

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB306

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

2. Patron: Stanley

3. Committee: Judiciary

4. Title: Destruction of criminal history information for certain charges and convictions.

5. Summary: Provides that any person who has had a charge discharged and dismissed under § 4.1-305 (unlawful purchase or possession of alcohol) or § 18.2-250.1 (misdemeanor possession of marijuana) is entitled, in the absence of good cause shown to the contrary by the Commonwealth, to the destruction of the police and court records relating to the charge, and the court that disposed of the charge must enter an order requiring the destruction of such records, including electronic records, when one year has passed since the date of dismissal and all court costs and fines and all orders of restitution have been satisfied. Any such person may file a petition for an order of destruction at any time, provided that the charge has been discharged and dismissed and all court costs and fines and all orders of restitution have been satisfied. The court may enter such an order upon conducting a hearing for good cause shown. Upon the entry of an order of destruction, the clerk of the court must forward a copy to the Department of State Police (VSP), which must direct the manner by which the appropriate destruction of records will be effected.

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

7. Fiscal Impact Estimates: Preliminary. See below.

8. Fiscal Implications: The proposed legislation provides that any individual who has had a charge discharged and dismissed for unlawful purchase or possession of alcohol or misdemeanor possession of marijuana is entitled to the destruction of the associated police and court records. The court must enter an order requiring the destruction of such records when one year has passed since the date of dismissal and after all court costs, fines, and orders of restitution have been satisfied. Courts may enter such orders upon conducting a hearing for good cause shown.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, there are 77,141 deferred dispositions and dismissals in the Central Criminal Records Exchange (CCRE) database that may be eligible for records destruction according to the provisions of the bill. It is unknown in how many of these cases all court costs, fines, and orders of restitution have been satisfied, and how many individuals would choose to petition the court for an order of destruction. The expungement section within VSP 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.

If, as VSP estimates, the agency would have to process 10 percent of eligible cases, this would immediately generate an additional 7,714 expungements for the agency to process. This would require an additional 16 FTE who process expungements on a full-time basis, at a cost of \$1,150,967 annually. Funding would also be needed for two supervisor positions, at an annual cost of \$150,547. VSP estimates it would also need additional office space to house the new employees at a cost of \$63,801 annually, with one-time furnishing costs of \$87,498. VSP also expected to incur additional technology costs, estimated at \$35,838 in FY 2021 and \$27,720 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.

The bill would also 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 5,432 cases in general district court and juvenile and domestic relations district court each year where a defendant was charged with violating these Code sections and the charge was later deferred and dismissed. If, as OES estimates, half of these cases per year were expunged in accordance with the bill's provisions, the statewide workload of clerks would increase in a manner equivalent to that performed by .4 FTE. According to OES, the cost of this additional workload is approximately \$24,854.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.