

## Department of Planning and Budget 2021 Fiscal Impact Statement

**1. Bill Number:** SB1372

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

**2. Patron:** Lucas

**3. Committee:** Judiciary

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

**5. Summary:** The proposed legislation provides for a process of automatic expungement, as defined in the bill. Upon entry of an automatic expungement order, the Executive Secretary of the Supreme Court (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 the Executive Secretary. Additionally, 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, upon entry of such an order. If an offense is ordered to be automatically expunged and a published or unpublished decision or order of the Supreme Court or Court of Appeals exists in relation to that offense, the clerk shall redact the name of the person charged with the offense that was ordered to be automatically expunged from any decision or order of the court that references such offense, unless such decision or order also includes offenses that were not ordered to be automatically expunged. Upon redaction of any decision or order, the OES shall remove the decision or order published on Virginia's Judicial System website and replace such decision or order with the redacted version of the decision or order. Entry of an automatic expungement order shall not serve as grounds for expungement of a person's DNA profile from the DNA data bank.

The proposed legislation adds § 19.2-392.5 to establish the process of automatic expungement. The bill defines "automatic expungement" to mean restricted dissemination of criminal history record information contained in the Central Criminal Records Exchange (CCRE), and prohibited dissemination of court records, unless such dissemination is authorized by a court order. Upon entry of an order for automatic expungement, the person who was arrested, charged, or convicted of the offense may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, criminal charge, or conviction occurred. 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 employment with, or to be a volunteer with, VSP or a police department or sheriff's office in the Commonwealth; (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 United States under any security program in

effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President. An order of automatic expungement does not relieve the person who was arrested, charged, or convicted of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense.

Additionally, if a person was charged with an offense in violation of §§ 4.1-305 (unlawful purchase or possession of alcohol), 18.2-250 (possession of controlled substances), or 18.2-250.1 (possession of marijuana), and such offense was deferred and dismissed, the offense shall be ordered to be automatically expunged. If a person was convicted of a violation of any of the following sections, such conviction must also be automatically expunged: §§ 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. The deferrals and dismissals or convictions listed in this section shall be automatically expunged if:

(i) 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 of Virginia or that of any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

(ii) for a misdemeanor conviction, eight years have passed since the date of the conviction and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code of Virginia or that of any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

(iii) 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 of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code of Virginia or that of any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

(iv) no offense that was deferred and dismissed 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 pursuant to this section. No conviction in this section 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 pursuant to this section.

The bill also provides that on a monthly basis, VSP shall determine which offenses in the CCRE meet criteria for automatic expungement. After reviewing such offenses, VSP shall provide an electronic list of all offenses that meet criteria to the OES and to any circuit court clerk who maintains a case management system (CMS) that interfaces with VSP. Upon receipt of such list, on at least a monthly basis, the OES shall provide a list of all offenses that meet criteria for automatic expungement to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the CMS maintained by the OES. Upon receipt of such list, on at least a monthly basis, the clerk of each circuit court must prepare an order and the chief judge of the court shall enter such order directing that the offenses that meet criteria be automatically expunged. The clerk of each circuit court must provide an electronic copy of any such order to VSP on at least a monthly basis.

The bill also provides that if a person is charged with the commission of a criminal offense 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 Commonwealth's attorney or any other person advises the court at such time that: (i) the charge is ancillary to another charge that resulted in a conviction or a finding of facts sufficient to justify a finding of guilt; (ii) a nolle prosequi is entered or the charge is dismissed as part of a plea agreement; (iii) another charge arising out of the same facts and circumstances is pending against the person; (iv) the Commonwealth intends to reinstitute the charge or any other charge arising out of the same facts and circumstances within three months; (v) good cause exists, as established by the Commonwealth by a preponderance of the evidence, that such charge should not be automatically expunged; or (vi) the person charged with the offense objects to the automatic expungement. In such cases when the court enters an order of automatic expungement, it shall advise that person charged of such order.

If (i) a person is charged or arrested as a result of mistaken identity or (ii) a person's name or other identification is used without his consent or authorization by another person who is charged or arrested using such name or identification, and a nolle prosequi is entered or the charge is otherwise dismissed, the attorney for the Commonwealth 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 the time the nolle prosequi or dismissal is entered, order that the charge be automatically expunged, unless the person charged or arrested as a result of the mistaken identity or unauthorized use of identifying information objects to such automatic expungement. If the court enters such an order, the court shall advise the person charged that the offense has been ordered to be automatically expunged.

On at least a monthly basis, the OES and any circuit court clerk who maintains a CMS that interfaces with VSP shall provide an electronic list of all offenses in such CMS to VSP that were ordered to be automatically expunged pursuant to the proposed §§ 19.2-392.8 and 19.2-392.9.

On at least an annual basis, VSP shall review the CCRE and identify all persons with finalized case dispositions that resulted in (i) an acquittal, (ii) a nolle prosequi, or (iii) 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 under Title 46.2. Upon identification of the finalized case dispositions, VSP shall provide an electronic list of such offenses to the OES and to any circuit court clerk who maintains a CMS that interfaces with VSP. Upon receipt of the electronic list from VSP, on at least an annual basis, the OES 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 circuit court clerk participates in the CMS maintained by the Executive Secretary. Upon receipt of the electronic list, 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. Such order shall contain the names of the persons charged with such offenses. The clerk of each circuit court shall provide an electronic copy of any such 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 exceptions provided in the Code. Upon receipt of such electronic notification, VSP shall electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be automatically expunged and may only be disseminated for certain purposes.

Upon entry of a court order for automatic expungement, the OES and any circuit court clerk who maintains a CMS that interfaces with VSP shall: (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 the Code. 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: (i) to make the determination of eligibility to possess or purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in Automated Fingerprint Information System (AFIS); (iii) to the Virginia Criminal Sentencing Commission for research purposes; (iv) to any employee of VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for employment with, or to be a volunteer with, VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (v) 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 emergency medical services agency; (vi) to any employee of the Department of Forensic Science (DFS) for the purpose of screening any person for employment with DFS; (vii) 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 emergency medical services agency; (viii) to any employee of the Department of Motor Vehicles (DMV), any employer or any medical examiner for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or

convictions; (x) 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 United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; (xi) to any person authorized to engage in the collection of court costs, fines, or restitution for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize the DNA Analysis and Data Bank; (xiii) to publish decisions of the Supreme Court and Court of Appeals; (xiv) to any employee of a court, the 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; (xv) to any employer or prospective employer or its designee where the Code requires the employer to inquire about prior criminal charges or convictions; and (xvi) 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 of court shall determine whether such record is open to public access and inspection. If the clerk of court determines that a court record has been automatically expunged, such record shall not be provided to the requestor without an order from the court that entered the order to automatically expunge the court record. Any order from a court that allows access to a court record that has been automatically expunged shall only be issued for one of the purposes set forth in this section. Such order to access a court record that has been automatically expunged shall allow the requestor to photocopy such court record. No fee shall be charged to any person filing a motion to access a court record that has been automatically expunged if the person filing such motion is the same person who was arrested, criminally charged, or convicted of the offense that was automatically expunged. If a pleading or case document in a court record that was automatically expunged is included among other court records that have not been ordered to be automatically expunged, the clerk of court shall ensure that such pleading or case document that was ordered to be automatically expunged is redacted from the court record prior to allowing public access to such court 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.

The bill also amends § 19.2-389.3, pertaining to limits on the dissemination of criminal history information related to violations of § 18.2-250.1 (misdemeanor possession of marijuana). It eliminates several instances in which such information is currently permitted to be released, including: (i) to aid in the preparation of a pretrial investigation report, a pre-sentence or post-sentence investigation report, or in the preparation of a discretionary sentencing guideline worksheet; (ii) to aid local community based probation services agencies with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare discretionary sentencing guidelines worksheets; and (vi) to any employee of the Department of State Police (VSP), a police department, or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The bill adds the following instances in which such

information may be released: (i) to any employee of VSP, a police department, or sheriff's office in the Commonwealth for the purpose of screening a person to be a volunteer in such agency; (ii) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (iii) 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 United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; (iv) to any person authorized to engage in the collection of court costs, fines, or restitution for purposes of collecting such court costs, fines, or restitution; (v) to administer and utilize the DNA Analysis and Data Bank; (vi) to publish decisions of the Supreme Court and Court of Appeals; (vii) to any employee of a court, the 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; (viii) to any employer or prospective employer or its designee where the Code requires the employer to inquire about prior criminal charges or convictions; and (ix) to the person arrested, charged, or convicted of the offense that was automatically expunged.

The bill prohibits agencies, officials, and employees of state and local governments, private employers that are not otherwise exempt, and education institutions from requiring an applicant for employment or admission to disclose information concerning an arrest, charge, or conviction under § 18.2-250.1, when such record is not open for public inspection. These provisions shall not apply if (i) the person is applying for employment with, or to be a volunteer with, VSP, a police department, or sheriff's office in the Commonwealth; (ii) the Virginia Code requires the entity to make such an inquiry; (iii) federal law requires 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 United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President.

Additionally, no person shall require the disclosure of any arrest, charge, or conviction under § 18.2-250.1 in the application for sale or rental of any dwelling, when such record is not open to public inspection. A violation is a Class 1 misdemeanor. It is also a Class 1 misdemeanor for any agency, official, or employee of state or local governments to require the release of such information not open to public inspection from an applicant for a license, permit, registration, or governmental service.

The bill provides that it is unlawful for any person having or acquiring access to an automatically expunged record, except for a news organization or newsperson engaged in journalism, to disclose such record or any information from such record to another person; a violation is a Class 1 misdemeanor.

Agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and educational institutions shall not, in any

application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Exceptions are provided 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 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 United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President. A violation is a Class 1 misdemeanor.

Additionally, 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, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. A violation is a Class 1 misdemeanor.

No person shall, in any application for the sale or rental of a dwelling, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. A violation is a Class 1 misdemeanor.

The bill contains multiple enactment clauses to stagger and delay effective dates in order to develop systems for implementing the provisions of the bill.

6. **Budget Amendment Necessary:** Yes, Items 39,402, and 425.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** 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, the Applicant Tracking System, the Expungement System, the Master Name Index (an index of names and search algorithm to connect a record to an individual in the event of misspellings or aliases), the

Civil Commitment System, and the Rap Back System (which allows agencies to be notified of any employees who are charged with a crime), and to unify all of these systems onto one platform. The estimated cost to make these replacements and upgrades is \$12.5 million. The Department estimates it will also need \$66,520 to modify its existing systems that disseminate marijuana records in order to comply with this proposed legislation. The total estimated information technology one-time cost to VSP is \$12,566,520.

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, including the completion of 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 in one-time furniture expenses, and \$9,957 the first year and \$7,700 annually thereafter for information technology costs.

According to the Office of the Executive Secretary (OES), the agency would need to make the following technological changes in order to implement the proposed legislation:

- modify 17 public/external-facing and 20 internal systems/interfaces to prohibit access to automatically expunged cases;
- develop and implement incoming and outgoing interfaces with VSP to receive and process cases for automatic expungement and orders voiding expungements;
- develop an Expungement Management System (EXMS), which includes project setup, infrastructure configuration, and development of capabilities to fully implement the bill's requirements;
- modify multiple systems to allow receipt of expungement and expungement void ordered entered through the EXMS;
- conduct performance and load testing of all affected systems;
- address database security and roles to ensure that only authorized users see the automatically expunged data; and
- assign additional processing units to systems to handle the increased load during expungement list processing, including additional data storage capabilities and software licensing costs.

OES estimates the total fiscal impact of this bill to be \$6,156,130. According to OES, this appropriation may be spread out over the four years it will take to be developed based on the bill's July 1, 2025, effective date.



The impact on local law enforcement agencies cannot be determined at this time. the bill is not expected to have a fiscal impact on the Department of Forensic Science (DFS)

According to the Virginia Criminal Sentencing Commission, any additional fiscal impact as a result of this proposed legislation is expected to be minimal and can be absorbed within the agency's current resources.

The proposed legislation provides for conviction of perjury under § 18.2-434, a Class 5 felony, for individuals who deny or fail to disclose an offense to an employer who is permitted to request information about automatically expunged records. A Class 5 felony is punishable by a term of imprisonment of between one and ten years, or confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

Because the bill expands the applicability of the existing Class 5 felony under § 18.2-434, it may increase future state prison bed needs in the Commonwealth. However, available data is not sufficient 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.

According to the Virginia Criminal Sentencing Commission, existing data do not contain sufficient detail to estimate the number of additional individuals who may be convicted of perjury if the proposal were enacted. However, affected offenders may be sentenced similarly to those who are currently convicted of perjury under § 18.2-434. Based upon FY 2019 and FY 2020 Sentencing Guideline data obtained by the Virginia Criminal Sentencing Commission, 85 offenders were convicted of a Class 5 felony under § 18.2-434. The perjury offense was the primary, or most serious offense in 59 cases. Another 50.8% of the offenders were given a local-responsible (jail) term for which the median sentence was three months. The remaining 20.3% received a state-responsible (prison) term with a median sentence of 1.8 years.

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 56, 2020 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The bill also establishes a new Class 1 misdemeanor for the unauthorized disclosure of an automatically expunged record under § 19.2-392.13, and makes it a Class 1 misdemeanor for employers, landlords, education institutions, and state and local agencies to require an individual to disclose an automatically expunged record, unless they are an exempted organization specifically listed in the Code. 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.

Existing data do not contain sufficient detail to estimate the number of additional individuals who may be convicted under the proposed Class 1 misdemeanors for unauthorized disclosure and requiring the disclosure of automatically expunged records, according to the Virginia Criminal Sentencing Commission.

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

The proposed legislation may also 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. 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.

The bill may have a fiscal impact on the Department of Motor Vehicle (DMV), however, requested information from the agency is still pending. The fiscal impact statement may be updated once the DMV provides relevant information.

- 9. Specific Agency or Political Subdivisions Affected:** Commonwealth's Attorneys, Department of State Police, Department of Forensic Science, Department of Motor Vehicles, Department of Corrections, Virginia Criminal Sentencing Commission, and Courts.

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

**11. Other Comments:** None.