

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, excluding an acquittal by reason of insanity or any charge that is deferred and dismissed after a finding of facts sufficient to justify a finding of guilt.

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.

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 an acquittal by reason of insanity or any charge that is  
112 deferred and dismissed after a finding 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  
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152 petition. If the court finds that the continued existence and possible dissemination of information relating  
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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  
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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  
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174 charged, enter an order requiring expungement of the police and court records relating to the charge. Such  
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