

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: SB608ES1

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Norment

3. Committee: Judiciary

4. Title: Expungement of police and court records; pardons.

5. Summary: Currently, if a person is charged with the commission of a crime, and is acquitted or a nolle prosequi is taken or the charge is otherwise dismissed, the person may file a petition requesting expungement of the police and court records. The bill adds certain other provisions. It provides that the following individuals may file a petition for the expungement of their police and court records:

(i) persons who were charged with any civil infraction for which they were acquitted, a nolle prosequi was taken, or the charge was otherwise dismissed; or

(ii) (a) persons who have been convicted of a violation of § 4.1-305 (unlawful purchase or possession of alcohol); § 18.2-250.1 (misdemeanor possession of marijuana); or § 18.2-371.2 (unlawful purchase or possession of tobacco, nicotine, or alternative nicotine products); (b) who were under 21 years of age on the date of the incident leading to the conviction; (c) all court costs and fines and all orders of restitution have been satisfied, and (d) five years have passed since the date of completion of all terms of sentencing and probation; or

(iii) (a) the person was charged with a violation of § 4.1-305, § 18.2-250 (unlawful possession of controlled substances), or § 18.2-250.1, and such charge was discharged and dismissed; (b) all court costs and fines and all orders of restitution have been satisfied; and (c) five years have passed since the date of completion of all terms of sentencing and probation; or

(iv) the person is convicted and has received a simple pardon for the commission of the crime or offense for which he seeks expungement and (a) has been of good behavior for the five years preceding the filing of his petition; and (b) the conviction is not for a violent felony, any crime ancillary to a violent felony, or a violation of § 18.2-248 (manufacture, etc. controlled substances); § 18.2-248.01 (transport controlled substances into the Commonwealth); § 18.2-248.1 (sell, give, distribute, or possess with the intent to sell, give, or distribute marijuana; § 18.2-255 (distribute drugs to persons under 18 years of age); § 18.2-255.2 (sell or manufacture drugs near certain properties); § 18.2-258.02 (maintain a fortified drug house); or § 24.2-1016 (make a false material statement on an elections form).

Current law allows for expungement in cases where the person has been acquitted, a nolle prosequi was taken, or the charges were otherwise dismissed.

The bill also prohibits employers or institution of higher education from requiring an applicant for employment or admission to disclose information concerning convictions that have been expunged. Additionally, agencies, officials, and employees of state or local government cannot, in any application, interview, or otherwise, require an applicant for a license, permit, registration or governmental services to disclose information concerning convictions that have been expunged. An applicant would not be required to answer questions concerning a conviction, including a reference to or information concerning arrests that have been expunged.

6. **Budget Amendment Necessary:** Yes. Items 39 and 425.
7. **Fiscal Impact Estimates:** Preliminary. See below.
8. **Fiscal Implications:** The proposed legislation provides that persons who have been charged with a civil infraction for which they were acquitted, a nolle prosequi was taken, or the charge was otherwise dismissed; who have been convicted of certain crimes; who have had their criminal charges discharged and dismissed; or who have received a simple pardon for the commission of such crime or offense, may file a petition for the expungement of their police and court records, provided they meet certain qualifications.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, there are approximately 99,986 records in the Central Criminal Records Exchange (CCRE) database that could meet criteria for expungement, according to the provisions of this bill. However, the data in the CCRE does not reflect in how many of these instances the persons have satisfied all court fines, costs, and restitution orders, and have had five years pass since the completion of all terms of sentencing and probation. VSP is also unable to determine the extent to which the expungement of civil cases would impact its workload. The number of persons who would choose to petition the court for expungement and how many individuals would ultimately receive simple pardons for the commission of the crimes set out in the proposed legislation is unknown at this time. However, there were approximately 104 pardons issued in calendar year 2019. According to VSP, employees in the expungement section can process approximately 500 expungements per employee per year. VSP currently has 10 FTE (including one supervisor) in the expungement section; six of these positions handle expungements full time, and the other three support positions and the supervisor assist with additional expungement workload when they are able.

Although it is unknown how many cases would be eligible for expungement of their police and court records pursuant to the provisions of the bill, if, as VSP estimates, the agency would have to process 10 percent of newly identified cases, this would immediately generate an additional 9,999 expungements for the agency to process. Should this occur, VSP would require an additional 20 FTE who process expungements full-time, at a cost of \$1,510,644 annually. VSP also believes it would need three supervisors at a cost of \$225,820 annually, and one program support manager at a cost of \$93,754 annually. VSP estimates it would also

need additional office space to house the new employees at a cost of \$88,613 annually with one-time furnishing costs of \$121,525. VSP also expects to incur additional technology costs, estimated at \$49,775 in FY 2021 and \$38,500 in FY 2022.

According to the Office of the Executive Secretary (OES), if the provisions of the bill were to be enacted, the OES would need to perform enhancements to the General District Case Management System that would allow for information from expunged cases to be abstracted and retained for inclusion in statistical reports required by the General Assembly, including models used for determining clerk staffing, judicial workload calculations, and various other data reports that allow for the equitable distribution of resources among the various general district courts. As the case management systems currently exist, once a record is purged OES is unable to determine that such a case was ever filed within the electronic system. The number of cases that are currently expunged each year is relatively minimal when compared to the number that could be expunged based on the provisions of this bill. Therefore, a method of accurately retaining the abstracted information is necessary to ensure the accuracy of case-data-based statistical reports generated by OES.

Abstract information for expunged civil and criminal cases would be retained within an “expungement data vault.” No identifying information for any defendant, including name, full date of birth, or social security number would be included with the abstract information retained in the expungement data vault. Ongoing, statistical reports would need to be modified to include the abstract case data that is retained within the expungement data vault.

To create the expungement data vault, the electronic data warehouse would need to be updated to allow for personally identifiable information and case numbers to be removed from expunged cases. In addition, various developmental enhancements would need to be made to the three existing electronic case management systems maintained by OES including: modifying the “case delete” function and adding an “expungement delete” option within seven divisions, updating the expungement batch jobs for two divisions, and creating new batch reports for two divisions.

The one-time total estimated cost for development, quality assurance analysis, and training of court personnel related to the system enhancements is \$299,402.50.

Also, this bill would increase the workload on general district court and juvenile and domestic relations district court clerks, who would be tasked with locating the physical case file for each expunged case, destroying its contents, and performing an “expungement delete” of the electronic record for each case in the case management system. It is estimated that the tasks required of a deputy clerk to expunge a case would consume 10 minutes. According to OES, on average, between 2016 and 2018 there were 4,477 cases in district court each year where a defendant who was under the age of 21 at the time of the offense was found guilty or delinquent for unlawful purchase or possession of alcohol, misdemeanor possession of marijuana, or unlawful purchase or possession of tobacco. During the same timeframe, on average 5,654 defendants has a charge for unlawful purchase or possession of alcohol, misdemeanor possession of marijuana, or possession of controlled substances that was deferred and dismissed. If, as OES expects, half of these eligible cases was expunged

pursuant to the provisions of the bill, this would increase the statewide workload of clerks in a manner equivalent to that performed by .7 of a full time employee of a clerk's office. This is an annual increase in work equal to \$46,294. These estimates do not include any workload impact for the expungement of pardon cases, which is indeterminate at this time, according to OES.

Additionally, on average, between 2018 and 2019 there were 4,068 civil violation cases processed within the criminal division of general district courts that were dismissed, the defendant was acquitted, or a nolle prosequi was taken. In regard to cases filed within the civil division of general district court, there were on average 3,236 cases with a case type similar to a civil infraction that were dismissed or had judgment rendered in favor of the defendant. The civil case types similar to a civil infraction included administrative license, impoundment, zoning violation, overweight vehicle, motor carrier, and other cases. If half of the 7,304 designated civil violation cases heard within general district court were thereafter expunged in accordance with the bill's provisions, this would increase the statewide workload of clerks in a manner equivalent to that performed by .5 of a full time employee of a clerk's office. This is an annual increase in work equal to \$31,067.

9. Specific Agency or Political Subdivisions Affected: Department of State Police and Courts, local law enforcement agencies

10. Technical Amendment Necessary: No.

11. Other Comments: None.