Department of Planning and Budget
2019 Fiscal Impact Statement

1. **Bill Number:** SB1602S1

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

2. **Patron:** Obenshain

3. **Committee:** Courts of Justice

4. **Title:** Reports to Central Criminal Record Exchange and duties and authority of the Exchange

5. **Summary:** This bill makes several changes to Code sections related to the Central Criminal Records Exchange (CCRE). First, it adds to the list of duties and responsibilities of community-based probation officers that they must review the criminal history record of any offender at least 60 days prior to his release from supervision to verify that all offenses for which he is being supervised appear on such record, if any such offense is required to be reported to the CCRE. If any such offense does not appear on the record, the probation officer must (i) order the offender to report to the law enforcement agency that made the arrest for such offense, or the Department of State Police (VSP), and submit to having his fingerprints and photograph taken, (ii) provide written or electronic notification to the CCRE that the offense does not appear on the offender's criminal history record, and (iii) verify that such fingerprints and photograph have been taken. Parole officers are required to take these actions for offenders who are on probation as of July 1, 2019. Additionally, upon intake of any offender on or after that date, parole officers must (i) take and provide fingerprints and a photograph of the offender to the CCRE to be classified and filed as part of the criminal history record, (ii) review such record to determine whether all offenses for which the offender is being supervised appear on it, and (iii) provide written or electronic notification to the CCRE if such offense does not appear. The bill also requires the Parole Board to order that the Department of Corrections (DOC) take fingerprints and photograph a person for each offense required to be reported to the CCRE, and to submit such report, upon revocation of parole for any felony offense.

   The bill also requires that the court in the relevant jurisdiction determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law enforcement officer. If not, the court shall order that the fingerprints and photograph of the person be taken by a law enforcement officer in order for such a person to be eligible for a court deferral to community-based probation upon being charged with first offense assault and battery against a family or household member. It requires the court to verify that the clerk of court has been provided with the fingerprints, or fingerprint identification information, of such a person before his charges may be discharged or dismissed. The bill requires that these same conditions be placed upon any person charged with first offense possession of a controlled substance or possession of marijuana. These same conditions are also required for individuals accused on misdemeanor property crimes

with no previous felony convictions in order for such person to be eligible for probation. The proposed legislation also gives law enforcement officers the authority to take the fingerprints and photograph of any person charged with an offense that has been deferred by the court. They currently only have this authority for persons they have arrested or who have been found guilty.

The proposed legislation would also require that for any defendant issued a summons in place of a warrant in a misdemeanor case or issued a summons by special conservators of the peace, reports to the CCRE are to be made as they are for treason, felony, misdemeanor, and local ordinance offenses. Currently reports to the CCRE are only required in such cases after a disposition of guilt is entered. For offenses not charged on a summons, the clerk of court shall make a report to the CCRE upon dismissal, indefinite postponement or continuance, when charges are still pending due to mental incompetency or incapacity, nolle prosequi, acquittal, upon conviction, including any sentence imposed of a failure of a grand jury to return a true bill, or upon any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. For offenses charged on a summons, such report to the CCRE may be submitted but shall not be required until: (i) a conviction is entered and no appeal is noted, or the conviction is upheld upon appeal, or the appeal is withdrawn; (ii) the court dismisses the proceeding; (iii) the defendant is acquitted by reason of insanity; (iv) or any finding is made that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense.

The bill provides that if a person is in custody for an offense for which a report to the CCRE is required when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report to the CCRE is required upon arrest, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law enforcement officer or by the agency that has custody of the accused at the time of first appearance. The bill requires such law enforcement officer or agency to submit a report to the CCRE for each offense.

It also would require judges, upon convicting a defendant of any offense which requires a report to the CCRE and issuing a suspense or modification of sentence or probation, to determine whether a copy of the defendant's fingerprints or fingerprint identification information has been provided to the clerk of court by a law enforcement officer for each such offense that requires reporting to the CCRE. In any case when this information has not been provided, the judge shall require that fingerprints and a photograph be taken by a law enforcement officer as a condition of probation or of the suspension of the imposition or execution of a sentence. Current law only requires this for felony cases, and does not require the taking of a photograph. It is also not currently required in cases where any part of a sentence is suspended. Additionally, the bill provides that in any case in which the court has suspended the imposition or execution of a sentence or place the defendant on probation, the court may modify the terms of probation at any time within the period of suspension or supervision to require that the fingerprints and photograph of the defendant be taken by a law enforcement officer as a condition of that suspended sentence or probation, but only after a

hearing for which both the defendant and the attorney for the Commonwealth have been given reasonable notice.

Additionally, the provisions of the proposed legislation would require that, at any hearings on the status of restitution payments held for defendants whose crimes require a report to the CCRE, or in which they were convicted of a felony offense, the court shall review the defendant's criminal history record to determine whether the present conviction appears, if the court has not previously verified that the conviction for such offense appears on such record. In non-felony cases, the defendant's probation officer shall provide this record to the court. If fingerprints and a photograph have previously been taken for such conviction, the probation officer is required to provide written or electronic notification to the CCRE within VSP that the conviction does not appear on the offender's criminal history record prior to the offender's release from supervision. In felony cases, the attorney for the Commonwealth shall provide the criminal history record to the court. If such conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph be taken by a law enforcement officer and submitted to the CCRE. If fingerprints and a photograph have previously been taken for such conviction, the attorney for the Commonwealth shall provide written or electronic notification to the CCRE within VSP that the conviction does not appear on the offender's criminal history record.

The bill also amends the sections of the Code governing the duties and authority of the CCRE. It requires that the CCRE submit periodic reports to the Office of the Executive Secretary of the Supreme Court of Virginia, the clerk of each circuit and district court, attorneys for the Commonwealth, and law enforcement agencies containing a list of offenses with "unapplied criminal history record information," defined in the bill as being information that cannot be applied to the criminal history record because such information is not supported by fingerprints or other accepted means of positive identification, or because of an inconsistency, error, or omission within the content of the submitted information. The bill would require the CCRE to review offenses containing unapplied criminal history record information and make reasonable efforts to ensure that such information is applied to criminal history records. The CCRE may request information from the clerk of each circuit and district court, Commonwealth's attorneys, law enforcement agencies, the Department of Corrections, the Department of Forensic Science, and local probation and community corrections agencies to obtain positive identification or to reconcile inconsistencies, errors, or omissions.

The CCRE would also be required to report to the Governor and General Assembly on or before November 1 of each year on the status of unapplied criminal history record information and any updates it makes to its fingerprinting policies and procedures. The bill includes a list of required information to be included in the report.

The bill also adds several criminal offenses to the list of offenses for which local law enforcement officers, conservators of the peace, clerks of court, the Secretary of the Commonwealth, and Department of Corrections must report to the Department of State Police information required to be included in the CCRE. It requires that a separate report be made for each charge. It also requires these entities to make reports to the CCRE when a

person is arrested on a capias for a violation of the terms or conditions of a suspended sentence or probation for a felony offense, or when a person is served with a show case for a violation of the terms or conditions of a suspended sentence or probation for a felony offense. In the case of a capias, a report shall be made to the CCRE upon arrest, and upon finding such person in violation, the court shall order that the fingerprints and photograph of such person be taken by a law enforcement officer for each such offense and submitted to the CCRE. In the case of a show cause, a report to the CCRE shall not be required until such person is found to be in violation, at which point the court shall order that the fingerprints and photograph of such person be taken by a law enforcement officer for each such offense and submitted to the CCRE. If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest, and the court shall order that the fingerprints and photograph of the accused be taken by a law enforcement officer or by the agency that has custody of the accused at the time of first appearance. In this case, the law enforcement officer or agency taking the fingerprints and photograph shall submit a report to the CCRE for each offense.

The proposed legislation also permits the CCRE to classify and file any fingerprints, photographs, and records it receives from any correctional institution for any person in custody as part of the criminal history record information for that person. It also requires the Department of Corrections (DOC) to submit any photographs, fingerprints, or description of a person to the CCRE for any offender who is serving a sentence for an offense for which a report to the CCRE is required. The bill also requires DOC to review each person's criminal history record at least 60 days prior to his scheduled release date to determine whether all offenses for which that person has been committed appears on his criminal history record. If such record does not appear, DOC must: (i) take and provide fingerprints and a photograph of the person to the CCRE to be classified and filed as part of the criminal history record information, and (ii) provide written or electronic notification to the CCRE within VSP that such offense does not appear on the offender's criminal history record prior to his release from a state correctional facility.

The bill also directs the Department of State Police to develop a model policy on the collection of fingerprints and reporting of criminal history record information to the CCRE, which it shall disseminate to all law enforcement agencies in the Commonwealth. It requires State Police to make reasonable efforts to ensure that criminal history record information reported to the CCRE prior to July 1, 2019 be applied to the criminal history record of the person if it has not already done so. It requires a report on the Department's progress to the Governor and the Chairman of the Virginia State Crime Commission by November 1, 2019.

6. **Budget Amendment Necessary**: No.

7. **Fiscal Impact Estimates:** Preliminary. See below.

8. **Fiscal Implications:** The Virginia State Police (VSP) operates the Central Criminal Records Exchange (CCRE), which is the state's criminal records database. The CCRE contains arrest

fingerprints and the disposition of all criminal cases adjudicated in the Commonwealth. It is available twenty-four hours a day and seven days a week to criminal justice and law enforcement agencies at the state and federal level. According to VSP, there is no anticipated fiscal impact on the agency as a result of this proposed legislation.

The Department of Corrections (DOC) does not anticipate any impact on its operations as a result of the provisions of this proposed legislation.

There is no expected material fiscal impact on the court system as a result of the provisions of this proposed legislation.

Any potential impact on local and community corrections agencies and local law enforcement agencies cannot be determined.

9. **Specific Agency or Political Subdivisions Affected:** Department of State Police, Sheriff's offices, Courts, Commonwealth's Attorneys, Department of Forensic Science, Department of Corrections, Local law enforcement agencies, Local and community corrections agencies, Parole Board

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

11. **Other Comments:** This bill is a companion to HB2343S1.