

SENATE BILL NO. 564

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Lucas)

A BILL to amend and reenact §§ 19.2-392.6, as it shall become effective, and 19.2-392.12, as it shall become effective, of the Code of Virginia, relating to sealing of offenses resulting in a deferred and dismissed disposition or conviction.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.6, as it shall become effective, and 19.2-392.12, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 19.2-392.6. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542)

Automatic sealing of offenses resulting in a deferred and dismissed disposition or conviction.

A. If a person was charged with an offense in violation of § 4.1-305 or former § 18.2-250.1, and such offense was deferred and dismissed as provided in § 4.1-305 or 18.2-251, such offense, including any records relating to such offense, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D.

B. If a person was convicted of a violation of any of the following sections, such conviction, including any records relating to such conviction, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D: § 4.1-305, 18.2-96, 18.2-103, 18.2-119, 18.2-120, or 18.2-134; a misdemeanor violation of § 18.2-248.1; or former § 18.2-250.1 or 18.2-415.

C. Subject to the provisions of subsection D, any offense listed under subsection A and any conviction listed under subsection B shall be ordered to be automatically sealed if ~~seven~~ three years have passed since the date of the dismissal or conviction and the person charged with or convicted of such offense has not been convicted of violating any law of the Commonwealth that requires a report to the

27 Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of
28 Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2,
29 during that time period.

30 D. No offense listed under subsection A shall be automatically sealed if, on the date of the deferral
31 or dismissal, the person was convicted of another offense that is not eligible for automatic sealing under
32 subsection A or B. No conviction listed under subsection B shall be automatically sealed if, on the date of
33 the conviction, the person was convicted of another offense that is not eligible for automatic sealing under
34 subsection A or B.

35 E. This section shall not be construed as prohibiting a person from seeking sealing in the circuit
36 court pursuant to the provisions of § 19.2-392.12.

37 **§ 19.2-392.12. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Sealing**
38 **of offenses resulting in a deferred and dismissed disposition or conviction by petition.**

39 A. Except for a conviction or deferral and dismissal of a violation of § 18.2-36.1, 18.2-36.2, 18.2-
40 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
41 deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation of § 18.2-
42 95 or any other felony offense in which the defendant is deemed guilty of larceny and punished as provided
43 in § 18.2-95 may file a petition setting forth the relevant facts and requesting sealing of the criminal history
44 record information and court records relating to the charge or conviction, including any records related to
45 any violation of the terms and conditions of a suspended sentence or probation for such conviction that
46 were specifically set forth in the petition to be sealed, provided that such person has (a) never been
47 convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, (b) not been
48 convicted of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any other felony
49 within the past 10 years of his petition.

50 B. A person shall not be required to pay any fees or costs for filing a petition pursuant to this
51 section ~~if such person files a petition to proceed without the payment of fees and costs, and the court with~~
52 ~~which such person files his petition finds such person to be indigent pursuant to § 19.2-159.~~

53 C. The petition with a copy of the warrant, summons, or indictment, if reasonably available, shall
54 be filed in the circuit court of the county or city in which the case was disposed of and shall contain, except
55 when not reasonably available, the date of arrest, the name of the arresting agency, and the date of
56 conviction. When this information is not reasonably available, the petition shall state the reason for such
57 unavailability. The petition shall further state the charge or conviction to be sealed; the date of final
58 disposition of the charge or conviction as set forth in the petition; the petitioner's date of birth, sex, race,
59 and social security number, if available; and the full name used by the petitioner at the time of arrest or
60 summons. ~~A petitioner may only have two petitions granted pursuant to this section within his lifetime.~~

61 D. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy
62 of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth
63 of the city or county in which the petition is filed. The attorney for the Commonwealth may file an
64 objection or answer to the petition or may give written notice to the court that he does not object to the
65 petition within 21 days after it is delivered to him or received in the mail.

66 E. Upon receipt of the petition, the circuit court shall order that the attorney for the Commonwealth
67 or a law-enforcement officer, as defined in § 9.1-101, provide the court with a sealed copy of the criminal
68 history record of the petitioner. Upon completion of the hearing, the court shall cause the criminal history
69 record to be destroyed unless, within 30 days of the date of the entry of the final order in the matter, the
70 petitioner or the attorney for the Commonwealth notes an appeal to the Supreme Court of Virginia.

71 F. After receiving the criminal history record of the petitioner, the court may conduct a hearing on
72 the petition. The court shall enter an order requiring the sealing of the criminal history record information
73 and court records, including electronic records, relating to the charge or conviction, including any records
74 related to any violation of the terms and conditions of a suspended sentence or probation for such
75 conviction that were specifically set forth in the petition to be sealed, only if the court finds that all criteria
76 in subdivisions 1 ~~through 4~~, 2, and 3 are met, as follows:

77 1. During a period after the date of (i) dismissal of a deferred charge, (ii) conviction, or (iii) release
78 from incarceration of the charge or conviction set forth in the petition, whichever date occurred later, the
79 person has not been convicted of violating any law of the Commonwealth that requires a report to the

80 Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of
81 Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, for:

82 a. ~~Seven~~ Three years for any misdemeanor offense; or

83 b. ~~Ten~~ Seven years for any felony offense;

84 2. If the records relating to the offense indicate that the occurrence leading to the deferral or
85 conviction involved the use or dependence upon alcohol or any narcotic drug or any other self-
86 administered intoxicant or drug of whatsoever nature, the petitioner has demonstrated his rehabilitation;
87 and

88 3. ~~The petitioner has not previously obtained the sealing of two other deferrals or convictions~~
89 ~~arising out of different sentencing events; and~~

90 4. ~~The continued existence and possible dissemination of information relating to the charge or~~
91 ~~conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the~~
92 ~~petitioner.~~

93 G. If the attorney for the Commonwealth of the county or city in which the petition is filed (i)
94 gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii)
95 stipulates in such written notice that the petitioner is eligible to have such offense sealed, and the continued
96 existence and possible dissemination of information relating to the charge or conviction of the petitioner
97 causes or may cause circumstances that constitute a manifest injustice to the petitioner, the court may
98 enter an order of sealing without conducting a hearing.

99 H. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

100 I. Upon the entry of an order of sealing, the clerk of the court shall cause an electronic copy of
101 such order to be forwarded to the Department of State Police. Such electronic order shall contain the
102 petitioner's full name, date of birth, sex, race, and social security number, if available, as well as the
103 petitioner's state identification number from the criminal history record, the court case number of the
104 charge or conviction to be sealed and of any violation of the terms and conditions of a suspended sentence
105 or probation for such charge or conviction, if available, and the document control number, if available.

106 Upon receipt of such electronic order, the Department of State Police shall seal such records in accordance

107 with § 19.2-392.13. When sealing such charge or conviction, the Department of State Police shall include
108 a notation on the criminal history record that such offense was sealed pursuant to this section. The
109 Department of State Police shall also electronically notify the Office of the Executive Secretary of the
110 Supreme Court and any other agencies and individuals known to maintain or to have obtained such a
111 record that such record has been ordered to be sealed and may only be disseminated in accordance with §
112 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures
113 adopted pursuant to § 9.1-134.

114 J. Costs shall be as provided by § 17.1-275 but shall not be recoverable against the Commonwealth.
115 Any costs collected pursuant to this section shall be deposited in the Sealing Fee Fund created pursuant to
116 § 17.1-205.1.

117 K. Any order entered where (i) the court or parties failed to strictly comply with the procedures
118 set forth in this section or (ii) the court enters an order for the sealing of records contrary to law shall be
119 voidable upon motion and notice made within two years of the entry of such order.

120 L. If a petitioner qualifies to file a petition for sealing of records without the payment of fees and
121 costs pursuant to subsection B and has requested court-appointed counsel, the court shall then appoint
122 counsel to file the petition for sealing of records and represent the petitioner in the sealed records
123 proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject
124 to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to
125 exceed \$120, as determined by the court, and such compensation shall be paid from the Sealing Fee Fund
126 as provided in § 17.1-205.1.

127 M. A petition filed under this section and any responsive pleadings filed by the attorney for the
128 Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court. Any
129 order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes
130 set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and
131 procedures adopted pursuant to § 9.1-134.

132 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-
133 57.2, 18.2-266, or 46.2-341.24 is ineligible for the sealing of records under this section.

134 O. Nothing in this chapter shall prohibit the circuit court from entering an order to seal a charge or
135 conviction under this section when such charge or conviction is eligible for sealing under some other
136 section of this chapter.

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