19.2-392.2:1, 19.2-392.2:2, 19.2-392.2:3, 19.2-392.3:1, and 19.2-292.4:1, and by adding in Chapter 23.1 of Title 19.2 sections numbered 19.2-392.5 and 19.2-392.6 as follows:

§ 1-229.1. Pardons.

"Absolute pardon" means an act by the Governor on behalf of the Commonwealth representing an official nullification of punishment and all other legal consequences of a crime.

"Simple pardon" means an act by the Governor on behalf of the Commonwealth representing official forgiveness of a crime for which a person has been convicted.

§ 8.01-40.5. Civil action for sale of public record information; data brokers; civil penalties.

A. As used in this section:

"Consumer" means a natural person who is a resident and domiciliary of the Commonwealth.

"Data broker" means a business that knowingly collects and sells or licenses to third parties the brokered public record information of a consumer with whom the broker does not have a direct relationship.

1. Examples of a direct relationship with a business include if the consumer is a past or present:

a. Customer, client, subscriber, user, or registered user of the business's goods or services;

b. Employee, contractor, or agent of the business;

c. Investor in the business; or

d. Donor to the business.

2. The following activities conducted by a business, and the collection and sale or licensing of brokered public record information incidental to conducting such activities, do not qualify the business as a data broker:

a. Developing or maintaining third-party e-commerce or application platforms;

b. Providing 411 directory assistance or directory information services, including name, address, and telephone number, on behalf of or as a function of a telecommunications carrier;

c. Providing publicly available information related to a consumer's business or profession; or

d. Providing publicly available information via real-time or near real-time alert services for health or safety purposes.

For purposes of this definition, the phrase "sells or licenses" does not include (i) a one-time or occasional sale of assets of a business as part of a transfer of control of those assets that is not part of the ordinary conduct of the business or (ii) a sale or license of data that is merely incidental to the business.

"Public record information" means information as described in 15 U.S.C § 1681k.

B. Data brokers shall:

1. Implement and maintain reasonable security procedures and practices to protect the accuracy of public record information.

2. Implement processes to affirmatively obtain the express consent of a parent or guardian of a minor before selling the public record information of such minor.

3. Implement procedures for consumers to submit a request to obtain any of their own public record information maintained by the data broker, including, at a minimum, a toll-free telephone number, and

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59 to obtain a copy of such information or any of such information sold to another entity by the data
60 broker regarding the consumer.

61 4. Refrain from maintaining or selling public record information about a consumer that it knows to
62 be inaccurate.

63 5. Provide a link on the homepage of the website of the data broker labeled "Do Not Sell My
64 Personal Information" that directs a consumer to a webpage enabling him or his authorized
65 representative to opt out of the sale of the consumer's public record information.

66 C. The provisions of this section shall not apply to (i) the Commonwealth or any agency,
67 commission, instrumentality, or political subdivision thereof; (ii) any clerk of court; (iii) any
68 organization that is tax exempt pursuant to § 501(c) or 527 of the Internal Revenue Code, as amended;
69 (iv) any financial institution as defined in § 6.2-100 or any public service corporation as defined in
70 § 56-1, including any affiliate or subsidiary thereof, or any entity that operates a payment network in
71 which all U.S. participants are financial institutions as defined in § 6.2-100; or (v) the activity of any
72 consumer reporting agency that is subject to civil liability pursuant to 15 U.S.C. § 1681.

73 D. If a data broker violates a provision of subsection B:

74 1. The Attorney General or an attorney for the Commonwealth may initiate a civil action against the
75 data broker and may recover a civil penalty of up to \$2,500 for each unintentional violation and up to
76 \$7,500 for each intentional violation.

77 2. A consumer may initiate a civil action against the data broker and may recover up to \$1,000 per
78 violation, in addition to actual damages caused by such violation, punitive damages in cases in which
79 the data broker's conduct was willful, and reasonable attorney fees, expert witness expenses, and costs.
80 A consumer may initiate a civil action and recover damages under this provision either for himself or
81 on behalf of a class of consumers.

82 3. In any action on behalf of a class, a party may also obtain injunctive relief.

83 **§ 9.1-128. Dissemination of criminal history record information; Board to adopt regulations and**
84 **procedures.**

85 A. Criminal history record information shall be disseminated, whether directly or through an
86 intermediary, only in accordance with § 19.2-389.

87 B. The Board shall adopt regulations and procedures for the interstate dissemination of criminal
88 history record information by which criminal justice agencies of the Commonwealth shall ensure that the
89 limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted
90 by recipients and will remain operative in the event of further dissemination.

91 C. The Board shall adopt regulations and procedures for the validation of an interstate recipient's
92 right to obtain criminal history record information from criminal justice agencies of the Commonwealth.

93 D. The Board shall adopt regulations and procedures for the dissemination of sealed police records
94 by which the criminal justice agencies of the Commonwealth and other individuals and agencies can
95 access such sealed records from the Central Criminal Records Exchange and shall ensure that the
96 access and dissemination of such sealed records are made in accordance with limitations on
97 dissemination of criminal history record information set forth in § 19.2-389.

98 **§ 9.1-134. Sealing of criminal history record information.**

99 The Board shall adopt procedures reasonably designed to (i) ensure the prompt expungement or
100 sealing of police records and the sealing or purging of criminal history record information when
101 required by state or federal law, regulation, or court order, and (ii) permit opening of sealed information
102 under conditions authorized by law.

103 **§ 17.1-205.1. Expungement Fee Fund.**

104 There is hereby created in the state treasury a special nonreverting fund to be known as the
105 Expungement Fee Fund, referred to in this section as "the Fund." The Fund shall be established on the
106 books of the Comptroller. All funds accruing to the Fund pursuant to § 19.2-392.2 and all funds
107 appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its
108 behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the
109 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
110 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in
111 the Fund. The Fund shall be administered by the Executive Secretary of the Supreme Court, who shall
112 use such funds solely to fund the costs for the compensation of court-appointed counsel under the
113 provisions of subsection N of § 19.2-392.2. Expenditures from the Fund shall be limited by an
114 appropriation in the general appropriation act. Expenditures and disbursements from the Fund shall be
115 made by the State Treasurer on warrants issued by the Comptroller upon request of the Executive
116 Secretary of the Supreme Court.

117 **§ 17.1-502. Administrator of circuit court system.**

118 A. The Executive Secretary of the Supreme Court shall be the administrator of the circuit court
119 system, which includes the operation and maintenance of a case management system and financial
120 management system and related technology improvements.

B. Any circuit court clerk may establish and maintain his own case management system, financial management system, or other independent technology using automation or technology improvements provided by a private vendor or the locality. Any data from the clerk's independent system may be provided directly from such clerk to designated state agencies. The data from the clerk's independent system may also be provided to designated state agencies through an interface with the technology systems operated by the Executive Secretary.

B1. If the data from a case management system established under subsection B is not provided to the Executive Secretary of the Supreme Court through an interface, such data shall be provided to the Department of State Police through an interface for purposes of complying with §§ 19.2-392.2:2 and 19.2-392.2:3. The parameters of such interface shall be determined by the Department of State Police. The costs of designing, implementing, and maintaining such interface shall be the responsibility of the circuit court clerk.

C. The Executive Secretary shall provide an electronic interface with his case management system, financial management system, or other technology improvements upon written request of any circuit court clerk. The circuit court clerk and the clerk's designated application service provider shall comply with the security and data standards established by the Executive Secretary for any such electronic interface. The Executive Secretary shall establish security and data standards for such electronic interfaces on or before June 30, 2013, and such standards shall be consistent with the policies, standards, and guidelines established pursuant to § 2.2-2009.

D. The costs of designing, implementing, and maintaining any such interface with the systems of the Executive Secretary shall be the responsibility of the circuit court clerk. Prior to incurring any costs, the Office of the Executive Secretary shall provide the circuit court clerk a written explanation of the options for providing such interfaces and provide the clerk with a proposal for such costs and enter into a written contract with the clerk to provide such services.

E. The Executive Secretary shall assist the chief judges in the performance of their administrative duties. He may employ such staff and other assistants, from state funds appropriated to him for the purpose, as may be necessary to carry out his duties, and may secure such office space as may be requisite, to be located in an appropriate place to be selected by the Executive Secretary.

§ 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 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.

§ 19.2-392.1:1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Expungement of the police records and the court records" means to remove all electronic and manual police and court records or portion thereof from a repository of such records, including criminal history record information contained in the Central Criminal Records Exchange, and place such records in a physically sealed and separate file or recorded to an offline medium, pursuant to procedures adopted pursuant to § 9.1-134.

"Sealing of the police and court records" means to (i) restrict dissemination of criminal history record information contained in the Central Criminal Records Exchange pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 and (ii) prohibit dissemination of court records.

§ 19.2-392.2. Expungement of police and court records.

A. If a person is charged with the commission of a crime, a civil offense, 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; (iv) (a) the person is convicted of a violation of § 4.1-305 or 18.2-250.1 or subsection B of § 18.2-371.2, (b) the person was under 21 years of age on the date of the incident leading to the conviction, (c) all court costs and fines and all orders of restitution have been satisfied, and (d) five years have passed since the date of conviction; or (v) (a) the person was charged with a violation of § 4.1-305, 18.2-250, or 18.2-250.1 and such charge was discharged and dismissed as provided in § 4.1-305 or 18.2-251 and (b) all court costs and fines and all orders of restitution have been satisfied, 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 or conviction.

B. 1. 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~~ *subdivision*. A petition filed under this ~~subsection~~ *subdivision* shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

2. A person shall not be required to pay any fees or costs for filing a petition pursuant to this section if such person files a petition requesting to proceed without the payment of fees and costs, and such petition:

a. States that (i) the final disposition of the criminal charge, civil offense, or conviction eligible for expungement occurred within the last 12 calendar months, as shown by an attached copy of the final case disposition, and (ii) the petitioner was represented by court-appointed counsel or a public defender, as certified by such person or his attorney with documentation of such representation attached; or

b. Requests a determination of indigency, pursuant to § 19.2-159, and the court with which such person files his expungement petition finds such person to be indigent.

C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be filed in the circuit court of the county or city 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. 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~~, civil offense, *or conviction* to be expunged, the date of final disposition of the charge *or conviction* 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 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. 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 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order of expungement or an order denying the petition for expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

F. After receiving the criminal history record information from the CCRE, 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 arrest, *charge, or conviction* of the petitioner causes or may cause circumstances ~~which~~ *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 *arrest, charge, or conviction*. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest, *charge, or conviction* was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the *arrest, charge, or conviction* and the court shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the *arrest, charge, or conviction* to be expunged is a felony, stipulates in such written notice that the continued existence and possible dissemination of information relating to the arrest, *charge, or conviction* of the petitioner causes or may cause circumstances ~~which~~ *that* constitute a manifest injustice to the petitioner, the court may enter an order of expungement without conducting a hearing.

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

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

I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402

of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection K.

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

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

L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth. ~~If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such costs paid by the petitioner. Any costs collected pursuant to this section shall be deposited in the Expungement Fee Fund created pursuant to § 17.1-205.1.~~

M. 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.

N. If a petitioner qualifies to file a petition for expungement without the payment of fees and costs pursuant to subdivision B 2 and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for expungement and represent the petitioner in the expungement proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed \$120, as determined by the court, and such compensation shall be paid from the Expungement Fee Fund.

O. A petition filed under this section and any responsive pleadings filed by the attorney for the Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court.

P. The Department of Motor Vehicles shall not expunge any conviction or any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt (i) in violation of federal regulatory record retention requirements or (ii) until three years after all statutory requirements associated with a driver's license suspension have been complied with if the Department of Motor Vehicles is required to administratively suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be expunged. Upon receipt of an order directing that an offense be expunged, the Department of Motor Vehicles shall expunge all records if the federal regulatory record retention period has run or three years have passed since the date that all statutory requirements associated with an administrative suspension have been satisfied. However, if the Department of Motor Vehicles cannot expunge an offense pursuant to this subsection at the time it is ordered, the Department of Motor Vehicles shall (a) notify the Department of State Police of the reason the record cannot be expunged and cite the authority prohibiting expungement at the time it is ordered, (b) notify the Department of State Police of the date on which such record can be expunged, (c) expunge such record on that date, and (d) notify the Department of State Police when such record has been expunged from the records of the Department of Motor Vehicles.

Q. Any provision in any plea agreement that purports to waive, release, or extinguish the right to file a petition requesting expungement of the police records and the court records shall be void and unenforceable as against public policy.

§ 19.2-392.2:1. Expungement of police and court records in district court.

A. If a person is charged with the commission of a misdemeanor criminal offense and is acquitted, or the charge against him is dismissed with prejudice, including dismissal by accord and satisfaction pursuant to § 19.2-151, he may immediately upon the acquittal or dismissal orally request expungement of the police records and the court records relating to the charge.

B. Upon such request and with the concurrence of the attorney for the Commonwealth, if the court finds that the continued existence and possible dissemination of information relating to the arrest of the person causes or may cause circumstances that constitute a manifest injustice to the person, it shall order the expungement of the police and court records, including electronic records, relating to the charge. Otherwise, it shall deny the request. Upon the entry of such order, it shall be treated as provided in subsection C. Any denial of a request for expungement, including a denial based on the attorney for the Commonwealth's objection to such request, shall be without prejudice, and the person may seek expungement in circuit court pursuant to the provisions of § 19.2-392.2.

C. Upon receipt of orders of dismissal and expungement, and payment by the person of \$100 in court costs, unless as provided in subsection D, the clerk of the court shall cause a copy of such orders

305 to be forwarded to the Department of State Police, which shall, pursuant to procedures adopted
306 pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such
307 records shall be effected. Any costs collected pursuant to this section shall be deposited in the
308 Expungement Fee Fund created pursuant to § 17.1-205.1.

309 D. A person shall not be required to pay any court costs pursuant to this section if such person has
310 been determined to be indigent pursuant to § 19.2-159.

311 E. If (i) the court or parties failed to strictly comply with the procedures set forth in this section or
312 (ii) the court enters an order of expungement contrary to law, any order entered shall be voidable upon
313 motion and notice made within three years of the entry of such order.

314 **§ 19.2-392.2:2. Sealing of police and court records by petition.**

315 A. A person who has been convicted of a (i) traffic infraction, (ii) misdemeanor offense, or (iii) Class
316 5 or 6 felony or violation of § 18.2-95 or any other felony offense where the defendant is deemed guilty
317 of larceny and punished as provided in § 18.2-95 or who has received a simple pardon for any crime or
318 any offense defined in Title 18.2 may file a petition setting forth the relevant facts and requesting
319 sealing of the police records and the court records relating to the arrest, charge, or conviction,
320 provided that such person has (a) never been convicted of a Class 1 or 2 felony, (b) not been convicted
321 of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any felony within the past
322 10 years of his petition.

323 B. A person shall not be required to pay any fees or costs for filing a petition pursuant to this
324 section if such person files a petition to proceed without the payment of fees and costs, and the court
325 with which such person files his petition finds such person to be indigent pursuant to § 19.2-159.

326 C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be
327 filed in the circuit court of the county or city in which the case was disposed of and shall contain,
328 except where not reasonably available, the date of arrest, the name of the arresting agency, and date of
329 conviction. Where this information is not reasonably available, the petition shall state the reason for
330 such unavailability. The petition shall further state the specific traffic offense or criminal conviction to
331 be sealed, the date of final disposition of the offense or conviction as set forth in the petition, the
332 petitioner's date of birth, and the full name used by the petitioner at the time of arrest or summons. A
333 petitioner may only have two petitions granted pursuant to this section within his lifetime.

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

338 E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's
339 fingerprints and shall provide that agency with a copy of the petition for sealed records. The
340 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange
341 (CCRE) with a copy of the petition for sealing of the police records and the court records attached. The
342 CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the
343 source documents that resulted in the CCRE entry that the petitioner wishes to seal, if applicable, the
344 set of fingerprints, and a copy of any prior orders entered pursuant to this section that were previously
345 granted to the petitioner. Upon completion of the hearing, the court shall return the fingerprint card to
346 the petitioner. If no hearing was conducted, upon the entry of an order of sealing or an order denying
347 the petition for sealing, the court shall cause the fingerprint card to be destroyed unless, within 30 days
348 of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person
349 from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the
350 return of the fingerprint card.

351 F. After receiving the criminal history record information from the CCRE, the court shall conduct a
352 hearing on the petition. If the court finds that:

353 1. During a period after the date of the conviction or release from incarceration, whichever date
354 occurred later, the person has not been convicted of violating any law of the Commonwealth that
355 requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any
356 other state, the District of Columbia, or the United States or any territory thereof, excluding traffic
357 infractions under Title 46.2 for:

358 a. Three years for any non-misdemeanor traffic offense;

359 b. Five years for any misdemeanor traffic offense, other than a violation of § 18.2-266, or any
360 misdemeanor offense that is not a crime of moral turpitude; or

361 c. Ten years for any misdemeanor offense that involves moral turpitude, a violation of § 18.2-266, a
362 Class 5 or Class 6 felony offense, or a violation of § 18.2-95 or any other felony offense where the
363 defendant is deemed guilty of larceny and punished as provided in § 18.2-95;

364 2. If the records relating to the offense indicate that the occurrence leading to the conviction
365 involved the use or dependence upon alcohol or any narcotic drug or any other self-administered
366 intoxicant or drug of whatsoever nature, the petitioner has demonstrated his rehabilitation;

3. The petitioner has not previously obtained the sealing of more than two other convictions arising out of different sentencing events; and

4. The continued existence and possible dissemination of information relating to the arrest, charge, or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner,

the court shall enter an order requiring the sealing of the police and court records, including electronic records, relating to the arrest, charge, or conviction. Otherwise, it shall deny the petition.

If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the arrest, charge, or conviction to be sealed is a misdemeanor offense that involves moral turpitude, a violation of § 18.2-266, or a felony offense, stipulates in such written notice that the petitioner is eligible to have such misdemeanor or felony offense sealed and the continued existence and possible dissemination of information relating to the arrest, charge, or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, the court may enter an order of sealing without conducting a hearing.

G. 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.

H. Upon entry of a court order for the sealing of the police and court records pursuant to this section, the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 shall ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing and shall not disseminate any court record of such arrest, criminal charge, or conviction to the public, except as provided in 19.2-392.3:1.

I. Upon the entry of an order of sealing, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134, direct the manner by which the appropriate sealing and removal of such records shall be effected. The Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange that relates to the arrest, criminal charge, or conviction that was ordered to be sealed, except for the purposes set forth by the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. The Department of State Police shall also electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated by the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

J. Costs shall be as provided by § 17.1-275 but shall not be recoverable against the Commonwealth. Any costs collected pursuant to this section shall be deposited in the Expungement Fee Fund created pursuant to § 17.1-205.1.

K. 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 sealing of the police records and the court records contrary to law shall be voidable upon motion and notice made within three years of the entry of such order.

L. If a petitioner qualifies to file a petition for sealing of the police records and the court records without the payment of fees and costs pursuant to subsection B and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for sealing of the police records and the court records and represent the petitioner in the sealed records proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed \$120, as determined by the court, and such compensation shall be paid from the Expungement Fee Fund.

M. A petition filed under this section and any responsive pleadings filed by the attorney for the Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court.

N. Nothing in this section shall require the Department of Motor Vehicles to seal any conviction or any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt (i) in violation of federal regulatory record retention requirements or (ii) until three years after all statutory requirements associated with a driver's license suspension have been complied with if the Department of Motor Vehicles is required to administratively suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be sealed. Upon receipt of an order directing that an offense be sealed, the Department of Motor Vehicles shall seal all records if the federal regulatory record retention period has run or three years have passed since the date that all statutory requirements associated with an administrative suspension have been satisfied. However, if the Department of Motor Vehicles cannot seal an offense pursuant to this section at the time it is ordered, the Department of Motor Vehicles shall (a) notify the Department of State Police of the reason the

record cannot be sealed and cite the authority prohibiting the sealing at the time it is ordered, (b) notify the Department of State Police of the date on which such record can be sealed, (c) seal such record on that date, and (d) notify the Department of State Police when such record has been sealed from the records of the Department of Motor Vehicles.

§ 19.2-392.2:3. Automatic sealing of police and court records for certain offenses.

A. When any person is arrested, charged, or convicted for (i) a Class 3 or 4 misdemeanor that is reported to the Central Criminal Records Exchange or (ii) a violation of § 4.1-305, 18.2-250.1, or 18.2-265.3 involving marijuana, a circuit court shall enter an order for any person sealing the police and court records for such offense, provided that (a) 10 years have passed since the date of final disposition, whichever is the latest date, and (b) the person arrested, charged, or convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, including traffic violations that result in a point assignment pursuant to § 46.2-492. Any number of arrests or charges that do not result in a conviction shall be sealed in accordance with this section, but a person may only have his convictions from two sentencing events sealed pursuant to this section over the course of his lifetime. Any convictions from a third or subsequent sentencing event are ineligible for sealing under this section.

B. On a monthly basis, the Department of State Police shall determine which arrests, charges, or convictions in the Central Criminal Records Exchange meet the criteria for automatic sealing of records set forth in subsection A. After making such determination, the Department of State Police shall provide an electronic list of all persons with arrests, charges, or convictions that meet the criteria for automatic sealing of records set forth in subsection A to the Executive Secretary of the Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502.

C. Upon receipt of the electronic list from the Department of State Police provided under subsection B, on at least a monthly basis the Executive Secretary of the Supreme Court shall provide an electronic list of all persons with arrests, charges, or convictions that meet the criteria for automatic sealing of records set forth in subsection A to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the Executive Secretary.

D. Upon receipt of the electronic list provided under subsection B or C, on at least a monthly basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the arrests, charges, or convictions that meet the criteria for automatic sealing of records set forth in subsection A be automatically sealed and removed pursuant to procedures adopted pursuant to § 9.1-134. Such order shall contain the names of the persons arrested, charged, or convicted.

E. Upon entry of a court order for the sealing of the police and court records pursuant to this section, the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 shall ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing and shall not disseminate any court record of such arrest, criminal charge, or conviction to the public, except as provided in 19.2-392.3:1.

F. The clerk of each circuit court shall provide an electronic copy of any order entered under subsection D to the Department of State Police on at least a monthly basis. Upon receipt of such order, the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange that relates to the arrest, criminal charge, or conviction that was ordered to be sealed, except for the purposes set forth by the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. The Department of State Police shall also electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated by the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

G. All electronic lists created in accordance with this section are not subject to further dissemination unless explicitly provided for by this section. Any willful and intentional unlawful dissemination is punishable as an unlawful dissemination of criminal history record information in violation of § 9.1-136.

H. If an offense is automatically sealed contrary to law, the automatic sealing of the police records and the court records for that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.

I. For purposes of this section, any traffic infraction or any Class 3 or 4 misdemeanor that is not reported to the Central Criminal Records Exchange shall be considered sealed in accordance with this section when the records from such traffic infraction or Class 3 or 4 misdemeanor are destroyed in accordance with § 16.1-69.55 or 17.1-213.

J. Nothing in this section shall require the Department of Motor Vehicles to seal any conviction or

any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt (i) in violation of federal regulatory record retention requirements or (ii) until three years after all statutory requirements associated with a driver's license suspension have been complied with if the Department of Motor Vehicles is required to administratively suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be sealed. Upon receipt of an order directing that an offense be sealed, the Department of Motor Vehicles shall seal all records if the federal regulatory record retention period has run or three years have passed since the date that all statutory requirements associated with an administrative suspension have been satisfied. However, if the Department of Motor Vehicles cannot seal an offense pursuant to this section at the time it is ordered, the Department of Motor Vehicles shall (a) notify the Department of State Police of the reason the record cannot be sealed and cite the authority prohibiting the sealing at the time it is ordered, (b) notify the Department of State Police of the date on which such record can be sealed, (c) seal such record on that date, and (d) notify the Department of State Police when such record has been sealed from the records of the Department of Motor Vehicles.

§ 19.2-392.3. Disclosure of expunged police and court records; penalties.

A. It shall be unlawful for any person having or acquiring access to an expunged court or police record pursuant to § 19.2-392.2 or 19.2-392.2:1 to open or review it or to disclose to another person any information from it without an order from the court which that ordered the record expunged.

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

C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. Any person who maliciously and intentionally violates this section is guilty of a Class 6 felony.

D. The provisions of this section shall not prohibit the disclosure of an expunged court or police record or any information from such records among law-enforcement officers and attorneys for the Commonwealth when such disclosures are made by such officers or attorneys while engaged in the performance of their public duties.

§ 19.2-392.3:1. Disclosure of sealed police and court records; penalties.

A. It is unlawful for any person having or acquiring access to a sealed police or court record pursuant to § 19.2-392.2:2 or 19.2-392.2:3 to open or review it or to disclose to another person any information from it without an order from the court that ordered the record sealed or unless such disclosure is made in accordance with subsection B or C.

B. Any person who is the subject of a sealed police or court record order entered pursuant to § 19.2-392.2:2 or 19.2-392.2:3 may submit a request to the circuit court that entered such sealing order to obtain a copy of the sealed records for himself or his designee. Such request shall be made under oath and on a form provided by the Supreme Court of Virginia. Upon receipt of the request from the subject, or the subject's designee, the clerk of the circuit court shall provide a copy of the requested sealed records to the subject of the records or his designee, as appropriate, depending on if the subject or his designee made such request.

C. Records relating to an arrest, charge, or conviction that was ordered to be sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated:

1. To make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm;

2. For fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System;

3. To the Virginia Criminal Sentencing Commission for research purposes;

4. To any full-time or part-time employee of the Department of State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time employment or part-time employment with, or to be a volunteer with, the Department of State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

5. To the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5;

6. To any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science;

7. To the chief law-enforcement officer of a locality, or his designee who shall be an individual

employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5;

8. To any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration;

9. To any employer or prospective employer or its designee where state or federal law requires the employer to inquire about prior criminal charges or convictions;

10. To any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President;

11. To any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § 19.2-349 for purposes of collecting such court costs, fines, or restitution;

12. To administer and utilize the DNA Analysis and Data Bank set forth in Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18;

13. To publish decisions of the Supreme Court and Court of Appeals, subject to the provisions of subsection B of § 17.1-323 and subsections B and D of § 17.1-413;

14. To any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairmen of the House Committee for Courts of Justice or the Senate Committee on the Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the Office of the Executive Secretary;

15. To any employer or prospective employer or its designee that is authorized access to such sealed records pursuant to the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134; or

16. To the person arrested, charged, or convicted of the offense that was sealed.

D. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. Any person who maliciously and intentionally violates this section is guilty of a Class 6 felony.

E. The provisions of this section shall not prohibit the disclosure of a sealed court or police record or any information from such records among law-enforcement officers and attorneys for the Commonwealth when such disclosures are made by such officers or attorneys while engaged in the performance of their public duties.

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments for expunged police and court records; penalty.

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, or conviction that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, or conviction, include a reference to or information concerning arrests or charges, or convictions that have been expunged.

B. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him, or conviction that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest or criminal charge against him, or conviction that has been expunged.

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

§ 19.2-392.4:1. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments for sealed police and court records; penalty.

A. Except as provided in subsection D, agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and educational institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, charge, or conviction against him that has been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3.

B. Except as provided in subsection D, agencies, officials, and employees of state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license,

permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him that has been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically sealed. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3.

C. No person, as defined in § 36-96.1:1, shall, in any application for the sale or rental of a dwelling, as defined in § 36-96.1:1, require an applicant to disclose information concerning any arrest, charge, or conviction against him that has been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, charge, or conviction against him that has been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3.

D. The provisions of subsections A and B shall not apply if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the Department of State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry;

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or

5. The rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 allow the employer to access such sealed records.

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

F. If any entity or person listed under subsection A, B, or C includes a question about a prior criminal arrest, charge, or conviction in an application for one or more of the purposes set forth in such subsections, such application shall include a notice to the applicant that a charge or conviction that has been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 does not have to be disclosed in the application.

Such notice need not be included on any application for one or more of the purposes set forth in subsection D.

§ 19.2-392.5. Effect of expunged police and court records.

Any person who has had an arrest, charge, or conviction expunged pursuant to § 19.2-392.2 or 19.2-392.2:1 shall stand in the place as if such expunged arrest, charge, or conviction never happened and any legal consequences of such arrest, charge, or conviction are nullified.

§ 19.2-392.6. Effect of sealed police and court records.

A. Any person who has had an arrest, charge, or conviction sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 may not have such an arrest, charge, or conviction used to impeach his credibility as a testifying witness at any hearing or trial if such arrest, charge, or conviction occurred more than 10 years from the date of such hearing or trial unless the probative value of the impeachment evidence, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and the proponent of such impeachment evidence gives the adverse party written notice of his intent to use such arrest, charge, or conviction, so that the adverse party may contest such use.

B. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 may be admissible in proceedings relating to the care and custody of a child.

C. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 shall not be disclosed in any sentencing report and shall not be considered when ascertaining the punishment of a criminal defendant.

D. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 may operate as a barrier crime as defined in § 19.2-392.02.

E. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 shall not be maintained, sold, or reported by any third party unless the disclosure of such arrest, charge, or conviction is made in accordance with the provisions of this chapter.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the

674 Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant
675 to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot
676 be determined for periods of commitment to the custody of the Department of Juvenile Justice.
677 3. That the Secretary of Public Safety and Homeland Security shall establish a work group
678 composed of the Superintendent of State Police or his designee, the Director of the Department of
679 Criminal Justice Services or his designee, the Executive Secretary of the Supreme Court or his
680 designee, and such other stakeholders as the Secretary of Public Safety and Homeland Security
681 shall deem appropriate to evaluate the feasibility of destroying expunged or sealed police and
682 court records. The work group shall provide recommendations related to the destruction of police
683 and court records, permanently purging criminal history record information, and preservation of
684 any necessary information from such records. The work group shall report its findings and
685 recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary
686 and the House Committee for Courts of Justice by November 1, 2021.
687 4. That the Department of Criminal Justice Services shall adopt regulations to implement the
688 provisions of this act to be effective within 280 days of its enactment.
689 5. That the provisions of the first enactment of this act amending the Code of Virginia by adding
690 a section numbered 17.1-205.1 and amending subsection L of § 19.2-392.2 shall become effective on
691 July 1, 2021, and that the remaining provisions of the first enactment of this act shall become
692 effective on July 1, 2022.