

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB476

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

2. Patron: Guzman

3. Committee: Courts of Justice

4. Title: Expungement of police and court records; misdemeanor and nonviolent felony convictions.

5. Summary: Provides that any person who has been convicted of a misdemeanor or felony may file a petition requesting expungement of police and court records relating to the charge and conviction. Exceptions are provided for violent felonies and for violations of the following sections: § 18.2-63 (carnal knowledge of a child); § 18.2-64.2 (carnal knowledge of inmate, etc.); § 18.2-67.4 (sexual battery); § 18.2-67.4:2 (sexual abuse of a child); § 18.2-248 (manufacture, etc. controlled substances); § 18.2-266 (driving while intoxicated); § 29.1-738 (operating a boat recklessly or while intoxicated); and § 46.2-341.24 (driving a commercial vehicle while intoxicated). The bill requires that any such petitioners (a) have been free from any term of incarceration, probation, or post-release supervision imposed as a result of such conviction for at least three years for a misdemeanor conviction and at least five years for a felony conviction; (b) have no outstanding fines, costs, or restitution, and (c) have no pending criminal proceeding. Current law allows for expungement in cases where the person has been acquitted, a nolle prosequi was taken, or the charges were otherwise dismissed.

6. Budget Amendment Necessary: Yes. Items 39 and 425.

7. Fiscal Impact Estimates: Preliminary. See below.

8. Fiscal Implications: The proposed legislation provides that any person who has been convicted of a misdemeanor or felony may file a petition for the expungement of his police and court records provided he has been free from any term of incarceration, probation, or post-release supervision imposed as a result of such convictions for a least three years for a misdemeanor and at least five years for a felony, he owes no outstanding fines, costs, or restitution, and he has no pending criminal proceedings against him. Exceptions are provided for violent felonies as defined in the Code, certain sexual offenses, convictions involving driving while intoxicated, and for manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give, or distribute a controlled substance.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, a total of 3,095,291 records (960,075 felonies and 2,135,216 misdemeanors) currently exist in the Central Criminal Records Exchange (CCRE), excluding

the violations that are exempted from expungement according to the provisions of the bill. However, VSP does not have the means of determining, based on the records it currently has, the number of individuals who are free from incarceration, probation, or post-release supervision for the period of time specified in the bill. Additionally, at this time, VSP has no means of independently determining if all fines, costs, and restitution have been paid by those individuals whose records exist in the CCRE. Therefore, it is unknown at this time how many individuals may qualify for expungement. Depending on the number of orders received, the agency will need additional staff to process these cases under the provisions of the bill. The expungement section within VSP can process approximately 500 expungements per employee per year. VSP currently only 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.

The cost for salary and fringe benefits for employees who process expungements is \$69,607 per year. Information technology costs per employee are an additional \$2,310 per year, and depending on the number of additional employees, office space, furniture expenses, and the cost for additional supervisor positions would be required.

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.

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

10. Technical Amendment Necessary: Yes. A period is needed after the eight in the Code section reference if the intent of the bill is to refer to § 18.2-67.4:2 under § 19.2-392.2(B), as amended.

11. Other Comments: None.