

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

1. Bill Number: HB5142

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. Patron: Jenkins

3. Committee: House Committee for Courts of Justice

4. Title: Court authority in criminal cases; prosecutorial discretion to dispose of a criminal case.

5. Summary: The substitute bill defines “good cause” as (i) the particular circumstances relating to the facts of the case, (ii) the general deterrence value of prosecuting a case, or (iii) the limits on agency resources or competing prosecutorial priorities make such case unprosecutable or not in the interests of the Commonwealth to prosecute such case at such time.

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.

6. Budget Amendment Necessary: See Line 8

7. Fiscal Impact Estimates: Indeterminate (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 will likely 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 provide an 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 is indeterminate.

The Virginia State Police (VSP) is responsible for expunging records from police files. According to VSP, there are 66,677 records in the Central Criminal Records Exchange (CCRE) that would meet the criteria of this bill. This number represents the number of records for the period of 2016 to 2019 and averages to roughly 16,669 per year. 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. VSP reports the need for 34 additional employees to meet the average of 16,669 expungements a year.

For reference purposes, the salary cost for each new expungement technician (program support technician) is \$38,266. If new employees are added, VSP will likely need additional office space as current space is at capacity.

According to the Virginia Association of Commonwealth's Attorneys (VACA), the substitute bill is not expected to have a material fiscal impact.

9. Specific Agency or Political Subdivisions Affected: Courts, Virginia State Police and Commonwealth's Attorneys

10. Technical Amendment Necessary: No

11. Other Comments: None