

Department of Planning and Budget

2021 Special Session I Fiscal Impact Statement

1. Bill Number: HB2133ER

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. Patron: Delaney

3. Committee: Passed both houses

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 for a conviction or adjudication of delinquency to be vacated, provided the following qualifications are met: (i) the petitioner was convicted or adjudicated delinquent of a qualifying offense and provides relevant information about the offense in the petition; (ii) the petitioner committed the qualifying offense as a direct result of being a victim of sex trafficking; and (iii) the petitioner includes any information about other such writs filed in accordance with this section. The filing must include a copy of the petitioner's fingerprints obtained from a law enforcement agency. If the writ of vacatur is granted and no appeals are filed, the circuit court must enter an order of expungement for the offense.

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.