

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB1402E

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Surovell

3. Committee: Passed the Senate

4. Title: Criminal records; expungement and sealing of records; repeal.

5. Summary: Provides that if a petition for the expungement of police and court records is filed, the petitioner shall request that the Central Criminal Records Exchange (CCRE) electronically forward a copy of their Virginia criminal history record to the circuit court in which the petition was filed. Upon receiving the request, the CCRE shall electronically forward the record to the circuit court. If the court is unable to receive the transmission, the CCRE shall forward a copy of the record to the court, which shall be maintained under seal by the clerk unless otherwise ordered by the court. The bill requires all expungement petitions and any associated responsive pleadings filed by a Commonwealth's attorney to be maintained under seal by the court clerk unless otherwise ordered by the court. Expungement orders shall be sealed and may only be disseminated for certain purposes, as outlined in the Code.

The bill also provides that upon a verified petition requesting access to an expunged record that is filed by the person who was charged with the offense, with notice to the Commonwealth's attorney, the court may enter an order allowing the person and their counsel to review and copy the expunged record. No agency or entity shall be required to allow the person or their counsel to do so if such record has been destroyed. A violation of this section is a Class 1 misdemeanor; however, unless otherwise prohibited by law, any person who opens, reviews, or discloses information from an expunged record after being provided a copy by the person charged with the expunged offense, or by counsel for such person, is not in violation of this section.

The bill repeals § 19.2-392.6(A), which provides for the automatic sealing of records for persons charged with a violation of either § 4.1-305 (illegal purchase/possession of alcohol) or the former § 18.2-250.1 (misdemeanor possession of marijuana) when the offense was deferred and dismissed. It provides that if a person was charged with any criminal offense and the offense concluded with a final disposition as a violation of the former § 18.2-250.1, the offense shall be automatically sealed. The bill requires the Department of State Police (VSP) to determine which offenses in the CCRE meet the criteria for automatic sealing on at least a monthly basis, and to determine which offenses in the CCRE meet this section's criteria for automatic sealing no later than July 1, 2025. The bill provides that VSP shall first

transmit the lists required under this section no later than the earlier of the first day of the third month following the date on which the processes to seal criminal history record information and court records pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective, or October 1, 2025.

The bill provides that a petition may request the sealing of the criminal history record information and court records for multiple charges or convictions, provided that they arose out of the same transaction or occurrence, and all such charges are eligible for sealing. A petition may not request sealing for multiple charges or convictions that arose out of different transactions or occurrences. Any petition that is granted solely to seal a violation of § 18.2-265.3 (sale, etc. of drug paraphernalia) as it relates to marijuana, solely to seal a violation of § 4.1-305 (unlawful purchase or possession of alcohol), or to seal both offenses arising out of the same transaction or occurrence shall not count against the petitioner's lifetime maximum.

The bill also repeals §§ 19.2-392.2:1 (automatic expungement of former marijuana offenses), 19.2-392.2:2 (petition for expungement of former marijuana offenses), and 19.2-392.9 (automatic sealing for mistaken identity or unauthorized use of identifying information). It repeals § 19.2-389.3 (limits on dissemination of criminal history record information related to marijuana possession to/by employers, educational institutions, and state and local governments); the effective date of the repeal of this section is the earlier of the date on which the processes to seal criminal history record information and court records pursuant to Chapter 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective, or July 1, 2025. The enactment date for the proposed legislation is effective on the earlier of the date on which the processes to seal criminal history record information and court records pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective, or July 1, 2025.

The bill provides for the release of records relating to an arrest, charge, or conviction that are otherwise ordered sealed to the Virginia State Crime Commission and the Joint Legislative Audit and Review Commission for research purposes. Current law only provides for the release to the Virginia Criminal Sentencing Commission for its research purposes.

- 6. Budget Amendment Necessary:** No.
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** According to the VSP, the proposed legislation is not anticipated to have a fiscal impact on the operations of the agency. Any potential fiscal impact on the Courts or Commonwealth's Attorneys is unavailable at this time. This document will be updated if additional information becomes available.

The Department of Motor Vehicles (DMV) estimates it would expunge 5,100 records annually as a result of the provisions of this bill. It costs the agency approximately \$38 in operational costs per expungement. DMV also estimates it would require three additional positions at a cost of \$65,000 annually per position (salary and benefits) to process the additional workload. Additionally, DMV estimates that 25,400 more records would qualify

for automatic expungement pursuant to the provisions of the bill; the agency incurs a one-time cost of \$9 per automated expungement. The Department of Motor Vehicles (DMV) relies on revenues generated from fees and other transportation sources, which are fully appropriated in the 2023 Amended Budget Bill (HB1400/SB800). Therefore, additional appropriation is not needed. DMV would have to cover the costs associated with this legislation by redirecting resources from other priorities.

9. Specific Agency or Political Subdivisions Affected: Department of State Police, Courts, Commonwealth's Attorneys, Department of Motor Vehicles.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to HB2400E.