

# REVISED

## Department of Planning and Budget 2018 Fiscal Impact Statement

**1. Bill Number: SB 334**

House of Origin  Introduced  Substitute  Engrossed  
Second House  In Committee  Substitute  Enrolled

**2. Patron: Peake**

**3. Committee: Reported from committee**

**4. Title: Expungement of criminal history records**

**5. Summary:**

The proposed legislation would expand the authorization for certain persons to petition the court for expungement of police records and court records relating to his/her charge to include persons charged of underage consumption or possession of alcohol or use of a false identification to try to purchase alcohol, under the following conditions:

1. The charge was deferred and dismissed;
2. All court costs and fines and orders of restitution have been satisfied;
3. The person seeking the expungement is at least 21 years old; and
4. The person seeking the expungement has no other alcohol-related convictions.

Currently, the only persons authorized to petition for expungement are those who have been acquitted or a *nolle prosequi* was taken and anyone whose name or other identification was used without his/her consent by another person who was charged and arrested using such name or identification.

For any expungement of the court and police records authorized by the legislation, it would require that the petitioner pay a \$300 fee, in addition to any other applicable court costs. That fee would be divided equally between a newly-authorized Heroin and Prescription Opioid Epidemic Fund and a special fund for the State Police.

Finally, the proposed legislation would create the Heroin and Prescription Opioid Epidemic Fund, to be administered by the Department of Criminal Justice Services. The source of moneys in the Fund would \$150 of the \$300 fee paid for each expungement of police and court records related to deferred and dismissed charges of underage possession of alcohol. The moneys in the Fund would be used solely for prevention, treatment, and recovery services relating to the use of heroin and prescription opioid drugs

**6. Budget Amendment Necessary: Indeterminate.**

**7. Fiscal Impact Estimates:** Preliminary. See Item 8.

**8. Fiscal Implications:**

The process set up in law for police and court records to be expunged involves the circuit court of the jurisdiction in which the case was disposed, the attorney for the Commonwealth, and the State Police, culminating in a hearing by the circuit court. According to data provided by the Virginia State Police, there are 2,740 cases of underage alcohol possession charges deferred and dismissed in the past and which would potentially be eligible to file a petition for expungement of those court records. In addition, the agency estimates there would be an additional 443 cases potentially eligible for expungement in each year going forward. However, information on the payment of court costs, fines, and restitution or on the existence of other alcohol-related convictions is not readily available. Therefore, although a significant percentage of this group may petition for expungement of their records, it is not possible to develop a reliable estimate.

The State Police currently have eight employees that annually process approximately 4,000 expungement petitions, for an average of 500 per employee. To process the additional petitions, in a timely fashion, that could be expected, the agency may need additional staff. The total annual cost of a program support technician in the unit is \$69,575. Of the \$300 additional fee the proposed legislation would require be collected for each expungement of the records of a deferred and dismissed first-time underage alcohol possession charge, \$150 would be dedicated to the State Police and could be used to offset the costs of implementing the legislation. Until there is data available on the number of expungements that would result from the legislation, it cannot be known whether that additional revenue will be sufficient to offset any additional costs.

Under the provisions of the proposed legislation, the Criminal Justice Services Board would have the responsibility of promulgating regulations to implement, and the Department of Criminal Justice Services (DCJS) the responsibility to administer, the Heroin and Prescription Opioid Epidemic Fund grant program. The revenue for the Fund would consist of half the additional \$300 fee collected for expungement of deferred and dismissed underage alcohol possession charges. It is not possible now to project the number of additional expungement petitions that would result from the legislation and, thus, the flow of revenue into the Fund. Depending on the size of the balance and the number of grants that could be made, DCJS may need an additional staff member to administer the program.

**9. Specific Agency or Political Subdivisions Affected:**

Circuit courts  
Attorneys for the Commonwealth  
Virginia State Police.  
Department of Criminal Justice Services

**10. Technical Amendment Necessary:** None.

**11. Other Comments:** There is a separate enacting clause making the provisions of the legislation contingent upon the inclusion of an appropriation in the budget bill effectuating its purposes.