

Department of Planning and Budget 2020 Fiscal Impact Statement

1. **Bill Number:** SB808

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

2. **Patron:** Morrissey

3. **Committee:** Judiciary

4. **Title:** Expungement of police and court records; misdemeanor and felony convictions.

5. **Summary:** Provides that a person who has been convicted of a criminal offense and such person (a) has been free from any term of incarceration, probation, and postrelease supervision imposed as a result of such conviction for at least eight years for a misdemeanor offense or at least 12 years for a felony offense; (b) has no subsequent criminal convictions; and (c) has no pending criminal proceeding may file a petition for the expungement of his police and court records. 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:** The proposed legislation provides that an individual who has been convicted of any criminal offense may file a petition for the expungement of his police and court records provided he has been free from any term of incarceration, probation, and postrelease supervision imposed as a result of the conviction for at least eight years for a misdemeanor or at least 12 years for a felony; he has no subsequent criminal convictions; and he has no pending criminal proceeding against him.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, 315,118 records (284,914 misdemeanors and 30,204 felonies) in the Central Criminal Records Exchange (CCRE) database could meet criteria to be expunged, according to the provisions of this bill. Of these, it is unknown in how many cases an individual would meet the requirements as set out in the proposed legislation, and how many individuals would choose to petition the court for expungement. 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 possible cases, this would immediately generate an additional 31,512 expungements for the agency to process. This would require an additional 63 FTE who handle expungements full time, at an estimated

cost of \$4,531,933 annually. VSP estimates it would also need seven supervisor positions at a total annual cost of \$526,913, and one program manager position at a cost of \$93,754 annually. VSP estimates it would also need additional office space to house these employees at a cost of \$251,660 annually with one-time furnishing costs of \$359,714. VSP also expects to incur additional technology costs, estimated at \$141,361 in FY 2021 and \$109,340 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. On average, between 2016 and 2018 there were 372,668 cases in district court each year where a defendant was found guilty or delinquent for violating a misdemeanor criminal offense, according to OES. If, as OES estimates, half of these cases were thereafter expunged in accordance with the bill’s provisions, this would increase the statewide workload of clerks in

a manner equivalent to that performed by 25.2 full time employees of a clerk's office. This is an annual increase in work equal to \$1,666,573.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.