

## Department of Planning and Budget 2019 Fiscal Impact Statement

**1. Bill Number:** SB1380

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

**2. Patron:** McDougale

**3. Committee:** Courts of Justice

**4. Title:** Expungement of certain charges and convictions.

**5. Summary:** This bill allows a person to petition for expungement of convictions and deferred disposition dismissals for marijuana possession, underage alcohol possession, and using a false ID to obtain alcohol under the following conditions:

1. when the offense occurred prior to the person's twenty-first birthday;
2. all court costs, fines, and restitution have been paid; and
3. five years have elapsed since the date of completion of all terms of sentencing and probation.

Under current law, only those who have been acquitted or who have taken a *nolle prosequi* are eligible to request expungement of police and court records relating to such charges.

For any expungement a marijuana possession or alcohol-related charge or conviction, the bill requires that the petitioner pay a \$150 fee, which shall be paid into the state treasury and credited to the Department of State Police.

In addition, current law prohibits an employer or educational institution in any application, interview, or otherwise, from requiring an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. Current law also prohibits agencies, officials, and employees of the state and local governments in any application, interview, or otherwise, from requiring an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him that has been expunged. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation. The bill expands the prohibitions in this section to include requiring the disclosure of information about convictions that have been expunged.

**6. Budget Amendment Necessary:** Yes. Item 419.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below. Nongeneral fund appropriation would be required.

- 8. Fiscal Implications:** This bill has no impact on the General Fund; however, a nongeneral fund appropriation will be required to account for revenue generated under the fee established by the proposed legislation.

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 Virginia State Police (VSP), culminating in a hearing by the circuit court. According to data provided by VSP, there are an estimated 10,655 charges that were deferred, dismissed, or convicted that would be eligible for expungement under the provisions of this bill. However, it is difficult to reliably estimate the number of expungements that may be sought because i) not all who are eligible are expected to petition for expungement and ii) information on the payment of court costs, fines, and restitution and on the existence of other alcohol-related charges is not readily available.

However, based on average data for the past five years, VSP expects that an additional 6,000 such cases may be processed each year under the proposed provisions. Currently, VSP has eight employees who processed approximately 4,100 expungement petitions in fiscal year 2018, which is already above the expected workload of 500 expungement petitions processed per employee, per year. Based on processing the estimated 6,000 additional expungement cases per year that may result from this bill, VPS estimates that it would require 12 additional program support technician at a cost of \$867,503 per year (salary plus benefits) to address the increased workload.

Based on VSP's estimate of an additional 6,000 petitions processed per year, the \$150 fee assessed by the bill per petition for a marijuana possession or alcohol-related charge or conviction would generate approximately \$900,000 in nongeneral fund revenue. This would be sufficient to offset the additional personnel costs associated with the proposed legislation.

Finally, this bill has the potential to increase the number of Class 1 misdemeanor convictions. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently 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 on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2018), the estimated total state support for local jails averaged \$33.83 per inmate, per day in FY 2017.

- 9. Specific Agency or Political Subdivisions Affected:** Circuit courts, Attorneys for the Commonwealth, Virginia State Police

- 10. Technical Amendment Necessary:** None

- 11. Other Comments:** None