

SENATE BILL NO. 504

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 §§ 17.1-205.1, 19.2-392.2, as it is currently effective and as it shall become effective, 19.2-392.12, as it shall become effective, and 19.2-392.16, 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 §§ 17.1-205.1, 19.2-392.2, as it is currently effective and as it shall become effective, 19.2-392.12, as it shall become effective, and 19.2-392.16, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

**§ 17.1-205.1. Sealing Fee Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Sealing Fee Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds accruing to the Fund pursuant to §§ 19.2-392.12 and 19.2-392.16 and all funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered by the Executive Secretary of the Supreme Court, who shall use such funds solely to fund the costs for the compensation of court-appointed counsel under the provisions of subsection L of § 19.2-392.2 and subsection L of § 19.2-392.12. Expenditures from the Fund shall be limited by an appropriation in the general appropriation act. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon request of the Executive Secretary of the Supreme Court.

27           § 19.2-392.2. (Effective until date pursuant to Acts 2023, cc. 554 and 555, cl. 4) Expungement  
28 of police and court records.

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

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

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

35           For purposes of this section, the term "otherwise dismissed" means to render a legal action out of  
36 consideration in a different way or manner than a nolle prosequi or formal dismissal by the trial court.

37           The term "otherwise dismissed" also includes those circumstances when a person is charged with  
38 the commission of a crime, a civil offense, or any offense defined in Title 18.2 and the initial charge is  
39 reduced or amended to another offense, including a lesser included offense or the same offense with a  
40 lesser gradient of punishment, so that such person is not convicted of the initial charge. The person then  
41 may file a petition setting forth the relevant facts and requesting expungement of the police records and  
42 the court records relating to the initial charge.

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

49           C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall  
50 be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being  
51 otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the  
52 name of the arresting agency. Where this information is not reasonably available, the petition shall state  
53 the reason for such unavailability. The petition shall further state the specific criminal charge or civil

54 offense to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's  
55 date of birth,~~and~~ the full name used by the petitioner at the time of arrest, and any emergency or  
56 preliminary protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-  
57 152.9 that was attached or factually related to the charge or offense to be expunged provided that a  
58 permanent protective order was not ordered as a result of such emergency or preliminary protective order.

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

63 E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's  
64 fingerprints and shall provide that agency with a copy of the petition for expungement. The law-  
65 enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE)  
66 with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a  
67 copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry  
68 that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon completion of the  
69 hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the  
70 entry of an order of expungement or an order denying the petition for expungement, the court shall cause  
71 the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the  
72 petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the  
73 clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

74 F. After receiving the criminal history record information from the CCRE, the court shall conduct  
75 a hearing on the petition. If the court finds that the continued existence and possible dissemination of  
76 information relating to the arrest of the petitioner ~~causes or may cause circumstances which~~ that constitute  
77 ~~a manifest injustice~~ hindrance to obtain employment, an education, or credit to the petitioner, it shall enter  
78 an order requiring the expungement of the police and court records, including electronic records, relating  
79 to the charge and any emergency or preliminary protective order issued pursuant to § 16.1-253, 16.1-  
80 253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9 that was attached or factually related to the expunged charge

81 or offense provided that a permanent protective order was not ordered as a result of such emergency or  
82 preliminary protective order. Otherwise, it shall deny the petition. However, if the petitioner has no prior  
83 criminal record and the arrest was for a misdemeanor violation or the charge was for a civil offense, the  
84 petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to  
85 expungement of the police and court records relating to the charge, and the court shall enter an order of  
86 expungement. If the attorney for the Commonwealth of the county or city in which the petition is filed (i)  
87 gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii)  
88 when the charge to be expunged is a felony, stipulates in such written notice that the continued existence  
89 and possible dissemination of information relating to the arrest of the petitioner ~~causes or~~ may cause  
90 circumstances ~~which~~ that constitute a manifest injustice hindrance to obtain employment, an education,  
91 or credit to the petitioner, the court may enter an order of expungement without conducting a hearing.

92 When an initial charge has been reduced or amended to another offense for which reporting to the  
93 CCRE is still required pursuant to § 19.2-390 and an order of expungement is granted for the initial charge,  
94 the CCRE shall amend the original arrest but maintain the fingerprints collected from the original arrest.

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

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

104 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-  
105 402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall  
106 enter an order requiring expungement of the police and court records relating to the charge and conviction.

107 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon  
108 the entry of such order, it shall be treated as provided in subsection K.

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

113 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such  
114 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations  
115 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
116 such records shall be effected, including the removal of criminal history record information in accordance  
117 with § 19.2-392.16.

118 L. Costs shall be as provided by § 17.1-275, ~~but~~ unless a person files a petition to proceed without  
119 the payment of fees and costs, and the court with which such person files his petition finds such person to  
120 be indigent pursuant to § 19.2-159. Costs shall not be recoverable against the Commonwealth.

121 If a person files a petition to proceed without the payment of fees and costs pursuant to this  
122 subsection and has requested court-appointed counsel, the court shall then appoint counsel to file the  
123 petition for expungement and represent the petitioner in the expungement proceedings. Counsel appointed  
124 to represent such a petitioner shall be compensated for his services subject to guidelines issued by the  
125 Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed \$120, as determined  
126 by the court, and such compensation shall be paid from the Sealing Fee Fund as provided in § 17.1-205.1.  
127 Nothing in this subsection shall be construed to limit the ability of a nonprofit legal aid program or legal  
128 aid society from providing pro bono legal services or representation to any person.

129 If the court enters an order of expungement and the petitioner did not file a petition to proceed  
130 without the payment of fees and costs, or the court with which such petitioner filed his petition to proceed  
131 without the payment of fees and costs did not find such petitioner to be indigent, the clerk of the court  
132 shall refund to the petitioner such costs paid by the petitioner.

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

136 N. Any petition for expungement or petition to proceed without the payment of fees and costs filed  
137 in accordance with this section shall be kept under seal.

138 O. Unless the subject of the criminal record requests otherwise, any person who files an appeal of  
139 a petition for relief that was denied under this section shall be allowed to proceed under a pseudonym  
140 pursuant to § 8.01-15.1.

141 **§ 19.2-392.2. (Effective pursuant to Acts 2023, cc. 554 and 555, cl. 4) Expungement of police**  
142 **and court records.**

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

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

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

149 For purposes of this section, the term "otherwise dismissed" means to render a legal action out of  
150 consideration in a different way or manner than a nolle prosequi or formal dismissal by the trial court.

151 The term "otherwise dismissed" also includes those circumstances when a person is charged with  
152 the commission of a crime, a civil offense, or any offense defined in Title 18.2 and the initial charge is  
153 reduced or amended to another offense, including a lesser included offense or the same offense with a  
154 lesser gradient of punishment, so that such person is not convicted of the initial charge. The person then  
155 may file a petition setting forth the relevant facts and requesting expungement of the police records and  
156 the court records relating to the initial charge.

157 B. If any person whose name or other identification has been used without his consent or  
158 authorization by another person who has been charged or arrested using such name or identification, he  
159 may file a petition with the court disposing of the charge for relief pursuant to this section. Such person

160 shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under  
161 this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-  
162 enforcement agency.

163 C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall  
164 be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being  
165 otherwise dismissed and shall contain, except when not reasonably available, the date of arrest and the  
166 name of the arresting agency. When this information is not reasonably available, the petition shall state  
167 the reason for such unavailability. The petition shall further state the specific criminal charge or civil  
168 offense to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's  
169 date of birth,~~and~~ the full name used by the petitioner at the time of arrest, and any emergency or  
170 preliminary protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-  
171 152.9 that was attached or factually related to the charge or offense to be expunged provided that a  
172 permanent protective order was not ordered as a result of such emergency or preliminary protective order.

173 If the petition is filed under this subsection, the petitioner shall request that the Central Criminal Records  
174 Exchange (CCRE) electronically forward a copy of the petitioner's Virginia criminal history record to the  
175 circuit court in which the petition was filed. Upon receiving such request, the CCRE shall electronically  
176 forward such record to the circuit court; however, if the circuit court is unable to receive an electronic  
177 transmission, the CCRE shall forward a copy of such record to the circuit court which shall be maintained  
178 under seal by the clerk unless otherwise ordered by the court.

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

183 E. If the petition is filed under subsection B, the petitioner shall obtain from a law-enforcement  
184 agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the  
185 petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the CCRE  
186 with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a

187 copy of the petitioner's criminal history and the set of fingerprints. Upon completion of the hearing, the  
188 court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an  
189 order of expungement or an order denying the petition for expungement, the court shall cause the  
190 fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner  
191 requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the  
192 court a self-addressed, stamped envelope for the return of the fingerprint card.

193 F. After receiving the criminal history record information, the court shall conduct a hearing on the  
194 petition. If the court finds that the continued existence and possible dissemination of information relating  
195 to the arrest of the petitioner ~~causes or may cause circumstances which~~ that constitute a ~~manifest injustice~~  
196 hindrance to obtain employment, an education, or credit to the petitioner, it shall enter an order requiring  
197 the expungement of the police and court records, including electronic records, relating to the charge and  
198 any emergency or preliminary protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4,  
199 19.2-152.8, or 19.2-152.9 that was attached or factually related to the expunged charge or offense provided  
200 that a permanent protective order was not ordered as a result of such emergency or preliminary protective  
201 order. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the  
202 arrest was for a misdemeanor violation or the charge was for a civil offense, the petitioner shall be entitled,  
203 in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police  
204 and court records relating to the charge, and the court shall enter an order of expungement. If the attorney  
205 for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the  
206 court pursuant to subsection D that he does not object to the petition and (ii) when the charge to be  
207 expunged is a felony, stipulates in such written notice that the continued existence and possible  
208 dissemination of information relating to the arrest of the petitioner ~~causes or may cause circumstances~~  
209 ~~which~~ that constitute a ~~manifest injustice~~ hindrance to obtain employment, an education, or credit to the  
210 petitioner, the court may enter an order of expungement without conducting a hearing.

211 When an initial charge has been reduced or amended to another offense for which reporting to the  
212 CCRE is still required pursuant to § 19.2-390 and an order of expungement is granted for the initial charge,  
213 the CCRE shall amend the original arrest but maintain the fingerprints collected from the original arrest.



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

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

223 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-  
224 402 of an absolute pardon for the commission of a crime that a person did not commit, the court shall  
225 enter an order requiring expungement of the police and court records relating to the charge and conviction.  
226 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon  
227 the entry of such order, it shall be treated as provided in subsection K.

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

232 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such  
233 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations  
234 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of  
235 such records shall be effected, including the removal of criminal history record information in accordance  
236 with § 19.2-392.16.

237 L. Costs shall be as provided by § 17.1-275, ~~but~~ unless a person files a petition to proceed without  
238 the payment of fees and costs, and the court with which such person files his petition finds such person to  
239 be indigent pursuant to § 19.2-159. Costs shall not be recoverable against the Commonwealth.

240 If a person files a petition to proceed without the payment of fees and costs pursuant to this  
241 subsection and has requested court-appointed counsel, the court shall then appoint counsel to file the  
242 petition for expungement and represent the petitioner in the expungement proceedings. Counsel appointed  
243 to represent such a petitioner shall be compensated for his services subject to guidelines issued by the  
244 Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed \$120, as determined  
245 by the court, and such compensation shall be paid from the Sealing Fee Fund as provided in § 17.1-205.1.  
246 Nothing in this subsection shall be construed to limit the ability of a nonprofit legal aid program or legal  
247 aid society from providing pro bono legal services or representation to any person.

248 If the court enters an order of expungement and the petitioner did not file a petition to proceed  
249 without the payment of fees and costs, or the court with which such petitioner filed his petition to proceed  
250 without the payment of fees and costs did not find such petitioner to be indigent, the clerk of the court  
251 shall refund to the petitioner such costs paid by the petitioner.

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

255 N. A petition filed under this section, including a petition for expungement or petition to proceed  
256 without the payment of fees and costs, and any responsive pleadings filed by the attorney for the  
257 Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court. Any  
258 order to expunge issued pursuant to this section shall be sealed and may only be disseminated for the  
259 purposes set forth in § 19.2-392.3 pursuant to regulations and procedures adopted pursuant to § 9.1-128  
260 and procedures adopted pursuant to § 9.1-134.

261 O. Unless the subject of the criminal record requests otherwise, any person who files an appeal of  
262 a petition for relief that was denied under this section shall be allowed to proceed under a pseudonym  
263 pursuant to § 8.01-15.1.

264 **§ 19.2-392.12. (For effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) Sealing of**  
265 **offenses resulting in a deferred and dismissed disposition or conviction by petition.**

266 A. Except for a conviction or deferral and dismissal of a violation of § 18.2-36.1, 18.2-36.2, 18.2-  
267 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  
268 deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation of § 18.2-  
269 95 or any other felony offense in which the defendant is deemed guilty of larceny and punished as provided  
270 in § 18.2-95 may file a petition setting forth the relevant facts and requesting sealing of the criminal history  
271 record information and court records relating to the charge or conviction, provided that such person has  
272 (a) never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life,  
273 (b) not been convicted of a Class 3 or 4 felony within the past 20 years, and (c) not been convicted of any  
274 other felony within the past 10 years of his petition.

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

278 C. The petition with a copy of the warrant, summons, or indictment, if reasonably available, shall  
279 be filed in the circuit court of the county or city in which the case was disposed of and shall contain, except  
280 when not reasonably available, the date of arrest, the name of the arresting agency, and the date of  
281 conviction. When this information is not reasonably available, the petition shall state the reason for such  
282 unavailability. The petition shall further state the charge or conviction to be sealed; the date of final  
283 disposition of the charge or conviction as set forth in the petition; the petitioner's date of birth, sex, race,  
284 and social security number, if available; and the full name used by the petitioner at the time of arrest or  
285 summons. A petition may request the sealing of the criminal history record information and court records  
286 for multiple charges or convictions as set forth in subsection A provided that all such charges and  
287 convictions arose out of the same transaction or occurrence and all such charges are eligible for sealing.  
288 A petition may not request the sealing of the criminal history record information and court records for  
289 multiple charges or convictions that arose out of different transactions or occurrences. A petitioner may  
290 only have two petitions granted pursuant to this section within his lifetime. Any petition that is granted (i)  
291 solely to seal a violation of subsection A of § 18.2-265.3 as it relates to marijuana, (ii) solely to seal a  
292 violation of § 4.1-305, or (iii) to seal a violation of both subsection A of § 18.2-265.3 as it relates to

293 marijuana and § 4.1-305 arising out of the same transaction or occurrence shall not count against the  
294 petitioner's lifetime maximum.

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

300 E. In addition to the filing of the petition under subsection C, the petitioner shall request that the  
301 Central Criminal Records Exchange (CCRE) electronically forward a copy of the petitioner's Virginia  
302 criminal history record to the circuit court in which the petition was filed. Upon receiving such request,  
303 the CCRE shall electronically forward such record to the circuit court; however, if the circuit court is  
304 unable to receive an electronic transmission, the CCRE shall forward a copy of such record to the circuit  
305 court which shall be maintained under seal by the clerk unless otherwise ordered by the court. Upon  
306 completion of the hearing, the court shall cause the criminal history record to be destroyed unless, within  
307 30 days of the date of the entry of the final order in the matter, the petitioner or the attorney for the  
308 Commonwealth notes an appeal to the Supreme Court of Virginia.

309 F. After receiving the criminal history record of the petitioner, the court may conduct a hearing on  
310 the petition. The court shall enter an order requiring the sealing of the criminal history record information  
311 and court records, including electronic records, relating to the charge or conviction, only if the court finds  
312 that all criteria in subdivisions 1 through 4 are met, as follows:

313 1. During a period after the date of (i) dismissal of a deferred charge, (ii) conviction, or (iii) release  
314 from incarceration of the charge or conviction set forth in the petition, whichever date occurred later, the  
315 person has not been convicted of violating any law of the Commonwealth that requires a report to the  
316 Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of  
317 Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, for:

- 318 a. Seven years for any misdemeanor offense; or
- 319 b. Ten years for any felony offense;

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

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

325           4. The continued existence and possible dissemination of information relating to the charge or  
326 conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the  
327 petitioner.

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

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

335           I. Upon the entry of an order of sealing, the clerk of the court shall maintain a copy of such order  
336 under seal and shall cause an electronic notification of such order to be forwarded to the Department of  
337 State Police. Such electronic notification shall contain the petitioner's full name, date of birth, sex, race,  
338 and social security number, if available, and the full name used by the petitioner at the time of arrest or  
339 summons, as well as the petitioner's state identification number from the criminal history record, the court  
340 case number of the charge or conviction to be sealed, if available, and the document control number, if  
341 available. Upon receipt of such electronic notification, the Department of State Police shall seal such  
342 records in accordance with § 19.2-392.13. When sealing such charge or conviction, the Department of  
343 State Police shall include a notation on the criminal history record that such offense was sealed pursuant  
344 to this section. The Department of State Police shall also electronically notify the Office of the Executive  
345 Secretary of the Supreme Court and any other agencies and individuals known to maintain or to have  
346 obtained such a record that such record has been ordered to be sealed and may only be disseminated in

347 accordance with § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128  
348 and the procedures adopted pursuant to § 9.1-134.

349 J. Costs shall be as provided by § 17.1-275 but shall not be recoverable against the Commonwealth.  
350 Any costs collected pursuant to this section shall be deposited in the Sealing Fee Fund created pursuant to  
351 § 17.1-205.1.

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

355 L. If a petitioner qualifies to file a petition for sealing of records without the payment of fees and  
356 costs pursuant to subsection B and has requested court-appointed counsel, the court shall then appoint  
357 counsel to file the petition for sealing of records and represent the petitioner in the sealed records  
358 proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject  
359 to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to  
360 exceed \$120, as determined by the court, and such compensation shall be paid from the Sealing Fee Fund  
361 as provided in § 17.1-205.1. Nothing in this subsection shall be construed to limit the ability of a nonprofit  
362 legal aid program or legal aid society from providing pro bono legal services or representation to any  
363 person.

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

369 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-  
370 57.2, 18.2-266, or 46.2-341.24 is ineligible for the sealing of records under this section.

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

374 § 19.2-392.16. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542)

375 **Dissemination of criminal history records and traffic history records by business screening services.**

376 A. For the purposes of this section:

377 "Business screening service" means a person engaged in the business of collecting, assembling,  
378 evaluating, or disseminating Virginia criminal history records or traffic history records on individuals.

379 "Business screening service" does not include any government entity or the news media.

380 "Criminal history record" means any information collected by a business screening service on  
381 individuals containing any personal identifying information, photograph, or other identifiable descriptions  
382 pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal  
383 criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional  
384 supervision, or release.

385 "Delete" means that a criminal history record shall not be disseminated in any manner, except to  
386 any entity authorized to receive and use such information pursuant to § 19.2-392.13 and pursuant to the  
387 rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134, but  
388 may be retained in order to resolve any disputes relating to this section, the accuracy of the record  
389 consistent with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-  
390 Bliley Act, 15 U.S.C. § 6801 et seq.

391 "Destroy" means that a criminal history record or a traffic history record shall not be disseminated  
392 in any manner, except as authorized under § 19.2-392.3, but may be retained in order to resolve any  
393 disputes relating to this section, the accuracy of the record consistent with the federal Fair Credit Reporting  
394 Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

395 "Expunged record" means a Virginia criminal history record or a traffic history record that has  
396 been expunged pursuant to § 19.2-392.2.

397 "Sealed record" means a Virginia criminal history record or a traffic history record that has been  
398 sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12.

399 "Traffic history record" means any information collected by a business screening service on  
400 individuals containing any personal identifying information, photograph, or other identifiable descriptions

401 pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal  
402 traffic infraction charges, and any disposition arising therefrom.

403 B. If a business screening service knows that a criminal history record or a traffic history record  
404 has been sealed, the business screening service shall promptly delete the record.

405 If a business screening service knows that a criminal history record or a traffic history record is an  
406 expunged record, the business screening service shall promptly destroy such record and may not  
407 disseminate such record in any manner.

408 C. A business screening service shall register with the Department of State Police to electronically  
409 receive copies of orders of expungement and of orders of sealing provided to the Department of State  
410 Police pursuant to §§ 19.2-392.2, 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12. The Department  
411 of State Police may charge an annual licensing fee to the business screening service for accessing such  
412 information, with a portion of such fee to be used to cover the cost of providing such records and the  
413 remainder of such fee to be deposited into the Sealing Fee Fund pursuant to § 17.1-205.1. The contract  
414 between the Department of State Police and the business screening service shall prohibit dissemination of  
415 the orders of expungement and the orders of sealing and shall require compliance by the business screening  
416 service with the provisions of subsections D, E, and F. The orders of expungement and the orders of  
417 sealing received by the business screening service shall remain confidential and shall not be disseminated  
418 or resold. The orders of expungement and the orders of sealing shall be used for the sole purpose of  
419 deleting criminal history records that have been sealed. The business screening service shall destroy the  
420 copies of the orders of expungement and the orders of sealing after deleting the information contained in  
421 such orders from expunged and sealed records. The Department of State Police shall require that the  
422 business screening service seeking access to the information identify themselves, certify the purposes for  
423 which the information is sought, and certify that the information will be used for no other purpose. The  
424 Department of State Police shall further require that a business screening service acknowledge receipt of  
425 all electronic copies of orders of expungement and the orders of sealing provided by the Department of  
426 State Police. The Department of State Police shall maintain a public list within its website identifying the  
427 business screening services that are licensed to receive such records.



428 D. A business screening service that disseminates a criminal history record or a traffic history  
429 record on or after the effective date of this section shall include the date when the record was collected by  
430 the business screening service and a notice that the information may include records that have been sealed  
431 since that date.

432 E. A business screening service shall implement and follow reasonable procedures to assure that  
433 it does not maintain or sell criminal history records or traffic history records that are inaccurate or  
434 incomplete or expunged records. If the completeness or accuracy of a criminal history record or traffic  
435 history record maintained by a business screening service is disputed by the individual who is the subject  
436 of the record, the business screening service shall, without charge, investigate the disputed record. If, upon  
437 investigation, the business screening service determines that the record does not accurately reflect the  
438 content of the official record, the business screening service shall correct the disputed record so as to  
439 accurately reflect the content of the official record. If the disputed record is found to have been sealed  
440 pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12, the business screening service shall  
441 promptly delete the record. If the disputed record is found to have been an expunged record, the business  
442 screening service shall promptly destroy the record. A business screening service may terminate an  
443 investigation of a disputed record if the business screening service reasonably determines that the dispute  
444 is frivolous, which may be based on the failure of the subject of the record to provide sufficient information  
445 to investigate the disputed record. Upon making a determination that the dispute is frivolous, the business  
446 screening service shall inform the subject of the record of the specific reasons why it has determined that  
447 the dispute is frivolous and shall provide a description of any information required to investigate the  
448 disputed record. The business screening service shall notify the subject of the disputed record of the  
449 correction or deletion of the record or of the termination or completion of the investigation related to the  
450 record within 30 days of the date when the business screening service receives notice of the dispute from  
451 the subject of the record.

452 F. A business screening service shall implement procedures for individuals to submit a request to  
453 obtain their own criminal history record and traffic history record information maintained by the business

454 screening service and any other information that may be sold to another entity by the business screening  
455 service regarding the individual.

456 G. A business screening service that violates this section is liable to the person who is the subject  
457 of the criminal history record or traffic history record for a penalty of \$1,000 or actual damages caused by  
458 the violation, whichever is greater, plus costs and reasonable attorney fees. Within 10 days of service of  
459 any suit by an individual, the business screening service may make a cure offer in writing to the individual  
460 claiming to have suffered a loss as a result of a violation of this section. Such offer shall be in writing and  
461 include one or more things of value, including the payment of money. A cure offer shall be reasonably  
462 calculated to remedy a loss claimed by the individual, as well as any attorney fees or other fees, expenses,  
463 or other costs of any kind that such individual may incur in relation to such loss. No cure offer shall be  
464 admissible in any proceeding initiated under this section, unless the cure offer is delivered by the business  
465 screening service to the individual claiming loss or to any attorney representing such individual prior to  
466 the filing of the business screening service's initial responsive pleading in such proceeding. The business  
467 screening service shall not be liable for such individual's attorney fees and court costs incurred following  
468 delivery of the cure offer unless the actual damages found to have been sustained and awarded, without  
469 consideration of attorney fees and court costs, exceed the value of the cure offer.

470 H. The Attorney General may file a civil action to enforce this section. If the court finds that a  
471 business screening service has willfully engaged in an act or practice in violation of this section, the  
472 Attorney General may recover for the Literary Fund, upon petition to the court, a civil penalty of not more  
473 than \$2,500 per violation. For the purposes of this section, prima facie evidence of a willful violation may  
474 be shown when the Attorney General notifies the alleged violator by certified mail that an act or practice  
475 is a violation of this section and the alleged violator, after receipt of said notice, continues to engage in  
476 the act or practice. In any civil action pursuant to this subsection, in addition to any civil penalty awarded,  
477 the Attorney General may also recover any costs and reasonable expenses incurred by the state in  
478 investigating and preparing the case, not to exceed \$1,000 per violation, and attorney fees. Such additional  
479 costs and expenses shall be paid into the general fund of the Commonwealth.

480 I. A business screening service that disseminates criminal history records or traffic history records  
481 in the Commonwealth is deemed to have consented to service of process in the Commonwealth and to the  
482 jurisdiction of courts of the Commonwealth for actions involving a violation of this section or for the  
483 recovery of remedies under this section.

484 J. A business screening service that is a consumer reporting agency and that is in compliance with  
485 the applicable provisions of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-  
486 Leach-Bliley Act, 15 U.S.C. § 6801 et seq., is considered to be in compliance with the comparable  
487 provisions of this section. A business screening service is subject to the state remedies under this section  
488 if its actions would violate this section and federal law.

489 K. Any business screening service or person who engages in the conduct of a business screening  
490 service, as set forth in this section, that fails to register with the Department of State Police as required  
491 by subsection C and that disseminates criminal history records or traffic history records in the  
492 Commonwealth may be subject to (i) suit by any person injured by such dissemination and (ii)  
493 enforcement actions by the Attorney General as set forth in subsection H.

494 L. Nothing in this section shall prohibit the prosecution of any person who willfully violates the  
495 provisions of § 19.2-392.3.

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