NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
703-246-2221 • TDD: 703-352-4139

July 17, 2025

VIA EMAIL ONLY
Seth Quint Peritz, Esq.
CROWLEY PERITZ LAW
10560 Main Street, Suite 501
Fairfax, VA 22030
Seth@CrowleyPeritzLaw.com
Counsel for Petitioner

Chaim Mandelbaum, Esq.
Assistant Commonwealth's Attorney
OFFICE OF THE COMMONWEALTH'S ATTORNEY FOR FAIRFAX COUNTY
4110 Chain Bridge Road, Ste. 103
Fairfax, VA 22030
chaim.mandelbaum@fairfaxcounty.gov
Counsel for Respondent

RE: [redacted][1] *v. Commonwealth, Case No. CL-2025-1773*

Dear Counsel:

This matter comes before the Court on the Petition for Expungement of Record Pursuant to Section 19.2-392.2 of the Virginia Code (the "***Petition***"), seeking the expungement of all police and court records relating to Petitioner's charge of assault and battery on a family or household

[1] Following the practice of the Virginia Supreme Court and this Circuit, the Court identifies Petitioner by their initials to minimize any potential impact on them. *See, e.g., A.R.A. v. Commonwealth*, 295 Va. 153, n.1 (2018); *A.M.Z.P. v. Commonwealth*, 113 Va. Cir. 72 n.1 (Fairfax Co. 2024); *R.T. v. Commonwealth*, 114 Va. Cir. 16, 28 n.1 (Fairfax Co. 2024); *W.H.D. v. Commonwealth*, 111 Va. Cir. 553 n. 1 (Fairfax Co. 2023). Moreover, in a further effort to maintain the anonymity of the persons referenced herein, the Court uses the pronoun "they" to refer to each of them, regardless of their applicable pronouns. *See* "They." Merriam-Webster's Unabridged Dictionary, Merriam-Webster, https://unabridged.merriam-webster.com/unabridged/they. Accessed 14 Jul. 2025 (supporting such usage). The order entered in this matter will be sealed, as required by law; this letter opinion is unsealed.

member, which was *nolle prossed*. Petitioner asserts that these records include records of the emergency protective order served upon them on the day of their arrest and the preliminary protective order entered against them later. As to the emergency protective order, the Court agrees.

Records of the emergency protective order entered against Petitioner, sought and obtained by a law enforcement officer solely due to Petitioner's arrest on a charge of assault and battery on a family or household member, are records "relating to" that charge. They are, therefore, eligible for expungement.

Records of the preliminary protective order entered against Petitioner, sought and obtained in a civil proceeding by the complaining witness in the criminal case based upon allegations of Petitioner's conduct, are not records "relating to" the charge. They are, therefore, not eligible for expungement.

FACTUAL FINDINGS

Petitioner was arrested for assault and battery of a family member, in violation of Code § 18.2-57.2 (the "***Charge***"). On the day of Petitioner's arrest, they were served with an emergency protective order (the "***ERO***") requested by a law enforcement officer. The ERO states, as the only basis for its entry, that "[a] warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against the allegedly abused person . . . ."

Several days after the Petitioner's arrest, the complaining witness in the criminal case sought a protective order against Petitioner in the Fairfax County Juvenile and Domestic Relations District Court (the "***JDRDC***"). The Petition for Protective Order – Family Abuse (the "***Petition for Protective Order***") states, as the basis for the request, that Petitioner was "committing or, within a reasonable time, has committed" acts of "family abuse" that would be described in *ex parte* oral testimony. It indicates that an emergency protective order involving the parties is in effect and was issued in Fairfax County on a particular date. It does not say why, or against whom, the emergency protective order was entered.

Pursuant to the Petition for Protective Order, the JDRDC issued a preliminary protective order against Petitioner (such order, the "***PPO***"). The PPO states the court's findings that: (1) the complaining witness (and petitioner in that case) "is a family or household member" of Petitioner; (2) the complaining witness "is, or has been, within a reasonable period of time, subjected to family abuse"; and (3) a protective order is warranted "to protect the health and safety" of the complaining witness or any of their family or household members. It further sets a date for the parties to be heard at trial on whether the JDRDC would enter a "full" protective order, lasting up to two years. The PPO makes no mention of the Charge or the EPO.

The JDRDC denied the "full" protective order at trial. That denial was appealed to the Fairfax County Circuit Court and nonsuited.

A *nolle prosequi* was taken to the Charge in the JDRDC, before the Petitioner entered a plea. Petitioner now seeks the expungement of all police and court records relating to the Charge; they contend that those records include the records of the ERO and PPO.

ANALYSIS

Virginia's expungement statute permits a person charged with a crime who is acquitted or as to whose charge a *nolle prosequi* is taken or the charge is otherwise dismissed to file a petition "requesting expungement of the police records and the court records *relating to* the charge." Va. Code § 19.2-392.2 (emphasis added). Here, Petitioner seeks the expungement of all police and court records relating to the Charge and contends that such records include the records of the EPO and PPO. The Petition requires the Court to determine, without the guidance of any applicable appellate decision, whether such records "relate to" the Charge under the expungement statute.

In determining the meaning of a provision of the Virginia Code, the Court's objective is to interpret the statute as the General Assembly intended. *See, e.g., Hunter v. Commonwealth*, 56 Va. App. 50, 56, 690 S.E.2d 792, 795 (2010) (citing *Winborne v. Virginia State Lottery*, 278 Va. 142, 148, 677 S.E.2d 304, 306 (2009)). First, the Court must consider the "ordinary and plain meaning" of the words used by the General Assembly in enacting the statute. *See, e.g., Winborne*, 278 Va. at 148, 677 S.E.2d at 306. To understand such meaning, the Court may consult dictionary definitions and prior cases but should not permit a hyper-technical analysis to result in a "curious, narrow, or strained construction" not intended by the legislature. *See Williams v. Commonwealth*, 57 Va. App. 341, 351, 702 S.E.2d 260 (2010) (citations omitted).

As used in the expungement statute, the phrase "relate to" has two possible meanings. The first such meaning is "to be in a relationship to"[2] or "to be connected with (someone or something)."[3] The second such meaning is "have reference to"[4] (as in the phrase "most of the lecture related to the causes of common ailments") or "to be about (someone or something)."[5]

Applying the first meaning of "relate to," the expungement statute would be properly interpreted to provide for the expungement of any police or court record *bearing any connection or relationship to* the subject charge, whether the record mentions the charge or flows directly from it, or not. This interpretation would require the expungement of the ERO, the PPO, the petitions filed to obtain them, and all of the other documents Petitioner seeks to expunge in this case.

If, instead, we apply the second meaning, the expungement statute would be properly interpreted to provide for the expungement of any police or court record *about* the subject charge; records bearing a connection or relationship to the charge but not *about* the charge would not be eligible for expungement. Application of the second definition would not permit expungement of all of the records Petitioner seeks to expunge in this case.

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[2] *See* "Relate." Merriam-Webster's Unabridged Dictionary, Merriam-Webster, https://unabridged.merriam-webster.com/unabridged/relate. Accessed 13 Jul. 2025.

[3] *See* "Relate to." Merriam-Webster's Dictionary, Merriam-Webster, https https://www.merriam-webster.com/dictionary/relate%20to. Accessed 13 Jul. 2025. *See also, A.M.Z.P*, 113 Va. Cir. at 73.

[4] *See* "Relate." Merriam-Webster's Unabridged Dictionary, Merriam-Webster, https://unabridged.merriam-webster.com/unabridged/relate. Accessed 13 Jul. 2025.

[5] *See* "Relate to." Merriam-Webster's Dictionary, Merriam-Webster, https https://www.merriam-webster.com/dictionary/relate%20to. Accessed 13 Jul. 2025.

Having found the expungement statute to be ambiguous, the Court may look to sources outside the language of the statute to determine the legislative intent in enacting it. *See, e.g, Va.-American Water Co. v. Prince William Cty. Serv. Auth.*, 246 Va. 509, 514, 436 S.E.2d 618, 621 (1993). The General Assembly helpfully included a "statement of policy" in Code § 19.2-392.1 that clarifies its thinking in enacting the expungement statute. That policy statement provides, in pertinent part, that "[t]he General Assembly finds that *arrest records* can be a hindrance to a citizen's ability to obtain employment and an education. . . . This chapter is intended to protect such persons from the unwarranted damage that may occur as a result of being arrested and convicted." Va. Code § 19.2-392.1 (emphasis added).

As applicable to Petitioner's case, the General Assembly's intent in enacting the expungement statute was to prevent public access to the "arrest records" of an accused but legally innocent person to protect that person from the "unwarranted damage" that may occur from the discovery that they were charged with a criminal offense. Thus, "police and court records relating to the charge" should include all records of a petitioner's charge and arrest and all other records referring to that charge and arrest (as opposed to the allegedly offending conduct) and flowing directly therefrom,[6] as such records would expressly inform the public that the petitioner had been charged and arrested. It is the second of our two definitions of "relate to" – that is, "to have reference to" or "to be about" – that fulfills the legislative intent in enacting the expungement statute.[7]

Police and court records "about" a petitioner's charge include, without limitation, the police report filed in the criminal case; records of the petitioner's arraignment, bond, and trial;

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[6] The Expungement statute permits the expungement only of such records flowing from the charge and arrest of the petitioner, not such records flowing from the factual circumstances or allegations that caused the petitioner to be charged. *See R.T. v. Commonwealth*, 114 Va. Cir. 16, 29 (Fairfax Co. 2024) (Oblon, J.) (applying a different analysis but coming to a similar conclusion).

[7] In assessing the intent of the General Assembly in enacting the expungement statute, the Court is aware that, in 2024, the legislature passed a bill to expressly provide Virginia courts with the authority to expunge emergency protective orders, which was vetoed by the Governor. *See J.D.B.*, 2025 Va. Cir. LEXIS at 3*. The Court is also aware that, during the decade preceding that bill's passage, the General Assembly considered and rejected efforts to allow emergency protective orders to be expunged. *See id.* at 3*. The Court does not find this legislative history particularly helpful in determining the intent of the legislature in enacting the expungement statute. The General Assembly's passage of a bill expressly authorizing the expungement of emergency protective orders could have easily been a reaction to judges misinterpreting the expungement statute, rather than a concession that the statute as originally enacted did not permit the expungement of certain emergency protective orders. Similarly, the legislature's failure to pass such a bill in the decade before it was passed and vetoed sheds little light on its intent. The intent of the legislature is declared by its actions, not by its failure to act. *See, e.g., As Pac. Fertility Cases*, 78 Cal. App. 5th 568, 584, 294 Cal. Rptr. 3d 30, 41 (2022) (citations omitted); *Styers v. Phillips*, 277 N.C. 460, 472, 178 S.E.2d 583, 590 (1971) (citations omitted); *James v. Young*, 77 N.D. 451, 460, 43 N.W.2d 692, 698 (1950); *Reed v. Huston*, 24 Idaho 26, 33, 132 P. 109, 111 (1913) ("The legislative intent that controls in the construction of statutes has reference to the legislature which passed a given act, and that intent is indicated by the action of the legislature and not by their failure to act.").

orders and filings in the criminal case; and records of motions hearings in the criminal case.[8] Such records would also include an emergency protective order, sought by a law enforcement officer and expressly requested and entered solely on the basis of the petitioner's arrest.[9] Such an emergency protective order is clearly "about" the petitioner's charge; it makes reference to the arrest on the charge and flows directly from that arrest.

The ERO is just such an emergency protective order. It was expressly sought, by a law enforcement officer, and solely entered against Petitioner due to their arrest on the Charge. Records of the ERO are court records *about* the Charge and must be expunged.

On the other hand, the PPO was sought and entered in a civil proceeding brought by the complaining witness in Petitioner's criminal case, not a law enforcement officer. The PPO was sought and obtained due to allegations about Petitioner's conduct, not the fact that he was arrested on the Charge. Though it appears that at least some of the conduct alleged as the basis for entering a protective order also led to the Charge, the PPO was not sought or obtained due to *the fact that Petitioner was charged or arrested.* Moreover, neither the PPO nor the Petition for Protective Order make any reference to the Charge or the arrest of Petitioner. Records of the PPO are not *about* the Charge and are not eligible for expungement.

CONCLUSION

Petitioner is entitled to the expungement of all police and court records relating to their charge of assault and battery of a family or household member, in violation of Virginia Code § 18.2-57.2. Such documents include records of the emergency protective order sought and obtained by a law enforcement officer solely on the basis of Petitioner's arrest on that charge; they do not include records of the preliminary protective order obtained by the complaining witness in a civil proceeding, which make no reference to the Petitioner's charge or arrest. An appropriate order will follow.

Sincerely,

[redacted]

Jonathan D. Frieden
Judge, Fairfax County Circuit Court

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[8] *See J.D.B.*, 2025 Va. Cir. LEXIS at *2 (applying a different analysis but concluding that such records are eligible for expungement).

[9] *See A.M.Z.P*, 113 Va. Cir. at 75 ("What is the point of expunging a domestic assault and battery charge while leaving public a protective order that facially reports that the court entered it because of the assault charge?") (Oblon, J.). *But see J.D.B*, 2025 Va. Cir. LEXIS at *3 (holding that Virginia courts lack authority to expunge emergency protective orders) (Shannon, J.).