

Department of Planning and Budget 2020 Fiscal Impact Statement

1. **Bill Number:** HB647

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Carter

3. **Committee:** Courts of Justice

4. **Title:** Petition for reclassification or expungement of certain convictions and police and court records.

5. **Summary:** Provides that any person who has been convicted of (i) a felony or misdemeanor offense that has been decriminalized or otherwise made unlawful or (ii) a felony offense that has been statutorily reduced to a misdemeanor offense since the conviction of such person may file a petition for reclassification or expungement and requesting (a) expungement of the police and court records relating to any misdemeanor or felony offense that has been decriminalized or otherwise made lawful, or (b) reclassification of the police and court records relating to a felony offense that has been statutorily reduced to a misdemeanor offense. Current law allows for expungement in cases where the person has been acquitted, a nolle prosequi was taken, or the charges were otherwise dismissed.

Such petition must be filed in the circuit court of the city or county in which the conviction was obtained. The bill sets forth the information that must be included in such petition, and provides that it must be served on the relevant Commonwealth's attorney. The petitioner must obtain from a law enforcement agency a complete set of his fingerprints. The law enforcement agency must submit the fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition attached. The CCRE must forward a copy of the petitioner's criminal history, a copy of the source documents that resulted in the relevant CCRE criminal history entry, and the set of fingerprints to the court. The court is required to return the fingerprint card to the petitioner or destroy it upon the conclusion of each case.

If the court finds that the offense for which the person was convicted has since been decriminalized or otherwise made lawful, or it has been statutorily reduced from a felony to a misdemeanor offense, the court must enter an order reclassifying the offense, in the case of a felony offense that has been statutorily reduced to a misdemeanor offense, or requiring the expungement of the records of an offense that has been decriminalized or otherwise made lawful. If the Commonwealth's attorney gives written notice that he does not object to the petition and stipulates that the offense for which the person was convicted has since been decriminalized or otherwise made lawful, or has been statutorily reduced from a felony to a misdemeanor, the court must enter such order without conducting a hearing. If that does not occur, the court must conduct a hearing on the petition.

The court must forward any such order to the Department of State Police (VSP) for handling of the expungement or reclassification. If the court enters any such order, all costs paid by the petitioner must be refunded by the court.

6. **Budget Amendment Necessary:** Yes. Items 39 and 425.
7. **Fiscal Impact Estimates:** Preliminary. See below.
8. **Fiscal Implications:** The proposed legislation provides for the expungement of criminal convictions in cases where (i) the felony or misdemeanor offense in question has been decriminalized or otherwise made unlawful or (ii) the felony offense in question has been statutorily reduced to a misdemeanor offense since the conviction took place. In the case of (i), the individual may file a petition for the expungement of the police and court records. In the case of (ii), the individual may file a petition for the reclassification of the felony offense on his record to a misdemeanor.

The Department of State Police (VSP) is responsible for expunging records from police files. VSP estimates the most significant future impact on its expungement workload as a result of the provisions of this bill would be from marijuana-related offenses. According to VSP, there are currently 176,957 misdemeanor possession of marijuana offenses, deferred dispositions, dismissals, or convictions in the Central Criminal Records Exchange (CCRE) database that could meet criteria to be expunged, according to the provisions of this bill. Of these, it is unknown in how many cases an individual would meet the requirements as set out in the proposed legislation, and how many individuals would choose to petition the court for expungement. The expungement section within VSP can process approximately 500 expungements per employee per year. VSP currently has 10 FTE (including one supervisor) in the expungement section; six of these positions handle expungements full time, and the other three support positions and the supervisor assist with additional expungement workload when they are able.

If, as VSP estimates, the agency would have to expunge 10 percent of these cases, this would immediately generate an additional 17,696 expungements for the agency to process. This would require an additional 36 FTE who are responsible for processing expungements, four supervisor FTE, and one program support manager FTE, according to VSP. The estimated annual cost for these positions is \$2,984,523. VSP estimates it would also need additional office space to house the new employees at a cost of \$145,325 annually with one-time furnishing costs of \$199,301. VSP also expects to incur additional technology costs, estimated at \$81,631 in FY 2021 and \$63,140 in FY 2022.

According to the Office of the Executive Secretary (OES), if the provisions of the bill were to be enacted, the OES would need to perform enhancements to the General District Case Management System that would allow for information from expunged cases to be abstracted and retained for inclusion in statistical reports required by the General Assembly, including models used for determining clerk staffing, judicial workload calculations, and various other data reports that allow for the equitable distribution of resources among the various general district courts. As the case management systems currently exist, once a record is purged

OES is unable to determine that such a case was ever filed within the electronic system. The number of cases that are currently expunged each year is relatively minimal when compared to the number that could be expunged based on the provisions of this bill. Therefore, a method of accurately retaining the abstracted information is necessary to ensure the accuracy of case-data-based statistical reports generated by OES.

Abstract information for expunged civil and criminal cases would be retained within an “expungement data vault.” No identifying information for any defendant, including name, full date of birth, or social security number would be included with the abstract information retained in the expungement data vault. Ongoing, statistical reports would need to be modified to include the abstract case data that is retained within the expungement data vault.

To create the expungement data vault, the electronic data warehouse would need to be updated to allow for personally identifiable information and case numbers to be removed from expunged cases. In addition, various developmental enhancements would need to be made to the three existing electronic case management systems maintained by OES including: modifying the “case delete” function and adding an “expungement delete” option within seven divisions, updating the expungement batch jobs for two divisions, and creating new batch reports for two divisions.

The one-time total estimated cost for development, quality assurance analysis, and training of court personnel related to the system enhancements is \$299,402.50.

OES also estimates the provisions of this bill may increase the workload for court clerks, at approximately ten additional minutes of work per expungement. It is indeterminate at this time how many additional clerk positions the courts would need to respond to the provisions of this bill because it is unknown how many cases would require expungement.

This proposed legislation would also require local law enforcement agencies to take petitioners’ fingerprints and submit them to the CCRE. Any potential fiscal impact to local law enforcement agencies is indeterminate at this time.

9. Specific Agency or Political Subdivisions Affected: Department of State Police, Courts, Commonwealth’s Attorneys, Local law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: None.