

**Department of Planning and Budget**  
**2020 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** HB5146S1

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Herring

**3. Committee:** Senate Finance and Appropriations

**4. Title:** Automatic expungement of criminal records.

**5. Summary:** Provides that the following may file a petition for the expungement of police and court records relating to their charge or conviction:

- (i) (a) the person is convicted of a violation of § 4.1-305 (unlawful purchase or possession of alcohol), § 18.2-250.1 (possession of marijuana), or § 18.2-371.2(B) (unlawful purchase, etc. of tobacco products under age 21); (b) the person was under 21 years of age on the date of the incident leading to the conviction; (c) all fines and all orders of restitution have been satisfied; and (d) five years have passed since the date of conviction;
- (ii) (a) the person was charged with a violation of § 4.1-305, § 18.2-250 (possession of controlled substances), or § 18.2-250.1, and such charge was discharged and dismissed; and (b) all court costs and fines and all orders of restitution have been satisfied; or
- (iii) the person is convicted and has received a simple pardon for the commission of the crime or offense for which he seeks expungement and (a) has been of good behavior for the five years preceding the filing of his petition and (b) the conviction is not for a violent felony, as defined in the Code, or any crime ancillary to a violent felony, or for a violation of § 18.2-248 (manufacture, sell, give, distribute, etc. controlled substances), § 18.2-248.01 (transport controlled substances in the Commonwealth), § 18.2-248.1 (sell, give, distribute, etc. marijuana), § 18.2-255 (distribute drugs to person under 18), § 18.2-255.2 (sell, manufacture, etc. drugs on certain properties), § 18.2-258.02 (maintain a fortified drug house), or § 24.2-1016 (election fraud).

Current law allows for expungement in cases where the person has been acquitted, a nolle prosequi was taken, or the charges were otherwise dismissed.

The bill creates in the state treasury a special nonreverting fund to be known as the Expungement Fee Fund, which 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 according to the provisions of this bill. Expenditures from the Fund shall be limited by an appropriation in the general appropriations 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. The bill provides that any costs and expungement fees collected pursuant to this bill shall be deposited in the Fund.

The bill provides that a person shall not be required to pay any fees or costs for filing an expungement petition if the person files a petition requesting to proceed without the payment of fees and costs, and such petition: (a) states that (i) the final disposition of the criminal charge, civil offense, or conviction eligible for expungement occurred within the last 12 calendar months, as shown by an attached copy of the final case disposition; and (ii) petitioner was represented by court-appointed counsel or a public defender, as certified by such attorney with documentation of such representation attached; or (b) requires a determination of indigency by the court with which such person intends to file his expungement petition.

Additionally, if a petitioner qualifies to file a petition for expungement without the payment of fees and costs provided in the bill and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for expungement and represent the petitioner in the expungement proceedings. Counsel appointed to represent such petitioner shall be compensated for his services on an hourly basis at a rate set by the Supreme Court of Virginia, and subject to guidelines issued by the Executive Secretary, in a total amount not to exceed \$300, and such compensation shall be paid from the Fund.

6. **Budget Amendment Necessary:** Yes. Items 39 and 425.
7. **Fiscal Impact Estimates:** Preliminary. See below.
8. **Fiscal Implications:** According to the Courts, on average, between 2016-2018, there were 4,193 cases per year in which a defendant was under the age of 21 at the time of the offense and was found guilty or delinquent for violating §§ 4.1-305, 18.2-250.1, or 18.2-371.2(B). During the same time period, an average of 4,982 defendants per year were charged for violating §§ 4.1-305, 18.2-250, or 18.2-250.1, after which the charge was deferred and dismissed. According to data from the Secretary of the Commonwealth, between calendar years 2014 and 2019, there were an average of 60 simple pardons granted per year; the Secretary does not track simple pardons by conviction type, so the number of anticipated simple pardons that would be eligible for expungement pursuant to the provisions of this bill cannot be determined.

According to the Courts, this bill would increase the workload on general district court clerks, who would be tasked with locating the physical case file for each expunged case, sealing its content, indexing the case, and performing an “expungement delete” of the electronic record for each case in the case management system. This process takes approximately 10 minutes. If, as the Courts estimate, half of eligible cases were expunged in accordance with this bill’s provisions, the workload increase for clerks statewide would require an additional 0.6 full-time equivalent (FTE) positions in each clerk’s office. This translates to an annual cost increase of approximately \$39,681 (prorated to \$33,218 in the first year). Additionally, according to the Courts, the agency’s Financial Accounting System (FAS) would need to be modified to allow for payments into the system to be designated for

finances only, as the proposed legislation provides that defendants may file a petition for expungement without paying court costs. Additionally, the Virginia Judicial Online Payment System, the Virginia Judicial Collection System, and the court receipting system will need to be modified because they interact with the FAS. The estimated one-time costs to make the necessary changes to these systems is \$35,000 in the first year.

According to the courts, because this bill does not require a petitioner to pay court costs prior to being granted an expungement, it could have an impact on the total court costs collected. The 891 individuals convicted under § 4.1-305 between 2016-2018 would have been required to pay an estimated \$74 per conviction in court costs. Out of this, \$61 is deposited into state treasury and \$13 is allocated to the locality. Approximately 40% of people do not pay all applicable court costs within five years of their conviction in general district court. The courts estimate \$26,364 in court costs may be forgone annually if applicable new convictions under § 4.1-305 are expunged prior to the person's payment of their court costs.

Additionally, there are 41,930 cases in the court's ten years of currently retained cases that would be eligible for expungement pursuant to the bill. If, as the courts estimate, 10% of eligible individuals petition for expungement, an estimated \$286,588 in district court costs may be forgone in the expungement of applicable convictions for these older cases under § 4.1-305 and § 18.2-250.1. Currently, certain court costs are deposited into the state treasury.

The bill is not expected to have a fiscal impact on the Court's Criminal Fund program, which is used to support services for indigent offenders.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, employees in the expungement section 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. The other three support positions and the supervisor assist with additional expungement workload when they are able. The agency processed an average of 4,268 expungements per year between calendar years 2016-2019.

Under the provisions of this bill, offenses for which all fines and orders of restitution, or for which court costs, fines, and orders of restitution (depending on the violation) have been satisfied are eligible for expungement. According to VSP, there are currently 107,028 records in the Central Criminal Records Exchange (CCRE) that would meet criteria for expungement under the proposed legislation. At this time, it is not possible to estimate how many petitions for expungement would be processed by VSP in the first year and ongoing. Therefore, different scenarios were developed for purposes of reasonably ascertaining the fiscal impact on the operations of the agency.

Assumptions: The prorated first-year cost for a program support technician is \$60,448 and the second-year cost is \$72,537. The prorated first-year cost for a supervisor is \$63,252, and the second-year cost is \$75,903. The prorated first-year cost for a program support manager is \$78,781, and the second-year cost is \$94,538. All personnel costs shown include salary, benefits, general liability insurance and workers' compensation costs.

- Assuming 15 percent of the total records would qualify, and those individuals would petition for expungement, an estimated 16,054 cases may be eligible for expungement. VSP estimates it would need 33 additional program support technician positions, four supervisor positions, and one program support manager to process these expungements. If, as VSP estimates, all 38 FTE are required, the total annual personnel expenses are estimated at \$2,791,870, which would be prorated to \$2,326,558 the first year. Additionally, if the workload increases as estimated above, VSP believes it would need to lease office space at an approximate cost of \$134,690 annually for the new employees. Additional costs include \$184,691 in one-time costs for the first year for furniture expenses, and information technology costs in the amount of \$75,673 the first year and \$58,520 ongoing.
- If the number of petitions is 10 percent of the total estimated cases, then VSP would need 22 additional program support technician positions, three supervisor positions, and one program support manager to process 10,702 expungements for a total of \$1,918,060 in personnel expenses per year.
- If the number of petitions is five percent of the total estimated cases, then VSP would need approximately 11 additional program support technician positions and one supervisor position to process 5,351 expungements for total personnel costs of \$873,810 per year (it is assumed that no additional program support managers would be needed under this scenario).
- If the number of petitions is one percent of the total estimated cases, then VSP would need approximately two program support technician positions to process 1,070 expungements for total personnel costs of \$145,074 annually (it is assumed that no additional supervisor or manager positions would be needed under this scenario).

Additional office space and technology costs may be needed as well, depending on the number of positions actually added. Under all scenarios, it is assumed that personnel, office space, and technology costs would need to be prorated for the first year depending on the effective date of the bill.

**9. Specific Agency or Political Subdivisions Affected:** Department of State Police and Courts.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill is a companion to SB5043S2.

During the 2020 Session of the General Assembly, a budget amendment was passed pursuant to SB640 to provide funding for the Office of the Executive Secretary (OES) to perform enhancements to the three electronic case management systems it maintains that would allow for information from expunged cases to be abstracted and retained for inclusion in various statistical reports. As the case management systems currently exist, once a record is purged,

the electronic case management system would be unable to determine that such a case was ever filed. The Court's fiscal impact statement assumes that the provisions of SB5043 will have an effective date after such system enhancements, which are currently in process, are completed. The current estimated date of completion is January 1, 2022.