

## **Department of Planning and Budget 2021 Fiscal Impact Statement**

**1. Bill Number:** SB1264

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Morrissey

**3. Committee:** Judiciary

**4. Title:** Expungement of emergency and preliminary protective orders.

**5. Summary:** Provides that if an emergency or preliminary protective order has been issued, and such order expires, is dissolved by the issuing court, or if a hearing for the issuance of a permanent protective order is scheduled or held and such order is subsequently not issued, the person against whom the order was issued may file a petition setting forth the relevant facts and requesting expungement of the police and court records relating to the order.

Such a petition and a copy of the order must be filed in the circuit court of the jurisdiction where the order was issued. In cases where the order is not reasonably available, the petition shall state the reason for the unavailability. The petition must also contain the date of the issuance of the order, the petitioner's date of birth, and the full name used by the petitioner at the time of the issuance of the order. A copy of the petition must be served on the Commonwealth's attorney of the relevant jurisdiction. The Commonwealth's attorney may file an objection or answer to the petition within 21 days of such service. The petitioner must also obtain from a law enforcement agency one complete set of his fingerprints and must provide the law enforcement agency with a copy of the expungement petition. The law enforcement agency must submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition expungement attached. The CCRE must forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to have expunged, and the set of fingerprints. Upon completion of the hearing, the court must return the fingerprint card to the petitioner.

The bill provides that after receiving the criminal history record information from the CCRE, the court must conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the emergency or preliminary protective order causes or may cause circumstances that constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the order. Otherwise, it must deny the petition. No costs may be recoverable against the Commonwealth.

Upon entry of an order of expungement the clerk of court must forward a copy of the order to the Department of State Police (VSP), which will direct the manner by which the appropriate expungement or removal of such records will be affected. Any order entered where (i) the

court or parties failed to strictly comply with these procedures or (ii) the court enters an order of expungement contrary to law will be voidable upon motion and notice made within three years of the entry of such order.

The bill also provides that an employer or educational institution may not, in any application, interview or otherwise, require an applicant for employment or admission to disclose information concerning any protective order issued against him, and such an applicant need not, in answer to any question concerning such a protective order, include a reference to that information if the protective order has been expunged. Additionally, agencies, officials, and employees of state and local governments may not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any protective order issued against him, and an applicant need not, in answer to any question concerning a protective order issued against him, include a reference to or information concerning such arrests or protective orders if they have been expunged.

Such an application may not be denied solely because of his refusal to disclose information concerning any protective order issued against him. A violation of the provisions of the bill is a Class 1 misdemeanor.

6. **Budget Amendment Necessary:** Yes, Items 39 and 425.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** The Department of State Police (VSP) is responsible for expunging police records contained in the Central Criminal Records Exchange (CCRE). According to data provided by VSP that was pulled from the Virginia Criminal Information Network (VCIN), on average, between 2016 and 2018, 65,028 emergency and preliminary protective orders were issued that did not later become full orders of protection, and thus would be eligible for expungement under the proposed bill. VSP also believes it may be required to expunge orders from previous years (protective orders issued prior to the implementation of this bill), in addition to the number of new protective orders it will need to expunge annually. However, at this time, VSP has not provided the number of cases from previous years contained in the CCRE. VSP assumes 10 percent (6,503 out of the 65,028 average) of eligible emergency and preliminary protective orders petitions per year would be granted by the court and required to be expunged under the provisions of this bill. At this time, it is not feasible to determine how many people would file petitions consistent with the specific provisions of the bill, and how many of those petitions would ultimately be granted by a court, leading to expungement orders. If as VSP assumes, 10 percent of cases (those identified between 2016 and 2018) would require expungement pursuant to a court order, then VSP would need 13 additional positions (12 program support technicians and one office supervisor) and resources in the expungement section. Currently, a VSP program support technician position costs approximately \$75,593 per year (salary and benefits), and can process 500 expungements per year. An office services supervisor position currently costs approximately \$75,903 per year, and a CCRE manager costs \$94,538 per year. Depending on the number of additional positions needed, each position could also incur additional office

rental expenses in the amount of approximately \$3,570 per position. The agency would also expect to incur a one-time cost of \$4,861 in office furniture expenses, and additional information technology expenses in the amount of \$1,991 in the first year and \$1,540 the second year per position.

According to the Office of the Executive Secretary (OES), the provisions of the proposed legislation will have a significant impact on circuit courts, which would be tasked with receiving and holding hearings for many cases related to the expungement of emergency and preliminary protective orders. It is expected the bill will have a significant impact on the workload of circuit court judges, which cannot be determined at this time. It is likely that additional circuit court judge or law clerk positions would be needed once the full impact of the bill, if implemented, is determined. Currently, circuit courts have 76 existing law clerk positions that are funded by localities and cost approximately \$74,000 annually per position.

Additionally, according to OES, the bill would increase the workload on general district and juvenile and domestic relations district court clerks, who would be tasked with locating the physical case file for each expunged case, sealing its contents, indexing the case, and deleting the electronic record for each case in the case management system. It is estimated that these tasks will take approximately 10 minutes per case. According to data provided by OES from its case management system (CMS), in 2019, there were 73,395 emergency or preliminary protective orders issued. If, as OES estimates, half of these yearly cases were expunged, this would increase the statewide workload of clerks in a manner equivalent to the work of five full-time employees of a clerk's office. However, it is not feasible to determine at this time the number of petitions that would be granted.

Further, expunging references to preliminary protective orders issued pursuant to § 16.1-253, as required in the bill, would create an additional workload burden because many of these orders are issued in complicated cases that can result in large case files. In such instances, many of the subsequent cases and relevant pleadings within a large file will reference the protective order. Therefore, a clerk would need to sort through every page of a large file for documentation and references to any protective order issued, and any instances would need to be manually redacted, unlike the simple sealing of an entire case file in criminal expungements. OES estimates these tasks would require an average of 20 minutes per case file. According to data provided by OES, on average, between 2018 and 2020 there were 3,220 preliminary protective orders issued pursuant to § 16.1-253. If, as OES estimates, half of these yearly cases were expunged in accordance with the bill's provisions in future years, this would increase the statewide workload of clerks in a manner equivalent to that performed by 0.4 of a full-time employee of a clerk's office.

Additionally, clerk positions would be necessary to delete the ten years of currently-retained district court records that would be eligible for expungement under the bill. If, as OES estimates, 25 percent of the protective orders issued in accordance with §§ 16.1-253.1, 16.1-253.4, 19.2-152.8, or 19.2-152.9 (estimated to be 183,480 cases) and 25% of the PPOs issued pursuant to 16.1-253 (estimated to be 8,050 cases) were to be expunged, this would increase the statewide workload of district court clerks in a manner that would require 2.6 additional district court clerk positions statewide. The total increase in district court clerks' office

workload as a result of the provisions of this bill would require eight additional employees, at an annual cost of \$529,071 (salary and benefits), according to OES.

Also, according to OES, the proposed legislation would increase the workload on magistrates, who would be tasked with searching for applicable records and removing those that had been expunged or sealed. OES estimates one additional magistrate position would be necessary, at an annual cost of \$77,183 annually (salary and benefits). The total estimated cost to OES as a result of the provisions of this proposed legislation is \$606,254 annually and nine positions.

The proposed legislation expands the applicability of existing Class 1 misdemeanors, by providing that employers, education institutions, agencies, officials, and employees of state and local governments may not require an applicant to disclose information about a protective order issued against him that has been expunged. Such applications may not be denied solely on the basis of an applicant's refusal to disclose such information. Under current law, a Class 1 misdemeanor is punishable by up to 12 months in prison or a fine of not more than \$2,500, or both.

Any potential fiscal impact on local-responsible jail bed space needs cannot be determined at this time. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

**9. Specific Agency or Political Subdivisions Affected:** Department of State Police, Courts, Commonwealth's Attorneys, Local and regional jails.

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

**11. Other Comments:** None.