

23102885D

SENATE BILL NO. 1402

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 9.1-128, as it shall become effective, 17.1-293.1, as it shall become effective, 19.2-392.2, 19.2-392.3, 19.2-392.5, 19.2-392.6, 19.2-392.7, 19.2-392.10, 19.2-392.11, 19.2-392.12, 19.2-392.13, and 19.2-392.14 and to repeal §§ 19.2-389.3, 19.2-392.2:1, 19.2-392.2:2, and 19.2-392.9 of the Code of Virginia, relating to criminal records; expungement and sealing of records; repeal.*

Patrons—Surovell; Delegate: Herring

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-128, as it shall become effective, 17.2-293.1, as it shall become effective, 19.2-392.2, 19.2-392.3, 19.2-392.5, 19.2-392.6, 19.2-392.7, 19.2-392.10, 19.2-392.11, 19.2-392.12, 19.2-392.13, and 19.2-392.14 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-128. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) **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 criminal history record information, including any records relating to an arrest, charge, or conviction, by which the criminal justice agencies of the Commonwealth and other persons, agencies, and employers can access such sealed records and shall ensure that access to and dissemination of such sealed records are made in accordance with the limitations on dissemination and use set forth in §§ 19.2-389; ~~49.2-389.3~~, and 19.2-392.13.

§ 17.1-293.1. (For contingent effective date see cc. 524 and 542) **Online case information system; exceptions.**

A. The Executive Secretary shall make available a publicly viewable online case information system of certain nonconfidential information entered into the case management system for criminal cases in the circuit courts participating in the Executive Secretary's case management system and in the general district courts. Such system shall be searchable by defendant name across all participating courts, and search results shall be viewable free of charge.

B. Upon entry of a sealing order pursuant to § 19.2-392.7, 19.2-392.8, ~~49.2-392.9~~, 19.2-392.11, or 19.2-392.12, the Executive Secretary shall not make any offense that was ordered to be sealed available for online public viewing in an appellate court, circuit court, or district court case management system maintained by the Executive Secretary.

C. Upon entry of a sealing order pursuant to § 19.2-392.7, 19.2-392.8, ~~49.2-392.9~~, 19.2-392.11, or 19.2-392.12, any circuit court clerk who maintains a viewable online case management or case information system shall not make any offense that was ordered to be sealed available for online public viewing.

§ 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 acquitted, or

2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed

INTRODUCED

SB1402

59 under this subsection shall include one complete set of the petitioner's fingerprints obtained from a
60 law-enforcement agency.

61 C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be
62 filed in the circuit court of the county or city in which the case was disposed of by acquittal or being
63 otherwise dismissed and shall contain, except ~~where~~ *when* not reasonably available, the date of arrest
64 and the name of the arresting agency. ~~Where~~ *When* this information is not reasonably available, the
65 petition shall state the reason for such unavailability. The petition shall further state the specific criminal
66 charge or civil offense to be expunged, the date of final disposition of the charge as set forth in the
67 petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest. *If*
68 *the petition is filed under this subsection, the petitioner shall request that the Central Criminal Records*
69 *Exchange (CCRE) electronically forward a copy of the petitioner's Virginia criminal history record to*
70 *the circuit court in which the petition was filed. Upon receiving such request, the CCRE shall*
71 *electronically forward such record to the circuit court; however, if the circuit court is unable to receive*
72 *an electronic transmission, the CCRE shall forward a copy of such record to the circuit court which*
73 *shall be maintained under seal by the clerk unless otherwise ordered by the court.*

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

78 E. ~~The~~ *If the petition is filed under subsection B, the* petitioner shall obtain from a law-enforcement
79 agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the
80 petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the ~~Central~~
81 ~~Criminal Records Exchange (CCRE)~~ *CCRE* with a copy of the petition for expungement attached. The
82 CCRE shall forward under seal to the court a copy of the petitioner's criminal history; ~~a copy of the~~
83 ~~source documents that resulted in the CCRE entry that the petitioner wishes to expunge, if applicable,~~
84 and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to
85 the petitioner. If no hearing was conducted, upon the entry of an order of expungement or an order
86 denying the petition for expungement, the court shall cause the fingerprint card to be destroyed unless,
87 within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint
88 card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped
89 envelope for the return of the fingerprint card.

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

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

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

113 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402
114 of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter
115 an order requiring expungement of the police and court records relating to the charge and conviction.
116 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon
117 the entry of such order, it shall be treated as provided in subsection K.

118 J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the
119 court shall enter an order requiring expungement of the police and court records relating to the charge
120 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 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.

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. 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. Any order to expunge issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.3 pursuant to regulations and procedures adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

§ 19.2-392.3. Disclosure of expunged records.

A. It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which 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. Upon a verified petition requesting access to an expunged court or police record that is filed by the person who was charged with the offense that was ordered to be expunged, with notice to the attorney for the Commonwealth, the court may enter an order allowing that person and their counsel to review and copy the expunged court or police record. However, no agency or entity shall be required to allow the person or their counsel to review or copy the expunged court or police record if such record has been destroyed.

D. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. *However, unless otherwise prohibited by law, any person who opens, reviews, or discloses information from an expunged court or police record after being provided a copy of such record by the person who was charged with the offense that was ordered to be expunged, or by counsel for such person, shall not be in violation of this section.*

§ 19.2-392.5. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Sealing defined; effect of sealing.

A. As used in this chapter, unless the context requires a different meaning, "sealing" means to (i) restricting dissemination of criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is authorized by a court order for one or more of the purposes set forth in § 19.2-392.13. "Sealing" may be required either by the issuance of a court order following the filing of a petition or automatically by operation of law under the processes set forth in this chapter.

B. The provisions of this chapter shall only apply to adults who were arrested, charged, or convicted of a criminal offense and to juveniles who were tried in circuit court pursuant to § 16.1-269.1.

C. Records relating to an arrest, charge, or conviction that have been sealed may be disseminated only for purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. The court, except as provided in subsection B of § 19.2-392.14, and any law-enforcement agency shall reply to any inquiry that no record exists with respect to an arrest, charge, or conviction that has been sealed, unless such information is permitted to be disclosed pursuant to § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. A clerk of any court and the Executive Secretary of the Supreme Court shall be immune from any cause of action arising from the production of sealed court records, including electronic records, absent gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any cause of action accruing prior to the effective date

of this section.

D. Except as otherwise provided in this section, upon entry of an order for sealing, the person who was arrested, charged, or convicted of the offense that was ordered to be sealed may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, charge, or conviction occurred. Except as otherwise provided in this section, no person as to whom an order for sealing has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning an arrest, charge, or conviction that has been sealed.

E. A person who is the subject of the order of sealing entered pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12 may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be sealed if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the 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.

Failure to disclose such sealed arrest, charge, or conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

F. An order to seal an arrest, charge, or conviction entered pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12 shall not relieve the person who was arrested, charged, or convicted of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense that was ordered to be sealed.

G. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12 may be admissible and considered in proceedings relating to the care and custody of a child. A person as to whom an order for sealing has been entered may be required to disclose a sealed arrest, charge, or conviction as part of such proceedings. Failure to disclose such sealed arrest, charge, or conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

H. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12 shall not be (i) disclosed in any sentencing report; (ii) considered when ascertaining the punishment of a defendant; or (iii) considered in any hearing on the issue of bail, release, or detention of a defendant.

I. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12 shall not constitute a barrier crime as defined in § 19.2-392.02, except as otherwise required under federal law.

J. A person shall be required to disclose any felony conviction sealed pursuant to § 19.2-392.12 for purposes of determining that person's eligibility to be empaneled as a member of a jury. Failure to disclose such conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

§ 19.2-392.6. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Automatic sealing of offenses resulting in a deferred and dismissed disposition or conviction; automatic sealing of former possession of marijuana offenses.

A. If a person was charged with an offense in violation of § 4.1-305 or former § 18.2-250.1, and such offense was deferred and dismissed as provided in § 4.1-305 or 18.2-251, such offense, including any records relating to such offense, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D.

B. If a person was convicted of a violation of any of the following sections, such conviction, including any records relating to such conviction, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D: § 4.1-305, 18.2-96, 18.2-103, 18.2-119, 18.2-120, or 18.2-134; a misdemeanor violation of § 18.2-248.1; or former § 18.2-250.1 or § 18.2-415.

C. Subject to the provisions of subsection D, any offense listed under subsection A and C, any conviction listed under subsection B shall be ordered to be automatically sealed if seven years have passed since the date of the dismissal or conviction and the person charged with or convicted of such 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, excluding traffic infractions under Title 46.2, during that time period.

~~D. No offense listed under subsection A shall be automatically sealed if, on the date of the deferral or dismissal, the person was convicted of another offense that is not eligible for automatic sealing under subsection A or B.~~ C. No conviction listed under subsection B A shall be automatically sealed if, on the date of the conviction, the person was convicted of another offense that is not eligible for automatic sealing under subsection A or B.

D. *If a person was charged with any criminal offense and such offense concluded with any final disposition as a violation of former § 18.2-250.1, such offense shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7.*

E. This section shall not be construed as prohibiting a person from seeking sealing in the circuit court pursuant to the provisions of § 19.2-392.12.

§ 19.2-392.7. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Process for automatic sealing of offenses resulting in a conviction or deferred disposition.

A. ~~On~~ *Except as provided in subsection A1, on at least a monthly basis, the Department of State Police shall determine which offenses in the Central Criminal Records Exchange meet the criteria for automatic sealing set forth in subsections A, B, and C of § 19.2-392.6.*

A1. *No later than July 1, 2025, the Department of State Police shall determine which offenses in the Central Criminal Records Exchange meet the criteria for automatic sealing set forth in subsection D of § 19.2-392.6.*

B. After reviewing the offenses under ~~subsection~~ *subsections A and A1*, the Department of State Police shall provide an electronic list of all offenses that meet the criteria for automatic sealing set forth in § 19.2-392.6 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 offenses that meet the criteria for automatic sealing set forth in § 19.2-392.6 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 offenses that meet the criteria for automatic sealing set forth in § 19.2-392.6 be automatically sealed under the process described in § 19.2-392.13. Such order shall contain the names of the persons charged with or convicted of such offenses. *The clerk of each circuit court shall maintain a copy of all orders entered pursuant to this subsection under seal.*

E. The clerk of each circuit court shall provide an electronic ~~copy~~ *notification* of any order entered under subsection D to the Department of State Police on at least a monthly basis. Upon receipt of such ~~order~~ *electronic notification*, the Department of State Police shall proceed as set forth in § 19.2-392.13.

F. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

G. If an offense is automatically sealed contrary to law, the automatic sealing of 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.

§ 19.2-392.10. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Process for automatic sealing of offenses resulting in acquittal, nolle prosequi, or dismissal.

A. On at least a monthly basis, 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 provide an electronic ~~list~~ *notification* of all offenses in such case management system to the Department of State Police that were ordered to be automatically sealed pursuant to §§ 19.2-392.8 and ~~19.2-392.9~~.

B. Upon receipt of the electronic ~~lists~~ *notification* under subsection A, the Department of State Police shall proceed as set forth in § 19.2-392.13.

§ 19.2-392.11. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Automatic sealing of misdemeanor offenses resulting in acquittal, nolle prosequi, or dismissal for persons with no convictions or deferred and dismissed offenses on their criminal history record.

A. On at least an annual basis, the Department of State Police shall review the Central Criminal Records Exchange and identify all persons with finalized misdemeanor case dispositions that resulted in (i) an acquittal, (ii) a nolle prosequi, or (iii) a dismissal, excluding any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, where the criminal history record

305 of such person contains no convictions for any criminal offense for a violation of any law of the
306 Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of
307 § 19.2-390 and where such criminal history record contains no arrests or charges for a violation of any
308 law of the Commonwealth that requires a report to the Central Criminal Records Exchange under
309 subsection A of § 19.2-390 in the past three years, excluding traffic infractions under Title 46.2. For
310 purposes of this subsection, any offense on the person's criminal history record that has previously been
311 ordered to be sealed shall not be deemed a conviction.

312 B. Upon identification of the finalized case dispositions under subsection A, the Department of State
313 Police shall provide an electronic list of such offenses to the Executive Secretary of the Supreme Court
314 and to any circuit court clerk who maintains a case management system that interfaces with the
315 Department of State Police under subsection B1 of § 17.1-502.

316 C. Upon receipt of the electronic list from the Department of State Police provided under subsection
317 B, on at least an annual basis the Executive Secretary of the Supreme Court shall provide an electronic
318 list of such offenses to the clerk of each circuit court in the jurisdiction where the case was finalized, if
319 such circuit court clerk participates in the case management system maintained by the Executive
320 Secretary.

321 D. Upon receipt of the electronic list provided under subsection B or C, on at least an annual basis
322 the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter
323 such order directing that the offenses be automatically sealed under the process described in
324 § 19.2-392.13. Such order shall contain the names of the persons charged with such offenses. *The clerk*
325 *of each circuit court shall maintain a copy of all orders entered pursuant to this subsection under seal.*

326 E. The clerk of each circuit court shall provide an electronic ~~copy~~ notification of any order entered
327 under subsection D to the Department of State Police on at least an annual basis. Upon receipt of such
328 ~~order~~ electronic notification, the Department of State Police shall proceed as set forth in § 19.2-392.13.

329 F. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for
330 the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to
331 § 9.1-128 and procedures adopted pursuant to § 9.1-134.

332 G. This section shall not be construed as prohibiting a person from seeking expungement in the
333 circuit court pursuant to the provisions of § 19.2-392.2. Entry of a sealing order pursuant to this section
334 shall not prohibit a person from seeking expungement in the circuit court pursuant to the provisions of
335 § 19.2-392.2.

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

339 I. If an offense is automatically sealed pursuant to the procedure set forth in this section and such
340 offense was not ordered to be automatically sealed at the time of acquittal, nolle prosequi, or dismissal
341 for one or more of the reasons set forth in § 19.2-392.8, the automatic sealing of such offense shall be
342 voidable upon motion and notice made within two years of the entry of the order to automatically seal
343 such offense.

344 **§ 19.2-392.12. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Sealing**
345 **of offenses resulting in a deferred and dismissed disposition or conviction by petition.**

346 A. Except for a conviction or deferral and dismissal of a violation of § 18.2-36.1, 18.2-36.2,
347 18.2-51.4, 18.2-51.5, 18.2-57.2, 18.2-266, or 46.2-341.24, a person who has been convicted of or had a
348 charge deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation
349 of § 18.2-95 or any other felony offense in which the defendant is deemed guilty of larceny and
350 punished as provided in § 18.2-95 may file a petition setting forth the relevant facts and requesting
351 sealing of the criminal history record information and court records relating to the charge or conviction,
352 provided that such person has (a) never been convicted of a Class 1 or 2 felony or any other felony
353 punishable by imprisonment for life, (b) not been convicted of a Class 3 or 4 felony within the past 20
354 years, ~~or~~ and (c) not been convicted of any other felony within the past 10 years of his petition.

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

358 C. The petition with a copy of the warrant, summons, or indictment, if reasonably available, shall be
359 filed in the circuit court of the county or city in which the case was disposed of and shall contain,
360 except when not reasonably available, the date of arrest, the name of the arresting agency, and the date
361 of conviction. When this information is not reasonably available, the petition shall state the reason for
362 such unavailability. The petition shall further state the charge or conviction to be sealed; the date of
363 final disposition of the charge or conviction as set forth in the petition; the petitioner's date of birth, sex,
364 race, and social security number, if available; and the full name used by the petitioner at the time of
365 arrest or summons. *A petition may request the sealing of the criminal history record information and*
366 *court records for multiple charges or convictions as set forth in subsection A provided that all such*

charges and convictions arose out of the same transaction or occurrence and all such charges are eligible for sealing. A petition may not request the sealing of the criminal history record information and court records for multiple charges or convictions that arose out of different transactions or occurrences. A petitioner may only have two petitions granted pursuant to this section within his lifetime. Any petition that is granted (i) solely to seal a violation of subsection A of § 18.2-265.3 as it relates to marijuana, (ii) solely to seal a violation of § 4.1-305, or (iii) to seal a violation of both subsection A of § 18.2-265.3 as it relates to marijuana and § 4.1-305 arising out of the same transaction or occurrence shall not count against the petitioner's lifetime maximum.

D. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of the petition by delivery or by first-class mail, postage prepaid, to 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 delivered to him or received in the mail.

E. Upon receipt of the petition, the circuit court shall order that the attorney for the Commonwealth or a law-enforcement officer, as defined in § 9.1-101, provide the court with a sealed copy of the criminal history record of the petitioner. In addition to the filing of the petition under subsection C, the petitioner shall request that the Central Criminal Records Exchange (CCRE) electronically forward a copy of the petitioner's Virginia criminal history record to the circuit court in which the petition was filed. Upon receiving such request, the CCRE shall electronically forward such record to the circuit court; however, if the circuit court is unable to receive an electronic transmission, the CCRE shall forward a copy of such record to the circuit court which shall be maintained under seal by the clerk unless otherwise ordered by the court. Upon completion of the hearing, the court shall cause the criminal history record to be destroyed unless, within 30 days of the date of the entry of the final order in the matter, the petitioner or the attorney for the Commonwealth notes an appeal to the Supreme Court of Virginia.

F. After receiving the criminal history record of the petitioner, the court may conduct a hearing on the petition. The court shall enter an order requiring the sealing of the criminal history record information and court records, including electronic records, relating to the charge or conviction, only if the court finds that all criteria in subdivisions 1 through 4 are met, as follows:

1. During a period after the date of (i) dismissal of a deferred charge, (ii) conviction, or (iii) release from incarceration of the charge or conviction set forth in the petition, 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. Seven years for any misdemeanor offense; or
- b. Ten years for any felony offense;

2. If the records relating to the offense indicate that the occurrence leading to the deferral or 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 two other deferrals or convictions arising out of different sentencing events; and

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

G. 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) stipulates in such written notice that the petitioner is eligible to have such offense sealed, and the continued existence and possible dissemination of information relating to the 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.

H. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

I. Upon the entry of an order of sealing, the clerk of the court shall maintain a copy of such order under seal and shall cause an electronic copy notification of such order to be forwarded to the Department of State Police. Such electronic order notification shall contain the petitioner's full name, date of birth, sex, race, and social security number, if available, and the full name used by the petitioner at the time of arrest or summons, as well as the petitioner's state identification number from the criminal history record, the court case number of the charge or conviction to be sealed, if available, and the document control number, if available. Upon receipt of such electronic order notification, the Department of State Police shall seal such records in accordance with § 19.2-392.13. When sealing such

charge or conviction, the Department of State Police shall include a notation on the criminal history record that such offense was sealed pursuant to this section. The Department of State Police shall also electronically notify the Office of the Executive Secretary of the Supreme Court and any other 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 in accordance with § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the 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 Sealing 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 for the sealing of records contrary to law shall be voidable upon motion and notice made within two years of the entry of such order.

L. If a petitioner qualifies to file a petition for sealing of 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 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 Sealing Fee Fund as provided in § 17.1-205.1.

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. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

N. A conviction or deferral and dismissal of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, 18.2-57.2, 18.2-266, or 46.2-341.24 is ineligible for the sealing of records under this section.

O. Nothing in this chapter shall prohibit the circuit court from entering an order to seal a charge or conviction under this section when such charge or conviction is eligible for sealing under some other section of this chapter.

§ 19.2-392.13. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Disposition of records when an offense is sealed; permitted uses of sealed records.

A. Upon electronic notification that a court order for sealing has been entered pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12, the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed, except for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. Upon receipt of such electronic notification, the Department of State Police shall 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 for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. Any records maintained electronically that are transformed or transferred by whatever means to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained shall be considered sealed, provided that such records are accessible only to the manager of the records or their designee.

B. Upon entry of a court order for sealing pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12, 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, charge, or conviction is not available for public online viewing as directed by subsections B and C of § 17.1-293.1. Additionally, upon entry of such an order for sealing, the clerk of court shall not disseminate any court record of such arrest, charge, or conviction, except as provided in subsections D and E.

C. Records relating to an arrest, charge, or conviction that was ordered to be sealed pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12 shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated and used for the following purposes: (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System; (iii) to the Virginia Criminal Sentencing Commission for its research purposes; (iv) to any full-time or part-time employee of the 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 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; (v) 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; (vi) 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; (vii) 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; (viii) 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; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (x) 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; (xi) 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; (xii) 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; (xiii) to publish decisions of the Supreme Court, Court of Appeals, or any circuit court; (xiv) to any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and 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; (xv) to any employer or prospective employer or its designee where this Code or a local ordinance requires the employer to inquire about prior criminal charges or convictions; (xvi) to any employer or prospective employer or its designee that is allowed access to such sealed records in accordance with the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134; (xvii) to any business screening service for purposes of complying with § 19.2-392.16; (xviii) to any attorney for the Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused; (xix) to any party in a criminal or civil proceeding for use as authorized by law in such proceeding; (xx) to any party for use in a protective order hearing as authorized by law; (xxi) to the Department of Social Services or any local department of social services for purposes of performing any statutory duties as required under Title 63.2; (xxii) to any party in a proceeding relating to the care and custody of a child for use as authorized by law in such proceeding; (xxiii) to the attorney for the Commonwealth and the court for purposes of determining eligibility for sealing pursuant to the provisions of § 19.2-392.12, *whether the court or parties failed to strictly comply with sealing procedures, or whether an order for sealing was entered contrary to law*; (xxiv) to determine a person's eligibility to be empaneled as a juror; and (xxv) to the person arrested, charged, or convicted of the offense that was sealed.

D. Upon request from any person to access a paper or a digital image of a court record, the clerk of court shall determine whether such record is open to public access and inspection. If the clerk of court determines that the court record has been sealed, such record shall not be provided to the requestor without an order from the court that entered the order to seal the court record. Any order from a court that allows access to a paper or a digital image of a court record that has been sealed shall only be issued for one or more of the purposes set forth in subsection C. Such order to access a paper or a digital image of a court record that has been sealed shall allow the requestor to photocopy such court record. No fee shall be charged to any person filing a motion to access a paper or a digital image of a court record that has been sealed if the person filing such motion is the same person who was arrested, charged, or convicted of the offense that was sealed.

E. No access shall be provided to electronic records in an appellate court, circuit court, or district court case management system maintained by the Executive Secretary of the Supreme Court or in a case management system maintained by a clerk of the circuit court for any arrest, charge, or conviction that was ordered to be sealed pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12, except to the Virginia Criminal Sentencing Commission for its research purposes. Such electronic records may be disseminated to the Virginia Criminal Sentencing Commission without a court order.

F. If a pleading or case document in a court record that was sealed is included among other court records that have not been ordered to be sealed, the clerk of court shall not be required to prohibit

dissemination of that record. The Supreme Court, Court of Appeals, and any circuit court shall not be required to prohibit dissemination of any published or unpublished opinion relating to an arrest, charge, or conviction that was ordered to be sealed.

G. The Department of Motor Vehicles shall not 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) in violation of federal program requirements 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 and all federal program requirements associated with a suspension have been satisfied. However, if the Department of Motor Vehicles cannot seal 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 sealed and cite the authority prohibiting sealing at the time it is ordered; (b) notify the Department of State Police of the date, if known at the time when the sealing is ordered, 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 within the Department of Motor Vehicles' records.

H. No arrest, charge, or conviction that has been sealed may be used to impeach the credibility of a testifying witness at any hearing or trial unless (i) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and (ii) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

I. The provisions of this section shall not prohibit the disclosure of sealed criminal history record information 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 for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime.

§ 19.2-392.14. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Disclosure of sealed records; penalty.

A. It is unlawful for any person having or acquiring access to sealed criminal history record information or a court record, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed pursuant to § 19.2-392.7, 19.2-392.8, ~~19.2-392.9~~, 19.2-392.11, or 19.2-392.12, to disclose such record or any information from such record to another person, except in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134.

B. A clerk of court shall not be in violation of this section if such clerk informs a person requesting access to a sealed court record that such court record has been sealed and can only be accessed pursuant to a court order.

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.

2. That §§ 19.2-392.2:1, 19.2-392.2:2, and 19.2-392.9 of the Code of Virginia are repealed.

3. That § 19.2-389.3 of the Code of Virginia is repealed effective on the earlier of (i) the date on which the processes to seal criminal history record information and court records pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective or (ii) July 1, 2025.

4. That the provisions of §§ 9.1-128, 19.2-392.2, 19.2-392.3, 19.2-392.6, 19.2-392.7, 19.2-392.10, 19.2-392.11, 19.2-392.12, and 19.2-392.13 of the Code of Virginia, as amended by this act, shall become effective on the earlier of (i) the date on which the processes to seal criminal history record information and court records pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective or (ii) July 1, 2025.

5. That the Department of State Police shall first transmit the lists required under subsection B of § 19.2-392.7 of the Code of Virginia, as amended by this act, not later than the earlier of (i) the first day of the third month following the date on which the processes to seal criminal history record information and court records pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective or (ii) October 1, 2025.