

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB268

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

2. Patron: Heretick

3. Committee: Courts of Justice

4. Title: Petition for vacatur and expungement of convictions and police and court records of victims of hum

5. Summary: Provides that any person may file a petition for vacatur and expungement setting forth the relevant facts and requesting (i) expungement of the police and court records relating to the charge or (ii) that the judgment of a conviction for an offense be vacated and the police and court records relating to such conviction be expunged, if at the time of offense leading to such charge or conviction such person was a victim of human trafficking. For persons wishing to vacate and expunge convictions, one of the following conditions must also be met:

(1) such person is charged and convicted of a violation of clause (i) or (ii) of § 18.2-46.3(B) (recruitment of persons for criminal street gangs); § 18.2-346 (prostitution); § 18.2-347 (keeping a bawdy place); § 18.2-348 (aiding prostitution); § 18.2-349 (using vehicles to promote prostitution); § 18.2-357.1 (commercial sex trafficking); or § 18.2-460 (obstruction of justice or resisting arrest, or any substantially similar offense under another state's laws or Federal law, and such offense was committed as part of a human trafficking scheme, or at the direction of an operator of such a scheme; or

(2) such person is charged with and convicted of any misdemeanor, other than those specifically enumerated herein and (i) there is a finding by a court that the petitioner's participating in the misdemeanor offense was proximately caused by the petitioner's status as a victim of human trafficking and (ii) at the time of the filing of such petition, such person is no longer a victim of human trafficking or has sought services for victims; or

(3) such person is arrested for or charged with an offense, but not prosecuted for such offense, or a nolle prosequi is taken or the charge is otherwise dismissed.

The bill provides for a process of filing such petition, information to be included in the petition upon filing, and procedures to be followed in any subsequent court hearings.

The petitioner of such order shall obtain from a law enforcement agency a complete set of his fingerprints and shall provide the law enforcement agency with a copy of the petition. The law enforcement agency must submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition attached. The CCRE must forward to the court

a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon receiving such information, the court shall conduct a hearing on the petition except as provided in this subsection. If the court finds that the continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, it must enter an order vacating the conviction and requiring the expungement of the police and court records. Otherwise, it must deny the petition. If the petitioner has no prior criminal record and the conviction or charge was for a misdemeanor violation, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records, and the court shall enter an expungement. If the Commonwealth's attorney (i) gives written notice to the court that he does not object to the petition and (ii) stipulates in the written notice that the continued existence and possible dissemination of information relating to the conviction or charge causes or may cause circumstances that constitute a manifest injustice to the petitioner, the court may enter an order vacating the conviction and requiring expungement without conducting a hearing.

The bill requires that the clerk of court must forward a copy of any order of vacatur or expungement to the Department of State Police (VSP), which shall direct the manner by which the appropriate expungement or removal of such records shall be effected. If the court enters an order of expungement, the clerk of court shall refund to the petitioner the costs paid to file it.

- 6. Budget Amendment Necessary:** Yes. Items 39 and 425.
- 7. Fiscal Impact Estimates:** Preliminary. See below.
- 8. Fiscal Implications:** The proposed legislation provides a means by which individuals who have been the victims of human trafficking may petition the court to vacate the conviction and to expunge the related police and court records for either a conviction or a criminal charge. Such convictions or charges must have taken place at the time of a person's involvement as a victim of human trafficking. The bill also provides that court must enter an order vacating the conviction and requiring expungement of the police and court records if it determines that continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner. However, if the petitioner has no prior criminal record and the conviction or charge was for a misdemeanor violation, the petitioner is entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records, and the court shall enter an expungement. Accordingly, it is not an automatic expungement.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, there are approximately 53,435 convictions in the Central Criminal Records Exchange (CCRE) that might meet the criteria to be expunged, according to the provisions of this bill. Specifically, convictions under §§ 18.2-46.3(B) (i) (ii), 18.2-346 , 18.2-347 , 18.2-348, 18.2-349, 18.2-357.1, 18.2-460. However, it is unknown how many of

these offenses were committed by persons who were victims of human trafficking at the time, who would elect to file a petition for expungement, and whose expungement petition would be granted according to the provisions of the bill. According to VSP, employees in the expungement section can process approximately 500 expungements per employee per year. The cost for salary and fringe benefits for each employee is \$69,607 per year. Information technology costs per employee are an additional \$2,310 per year, and depending on the number of additional employees, office space and furniture expenses could be required as well.

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.

OES also estimates the provisions of this bill may increase the workload for court clerks, at approximately ten additional minutes of work per expungement. It is indeterminate at this time how many additional clerk positions the courts would need to respond to the provisions of this bill because it is unknown how many cases would require expungement.

The bill also requires expungement petitions to obtain a set of their fingerprints from a local law enforcement agency. The local law enforcement agency must submit the fingerprints to

the CCRE with a copy of the petition attached, as furnished by the petitioner. Any potential fiscal impact to local law enforcement agencies as a result of the provisions of this bill is indeterminate at this time.

9. Specific Agency or Political Subdivisions Affected: Department of State Police, Courts, Commonwealth's Attorneys, and Local law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to SB914.