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SENATE BILL NO. 564

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary)

(Patron Prior to Substitute—Senator Lucas)

Senate Amendments in [] - February 14, 2022

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

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

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

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

A. Except for a conviction or deferral and dismissal of a violation of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 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 deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation of § 18.2-95 or any other felony offense in which the defendant is deemed guilty of larceny and punished as provided in § 18.2-95 may file a petition setting forth the relevant facts and requesting sealing of the criminal history record information and court records relating to the charge or conviction, including any records related to any violation of the terms and conditions of a suspended sentence or probation for such conviction that were specifically set forth in the petition to be sealed, provided that such person has (a) never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any other felony within the past 10 years of his petition.

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

C. The petition with a copy of the warrant, summons, or indictment, if reasonably available, shall be filed in the circuit court of the county or city in which the case was disposed of and shall contain, except when not reasonably available, the date of arrest, the name of the arresting agency, and the date of conviction. When this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the charge or conviction to be sealed; the date of

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60 final disposition of the charge or conviction as set forth in the petition; the petitioner's date of birth, sex,
61 race, and social security number, if available; and the full name used by the petitioner at the time of
62 arrest or summons. A petitioner may only have two petitions granted pursuant to this section within his
63 lifetime.

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

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

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

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

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

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

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

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

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

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

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

105 I. Upon the entry of an order of sealing, the clerk of the court shall cause an electronic copy of such
106 order to be forwarded to the Department of State Police. Such electronic order shall contain the
107 petitioner's full name, date of birth, sex, race, and social security number, if available, as well as the
108 petitioner's state identification number from the criminal history record, the court case number of the
109 charge or conviction to be sealed *and of any violation of the terms and conditions of a suspended*
110 *sentence or probation for such charge or conviction*, if available, and the document control number, if
111 available. Upon receipt of such electronic order, the Department of State Police shall seal such records
112 in accordance with § 19.2-392.13. When sealing such charge or conviction, the Department of State
113 Police shall include a notation on the criminal history record that such offense was sealed pursuant to
114 this section. The Department of State Police shall also electronically notify the Office of the Executive
115 Secretary of the Supreme Court and any other agencies and individuals known to maintain or to have
116 obtained such a record that such record has been ordered to be sealed and may only be disseminated in
117 accordance with § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128
118 and the procedures adopted pursuant to § 9.1-134.

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

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

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

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

137 N. A conviction or deferral and dismissal of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, 18.2-57.2,
138 18.2-266, or 46.2-341.24 is ineligible for the sealing of records under this section.

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

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