

HOUSE BILL NO. 838

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Hope)

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 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 a dismissal by the court under any circumstances and in any manner.

The term "otherwise dismissed" also includes those circumstances when an 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.

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

32 C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall  
33 be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being  
34 otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the  
35 name of the arresting agency. Where this information is not reasonably available, the petition shall state  
36 the reason for such unavailability. The petition shall further state the specific criminal charge or civil  
37 offense to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's  
38 date of birth, and the full name used by the petitioner at the time of arrest.

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

43 E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's  
44 fingerprints and shall provide that agency with a copy of the petition for expungement. The law-  
45 enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE)  
46 with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a  
47 copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry  
48 that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon completion of the  
49 hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the  
50 entry of an order of expungement or an order denying the petition for expungement, the court shall cause  
51 the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the

52 petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the  
53 clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

54 F. After receiving the criminal history record information from the CCRE, the court shall conduct  
55 a hearing on the petition. If the court finds that the continued existence and possible dissemination of  
56 information relating to the arrest of the petitioner ~~causes or may cause circumstances which~~ that constitute  
57 ~~a manifest injustice~~ hindrance to obtain employment, an education, or credit to the petitioner, it shall enter  
58 an order requiring the expungement of the police and court records, including electronic records, relating  
59 to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record  
60 and the arrest was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall  
61 be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement  
62 of the police and court records relating to the charge, and the court shall enter an order of expungement.  
63 If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written  
64 notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the charge  
65 to be expunged is a felony, stipulates in such written notice that the continued existence and possible  
66 dissemination of information relating to the arrest of the petitioner ~~causes or may cause circumstances~~  
67 ~~which~~ that constitute ~~a manifest injustice~~ hindrance to obtain employment, an education, or credit to the  
68 petitioner, the court may enter an order of expungement without conducting a hearing. When an initial  
69 charge has been reduced or amended to another offense for which reporting to the CCRE is still required  
70 pursuant to § 19.2-390 and an order of expungement is granted for the initial charge, the CCRE shall  
71 amend the original arrest but maintain the fingerprints collection from the original arrest.

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

74 H. Notwithstanding any other provision of this section, when the charge is dismissed because the  
75 court finds that the person arrested or charged is not the person named in the summons, warrant, indictment  
76 or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or  
77 charged, enter an order requiring expungement of the police and court records relating to the charge. Such  
78 order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection

79 and shall be accompanied by the complete set of the petitioner's fingerprints filed with his petition. Upon  
80 the entry of such order, it shall be treated as provided in subsection K.

81 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-  
82 402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall  
83 enter an order requiring expungement of the police and court records relating to the charge and conviction.  
84 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon  
85 the entry of such order, it shall be treated as provided in subsection K.

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

90 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such  
91 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations  
92 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
93 such records shall be effected.

94 L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the  
95 Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the  
96 petitioner such costs paid by the petitioner.

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

100 **§ 19.2-392.2. (Effective pursuant to Acts 2023, cc. 554 and 555, cl. 4) Expungement of police**  
101 **and court records.**

102 A. If a person is charged with the commission of a crime, a civil offense, or any offense defined  
103 in Title 18.2, ~~and~~

104 ~~1. Is (i) is~~ acquitted, ~~or~~

105           ~~2-A~~ (ii) a nolle prosequi is taken, or (iii) the charge is otherwise dismissed, including dismissal by  
106 accord and satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and  
107 requesting expungement of the police records and the court records relating to the charge.

108           For purposes of this section, the term "otherwise dismissed" means a dismissal by the court under  
109 any circumstances and in any manner.

110           The term "otherwise dismissed" also includes those circumstances when an initial charge is  
111 reduced or amended to another offense, including a lesser included offense or the same offense with a  
112 lesser gradient of punishment, so that such person is not convicted of the initial charge. The person then  
113 may file a petition setting forth the relevant facts and requesting expungement of the police records and  
114 the court records relating to the initial charge.

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

121           C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall  
122 be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being  
123 otherwise dismissed and shall contain, except when not reasonably available, the date of arrest and the  
124 name of the arresting agency. When this information is not reasonably available, the petition shall state  
125 the reason for such unavailability. The petition shall further state the specific criminal charge or civil  
126 offense to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's  
127 date of birth, and the full name used by the petitioner at the time of arrest. If the petition is filed under this  
128 subsection, the petitioner shall request that the Central Criminal Records Exchange (CCRE) electronically  
129 forward a copy of the petitioner's Virginia criminal history record to the circuit court in which the petition  
130 was filed. Upon receiving such request, the CCRE shall electronically forward such record to the circuit  
131 court; however, if the circuit court is unable to receive an electronic transmission, the CCRE shall forward

132 a copy of such record to the circuit court ~~which~~ that shall be maintained under seal by the clerk unless  
133 otherwise ordered by the court.

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

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

148 F. After receiving the criminal history record information, the court shall conduct a hearing on the  
149 petition. If the court finds that the continued existence and possible dissemination of information relating  
150 to the arrest of the petitioner ~~causes or may cause circumstances which~~ that constitute a ~~manifest injustice~~  
151 hindrance to obtain employment, an education, or credit to the petitioner, it shall enter an order requiring  
152 the expungement of the police and court records, including electronic records, relating to the charge.  
153 Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest  
154 was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled, in  
155 the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police  
156 and court records relating to the charge, and the court shall enter an order of expungement. If the attorney  
157 for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the  
158 court pursuant to subsection D that he does not object to the petition and (ii) when the charge to be

159 expunged is a felony, stipulates in such written notice that the continued existence and possible  
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163 charge has been reduced or amended to another offense for which reporting to the CCRE is still required  
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165 amend the original arrest but maintain the fingerprints collection from the original arrest.

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

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

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176 402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall  
177 enter an order requiring expungement of the police and court records relating to the charge and conviction.  
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179 the entry of such order, it shall be treated as provided in subsection K.

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

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185 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations

186 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
187 such records shall be effected.

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189 Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the  
190 petitioner such costs paid by the petitioner.

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

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

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