

1 HOUSE BILL NO. 838
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee for Courts of Justice
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Hope)

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

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

9 **1. That § 19.2-392.2, as it is currently effective and as it shall become effective, of the Code of**
 10 **Virginia is amended and reenacted as follows:**

11 **§ 19.2-392.2. (Effective until date pursuant to Acts 2023, cc. 554 and 555, cl. 4) Expungement**
 12 **of police and court records.**

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

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

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

19 For purposes of this section, the term "otherwise dismissed" means a dismissal by the court under
 20 any circumstances and in any manner, excluding any charge that is deferred and dismissed after a finding
 21 of facts sufficient to justify a finding of guilt.

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

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

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

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

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

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

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

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

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

80 order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection
81 and shall be accompanied by the complete set of the petitioner's fingerprints filed with his petition. Upon
82 the entry of such 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-
84 402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall
85 enter an order requiring expungement of the police and court records relating to the charge and conviction.
86 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon
87 the entry of such order, 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,
89 the court shall enter an order requiring expungement of the police and court records relating to the charge
90 and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
91 subsection. 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
93 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations
94 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of
95 such records shall be effected.

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

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

102 **§ 19.2-392.2. (Effective pursuant to Acts 2023, cc. 554 and 555, cl. 4) Expungement of police**
103 **and court records.**

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

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

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

110 For purposes of this section, the term "otherwise dismissed" means a dismissal by the court under
111 any circumstances and in any manner, excluding any charge that is deferred and dismissed after a finding
112 of facts sufficient to justify a finding of guilt.

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

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

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

134 court; however, if the circuit court is unable to receive an electronic transmission, the CCRE shall forward
135 a copy of such record to the circuit court ~~which~~ that shall be maintained under seal by the clerk unless
136 otherwise ordered by the court.

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

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

151 F. After receiving the criminal history record information, the court shall conduct a hearing on the
152 petition. If the court finds that the continued existence and possible dissemination of information relating
153 to the arrest of the petitioner ~~causes or~~ may cause circumstances ~~which~~ that constitute a manifest injustice,
154 including any hindrance to obtain employment, an education, or credit to the petitioner, it shall enter an
155 order requiring the expungement of the police and court records, including electronic records, relating to
156 the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record
157 and the arrest was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall
158 be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement
159 of the police and court records relating to the charge, and the court shall enter an order of expungement.
160 If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written

161 notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the charge
162 to be expunged is a felony, stipulates in such written notice that the continued existence and possible
163 dissemination of information relating to the arrest of the petitioner ~~causes or~~ may cause circumstances
164 which that constitute a manifest injustice, including any hindrance to obtain employment, an education,
165 or credit to the petitioner, the court may enter an order of expungement without conducting a hearing.
166 When an initial charge has been reduced or amended to another offense for which reporting to the CCRE
167 is still required pursuant to § 19.2-390 and an order of expungement is granted for the initial charge, the
168 CCRE shall amend the original arrest but maintain the fingerprints collected from the original arrest.

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

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

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

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

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

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

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

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

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