

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5062ER

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

2. Patron: Mullin

3. Committee: Passed both houses.

4. Title: Dismissal of criminal charges on Commonwealth's motion.

5. Summary: The proposed legislation provides that upon motion of the Commonwealth to dismiss a charge, whether with or without prejudice, and with the consent of the defendant, a court shall grant the motion unless the court finds by clear and convincing evidence that the motion was made as the result of (i) bribery or (ii) bias or prejudice toward a victim because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim.

The bill establishes that a trial court presiding in a criminal case may, with the agreement of the defendant and the Commonwealth, after any plea or trial, with or without a determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the case, including (i) mitigating factors relating to the defendant or the offense, (ii) the request of the victim, or (iii) any other appropriate factors, defer proceedings, defer entry of a conviction order, if none, or defer entry of a final order, and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties and placed on the record, or if there is no agreement, as may be imposed by the court. Final disposition may include (a) conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.

The bill states that by consenting to and receiving a deferral of proceedings or a deferral of entry of a final order of guilt and fulfilling the conditions specified by the court, the defendant waives his right to appeal such entry of a final order of guilt. The court must notify the defendant that he would be waiving his rights to appeal prior to granting a deferral of proceedings or deferral of entry of a conviction order. The bill also provides that, upon agreement of all parties, a charge that is dismissed pursuant to this bill may be considered as otherwise dismissed for purposes of expungement of police and court records in accordance with § 19.2-392.2, and such agreement of all parties and expungement eligibility shall be indicated in the final disposition order.

The bill also amends and reenacts §§16.1-69.48:1 (fixed fee for misdemeanors), 17.1-275.1 (fixed felony fee), 17.1-275.2 (fixed fee for felony reduced to misdemeanor), 17.1-275.7 (fixed misdemeanor fee), 19.2-303.4 (payment of costs when proceedings deferred and defendant placed on probation), 19.2-335 (certification by a judge to clerk of circuit court

costs of proceedings in criminal cases), and 19.2-336 (clerk to make up statement of whole cost, and issue execution) by adding a section numbered 19.2-298.02, relating to deferred disposition in a criminal case.

- 6. Budget Amendment Necessary:** See Line 8.
- 7. Fiscal Impact Estimates:** Final (see Line 8).
- 8. Fiscal Implications:** According to the Office of the Executive Secretary of the Supreme Court (OES), the proposed bill authorizes a court to “defer and dismiss” criminal cases under certain conditions. The bill establishes that such dispositions under the statute would be considered as “otherwise dismissed” and thus eligible for expungement under Virginia Code § 19.2-392.2. The bill is likely to have a fiscal impact on the courts as defendants whose cases were disposed under the new statute will be eligible to petition to have their case records expunged. Since this is a new disposition, OES cannot estimate how frequently this disposition will be utilized and, of those eligible to petition for expungement, how many people are likely to seek that relief. Therefore, the fiscal impact on courts is indeterminate at this time.

The Virginia State Police (VSP) expunges records from police files. VSP states an employee in the expungement section can process approximately 500 expungements per year. The VSP expungement section currently employs 10 FTE (including one supervisor), 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. The agency processed an average of 4,268 expungements per year between calendar years 2016-2019.

According to VSP, for the period of 2016 to 2019, there were 66,677 records received in the Central Criminal Records Exchange (CCRE); however, it is not clear how many of these records would require expungement. Depending on the number of cases, VSP believes it may need additional positions. For reference purposes, the salary cost for a new expungement technician (program support technician) is \$38,266. If new employees are added, VSP likely will need additional office space as current space is at capacity. Without good estimates of the number of records that will need to be expunged, it is not possible to determine the extent of the fiscal impact on VSP at this time.

The fiscal impact as a result of the amendment to the various fixed fee statutes cannot be determined at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Virginia State Police, and Commonwealth’s Attorneys.
- 10. Technical Amendment Necessary:** No.
- 11. Other Comments:** None.