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SENATE BILL NO. 1339

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary on February 1, 2021)

(Patrons Prior to Substitute—Senators Surovell, Morrissey [SB 1283], and Lucas [SB 1372])

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 a section numbered 1-229.1, 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, 19.2-392.6, and 19.2-392.7, relating to expungement and sealing of police and court records; Expungement Fee Fund created; protection of public record information; penalties.

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 a section numbered 1-229.1, 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, 19.2-392.6, and 19.2-392.7 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.

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

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

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

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

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

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

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

§ 17.1-205.1. Expungement Fee Fund.

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

§ 17.1-502. Administrator of circuit court system.

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A. The Executive Secretary of the Supreme Court shall be the administrator of the circuit court system, which includes the operation and maintenance of a case management system and financial 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, (ii) in violation of federal program requirements, or (iii) 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 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 a 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 to be forwarded to the Department of State Police, which shall, pursuant to procedures adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be effected. Any costs collected pursuant to this section shall be deposited in the Expungement Fee Fund created pursuant to § 17.1-205.1.

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

E. If (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, any order entered shall be voidable upon motion and notice made within three years of the entry of such order.

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

A. Except for a conviction of § 18.2-266 or 46.2-341.24, a person who has been convicted of a (i) traffic infraction, (ii) misdemeanor offense, or (iii) Class 5 or 6 felony or violation of § 18.2-95 or any other felony offense where the defendant is deemed guilty of larceny and punished as provided in § 18.2-95 or who has received a simple pardon for any crime or any offense defined in Title 18.2 may file a petition setting forth the relevant facts and requesting sealing of the police records and the court records relating to the arrest, charge, or conviction, provided that such person has (a) never been convicted of a Class 1 or 2 felony, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any felony within the past 10 years of his petition.

B. 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 to proceed without the payment of fees and costs, and the court with which such person files his petition finds such person to be indigent pursuant to § 19.2-159.

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 and shall contain, except where not reasonably available, the date of arrest, the name of the arresting agency, and date of conviction. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific traffic offense or criminal conviction to be sealed, the date of final disposition of the offense 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 or summons. A petitioner may only have two petitions granted pursuant to this section within his lifetime.

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 sealed records. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for sealing of the police records and the court records 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 seal, if applicable, the set of fingerprints, and a copy of any prior orders entered pursuant to this section that were previously granted to the petitioner. 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 sealing or an order denying the petition for sealing, 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:

1. During a period after the date of the conviction or release from incarceration, whichever date occurred later, the person 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, excluding traffic infractions under Title 46.2 for:

a. Three years for any traffic infraction;

b. Five years for any misdemeanor traffic offense, other than a violation of § 18.2-266 or 46.2-341.24, or any misdemeanor offense that is not a crime of moral turpitude; or

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

2. If the records relating to the offense indicate that the occurrence leading to the conviction involved the use or dependence upon alcohol or any narcotic drug or any other self-administered 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 46.2-341.24, 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 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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, (ii) in violation of federal program 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 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 a 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 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, (ii) in violation of federal program 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 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 a 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~~ *is* 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 when such disclosures are made by such officers or attorneys while engaged in the performance of their duties or practice of law.

§ 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 court record order entered pursuant to § 19.2-392.2:2 or 19.2-392.2:3 may submit a request to the court where such sealed records are maintained 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.

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 §§ 17.1-323 and 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;

16. To any business screening service for purposes of complying with subsection C of § 19.2-392.7; or

17. 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 when such disclosures are made by such officers or attorneys while engaged in the performance of their duties or practice of law.

§ 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.

A. 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, including the expungement of Department of Motor Vehicles records for such expunged arrest, charge, or conviction unless the expungement of such arrest, charge, or conviction would be (i) in violation of federal regulatory record retention requirements, (ii) in violation of federal program requirements, or (iii) in violation of other statutory requirements associated with a driver's license suspension that have not been satisfied.

B. For any person who has had an arrest, charge, or conviction expunged pursuant to § 19.2-392.2 or 19.2-392.2:1, the Commissioner of the Department of Motor Vehicles shall reinstate a person's privilege to drive a motor vehicle if such privilege was suspended or revoked solely on the basis of such arrest, charge, or conviction that was the subject of the expungement. Nothing in this act shall require the Commissioner to reinstate a person's driving privileges if (i) such privileges have been otherwise lawfully suspended or revoked, (ii) such person is otherwise ineligible for a driver's license, or (iii) such reinstatement is contrary to federal law.

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

A. 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.

B. 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.

C. 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.

D. 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.

§ 19.2-392.7. Background checks by business screening services.

A. For the purposes of this section:

"Business screening service" means a person engaged in the business of collecting, assembling, evaluating, or disseminating Virginia criminal history records on individuals for a fee. "Business

screening service" does not include any government entity or the news media.

"Criminal history record" means information collected by a business screening service on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release.

"Delete" means that a criminal history record shall not be disseminated in any manner, except to any entity authorized to receive and use such information pursuant to subsection D of § 19.2-392.4:1, but may be retained in order to resolve any disputes relating to the accuracy of the record consistent with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

B. If a business screening service knows that a criminal history record has been automatically expunged, the business screening service shall promptly delete the record.

C. A business screening service shall register with the Department of State Police to electronically receive copies of orders of sealing of the police and court records provided to the Department of State Police pursuant to § 19.2-392.2:2 or 19.2-392.2:3. The orders of sealing of the police and court records received by the business screening service shall remain confidential and shall not be disseminated. The orders of sealing of the police and court records shall be used for the sole purpose of deleting criminal history records that have been sealed. The business screening service shall destroy the copies of the orders of sealing of the police and court records after deleting the information contained in such orders from criminal history records.

D. If the completeness or accuracy of a criminal history record maintained by a business screening service is disputed by the individual who is the subject of the record, the business screening service shall, without charge, investigate the disputed record. If, upon investigation, the business screening service determines that the record does not accurately reflect the content of the official record, the business screening service shall correct the disputed record so as to accurately reflect the content of the official record. If the disputed record is found to have been sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3, the business screening service shall promptly delete the record. A business screening service may terminate an investigation of a disputed record if the business screening service reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of the record to provide sufficient information to investigate the disputed record. Upon making a determination that the dispute is frivolous, the business screening service shall inform the subject of the record of the specific reasons why it has determined that the dispute is frivolous and shall provide a description of any information required to investigate the disputed record. The business screening service shall notify the subject of the disputed record of the correction or deletion of the record or of the termination or completion of the investigation related to the record within 30 days of the date when the business screening service receives notice of the dispute from the subject of the record. A business screening service that complies with this subsection is not in violation of this section.

E. A business screening service that violates this section is liable to the person who is the subject of the criminal history record for a penalty of $1,000 or actual damages caused by the violation, whichever is greater, plus costs and reasonable attorney fees. Prior to filing suit for an alleged violation of this section, the person who is the subject of the criminal history record shall file a dispute with the business screening service and the business screening services shall be given an opportunity to respond as provided in subsection E.

F. The Attorney General may file a civil action to enforce this section. If the court finds that a business screening service has willfully engaged in an act or practice in violation of this section, the Attorney General may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than $2,500 per violation. For the purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General notifies the alleged violator by certified mail that an act or practice is a violation of this section and the alleged violator, after receipt of said notice, continues to engage in the act or practice. In any civil action pursuant to this subsection, in addition to any civil penalty awarded, the Attorney General may also recover any costs and reasonable expenses incurred by the state in investigating and preparing the case, not to exceed $1,000 per violation, and attorney fees. Such additional costs and expenses shall be paid into the general fund.

G. A business screening service that disseminates criminal history record information in the Commonwealth is deemed to have consented to service of process in the Commonwealth and to the jurisdiction of courts of the Commonwealth for actions involving a violation of this section or for the recovery of remedies under this section.

H. A business screening service in compliance with the applicable provisions of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., is considered to be in compliance with this section. A business screening service is subject to the state remedies under this section if its actions would violate this section and federal law.

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 Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

3. That the Secretary of Public Safety and Homeland Security shall establish a work group composed of the Superintendent of State Police or his designee, the Director of the Department of Criminal Justice Services or his designee, the Executive Secretary of the Supreme Court or his designee, and such other stakeholders as the Secretary of Public Safety and Homeland Security shall deem appropriate to evaluate the feasibility of destroying expunged or sealed police and court records. The work group shall provide recommendations related to the destruction of police and court records, permanently purging criminal history record information, and preservation of any necessary information from such records. The work group shall report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2021.

4. That the Department of Criminal Justice Services shall adopt regulations to implement the provisions of this act to be effective within 280 days of its enactment.

5. That the provisions of the first enactment of this act amending the Code of Virginia by adding a section numbered 17.1-205.1 and amending subsection L of § 19.2-392.2 of the Code of Virginia shall become effective on July 1, 2021, and that the remaining provisions of the first enactment of this act shall become effective on July 1, 2022.