

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2133E

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|------------------------|---------------------------------------|-------------------------------------|---|
| House of Origin | <input type="checkbox"/> Introduced | <input type="checkbox"/> Substitute | <input checked="" type="checkbox"/> Engrossed |
| Second House | <input type="checkbox"/> In Committee | <input type="checkbox"/> Substitute | <input type="checkbox"/> Enrolled |

2. Patron: Delaney

3. Committee: Engrossed by House

4. Title: Issuance of writ of vacatur for victims of commercial sex trafficking.

- 5. Summary:** Provides that any victim of sex trafficking may file a petition for vacatur setting forth the relevant facts and requesting that the judgment of conviction or adjudication of delinquency be vacated. The bill requires that the petition allege: (i) the petitioner was convicted or adjudicated delinquent of a qualifying offense (§ 18.2-346 (prostitution) or § 18.2-347 (keeping a bawdy place)), including the date on which the qualifying offense occurred, the date of final disposition on which the conviction or adjudication of delinquency was entered, the petitioner's date of birth, and the full name used by the petitioner at the time of the offense; (ii) the petitioner committed the qualifying offense as a direct result of being a victim of sex trafficking; and (iii) whether the petitioner has previously filed any other such petition in any circuit court and, if so, the disposition of such petition. Such petition must contain all relevant allegations of facts that are known to the petitioner at the time of filing, and must be filed on a form provided by the Supreme Court. The petitioner must obtain from a law enforcement agency one complete set of the petitioner's fingerprints and must file those fingerprints with the circuit court with the petition.

If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court that he does not object to the petition and (ii) stipulates in such written notice that the petitioner was convicted or adjudicated delinquent of a qualifying offense and that the petitioner committed the qualifying offense as a direct result of being a victim of sex trafficking, the circuit court may grant the writ and vacate the qualifying offense without conducting a hearing. If the attorney for the Commonwealth of the county or city in which the petition is filed objects to the petition or does not file an answer, the court must conduct a hearing on the petition after reasonable notice has been provided to both the petitioner and the attorney for the Commonwealth.

If a writ of vacatur is granted, and no appeal is made to the Supreme Court, or the Supreme Court refuses or denies the Commonwealth's petition for appeal or upholds the decision of the circuit court, an order of expungement for the qualifying offense must be entered by the circuit court. Upon entry of the order of expungement, the clerk of court must cause a copy of the writ of vacatur, the order of expungement, and the complete set of petitioner's fingerprints to be forwarded to the Department of State Police (VSP), which shall expunge the qualifying offense. The writ to vacate the qualifying offense will not be expunged, and

must be maintained by the circuit court. Access to the writ may be provided only upon court order. Any person seeking access to the writ may file a written motion setting forth why such access is needed. The court shall issue an order to disclose the writ upon the written motion of the petitioner named in the writ. The court may issue an order to disclose the writ if it finds that such disclosure best serves the interests of justice.

If the court enters a writ of vacatur, the petitioner would be entitled to a refund of all fines, costs, forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court where the conviction was entered is in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines, costs, forfeitures, and penalties paid.

The bill does not create any cause of action for damages against the Commonwealth or any of its political subdivisions or any officers, employees, or agents of the Commonwealth or its political subdivisions.

6. **Budget Amendment Necessary:** See Line 8.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** According to the Office of the Executive Secretary (OES), the proposed legislation is likely to increase the workload of circuit court judges, clerks, and other personnel necessary to process the petitions and hearings required by the bill. Additionally, the court costs refunded to persons who have successfully petitioned for a writ of vacatur would come out of the various allocations provided within § 16.1-69.48:1 (fixed fee for misdemeanors, traffic infractions and other violations) for qualifying cases disposed of within district courts and § 17.1-275.1 (fixed felony fee), §17.1-275.2 (fixed felony fee for felony reduced to misdemeanor), and §17.1-275.7(fixed misdemeanor fee) for qualifying cases disposed of within circuit courts. These fees collected are deposited in various funds to support specific programs. Refunded fines would come out of the Literary Fund for offenses based on state law, and from the locality for violations of local ordinances. The number of petitions requesting a writ of vacatur, and the portion that would subsequently be granted, are unknown. For this reason, the fiscal impact for this bill on OES and the reduction to the various programs as a result of potential refunds cannot be determined at this time.

According to the Department of State Police (VSP), the Central Criminal Records Exchange (CCRE) currently contains 11,002 total convictions under §§ 18.2-346 and 18.2-347. The VSP expungement section currently staffs a total of 10 positions, seven of which process expungements full-time. The other three positions have other primary responsibilities and provide support with expungements as needed. Between calendar years 2016-2020, this section processed an average of 4,102 orders for expungement per year. Employees complete an average of 500 expungements per year. VSP assumes 10 percent (1,100) of the total

records currently in the CCRE would be required to be expunged under the provisions of the bill. Based upon this assumption, VSP estimates it may need funding and four positions. However, the bill requires the court to grant the writ and vacate a qualifying offense if it finds the petitioner (i) was convicted or adjudicated delinquent of a qualifying offense and (ii) committed the qualifying offense as a direct result of being a victim of sex trafficking. If a writ of vacatur is granted and no appeal is made to the Supreme Court, or the Supreme Court refused or denies the Commonwealth's petition for appeal or upholds the decision of the circuit, then an order of expungement for the qualifying offense must be entered by the circuit court. Therefore, at this time, it is not feasible to determine how many people would file petitions consistent with the specific provisions of the bill, and how many of those petitions would ultimately be granted by a court leading to expungement orders. If workloads in the expungement section increases as a result of this legislation, VSP would need additional positions. But there is not sufficient information to determine the number of petitions that would be filed per year and granted based on the proposed legislation. Currently, a VSP program support technician position costs approximately \$75,269.76 per year (salary and benefits). Each position would also incur additional information technology expenses in the amount of \$1,991 in the first year and \$1,540 the second year.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.