

SENATE BILL NO. 230

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact § 19.2-392.2, as it is currently effective and 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 § 19.2-392.2, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 19.2-392.2. (Effective until July 1, 2026) Expungement of police and court records.

A. If a person is *arrested*, charged ~~with~~, *summonsed*, or *indicted* for the commission of an *infraction*, a crime, or 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 is not ultimately convicted, provided that no finding of guilt was made by a court during the proceedings, such matter is eligible for expungement. Such person 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, a matter shall be eligible for expungement if the initial charge is reduced or amended to another offense, including a lesser-included offense or the same offense with a lesser punishment, such that the person is not convicted of 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~~ *charging document*, 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~~ *resolved* and shall contain, except when not reasonably available, the date of arrest and the name of the arresting agency. *A single petition may request the expungement of the police and court records for multiple charges arising out of separate transactions or occurrences. When this*

information is not reasonably available, the petition shall state the reason for such unavailability. *Such unavailability alone shall not be a basis for refusing expungement.* 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. 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 circuit court which shall be maintained under seal by the clerk unless otherwise ordered by the court.

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~~ *shall* file an objection or answer to the petition, *including the factual basis for such objection*, or may give written notice to the court that he does not object to the petition within 21 days after it is served on him.

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

F. After receiving the criminal history record information, 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 *potential* manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records *and any emergency or preliminary protective orders issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9*, relating to the charge. Otherwise, it shall deny the petition.

62 However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation or the
63 charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the
64 contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and
65 the court shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in
66 which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object
67 to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written notice that the
68 continued existence and possible dissemination of information relating to the arrest of the petitioner causes or
69 may cause circumstances which constitute a *potential* manifest injustice to the petitioner, the court may enter
70 an order of expungement without conducting a hearing. *The existence of a prior conviction alone shall not be*
71 *a sufficient basis to deny an expungement.*

72 G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the
73 decision of the court may appeal, as provided by law in civil cases. *Unless the subject of the criminal record*
74 *requests otherwise, any person whose petition for relief under this section is appealed shall be allowed to*
75 *proceed under a pseudonym pursuant to § 8.01-15.1.*

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

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

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

92 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.

§ 19.2-392.2. (Effective July 1, 2026) Expungement of police and court records.

A. If a person is *arrested*, charged ~~with~~, *summonsed*, or *indicted* for the commission of *an infraction*, a crime, or 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 is not ultimately convicted, provided that no finding of guilt was made by a court during the proceedings, such matter is eligible for expungement. Such person may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge. A person shall not be required to pay any court fees or costs for filing a petition under this subsection. For purposes of this section, a matter shall be eligible for expungement if the initial charge is reduced or amended to another offense, including a lesser-included offense or the same offense with a lesser punishment, such that the person is not convicted of 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. A person shall not be required to pay any court fees or costs for filing a petition under this subsection. A petition filed under this subsection shall

123 include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

124 C. The petition with a copy of the ~~warrant, summons, or indictment~~ *charging document*, if reasonably
125 available, shall be filed in the circuit court of the county or city in which the case was ~~disposed of by acquittal~~
126 ~~or being otherwise dismissed~~ *resolved* and shall contain, except when not reasonably available, the date of
127 arrest and the name of the arresting agency. *A single petition may request the expungement of the police and*
128 *court records for multiple charges arising out of separate transactions or occurrences.* When this
129 information is not reasonably available, the petition shall state the reason for such unavailability. *Such*
130 *unavailability alone shall not be a basis for refusing expungement.* The petition shall further state the specific
131 criminal charge or civil offense to be expunged, the date of final disposition of the charge as set forth in the
132 petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest. If the
133 petition is filed under this subsection, the petitioner shall request that the Central Criminal Records Exchange
134 (CCRE) electronically forward a copy of the petitioner's Virginia criminal history record to the circuit court
135 in which the petition was filed. Upon receiving such request, the CCRE shall electronically forward such
136 record to the circuit court; however, if the circuit court is unable to receive an electronic transmission, the
137 CCRE shall forward a copy of such record to the circuit court which shall be maintained under seal by the
138 clerk unless otherwise ordered by the court.

139 D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in
140 which the petition is filed. The attorney for the Commonwealth ~~may~~ *shall* file an objection or answer to the
141 petition, *including the factual basis for such objection*, or may give written notice to the court that he does not
142 object to the petition within 21 days after it is served on him.

143 E. If the petition is filed under subsection B, the petitioner shall obtain from a law-enforcement agency
144 one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for
145 expungement. The law-enforcement agency shall submit the set of fingerprints to the CCRE with a copy of
146 the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the
147 petitioner's criminal history and the set of fingerprints. Upon completion of the hearing, the court shall return
148 the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order of expungement
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155 the arrest of the petitioner causes or may cause circumstances which constitute a *potential* manifest injustice
156 to the petitioner, it shall enter an order requiring the expungement of the police and court records, including
157 electronic records *and any emergency or preliminary protective orders issued pursuant to § 16.1-253,*
158 *16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9,* relating to the charge. Otherwise, it shall deny the petition.
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160 charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown to the
161 contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and
162 the court shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in
163 which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object
164 to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written notice that the
165 continued existence and possible dissemination of information relating to the arrest of the petitioner causes or
166 may cause circumstances which constitute a *potential* manifest injustice to the petitioner, the court may enter
167 an order of expungement without conducting a hearing. *The existence of a prior conviction alone shall not be*
168 *a sufficient basis to deny an expungement.*

169 G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the
170 decision of the court may appeal, as provided by law in civil cases. *Unless the subject of the criminal record*
171 *requests otherwise, any person whose petition for relief under this section is appealed shall be allowed to*
172 *proceed under a pseudonym pursuant to § 8.01-15.1.*

173 H. Notwithstanding any other provision of this section, when the charge is dismissed because the court
174 finds that the person arrested or charged is not the person named in the summons, warrant, indictment or
175 presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged,
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177 contain a statement that the dismissal and expungement are ordered pursuant to this subsection and shall be
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179 order, it shall be treated as provided in subsection K.

180 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402 of an
181 absolute pardon for the commission of a crime that a person did not commit, the court shall enter an order
182 requiring expungement of the police and court records relating to the charge and conviction. Such order shall
183 contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of such order,

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

189 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be
190 forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant
191 to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be
192 effected. The Department of State Police shall validate the accuracy of any criminal history record ordered to
193 be expunged pursuant to this section but shall not validate whether such record is eligible for expungement.

194 L. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in
195 this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion
196 and notice made within three years of the entry of such order.

197 M. A petition filed under this section and any responsive pleadings filed by the attorney for the
198 Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court. Any order
199 to expunge issued pursuant to this section shall be sealed and may only be disseminated for the purposes set
200 forth in § 19.2-392.3 pursuant to regulations and procedures adopted pursuant to § 9.1-128 and procedures
201 adopted pursuant to § 9.1-134.