

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

1. Bill Number: SB5043S1

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

2. Patron: Deeds

3. Committee: Judiciary

4. Title: Expungement of police and court records.

5. Summary: Provides that the following may file a petition for the expungement of police and court records relating to their charge or conviction:

- (i) (a) the person is convicted of a violation of § 4.1-305 (unlawful purchase or possession of alcohol), § 18.2-250.1 (possession of marijuana), or § 18.2-371.2(B) (unlawful purchase, etc. of tobacco products under age 21); (b) the person was 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;
- (ii) (a) the person was charged with a violation of § 4.1-305, § 18.2-250 (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
- (iii) 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, as defined in the Code, or any crime ancillary to a violent felony, or for a violation of § 18.2-248 (manufacture, sell, give, distribute, etc. controlled substances), § 18.2-248.01 (transport controlled substances in the Commonwealth), § 18.2-248.1 (sell, give, distribute, etc. marijuana), § 18.2-255 (distribute drugs to person under 18), § 18.2-255.2 (sell, manufacture, etc. drugs on certain properties), § 18.2-258.02 (maintain a fortified drug house), or § 24.2-1016 (election fraud).

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

6. Budget Amendment Necessary: Yes. Items 39 and 425.

7. Fiscal Impact Estimates: Preliminary. See below.

- 8. Fiscal Implications:** According to the Courts, on average, between 2016-2018, there were 4,477 cases per year in which a defendant was under the age of 21 at the time of the offense and was found guilty or delinquent for violating §§ 4.1-305, 18.2-250.1, or 18.2-371.2(B). During the same time period, an average of 5,654 defendants per year were charged for violating §§ 4.1-305, 18.2-250, or 18.2-250.1, after which the charge was deferred and dismissed. According to data from the Secretary of the Commonwealth, between calendar years 2014 and 2019, there were an average of 60 simple pardons granted per year; the Secretary does not track simple pardons by conviction type, so the number of anticipated simple pardons that would be eligible for expungement pursuant to the provisions of this bill cannot be determined.

According to the Courts, this bill would increase the workload on general district and juvenile and domestic relations district court clerks, who would be tasked with locating the physical case file for each expunged case, sealing its content, indexing the case, and performing an “expungement delete” of the electronic record for each case in the case management system. This process takes approximately 10 minutes. If, as the Courts estimate, half of eligible cases were expunged in accordance with this bill’s provisions, the workload increase for clerks statewide would require an additional 0.7 full-time equivalent (FTE) positions in each clerk’s office. This translates to an annual cost increase of approximately \$46,294.

The Department of State Police (VSP) is responsible for expunging records from police files. 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. The agency processed an average of 4,268 expungements per year between calendar years 2016-2019.

According to VSP, there are currently 107,028 records in the Central Criminal Records Exchange (CCRE) that would meet criteria for expungement under the proposed legislation. Assuming 10% of those who qualify for expungement would petition, an estimated 10,702 cases would be eligible for immediate expungement. VSP estimates it would need 22 additional program support technician positions to process these expungements. Each of these positions costs \$72,537 annually (salary and fringe benefits). Additionally, VSP estimates it would need three senior office supervisors at an annual cost of \$75,903 and one additional program support manager at an annual cost of \$94,538 to supervise the new employees and oversee this section. The total annual personnel expenses are estimated at \$1,918,060 (prorated to \$1,598,383 the first year). The estimate assumes that annually, 10% of individuals eligible under the proposed legislation will petition for expungement.

Assuming the workload continues as estimated above, VSP believes it would need to lease office space at an approximate cost of \$92,156 annually for these employees. Additional costs include \$126,368 in one-time costs the first year for furniture expenses, and information technology costs in the amount of \$51,776 the first year and \$40,040 ongoing.

9. Specific Agency or Political Subdivisions Affected: Department of State Police and Courts.

10. Technical Amendment Necessary: No.

11. Other Comments: During the 2020 Session of the General Assembly, a budget amendment was passed pursuant to SB640 to provide funding for the Office of the Executive Secretary (OES) to perform enhancements to the three electronic case management systems it maintains that would allow for information from expunged cases to be abstracted and retained for inclusion in various statistical reports. As the case management systems currently exist, once a record is purged, the electronic case management system would be unable to determine that such a case was ever filed. The Court's fiscal impact statement assumes that the provisions of SB5043 will have an effective date after such system enhancements, which are currently in process, are completed.