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## SENATE BILL NO. 504

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 5, 2024)

(Patron Prior to Substitute—Senator Surovell)

A *BILL to amend and reenact §§ 17.1-205.1, 19.2-392.2, as it is currently effective and as it shall become effective, 19.2-392.12, as it shall become effective, and 19.2-392.16, as it shall become effective, of the Code of Virginia, relating to expungement of police and court records.*

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

**1. That §§ 17.1-205.1, 19.2-392.2, as it is currently effective and as it shall become effective, 19.2-392.12, as it shall become effective, and 19.2-392.16, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

**§ 17.1-205.1. Sealing Fee Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Sealing 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 §§ 19.2-392.12 and 19.2-392.16 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 L of § 19.2-392.2 and subsection L of § 19.2-392.12*. 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.

**§ 19.2-392.2. (Effective until date pursuant to Acts 2023, cc. 554 and 555, cl. 4) 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) 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, 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.

*For purposes of this section, the term "otherwise dismissed" means to render a legal action out of consideration in a different way or manner than a nolle prosequi or formal dismissal by the trial court.*

*The term "otherwise dismissed" also includes those circumstances when a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2 and the initial charge is reduced or amended to another offense, including a lesser included offense or the same offense with a lesser gradient of punishment, so that such person is not convicted of the initial charge. The person then may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the initial charge.*

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

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 to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, ~~and~~ the full name used by the petitioner at the time of arrest, ~~and any emergency or preliminary protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9 that was attached or factually related to the charge or offense to be expunged provided that a permanent protective order was not ordered as a result of such emergency or preliminary protective order.~~

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

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

76 F. After receiving the criminal history record information from the CCRE, the court shall conduct a  
77 hearing on the petition. If the court finds that the continued existence and possible dissemination of  
78 information relating to the arrest of the petitioner ~~causes or~~ may cause circumstances ~~which that~~  
79 constitute a ~~manifest injustice~~ *hindrance to obtain employment, an education, or credit* to the petitioner,  
80 it shall enter an order requiring the expungement of the police and court records, including electronic  
81 records, relating to the charge *and any emergency or preliminary protective order issued pursuant to*  
82 *§ 16.1-253, 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9 that was attached or factually related to*  
83 *the expunged charge or offense provided that a permanent protective order was not ordered as a result*  
84 *of such emergency or preliminary protective order.* Otherwise, it shall deny the petition. However, if the  
85 petitioner has no prior criminal record and the arrest was for a misdemeanor violation or the charge was  
86 for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the contrary  
87 by the Commonwealth, to expungement of the police and court records relating to the charge, and the  
88 court shall enter an order of expungement. If the attorney for the Commonwealth of the county or city  
89 in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does  
90 not object to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written  
91 notice that the continued existence and possible dissemination of information relating to the arrest of the  
92 petitioner ~~causes or~~ may cause circumstances ~~which that~~ constitute a ~~manifest injustice~~ *hindrance to*  
93 *obtain employment, an education, or credit* to the petitioner, the court may enter an order of  
94 expungement without conducting a hearing.

95 *When an initial charge has been reduced or amended to another offense for which reporting to the*  
96 *CCRE is still required pursuant to § 19.2-390 and an order of expungement is granted for the initial*  
97 *charge, the CCRE shall amend the original arrest but maintain the fingerprints collected from the*  
98 *original arrest.*

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

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

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

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

117 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such  
118 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations  
119 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
120 such records shall be effected, *including the removal of criminal history record information in*  
121 *accordance with § 19.2-392.16.*

L. Costs shall be as provided by § 17.1-275, ~~but~~ unless a 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. Costs shall not be recoverable against the Commonwealth.

If a person files a petition to proceed without the payment of fees and costs pursuant to this subsection 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 Sealing Fee Fund as provided in § 17.1-205.1. Nothing in this subsection shall be construed to limit the ability of a nonprofit legal aid program or legal aid society from providing pro bono legal services or representation to any person.

If the court enters an order of expungement and the petitioner did not file a petition to proceed without the payment of fees and costs, or the court with which such petitioner filed his petition to proceed without the payment of fees and costs did not find such petitioner to be indigent, 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. Any petition for expungement or petition to proceed without the payment of fees and costs filed in accordance with this section shall be kept under seal.

O. Unless the subject of the criminal record requests otherwise, any person who files an appeal of a petition for relief that was denied under this section shall be allowed to proceed under a pseudonym pursuant to § 8.01-15.1.

**§ 19.2-392.2. (Effective pursuant to Acts 2023, cc. 554 and 555, cl. 4) 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) is acquitted, or~~

~~2. A (ii) a nolle prosequi is taken, (iii) 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.~~

*For purposes of this section, the term "otherwise dismissed" means to render a legal action out of consideration in a different way or manner than a nolle prosequi or formal dismissal by the trial court.*

*The term "otherwise dismissed" also includes those circumstances when a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2 and the initial charge is reduced or amended to another offense, including a lesser included offense or the same offense with a lesser gradient of punishment, so that such person is not convicted of the initial charge. The person then may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the initial charge.*

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

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 when not reasonably available, the date of arrest and the name of the arresting agency. When 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 to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest, and any emergency or preliminary protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9 that was attached or factually related to the charge or offense to be expunged provided that a permanent protective order was not ordered as a result of such emergency or preliminary protective order. If the petition is filed under this subsection, 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

183 circuit court which shall be maintained under seal by the clerk unless otherwise ordered by the court.

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

188 E. If the petition is filed under subsection B, the petitioner shall obtain from a law-enforcement  
189 agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the  
190 petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the CCRE  
191 with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a  
192 copy of the petitioner's criminal history and the set of fingerprints. Upon completion of the hearing, the  
193 court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of  
194 an order of expungement or an order denying the petition for expungement, the court shall cause the  
195 fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the  
196 petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the  
197 clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

198 F. After receiving the criminal history record information, the court shall conduct a hearing on the  
199 petition. If the court finds that the continued existence and possible dissemination of information relating  
200 to the arrest of the petitioner ~~causes or~~ may cause circumstances ~~which that~~ constitute a ~~manifest~~  
201 ~~injustice~~ *hindrance to obtain employment, an education, or credit* to the petitioner, it shall enter an order  
202 requiring the expungement of the police and court records, including electronic records, relating to the  
203 charge *and any emergency or preliminary protective order issued pursuant to § 16.1-253, 16.1-253.1,*  
204 *16.1-253.4, 19.2-152.8, or 19.2-152.9 that was attached or factually related to the expunged charge or*  
205 *offense provided that a permanent protective order was not ordered as a result of such emergency or*  
206 *preliminary protective order.* Otherwise, it shall deny the petition. However, if the petitioner has no  
207 prior criminal record and the arrest was for a misdemeanor violation or the charge was for a civil  
208 offense, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the  
209 Commonwealth, to expungement of the police and court records relating to the charge, and the court  
210 shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in  
211 which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not  
212 object to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written  
213 notice that the continued existence and possible dissemination of information relating to the arrest of the  
214 petitioner ~~causes or~~ may cause circumstances ~~which that~~ constitute a ~~manifest injustice~~ *hindrance to*  
215 *obtain employment, an education, or credit* to the petitioner, the court may enter an order of  
216 expungement without conducting a hearing.

217 *When an initial charge has been reduced or amended to another offense for which reporting to the*  
218 *CCRE is still required pursuant to § 19.2-390 and an order of expungement is granted for the initial*  
219 *charge, the CCRE shall amend the original arrest but maintain the fingerprints collected from the*  
220 *original arrest.*

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

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

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

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

239 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such  
240 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations  
241 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
242 such records shall be effected, *including the removal of criminal history record information in*  
243 *accordance with § 19.2-392.16.*

244 L. Costs shall be as provided by § 17.1-275, ~~but~~ *unless a 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. Costs shall not be recoverable against the Commonwealth.

If a person files a petition to proceed without the payment of fees and costs pursuant to this subsection 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 Sealing Fee Fund as provided in § 17.1-205.1. Nothing in this subsection shall be construed to limit the ability of a nonprofit legal aid program or legal aid society from providing pro bono legal services or representation to any person.

If the court enters an order of expungement and the petitioner did not file a petition to proceed without the payment of fees and costs, or the court with which such petitioner filed his petition to proceed without the payment of fees and costs did not find such petitioner to be indigent, 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, including a petition for expungement or petition to proceed without the payment of fees and costs, 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.

O. Unless the subject of the criminal record requests otherwise, any person who files an appeal of a petition for relief that was denied under this section shall be allowed to proceed under a pseudonym pursuant to § 8.01-15.1.

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

A. Except for a conviction or deferral and dismissal of a violation 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, a person who has been convicted of or had a charge deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation of § 18.2-95 or any other felony offense in which the defendant is deemed guilty of larceny and punished as provided in § 18.2-95 may file a petition setting forth the relevant facts and requesting sealing of the criminal history record information and court records relating to the charge or conviction, provided that such person has (a) never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, and (c) not been convicted of any other 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 when not reasonably available, the date of arrest, the name of the arresting agency, and the date of conviction. When this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the charge or conviction to be sealed; the date of final disposition of the charge or conviction as set forth in the petition; the petitioner's 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. A petition may request the sealing of the criminal history record information and 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. 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 notification of such order to be forwarded to the Department of State Police. Such electronic 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 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. *Nothing in this subsection shall be construed to limit the ability of a nonprofit legal aid program or legal aid society from providing pro bono legal services or representation to any person.*

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.

**§ 19.2-392.16. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) Dissemination of criminal history records and traffic history records 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 or traffic history records on individuals.

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

"Criminal history record" means any information collected by a business screening service on individuals containing any personal identifying information, photograph, or other identifiable descriptions pertaining to an individual and any information regarding 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 § 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, but may be retained in order to resolve any disputes relating to this section, 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.

"Destroy" means that a criminal history record or a traffic history record shall not be disseminated in any manner, except as authorized under § 19.2-392.3, but may be retained in order to resolve any disputes relating to this section, 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.

"Expunged record" means a Virginia criminal history record or a traffic history record that has been expunged pursuant to § 19.2-392.2.

"Sealed record" means a Virginia criminal history record or a traffic history record that has been sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12.

"Traffic history record" means any information collected by a business screening service on individuals containing any personal identifying information, photograph, or other identifiable descriptions pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal traffic infraction charges, and any disposition arising therefrom.

B. If a business screening service knows that a criminal history record or a traffic history record has been sealed, the business screening service shall promptly delete the record.

*If a business screening service knows that a criminal history record or a traffic history record is an expunged record, the business screening service shall promptly destroy such record and may not disseminate such record in any manner.*

C. A business screening service shall register with the Department of State Police to electronically receive copies of orders of expungement and of orders of sealing provided to the Department of State Police pursuant to §§ 19.2-392.2, 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12. The Department of State Police may charge an annual licensing fee to the business screening service for accessing such information, with a portion of such fee to be used to cover the cost of providing such records and the remainder of such fee to be deposited into the Sealing Fee Fund pursuant to § 17.1-205.1. The contract between the Department of State Police and the business screening service shall prohibit dissemination of the orders of expungement and the orders of sealing and shall require compliance by the business screening service with the provisions of subsections D, E, and F. The orders of expungement and the orders of sealing received by the business screening service shall remain

429 confidential and shall not be disseminated or resold. The *orders of expungement and the orders of*  
430 sealing shall be used for the sole purpose of deleting criminal history records that have been sealed. The  
431 business screening service shall destroy the copies of the *orders of expungement and the orders of*  
432 sealing after deleting the information contained in such orders from *expunged and sealed* records. The  
433 Department of State Police shall require that the business screening service seeking access to the  
434 information identify themselves, certify the purposes for which the information is sought, and certify that  
435 the information will be used for no other purpose. The Department of State Police shall further require  
436 that a business screening service acknowledge receipt of all electronic copies of *orders of expungement*  
437 *and the orders of sealing* provided by the Department of State Police. The Department of State Police  
438 shall maintain a public list within its website identifying the business screening services that are licensed  
439 to receive such records.

440 D. A business screening service that disseminates a criminal history record or a traffic history record  
441 on or after the effective date of this section shall include the date when the record was collected by the  
442 business screening service and a notice that the information may include records that have been sealed  
443 since that date.

444 E. A business screening service shall implement and follow reasonable procedures to assure that it  
445 does not maintain or sell criminal history records or traffic history records that are inaccurate or  
446 incomplete *or expunged records*. If the completeness or accuracy of a criminal history record or traffic  
447 history record maintained by a business screening service is disputed by the individual who is the  
448 subject of the record, the business screening service shall, without charge, investigate the disputed  
449 record. If, upon investigation, the business screening service determines that the record does not  
450 accurately reflect the content of the official record, the business screening service shall correct the  
451 disputed record so as to accurately reflect the content of the official record. If the disputed record is  
452 found to have been sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12, the  
453 business screening service shall promptly delete the record. *If the disputed record is found to have been*  
454 *an expunged record, the business screening service shall promptly destroy the record.* A business  
455 screening service may terminate an investigation of a disputed record if the business screening service  
456 reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of  
457 the record to provide sufficient information to investigate the disputed record. Upon making a  
458 determination that the dispute is frivolous, the business screening service shall inform the subject of the  
459 record of the specific reasons why it has determined that the dispute is frivolous and shall provide a  
460 description of any information required to investigate the disputed record. The business screening service  
461 shall notify the subject of the disputed record of the correction or deletion of the record or of the  
462 termination or completion of the investigation related to the record within 30 days of the date when the  
463 business screening service receives notice of the dispute from the subject of the record.

464 F. A business screening service shall implement procedures for individuals to submit a request to  
465 obtain their own criminal history record and traffic history record information maintained by the  
466 business screening service and any other information that may be sold to another entity by the business  
467 screening service regarding the individual.

468 G. A business screening service that violates this section is liable to the person who is the subject of  
469 the criminal history record or traffic history record for a penalty of \$1,000 or actual damages caused by  
470 the violation, whichever is greater, plus costs and reasonable attorney fees. Within 10 days of service of  
471 any suit by an individual, the business screening service may make a cure offer in writing to the  
472 individual claiming to have suffered a loss as a result of a violation of this section. Such offer shall be  
473 in writing and include one or more things of value, including the payment of money. A cure offer shall  
474 be reasonably calculated to remedy a loss claimed by the individual, as well as any attorney fees or  
475 other fees, expenses, or other costs of any kind that such individual may incur in relation to such loss.  
476 No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is  
477 delivered by the business screening service to the individual claiming loss or to any attorney  
478 representing such individual prior to the filing of the business screening service's initial responsive  
479 pleading in such proceeding. The business screening service shall not be liable for such individual's  
480 attorney fees and court costs incurred following delivery of the cure offer unless the actual damages  
481 found to have been sustained and awarded, without consideration of attorney fees and court costs,  
482 exceed the value of the cure offer.

483 H. The Attorney General may file a civil action to enforce this section. If the court finds that a  
484 business screening service has willfully engaged in an act or practice in violation of this section, the  
485 Attorney General may recover for the Literary Fund, upon petition to the court, a civil penalty of not  
486 more than \$2,500 per violation. For the purposes of this section, prima facie evidence of a willful  
487 violation may be shown when the Attorney General notifies the alleged violator by certified mail that an  
488 act or practice is a violation of this section and the alleged violator, after receipt of said notice,  
489 continues to engage in the act or practice. In any civil action pursuant to this subsection, in addition to  
490 any civil penalty awarded, the Attorney General may also recover any costs and reasonable expenses



491 incurred by the state in investigating and preparing the case, not to exceed \$1,000 per violation, and  
492 attorney fees. Such additional costs and expenses shall be paid into the general fund of the  
493 Commonwealth.

494 I. A business screening service that disseminates criminal history records or traffic history records in  
495 the Commonwealth is deemed to have consented to service of process in the Commonwealth and to the  
496 jurisdiction of courts of the Commonwealth for actions involving a violation of this section or for the  
497 recovery of remedies under this section.

498 J. A business screening service that is a consumer reporting agency and that is in compliance with  
499 the applicable provisions of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the  
500 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., is considered to be in compliance with the  
501 comparable provisions of this section. A business screening service is subject to the state remedies under  
502 this section if its actions would violate this section and federal law.

503 K. Any business screening service or person who engages in the conduct of a business screening  
504 service, as set forth in this section, that fails to register with the Department of State Police as required  
505 by subsection C and that disseminates criminal history records or traffic history records in the  
506 Commonwealth may be subject to (i) suit by any person injured by such dissemination and (ii)  
507 enforcement actions by the Attorney General as set forth in subsection H.

508 L. *Nothing in this section shall prohibit the prosecution of any person who willfully violates the*  
509 *provisions of § 19.2-392.3.*