

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: HB2113H2

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

2. Patron: Herring

3. Committee: House Appropriations

4. Title: Automatic expungement of criminal records.

5. Summary: Provides for a process of automatic expungement, defined in the bill as (i) the restriction of the dissemination of criminal history record information contained in the Central Criminal Records Exchange (CCRE) to the purposes set forth in the bill, and (ii) the prohibition of the dissemination of court records, unless such dissemination is authorized by a court order for a purpose set forth in the bill. The bill provides that upon entry of an automatic expungement order, the Executive Secretary of the Supreme Court (OES) shall not make any offense that was ordered to be automatically expunged available for online public viewing in an appellate court, circuit court, or district court case management system maintained by OES. Upon entry of such an order, any circuit court clerk who maintains a viewable online case management or case information system shall not make any offense that was ordered to be expunged available for online public viewing.

If an offense is ordered to be automatically expunged and a published or unpublished decision or order of the Supreme Court or Court of Appeals exists in relation to that offense, the clerk shall redact the name of the person charged with the offense that was ordered to be automatically expunged from any decision or order of the Court that references such offense, unless such decision or order also includes offenses that were not ordered to be automatically expunged. Upon redaction of any decision or order of the Supreme Court or the Court of Appeals, the OES shall remove the decision or order published on Virginia's Judicial System website and replace such decision or order with the redacted version of the decision or order.

The bill also provides that if the data from the case management system established under this section is not provided to the OES through an interface, such data shall be provided to the Department of State Police (VSP) through an interface for purposes of complying with this bill. The parameters of the interface shall be determined by VSP while the costs of designing, implementing, and maintaining such interface shall be the responsibility of the circuit court clerk.

Additionally, the bill provides that the entry of an automatic expungement order shall not serve as grounds for expungement of a person's DNA profile or any records in the DNA data bank relating to that DNA profile.

The bill also provides that records relating to the arrest, criminal charge, or conviction of a person for a violation of § 18.2-250.1 (misdemeanor possession of marijuana) maintained in the CCRE shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to screen anyone to be a volunteer with VSP; (ii) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (iii) to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; (iv) to any person authorized to engage in the collection of court costs, fines, or restitution for purposes of collecting such court costs, fines, or restitution; (v) to administer and utilize the DNA Analysis and Data Bank; (vi) to publish decisions of the Supreme Court and Court of Appeals; (vii) to any full-time or part-time employee of a court, the OES, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the OES; (viii) to any employer or prospective employer or its designee where the Code requires the employer to inquire about prior criminal charges or convictions; (ix) to the person arrested, charged, or convicted of the offense that was automatically expunged; (x) to any business screening service for purposes of complying with subsection C of § 19.2-392.15; and (xi) to any attorney for the Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused. The bill eliminates several circumstances under which such records may currently be disseminated. Agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in their hiring processes, and educational institutions shall not require an applicant for employment or admission to disclose information concerning any arrest, charge, or conviction in violation of § 18.2-250.1 if such record is not open for public inspection, according to the provisions of the bill, except in the following circumstances: (i) the person is applying for employment with, or to be a volunteer with, VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ii) the Code requires the employer to make such an inquiry; (iii) federal law requires the employer to make such an inquiry; or (iv) the position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President. Except in such cases, the applicant need not include a reference to or information concerning such arrest, charge, or conviction when the record is not open for public inspection. The bill also provides that no person shall be required to disclose information pertaining to an arrest, charge, or conviction in violation of § 18.2-250.1 when such record is not open for public inspection in any application for the sale or rental of a dwelling. An applicant need not include a reference to or information concerning arrests, charges, or convictions when the record is not open for public inspection, and the application may not be

denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge or conviction. A violator of this section, or § 19.2-389.3(D), concerning an agency, official, or employee of a state or local government requiring such records that are not open to public inspection in an application, interview, or otherwise for a license, permit, registration, or governmental service is guilty of a Class 1 misdemeanor.

Concerning automatic expungement, the bill provides that records relating to an arrest, criminal charge, or conviction that has been automatically expunged may only be disseminated for purposes set forth in this section. The court and any law enforcement agency shall reply to any inquiry that no record exists with respect to an arrest, criminal charge, or conviction that has been automatically expunged, unless such information is permitted to be disclosed pursuant to the Code. Upon entry of an order for automatic expungement, the person who was arrested, criminally charged, or convicted of the offense that was ordered to be automatically expunged may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, criminal charge, or conviction occurred. No person as to whom an order for automatic expungement has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning an arrest, criminal charge, or conviction that has been automatically expunged, unless an exception for such disclosure is provided in this section. However, the person who was the subject of the order of automatic expungement may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be automatically expunged if: (i) the person is applying for employment with, or to be a volunteer with, VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ii) the Code requires the employer to make such an inquiry; (iii) federal law requires the employer to make such an inquiry; or (iv) the position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President. Further, an order to automatically expunge shall not relieve the person who is the subject of the order of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense.

The bill provides that if a person was charged with an offense in violation of § 4.1-305 (unlawful purchase or possession of alcohol), 18.2-250 (possession of controlled substances), or 18.2-250.1 (possession of marijuana), and such offense was deferred and dismissed, such offense shall be ordered to be automatically expunged. The bill provides that a conviction following a violation of any of the following shall be ordered to be automatically expunged: § 4.1-305, 18.2-57.01, 18.2-60, 18.2-86, 18.2-94, 18.2-96, 18.2-104, 18.2-119, 18.2-120, 18.2-121.3, 18.2-126, 18.2-127, 18.2-132.1, 18.2-134, 18.2-136, 18.2-137, 18.2-138, 18.2-144.2, 18.2-145.1, 18.2-146, 18.2-147, 18.2-147.2, 18.2-151, 18.2-151.1, 18.2-152.3:1, 18.2-152.7:1, 18.2-152.7:2, 18.2-152.15, 18.2-152.17, 18.2-156, 18.2-159, 18.2-160.1, 18.2-162.1, 18.2-163, 18.2-164, 18.2-165.1, 18.2-165.2, 18.2-250, 18.2-250.1, 18.2-251, 18.2-251.4, 18.2-255.1, 18.2-265.5, 18.2-265.7, 18.2-265.18, 18.2-265.21, 18.2-313.1, 18.2-313.2, 18.2-323.01, 18.2-323.02, 18.2-324, 18.2-326, 18.2-328, 18.2-329, 18.2-330, 18.2-331, 18.2-340,

18.2-371.3, 18.2-403.4, 18.2-404, 18.2-409, 18.2-410, 18.2-414.1, 18.2-415, 18.2-427, 18.2-428, 18.2-431.1, 18.2-462, 18.2-468, 18.2-471.1, 18.2-477.2, 18.2-487, 18.2-488, 18.2-499, 18.2-505, or 18.2-511.1. The offenses listed in these subsections shall be ordered to be automatically expunged if:

- For an offense that was deferred and dismissed, eight years have passed since the date of the dismissal and the person charged with the offense has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code of Virginia or of any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions, during that time period.
- For a misdemeanor conviction of an offense listed in this subsection, eight years have passed since the date of the conviction and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code of Virginia or of any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions, during that time period.
- For a felony conviction, eight years have passed since the date of the conviction or release from incarceration, whichever date occurred later, and the person convicted of the offense has not been convicted of violating any law of the Commonwealth that requires a report to the CCRE pursuant to the Code of Virginia or of any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions, during that time period.

According to the provisions of the bill, no offense that was deferred or dismissed may be automatically expunged if, on the date of the deferral or dismissal, the person was convicted of another offense that is not eligible for automatic expungement. No eligible conviction may be automatically expunged if, on the date of conviction, the person was convicted of another offense that is not eligible for automatic expungement.

The bill also requires that on a monthly basis, VSP shall determine which offenses in the CCRE meet the criteria for automatic expungement. After reviewing these offenses, VSP must provide an electronic list of all offenses that meet criteria to the OES and to any circuit court clerk who maintains a case management system that interfaces with VSP. Upon receipt of the list from VSP, on at least a monthly basis, the OES shall provide an electronic list of all offenses that meet criteria for expungement to the clerk of each circuit court in the jurisdiction where the case was finalized, if such clerk participates in the case management system maintained by OES. Upon receipt of that list, on at least a monthly basis the clerk of each circuit court shall prepare an order and the chief judge of the court shall enter such order directing that the offenses be automatically expunged. The clerk of each circuit court shall provide an electronic copy of any order entered under this section to VSP on at least a monthly basis.

Additionally, the bill provides that if a person is charged with the commission of a criminal offense, excluding traffic infractions, and (i) the person is acquitted, (ii) a nolle prosequi is

entered, or (iii) the charge is otherwise dismissed, excluding any charge that is deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, the court disposing of the matter shall, at the time the acquittal, nolle prosequi, or dismissal is entered, order that the charge be automatically expunged, unless the attorney for the Commonwealth or any other person advises the court at the time the acquittal, nolle prosequi, or dismissal is entered that: (i) the charge is ancillary to another charge that resulted in a conviction or a finding of facts sufficient to justify a finding of guilt; (ii) a nolle prosequi is entered or the charge is dismissed as part of a plea agreement; (iii) another charge arising out of the same facts and circumstances is pending against the person; (iv) the Commonwealth intends to reinstitute the charge or any other charge arising out of the same facts and circumstances within three months; (v) good cause exists, as established by the Commonwealth by a preponderance of the evidence, that such charge should not be automatically expunged; or (vi) the person charged with the offense objects to the automatic expungement.

According to the provisions of the bill, if (i) a person is charged or arrested as a result of mistaken identity or (ii) a person's name or other identification is used without his consent or authorization by another person who is charged or arrested using such name or identification, and a nolle prosequi is entered or the charge is otherwise dismissed, the attorney for the Commonwealth or any other person requesting the nolle prosequi or dismissal shall notify the court of the mistaken identity or unauthorized use of identifying information at the time such request is made. Upon such notification, the court disposing of the matter shall, at the time the nolle prosequi or dismissal is entered, order that the charge be automatically expunged, unless the person charged or arrested as a result of the mistaken identity or unauthorized use of identifying information objects to such automatic expungement.

On at least an annual basis, VSP shall review the CCRE and identify all persons with finalized case dispositions that resulted in (i) an acquittal, (ii) a nolle prosequi, or (iii) a dismissal, excluding any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, where the criminal history record of such person contains no convictions for any criminal offense, excluding traffic infractions. For purposes of this section, any offense on the person's criminal history record that has previously been ordered to be automatically expunged shall not be deemed a conviction. Upon identification of the finalized case dispositions, VSP shall provide an electronic list of such offenses to the OES and to any circuit court clerk who maintains a case management system that interfaces with VSP. Upon receipt of the electronic list from VSP, on at least an annual basis, the OES shall provide an electronic list of such offenses to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the Executive Secretary. Upon receipt of such electronic list, on at least an annual basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses be automatically expunged. The clerk of each circuit court shall provide an electronic copy of any such order entered to VSP on at least an annual basis.

Additionally, upon electronic notification that a court order for automatic expungement has been entered, VSP must not disseminate any criminal history record information contained in the CCRE that relates to the arrest, criminal charge, or conviction that was ordered to be

automatically expunged, except for the exceptions set forth in this section. Upon receipt of such electronic notification, VSP must electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be automatically expunged and may only be disseminated for certain purposes set forth in this section. Any records maintained electronically that are transformed or transferred by whatever means to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained must be considered automatically expunged, provided that such records are accessibly only to the manager of the records. Upon entry of a court order for automatic expungement, the OES and any circuit court clerk who maintains a case management system that interfaces with VSP shall: (i) ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing; and (ii) not disseminate any court record of such arrest, criminal charge, or conviction to the public, except as provided in this section. Records relating to an arrest, criminal charge, or conviction that was ordered to be automatically expunged shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in the AFIS; (iii) to the Virginia Criminal Sentencing Commission for research purposes; (iv) to any employee of VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for employment with, or to be a volunteer with, VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (v) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (vi) to any employee of the Department of Forensic Science (DFS) for the purpose of screening any person for employment with DFS; (vii) to the chief law enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (viii) to any employee of the Department of Motor Vehicles (DMV), any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (x) to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; (xi) to any person authorized to engage in the collection of court costs, fines, or restitution for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize the DNA Analysis and Data Bank; (xiii) to publish decisions of the Supreme Court and Court of Appeals; (xiv) to any employee of a court, the OES, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the

Judiciary for the purpose of screening any person for employment as a clerk, magistrate, or judge with a court or OES; (xv) to any employer or prospective employer or its designee where the Code requires the employer to inquire about prior criminal charges or convictions; (xvi) to the person arrested, charged, or convicted of the offense that was automatically expunged; (xvii) to any business screening service for purposes of complying with subsection C of § 19.2-392.15; and (xviii) to any attorney for the Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused.

Upon request from any person to access a court record, the clerk of court shall determine whether such record is open to public access and inspection. If the clerk of court determines that a court record has been automatically expunged, such record shall not be provided to the requestor without an order from the court that entered the order to automatically expunge the court record. Any order from a court that allows access to a court record that has been automatically expunged shall only be issued for one or more of the exceptions provided in this section. Such order shall allow the requestor to photocopy such court record. No fee shall be charged to any person filing a motion to access such a court record if the person filing such motion is the same person who was arrested, criminally charged, or convicted of the offense that was expunged. If a pleading or case document in a court record that was automatically expunged is included among other court records that have not been ordered to be automatically expunged, the clerk of court shall ensure that such pleading or case document that was ordered to be automatically expunged is redacted from the court record prior to allowing public access to such court record.

The DMV must not automatically expunge any conviction or any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt (i) in violation of federal regulatory record retention requirements or (ii) in violation of federal program requirements if the DMV is required to suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be automatically expunged. Upon receipt of an order directing that an offense be automatically expunged, the DMV must automatically expunge all records if the federal regulatory record retention period has run and all federal program requirements associated with a suspension have been satisfied. However, if the DMV cannot automatically expunge an offense pursuant to this subsection at the time it is ordered, the agency must (a) notify VSP of the reason the record cannot be automatically expunged and cite the authority prohibiting automatic expungement at the time it is ordered; (b) notify VSP of the date, if known at the time when the expungement is ordered, on which such record can be automatically expunged; (c) automatically expunge such record on that date; and (d) notify VSP when such record has been automatically expunged from the DMV's records.

Additionally, no charge or conviction that has been automatically expunged may be used to impeach the credibility of a testifying witness at any hearing or trial unless (i) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and (ii) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

It is unlawful for any person having or acquiring access to an automatically expunged criminal history or court record, except for a news organization or newsperson engaged in journalism, to disclose such record or any information from such record to another person, except for the purposes authorized in this section; a violation is a Class 1 misdemeanor.

Agencies, officials, and employees of state and local governments, private employers that are not subject to federal regulations in the hiring process, and educational institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Exceptions are provided in the following instances: (i) the person is applying for employment with, or to be a volunteer with, VSP or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ii) the Code requires the employer to make such an inquiry; (iii) federal law requires the employer to make such an inquiry; or (iv) the position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President. A violation is a Class 1 misdemeanor.

Agencies, officials, and employees of state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. A violation is a Class 1 misdemeanor.

No person shall, in any application for the sale or rental of a dwelling, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions that have been automatically expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, criminal charge, or conviction against him that has been automatically expunged. A violation is a Class 1 misdemeanor.

If a business screening service knows that a criminal history record in an application has been automatically expunged, the service shall promptly delete the record. A business

screening service must register with VSP to receive copies of orders of automatic expungement provided to VSP. The orders of automatic expungement received by the business screening service must remain confidential and may not be disseminated. The orders of automatic expungement must be used for the sole purpose of deleting criminal history records that have been automatically expunged. The business screening service must destroy the copies of the orders of automatic expungement after deleting the information contained in such orders from criminal history records. A business screening service that disseminates a criminal history record on or after July 1, 2025, must include the date when the record was collected by the business screening service and a notice that the information may include criminal history records that have been automatically expunged since that date.

If the completeness or accuracy of a criminal record maintained by a business screening service is disputed by the individual who is the subject of the record, the screening service must, without charge, investigate the disputed record. If, upon investigation, the screening service determines that the record does not accurately reflect the content of the official record, the screening service must correct the disputed record so as to accurately reflect the content of the official record. If the disputed record is found to have been automatically expunged, the business screening service must promptly delete the record. A business screening service may terminate an investigation of a disputed record if the service reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of the record to provide sufficient information to investigate the disputed record.

Upon making a determination that the dispute is frivolous, the service must inform the subject of the record of the specific reasons why it has determined this to be the case and must provide a description of any information required to investigate the disputed record.

The business screening service must notify the subject of the disputed record of the correction or deletion of the record or of the termination or completion of the investigation related to the record within 30 days of the date when the service receives notice of the dispute from the subject of the record. A business screening service that complies with this subsection is not in violation of this section. A business screening service that violates this section is liable to the person who is the subject of the criminal history record for a penalty of \$1,000 or actual damages caused by the violation, whichever is greater, plus costs and reasonable attorney fees. Prior to filing suit for an alleged violation of this section, the person who is the subject of the criminal history record must have filed a dispute with the business screening service, and the service must have been given an opportunity to respond as provided in the bill. The Attorney General (OAG) may file a civil action to enforce this section. If the court finds that a business screening service has willfully engaged in an act or practice in violation of this section, the Attorney General may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. In any civil action pursuant to this subsection, in addition to any civil penalty awarded, the Attorney General may also recover any costs and reasonable expenses incurred by the state in investigating and preparing the case, not to exceed \$1,000 per violation, and attorney fees. Such additional costs and expenses shall be paid into the general fund of the Commonwealth.

The bill contains an enactment clause.

6. Budget Amendment Necessary: Yes, Items 402 and 425.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: According to the Department of State Police (VSP), the proposed legislation would require the agency to replace several of its core systems that collect and store criminal record information, including the agency's Criminal History System, the Applicant Tracking System, the Expungement System, the Master Name Index (an index of names and search algorithm to connect a record to an individual in the event of misspellings or aliases), the Civil Commitment System, and the Rap Back System (which allows agencies to be notified of any employees who are charged with a crime), and to unify all of these systems onto one platform. The estimated cost to make these replacements and upgrades is \$12.5 million. The Department estimates it will also need \$66,520 to modify its existing systems that disseminate marijuana records in order to comply with this proposed legislation. Additionally, it will cost approximately \$15,000 to develop and implement the functionality for the agency to delete all records from the CCRE that are not reportable under the proposed § 19.2-390(A)(1). The total estimated information technology one-time cost to VSP is \$12,581,520.

Additionally, VSP estimates it will need four analyst positions, and one lead analyst position, to comply with the provisions of this bill. These positions would complete several functions as provided in the proposed legislation, including the completion of out-of-state criminal history reviews to find convictions that qualify for automatic expungement pursuant to § 19.2-392.6(C) (1), (2), and (3). Current technology does not allow for this search function to be automated, so these positions would need to manually examine the qualifying records, confirm the requirements of the originating state or territory, and conduct research on incomplete records.

There are 304,799 records in the Central Criminal Records Exchange (CCRE) that would meet criteria for automatic expungement according to the bill, and VSP received an average of 30,100 such records between calendar years 2017-2019. VSP estimates that each analyst position would be able to review, research, and process 6,000 of these record examinations, and the corresponding expungements per year. The total ongoing cost for these positions, including salary and benefits, is \$438,464 annually. Other costs associated with these positions include \$17,722 per year in office space costs, \$24,301 in one-time furniture expenses, and \$9,957 the first year and \$7,700 annually thereafter for information technology costs.

According to the Office of the Executive Secretary (OES), the agency would need to make the following technological changes in order to implement the proposed legislation:

- modify 17 public/external-facing and 20 internal systems/interfaces to prohibit access to automatically expunged cases;
- develop and implement incoming and outgoing interfaces with VSP to receive and process cases for automatic expungement and orders voiding expungements;
- develop an Expungement Management System (EXMS), which includes project setup, infrastructure configuration, and development of capabilities to fully implement the bill's requirements;

- modify multiple systems to allow receipt of expungement and expungement void ordered entered through the EXMS;
- conduct performance and load testing of all affected systems;
- address database security and roles to ensure that only authorized users see the automatically expunged data; and
- assign additional processing units to systems to handle the increased load during expungement list processing, including additional data storage capabilities and software licensing costs.

OES estimates the total fiscal impact of this bill to be \$6,156,130. According to OES, this appropriation may be spread out over the four years it will take to be developed based on the bill's July 1, 2025, effective date.

The Department of Motor Vehicles (DMV) estimates its costs would be \$45 per record expunged under existing processes and \$36 per record expunged if allowed to more fully automate the process. The number of records DMV would need to expunge could be in the hundreds of thousands, potentially creating a high cost the agency could not absorb. If DMV is allowed to spread the number of records expunged over time, it could reduce its immediate cost to \$38 per record for expunging 5,100 records annually, with the agency requiring three additional positions. In addition, the agency would incur one-time costs of \$9 per record expungement for the automated portion of its expungement process and related activities, with the number of records ranging between 25,400 and 58,400.

The proposed legislation provides for conviction of perjury under § 18.2-434, a Class 5 felony, for individuals who deny or fail to disclose an offense to an employer who is permitted to request information about automatically expunged records. A Class 5 felony is punishable by a term of imprisonment of between one and ten years, or confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. The bill also establishes a new Class 1 misdemeanor for the unauthorized disclosure of an automatically expunged record under § 19.2-392.13, and makes it a Class 1 misdemeanor for employers, landlords, education institutions, and state and local agencies to require an individual to disclose an automatically expunged record, unless they are an exempted organization specifically listed in the Code. Under current law, a Class 1 misdemeanor is punishable by up to 12 months in prison or a fine of not more than \$2,500, or both.

According to the Virginia Criminal Sentencing Commission, existing data do not contain sufficient detail to estimate the number of additional individuals who may be convicted of perjury if they proposal were enacted. However, affected offenders may be sentenced similarly to those who are currently convicted of perjury under § 18.2-434. Based upon FY 2019 and FY 2020 Sentencing Guideline data obtained by the Virginia Criminal Sentencing Commission, 85 offenders were convicted of a Class 5 felony under § 18.2-434. The perjury offense was the primary, or most serious offense in 59 cases. Another 50.8% of the offenders were given a local-responsible (jail) term for which the median sentence was three months. The remaining 20.3% received a state-responsible (prison) term with a median sentence of 1.8 years.

Existing data do not contain sufficient detail to estimate the number of additional individuals who may be convicted under the proposed Class 1 misdemeanors for unauthorized disclosure and requiring the disclosure of automatically expunged records, according to the Virginia Criminal Sentencing Commission.

Because the bill expands the applicability of the existing Class 5 felony under § 18.2-434, it may increase future state prison bed needs in the Commonwealth. However, available data is not sufficient to estimate the number of cases under the proposed legislation or estimate the overall impact. Accordingly, the magnitude of the impact on prison bed space cannot be determined at this time.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 56, 2020 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Any potential fiscal impact on local and regional jails or the Department of Juvenile Justice (DJJ) is indeterminate at this time, but is likely to be negligible.

The proposed legislation may also increase the local-responsible jail bed space needs, however the extent of the impact cannot be determined at this time using existing data. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

According to the Office of the Attorney General (OAG), there is no anticipated fiscal impact on agency operations as a result of the provisions of this bill.

9. Specific Agency or Political Subdivisions Affected: Department of State Police, Office of Executive Secretary, Commonwealth's Attorneys, Office of the Attorney General, Department of Motor Vehicles, Department of Forensic Science, Department of Corrections.

10. Technical Amendment Necessary: No.

11. Other Comments: None.