

Department of Planning and Budget

2020 Special Session I - Fiscal Impact Statement

1. Bill Number: SB5043H1

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

2. Patron: Deeds

3. Committee: House Appropriations

4. Title: Police and court records; Expungement Fee Fund created, expungement of certain records.

5. Summary: The proposed legislation provides for a process of automatic expungement for certain criminal charges and convictions. It provides that records relating to any arrest, criminal charge, or conviction that has been automatically expunged may only be disseminated for the purposes set forth in the bill. The court and any law enforcement agency shall reply to any inquiry that no record exists with respect to an arrest, criminal charge, or conviction that has been automatically expunged, unless such information is permitted to be disclosed, pursuant to the provisions of the bill. A clerk of court and the Executive Secretary of the Supreme Court shall be immune from any cause of action arising from the production of expunged court records, absent gross negligence or willful misconduct. Except as provided in the bill, upon entry of an order for automatic expungement, the person who was arrested, criminally charged, or convicted of the offense that was ordered to be automatically expunged may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such arrest, criminal charge, or conviction occurred. No person as to whom such an order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning such arrest, criminal charge, or conviction, unless otherwise provided for in the bill.

According to the bill, the person who was the subject of the order of automatic expungement may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be automatically expunged if: (i) the person is applying for full-time or part-time employment with, or to be a volunteer with, the Department of State Police (VSP) or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ii) the Code requires the employer to make such an inquiry; (iii) Federal law requires the employer to make such an inquiry; or (iv) the position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the U.S. under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the U.S. or any Executive Order of the President.

Additionally, an order to automatically expunge an arrest, criminal charge, or conviction shall not relieve the person who was arrested, criminally charged, or convicted of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense that was ordered to be automatically expunged. The provisions of this bill shall apply only to adults who were arrested, charged, or convicted of a criminal offense and to juveniles who were tried in circuit court.

The bill provides that if a person was charged with an offense in violation of § 4.1-305 (concerning the unlawful purchase or possession of alcoholic beverages), § 18.2-250 (concerning the unlawful possession of controlled substances), or § 18.2-250.1 (concerning the unlawful possession of marijuana), and such offense was deferred and dismissed, such offense shall be ordered to be automatically expunged, according to the provisions of the bill. The bill also provides that if a person was convicted of a violation of any of the following Code sections, such conviction shall be ordered to be automatically expunged, subject to the provisions of the bill: §§ 4.1-305, 18.2-57.01, 18.2-60, 18.2-86, 18.2-94, 18.2-96, 18.2-104, 18.2-119, 18.2-120, 18.2-121.3, 18.2-126, 18.2-127, 18.2-132.1, 18.2-134, 18.2-136, 18.2-137, 18.2-138, 18.2-144.2, 18.2-145.1, 18.2-146, 18.2-147, 18.2-147.2, 18.2-151, 18.2-151.1, 18.2-152.3:1, 18.2-152.7:1, 18.2-152.7:2, 18.2-152.15, 18.2-152.17, 18.2-156, 18.2-159, 18.2-160.1, 18.2-162.1, 18.2-163, 18.2-164, 18.2-165.1, 18.2-165.2, 18.2-250, 18.2-250.1, 18.2-251, 18.2-251.4, 18.2-255.1, 18.2-265.5, 18.2-265.7, 18.2-265.18, 18.2-265.21, 18.2-313.1, 18.2-313.2, 18.2-323.01, 18.2-323.02, 18.2-324, 18.2-326, 18.2-328, 18.2-329, 18.2-330, 18.2-331, 18.2-340, 18.2-371.3, 18.2-403.4, 18.2-404, 18.2-409, 18.2-410, 18.2-414.1, 18.2-415, 18.2-427, 18.2-428, 18.2-431.1, 18.2-462, 18.2-468, 18.2-471.1, 18.2-477.2, 18.2-487, 18.2-488, 18.2-499, 18.2-505, or 18.2-511.1. Such offenses and convictions shall be ordered to be automatically expunged if:

- for an offense that was deferred and dismissed, eight years have passed since the date of the dismissal and the person charged with the offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange (CCRE) pursuant to the Code or the laws of any other state, the District of Columbia, or the U.S. or any territory thereof, excluding traffic infractions;
- for a misdemeanor conviction, eight years have passed since the date of the conviction and the person convicted has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code or the laws of any other state, D.C., or the U.S., or any territory thereof, excluding traffic infractions; and
- for a felony conviction, eight years have passed since the date of the conviction or release from incarceration, whichever date occurred later, and the person convicted has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code or the laws of any other state, D.C., or the U.S. or any territory thereof, excluding traffic infractions.

Additionally, no offense shall be automatically expunged if, on the date of the deferral or dismissal, the person was convicted of another offense that is not eligible for automatic expungement. No conviction listed in this bill shall be automatically expunged if, on the date

of the conviction, the person was convicted of another offense that is not eligible for automatic expungement.

The bill provides that on a monthly basis, VSP must determine which offenses in the CCRE meet the criteria for automatic expungement. After reviewing the offenses, VSP is required to provide an electronic list of all offenses that meet criteria to the Executive Secretary of the Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with VSP. Upon receipt of the electronic list from VSP, on at least a monthly basis the Executive Secretary shall provide an electronic list of all offenses that meet criteria to the clerk of each circuit court in the jurisdiction where the case was finalized, if such clerk participates in the case management system maintained by the Executive Secretary. Upon receipt of the electronic list, on at least a monthly basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses that meet the criteria for automatic expungement be automatically expunged pursuant to the process set forth in this bill. The order must contain the names of the persons charged with or convicted of such offenses. The clerk of each circuit court is required to provide an electronic copy of any order entered to VSP on at least a monthly basis. If an offense is automatically expunged contrary to law, the expungement of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to expunge such offense.

Additionally, the bill provides that if a person is charged with the commission of a criminal offense, excluding traffic infractions, and (i) the person is acquitted, (ii) a nolle prosequi is entered, or (iii) the charge is otherwise dismissed, excluding any charge that is deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, the court disposing of the matter shall, at the time the acquittal, nolle prosequi, or dismissal is entered, order that the charge be automatically expunged unless the attorney for the Commonwealth or any other person advises the court at that time that:

- the charge is ancillary to another charge that resulted in a conviction or a finding of facts sufficient to justify a finding of guilt;
- a nolle prosequi is entered or the charge is dismissed as part of a plea agreement;
- another charge arising out of the same facts and circumstances is pending against the person;
- the Commonwealth intends to reinstitute the charge or any other charge arising out of the same facts and circumstances within three months;
- good cause exists, as established by the Commonwealth by a preponderance of the evidence, that such charge should not be automatically expunged; or
- the person charged with the offense objects to the expungement.

If the court enters an order pursuant to this subsection, the court shall advise the person charged that the offense has been ordered to be automatically expunged.

The bill also provides for automatic expungement in cases of mistaken identity or unauthorized use of identifying information. If (a) a person was charged or arrested as a result of mistaken identity or (ii) a person's name or other identification were used without

his consent or authorization by another person who was charged or arrested using such name or identification, and a nolle prosequi is entered or the charge is otherwise dismissed, the Commonwealth's attorney or any other person requesting the nolle prosequi or dismissal shall notify the court of the mistaken identity or unauthorized use of identifying information at the time such request is made. Upon such notification, the court disposing of the matter shall, at such time, order that the charge be automatically expunged, unless the person who was charged or arrested objects to such expungement.

The bill also provides that on at least an annual basis, VSP must review the CCRE and identify all persons with finalized case dispositions that resulted in an acquittal, a nolle prosequi, or a dismissal, excluding any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, where the criminal history record of such person contains no convictions for any criminal offense, excluding traffic infractions. Upon identification of these finalized case dispositions, VSP is required to provide an electronic list of such offenses to the Executive Secretary and to any circuit court clerk who maintains a case management system that interfaces with VSP. Upon receipt of the list from VSP, on at least an annual basis the Executive Secretary shall provide an electronic list of such offenses to the clerk of each circuit court in the jurisdiction where the case was finalized, if such court clerk participates in the case management system. On at least an annual basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses be automatically expunged. The clerk shall provide an electronic copy of any order entered to VSP on at least an annual basis.

Upon electronic notification that a court order for automatic expungement has been entered, VSP shall not disseminate any criminal history record information contained in the CCRE that relates to the arrest, criminal charge, or conviction that was ordered to be automatically expunged, except for the purposes set forth in the bill. Upon receipt of such notification, VSP shall electronically notify those agencies and individuals known to maintain or to have obtained such a record that the record has been ordered to be expunged, and may only be disseminated for the purposes set forth elsewhere in the bill. Upon entry of a court order for automatic expungement, the Executive Secretary and any circuit court clerk who maintains a case management system that interfaces with VSP under this section must : (i) ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing; and (ii) not disseminate any court record of such arrest, criminal charge, or conviction to the public, except as provided in this bill.

Additionally, records relating to an arrest, criminal charge, or conviction that was ordered to be automatically expunged shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated in the following cases:

- to make a determination of eligibility to possess or purchase a firearm;
- for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System;
- to the Virginia Criminal Sentencing Commission for research purposes;
- to any full-time or part-time employee of VSP or a police department or sheriff's office in the Commonwealth or any political subdivision thereof for the purpose of

- screening any person for full-time or part-time employment with, or to be a volunteer with, VSP or a police department or sheriff's office in the Commonwealth or any political subdivision thereof;
- to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an EMS agency;
 - to any full-time or part-time employee of the Department of Forensic Science (DFS) for the purpose of screening any person for full-time or part-time employment with the agency;
 - to the chief law enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance for the purpose of screening any person who applies to be a volunteer with or an employee of an EMS agency;
 - to any employee of the Department of Motor Vehicles (DMV), any employer as defined in § 46.2-341.4 (pertaining to commercial motor vehicles), or any medical examiner for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration;
 - to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions;
 - to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the U.S. under any security program in effect pursuant to or administered under any contract with, or statute or regulation or, the U.S. or any Executive Order of the President;
 - to any person authorized to engage in the collection of court costs, fines, or restitution, for the purposes of collecting such costs, fines, or restitution;
 - to administer and utilize the DNA Analysis and Data Bank;
 - to publish decisions of the Supreme Court and Court of Appeals;
 - to any employee of a court, the Office of the Executive Secretary (OES), the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary for the purpose of screening any person for employment as a clerk, magistrate, or judge with a court or the OES;
 - to any employer or prospective employer or its designee where the Code requires the employer to inquire about prior criminal charges or convictions; and
 - to the person arrested, charged, or convicted of the offense that was automatically expunged.

Upon request from any person to access a court record, the clerk shall determine whether the record is open to public access and inspection. If the clerk determines that a record has been automatically expunged, such record cannot be provided to the requestor without an order from the court that entered the order to automatically expunge the record. Any such order that allows access to a court record that has been automatically expunged shall only be issued for one or more of the purposes set forth in this subsection of the bill. Such order shall allow the requestor to photocopy the record. No fee shall be charged if the person filing the motion is the same person whose arrest, charge, or conviction was automatically expunged. If a pleading or case document in a court record that was automatically expunged is included

among other court records that were not, the clerk shall ensure that such pleading or case document that was ordered to be expunged is redacted from the record prior to allowing public access to the record. No charge or conviction that has been automatically expunged may be used to impeach the credibility of a testifying witness at any hearing or trial.

It is unlawful for any person having or acquiring access to an automatically expunged criminal history or court record, except for a news organization or newsperson engaged in journalism, to disclose such record or any information from such record to another person for an unauthorized purpose. A violation is a Class 1 misdemeanor.

The bill provides that agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and education institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, charge, or conviction that has been automatically expunged. An applicant need not, in answer to any question concerning an arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been automatically expunged. The provisions of this section shall not apply in the following cases: (i) the person is applying for employment with, or to be a volunteer with, VSP or a police department or sheriff's office in the Commonwealth or any political subdivision thereof; (ii) the Code requires the employer to make such an inquiry; (iii) Federal law requires the employer to make such an inquiry; or (iv) the position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the U.S. under any security program in effect pursuant to or administered under any contract with, or statute or regulation or, the U.S. or any Executive Order of the President.

Agencies, officials, and employees of state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, charge, or other conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning an arrest, charge or conviction, include a reference to or information concerning ones that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning an automatic expungement.

No person shall, in any application for the sale or rental of a dwelling, require an applicant to disclose information about an arrest, charge, or conviction against him that has been automatically expunged. An applicant need not include a reference to such information in answer to any question. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, charge, or conviction against him that has been automatically expunged. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation. If any entity or person listed in this subsection includes a question about a prior criminal charge or conviction in an application for one or more of the purposes set forth there, such application shall include a notice to the applicant that a charge or conviction that has been automatically expunged does

not have to be disclosed in the application. Such notice need not be included on any application for employment or volunteering with VSP, a police department, or sheriff's office, when the Code or Federal law requires such an inquiry, or when the position or access to the premises where the position is to be performed is subject to requirements imposed in the interest of national security.

The bill provides that upon entry of an automatic expungement order pursuant to this section, the OES shall not make any offense that was ordered to be automatically expunged available for online public viewing in an appellate court, circuit court, or district court case management system maintained by OES. Upon entry of such order, any circuit court clerk who maintains a viewable online case management or case information system shall not make any offense that was ordered to be automatically expunged available for online public viewing.

If an offense is ordered to be automatically expunged pursuant to the bill, and a published or unpublished decision or order of the Supreme Court or the Court of Appeals exists in relation to that offense, the clerk is required to redact the name of the person charged with the offense from any decision or order that references such offense, unless such decision or order also includes offenses that were not ordered to be automatically expunged. Upon such redaction, the Executive Secretary of the Supreme Court shall remove the decision or order published on Virginia's Judicial System website and replace such decision or order with the redacted version.

The bill also provides that if data from a case management system is not provided to the Executive Secretary of the Supreme Court through an interface, such data must be provided to VSP through an interface for the purposes of complying with this section. The parameters of such interface shall be determined by VSP. The costs of designing, implementing, and maintaining such interface shall be the responsibility of the circuit court clerk.

The bill provides that the entry of an automatic expungement order shall not serve as grounds for the expungement of a person's DNA profile or any records in the data bank relating to that DNA profile.

The bill makes several amendments to § 19.2-389.3, concerning the limits on dissemination of criminal history record information for marijuana possession charges. It eliminates language that allows for such records that have been deferred and dismissed to be disseminated in the following cases: (i) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency, a pre-sentence or post-sentence investigation report, or in the preparation of discretionary sentencing guidelines worksheets; (ii) to aid local community based probation services agencies with investigating or service adult local responsible offenders and all court service units serving juvenile delinquent offenders; (iii) to attorneys for the Commonwealth to secure information incidental to sentencing and to Commonwealth's attorneys and probation officers to prepare discretionary sentencing guidelines worksheets; and (iv) to any full time or part time employee of VSP, a police department, or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, for purposes of the administration of criminal justice.

The bill provides for the dissemination of such records to the following: (i) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (ii) to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the U.S. under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the U.S. or any Executive Order of the President; (iii) to any person authorized to engage in the collection of court costs, fines, or restitution; (iv) to administer and utilize the DNA Analysis and Data Bank; (v) to publish decisions of the Supreme Court and Court of Appeals; (vi) to any full-time or part-time employee of a court, the OES, the Division of Legislative Services, or the Chairs of the House Committee for Courts or Justice and the Senate Committee on the Judiciary for the purpose of screening any person for employment as a clerk, magistrate, or judge with a court or the OES; (vii) to any employer or prospective employer or its designee where the Code requires the employer to inquire about prior criminal charges or convictions; and (viii) to the person arrested, charged, or convicted of the offense that was automatically expunged.

Additional amendments to § 19.2-389.3 requires that agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and education institutions not require an applicant for employment or admission to disclose information concerning any arrest, charge, or conviction when such record is not open for public inspection. Exceptions are provided in the following cases: (i) the person is applying for employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ii) the Code requires the employer to make such an inquiry; (iii) Federal law requires the employer to make such an inquiry; or (iv) the position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in there interest of the national security of the U.S. under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the U.S. or any Executive Order of the President. Additionally, no person shall, in any application for the sale or rental of a dwelling, require an applicant to disclose such information when the corresponding record is not open to public inspection. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions when such records are not open for public inspection. Such an application may not be denied solely because of the applicant's refusal to disclose such information. A violation is a Class 1 misdemeanor.

Additionally, the bill contains the following enactment clauses:

- that the provisions of §§ 19.2-72, 19.2-74, and 19.2-390, as amended by the bill, shall become effective on July 1, 2021;
- that VSP shall delete all records from the CCRE that were not required to be reported to the CCRE pursuant to the bill, by July 1, 2021;

- that the Attorney General, after consultation with the Committee on District Courts, the Superintendent of State Police, and Commissioner of the Department of Motor Vehicles (DMV), shall amend the Virginia uniform summons to reflect the amendments made in this bill by July 1, 2021;
- that the provisions of §§ 9.1-101, 17.1-293.1, 17.1-323, 17.1-413, 17.1-502, and 19.2-310.7, as amended by the bill, and Chapter 23.2 of Title 19.2 of the Code, as created in the bill, shall become effective on July 1, 2024;
- that the Executive Secretary of the Supreme Court of Virginia, VSP, and any circuit court clerk who maintains a case management system that interfaces with VSP shall automate systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, and 19.2-392.11, as created by the bill, by July 1, 2024;
- that the Executive Secretary of the Supreme Court of Virginia shall develop a form for requesting and authorizing access to an automatically expunged court record by July 1, 2024;
- that VSP shall purchase Criminal History, Expungement, Master Name Index, Rap Back, Civil Commitment, Applicant Tracking, and such other solutions or services as may be necessary to implement the provisions of the bill, and that such purchases shall not be subject to the Virginia Public Procurement Act;
- that the Virginia State Crime Commission shall consult with stakeholders to determine and recommend methods to educate the public on the automatic expungement process and the effects of an order to automatically expunge an arrest, criminal charge, or conviction and shall report on such recommended methods by December 15, 2021;
- that the Executive Secretary of the Supreme Court of Virginia, VSP, and any circuit court clerk who maintains a case management system that interfaces with VSP shall each provide a report to the Virginia State Crime Commission on the progress of implementing automated systems to exchange information, as required by the bill, by November 1, 2021, and by November 1 of each year thereafter until the automated systems have been fully implemented;
- that VSP shall determine the feasibility and cost of implementing an automated system to review out-of-state criminal history records and report to the Virginia State Crime Commission by November 1, 2021, and by November 1 of each year thereafter until such determination has been made;
- that the Virginia State Crime Commission shall examine methods to regulate or restrict the dissemination of criminal history record information by private entities and provide a report by January 12, 2021;
- that the Virginia Court Clerks' Association shall determine the necessary staffing and technology costs of implementing the provisions of the bill and report to the Virginia State Crime Commission by November 1, 2021, and by November 1 of each year thereafter until such determination has been made.

6. Budget Amendment Necessary: Yes. Item 39, 402, and 425.

7. Fiscal Impact Estimates: Preliminary. See below.

- 8. Fiscal Implications:** According to the Courts, it would be necessary to implement several technological changes to comply with the provisions of the proposed legislation, including: modifying 17 public or external-facing systems to prohibit access to automatically expunged cases and modifications of more than 20 internal systems and interfaces; developing and implementing incoming and outgoing interfaces with the Department of State Police (VSP) to receive and process cases for automatic expungement and orders voiding expungements; developing an Expungement Management System (EXMS), which includes project setup, infrastructure configuration, and the development of capabilities to fully implement the bill's requirements; modifying of multiple systems to allow the receipt of expungement and expungement void orders entered from the EXMS; testing performance and load of all affected systems; addressing database security and roles to ensure only authorized users see the automatically expunged data; and assigning additional processing units to systems to handle the increased load during expungement list processing, which also includes additional data storage capabilities and software licensing costs. The total estimated one-time cost to the Office of the Executive Secretary (OES) is approximately \$6,156,130. According to OES, this appropriation may be spread out over the four years it will take to implement these changes.

According to the Department of State Police (VSP), the proposed legislation would require the agency to replace several of its core systems that collect and store criminal record information, including the agency's Criminal History System, its Applicant Tracking System, its Expungement System, and its Master Name Index (an index of names and search algorithm to connect a record to an individual in the event of misspellings or aliases). Additionally, the agency would need to upgrade its Civil Commitment System and introduce a Rap Back system (which allows agencies to be notified of any employees who are charged with a crime) to unify all of these systems onto one platform. The estimated cost to make these replacements and upgrades is \$12.5 million. Additionally, the agency estimates it would need an additional \$15,000 to develop and implement the functionality to delete all records that are not reportable under § 19.2-390(A)(1) of the proposed legislation. The Department estimates it will also need \$66,520 to modify its existing systems that disseminate marijuana records in order to comply with § 19.2-389.3 of the proposed legislation. The total estimated information technology one-time cost to VSP is \$12,581,520.

Additionally, VSP estimates it will need four analyst positions, and one lead analyst position, to comply with the provisions of this bill. These positions would complete several functions as provided in the proposed legislation. First, they would complete out-of-state criminal history reviews to find convictions that qualify for automatic expungement pursuant to § 19.2-392.6(C) (1), (2), and (3). Current technology does not allow for this search function to be automated, so these positions would need to manually examine the qualifying records, confirm the requirements of the originating state or territory, and conduct research on incomplete records. There are 304,799 records in the Central Criminal Records Exchange (CCRE) that would meet criteria for automatic expungement according to the bill, and VSP received an average of 30,100 such records between calendar years 2017-2019. VSP estimates that each analyst position would be able to review, research, and process 6,000 of these record examinations, and the corresponding expungements per year. The total ongoing cost for these positions, including salary and benefits, is \$438,464 annually. Other costs

associated with these positions include \$17,722 per year in office space costs, \$24,301 the first year for furniture expenses, and \$9,957 the first year and \$7,700 annually thereafter for information technology costs.

There is no anticipated fiscal impact on the Virginia State Crime Commission as a result of the provisions of this bill. Any potential fiscal impact on local law enforcement agencies is indeterminate at this time.

The proposed legislation provides that individuals cannot be held guilty for perjury or giving a false statement arising out of a person's denial or failure to disclose an offense that was automatically expunged, unless such denial or failure to disclose is in response to a query from certain employers. Under § 18.2-434, a person to whom an oath is lawfully administered who willfully and falsely swears to any material matter may be prosecuted for perjury, a Class 5 felony. If the denial or failure to disclose provided for in this bill can be prosecuted in the same manner as perjury and other false swearing, individuals who falsify their expunged record may be charged with perjury.

Based upon FY 2018 and FY 2019 Sentencing Guideline data obtained by the Virginia Criminal Sentencing Commission, 74 offenders were convicted of a Class 5 felony for perjury. This offense was the primary, or most serious offense, at sentencing for 51 of these cases. Of these, 33.3% did not receive an active term of incarceration to serve after sentencing. Another 51% were given a local-responsible jail term, for which the median sentence was three months. The remaining 15.7% received a state-responsible prison term with a median sentence of 1.7 years.

The proposed legislation expands the applicability of an existing felony. Therefore, the bill may increase future state prison bed needs in the Commonwealth; however, sufficient data is not available to estimate the number of cases under the proposed legislation or estimate the overall impact. Accordingly, the magnitude of the impact on prison bed space cannot be determined at this time.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1289, 2020 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

Any potential fiscal impact on local and regional jails or the Department of Juvenile Justice (DJJ) is indeterminate at this time.

The proposed legislation also may increase the local-responsible jail bed space needs, however, the extent of the impact cannot be determined at this time using existing data. Any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. According to the

Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Existing data do not contain sufficient detail to estimate the number of individuals who may be convicted of the new Class 1 misdemeanors created in the bill, according to the Virginia Criminal Sentencing Commission.

- 9. Specific Agency or Political Subdivisions Affected:** Department of State Police, Department of Corrections, Virginia State Crime Commission, Department of Motor Vehicles, Office of the Attorney General, Courts, Local law enforcement agencies, Local and regional jails.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is a companion to HB5146H3.