

## **Fiscal Impact Review 2019 General Assembly Session**

**Date:** January 29, 2019

**Bill number:** SB 1380 (Introduced); expungement of certain convictions

**Review requested by:** Chairmen Norment and Hanger, Senate Finance Committee

### **JLARC Staff Fiscal Estimates**

JLARC staff concurs with the DPB fiscal impact statement that SB 1380 would have no impact on the general fund, but would require a nongeneral fund appropriation that would be covered by a fee established by the bill. SB 1380 would allow a person to petition for expungement of convictions for marijuana possession, underage alcohol possession, and using a false ID to obtain alcohol, under certain conditions. The DPB fiscal impact statement estimates a nongeneral fund impact of approximately \$900,000 per year based on data from the Virginia State Police. The nongeneral fund impact is likely to be smaller than this.

***An explanation of the JLARC staff review is included on the pages that follow.***

**Authorized for release:**



**Hal E. Greer, Director**

## **Bill summary**

SB 1380 would allow persons convicted of underage alcohol consumption or possession, use of a fake ID to obtain alcohol, or marijuana possession to petition for expungement of the conviction. The bill would allow petitions only if the offense occurred before the person turned 21; all court costs, fines, and restitution are paid; and five years have elapsed since the completion of sentence and probation. Current law allows petition for expungement only when a person has been acquitted or charges have been dismissed, not when they have been convicted.

The bill would also prohibit employers and educational institutions from requiring individuals to disclose expunged convictions for these offenses. Current law prohibits requiring disclosure of expunged arrests but not convictions.

## **Fiscal implications**

The fiscal impact of SB 1380 would be covered by a nongeneral fund appropriation established to account for fees collected under this bill. Petitioners would pay a fee of \$150 per request under this bill, which would cover the cost for Virginia State Police (VSP) staff to process a petition for expungement.

The amount of the nongeneral fund appropriation depends on the number of additional petitions for expungements that would be made. The fiscal impact statement was based on an estimate from VSP that an annual average of 6,000 individuals would be eligible to petition for expungement under this bill. That estimate was incorrect because it included individuals who were 21 or older at the time of the offense. These individuals would not be eligible to petition under SB 1380. VSP now estimates that 3,800 individuals would be eligible to petition for expungement under this bill. Based on VSP's expected workload of 500 expungement petitions processed annually per employee, 7.6 additional program staff FTEs would be needed to process the additional petitions.

The fee of \$150 per petition would generate an estimated \$570,000 in nongeneral fund revenue per year (or 3,800 X \$150). This amount would cover about eight program staff, based on the estimated cost in the fiscal impact statement of \$72,292 per FTE. This estimate assumes every individual newly eligible for expungement would submit a petition. VSP is unable to estimate the proportion of eligible individuals who would petition, but it is likely to be less than 100 percent.

The number of people requesting expungement could be higher in the first few years than in subsequent years because of an initial backlog. In other words, if the bill is enacted, a large number of individuals convicted more than five years ago would be

immediately eligible to petition. VSP was unable to estimate the number of these individuals who would petition.

In its FIS, DPB noted the possibility that, by prohibiting employers from asking about expunged convictions, the bill might lead to some convictions for violation of this prohibition. If any convictions result in jail time, the bill would create an additional cost to the state by increasing the number of local jail inmates and thereby reimbursements to local jails.

The likelihood of an individual spending time in jail for asking about a conviction expunged under this bill is very low. State law currently prohibits employers from asking about expunged arrests or charges (§ 19.2-392.4). A search of the Local Inmate Data System (LIDS) for 2009 through 2018 identified no individuals spending time in jail for violating this prohibition. Given that, adding a prohibition for asking about expunged convictions under this bill is unlikely to result in jail time for any individuals, and therefore no general fund cost.

**Budget amendment necessary?** Yes (nongeneral fund appropriation)

**Agencies affected:** Virginia State Police, Circuit courts, Attorneys for the Commonwealth

**Prepared by:** Erik Beecroft

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