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HOUSE BILL NO. 2129

Offered January 20, 1999

A BILL to amend and reenact §§ 19.2-392.1 and 19.2-392.2 of the Code of Virginia, relating to expungement of criminal records.

Patrons—Albo and Woodrum

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.1 and 19.2-392.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-392.1. Statement of policy.

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, and an education and to obtain credit and a like hindrance to a person with no prior criminal record whose arrest on a misdemeanor charge is dismissed pursuant to full compliance with all terms of an agreement or deferral approved by the court. It further finds that the police and court records of those of its citizens who have been absolutely pardoned for crimes for which they have been unjustly convicted can also be a hindrance. This chapter is intended to protect such persons from the unwarranted damage which may occur as a result of being arrested and convicted.

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

A. If a person is charged with the commission of a crime and

1. ~~Is~~The person is acquitted; or

2. A nolle prosequi is taken ~~on~~ ~~of~~ ~~the~~; or

3. The charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, or by full compliance with all terms of any agreement or deferral approved by the court in the case of a person who is charged with a misdemeanor and has no prior criminal record; or

3. ~~Is~~ 4. The person is granted an absolute pardon for the commission of a crime for which he has been unjustly convicted, 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 petition the court disposing of the charge for relief pursuant to this section.

C. The petition with a copy of the warrant 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 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.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition within twenty-one days after it is served on him.

E. The court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court shall enter an order of expungement.

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

G. Notwithstanding any other provision of this section, when the charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the police and court records relating to the charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection H hereof.

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60 H. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such
61 order to be forwarded to the Department of Criminal Justice Services, which Department shall, pursuant
62 to rules and regulations adopted pursuant to § 9-190, direct the manner by which the appropriate
63 expungement or removal of such records shall be effected.
64 I. Costs shall be as provided by § 14.1-112, but shall not be recoverable against the Commonwealth.