Department of Planning and Budget
2021 Fiscal Impact Statement

1. **Bill Number:** SB1339

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

2. **Patron:** Surovell

3. **Committee:** Judiciary

4. **Title:** Expungement and sealing of police and court records; Expungement Fee Fund created.

5. **Summary:** Provides that data brokers, as defined in the bill, must: (i) implement and maintain reasonable security procedures and practices to protect the accuracy of public record information; (ii) implement processes to affirmatively obtain the express consent of a parent or guardian of a minor before selling the public record information of such minor; (iii) implement procedures for consumers to submit a request to obtain any of their own public record information maintained by the data broker, including, at a minimum, a toll-free telephone number, and to obtain a copy of such information or any of such information sold to another entity by the data broker regarding the consumer; (iv) refrain from maintaining or selling public record information about a consumer that it knows to be inaccurate; (v) provide a link on the homepage of the website of the data broker labeled "Do Not Sell My Personal Information" that directs a consumer to a webpage enabling him or his authorized representative to opt out of the sale of the consumer's public record information. Exceptions to this section are provided for (i) the Commonwealth or any agency, commission, instrumentality, or political subdivision thereof; (ii) any clerk of court; (iii) any organization that is tax exempt; (iv) any financial institution or any public service corporation, including any affiliate or subsidiary thereof, or any entity that operates a payment network in which all U.S. participants are financial institutions; or (v) the activity of any consumer reporting agency that is subject to civil liability. If a data broker violates this section, the Attorney General (OAG) or a Commonwealth's attorney may initiate a civil action against the data broker and may recover a civil penalty of up to $2,500 for each unintentional violation and up to $7,500 for each intentional violation. A consumer may initiate a civil action against the data broker and may recover up to $1,000 per violation, in addition to actual damages caused by such violation, punitive damages in cases in which the data broker's conduct was willful, and reasonable attorney fees, expert witness expenses, and costs. A consumer may initiate a civil action and recover damages under this provision either for himself or on behalf of a class of consumers. Additionally, in any action on behalf of a class, a party may also obtain injunctive relief.

   The bill also requires the Board of Criminal Justice Services (the Board) to adopt regulations and procedures for the dissemination of sealed police records by which the criminal justice agencies of the Commonwealth and other individuals and agencies can access such sealed records from the Central Criminal Records Exchange (CCRE) and must ensure that the

access and dissemination of such sealed records are made in accordance with limitations on dissemination of criminal history record information set forth in this bill. The Board must also adopt procedures reasonably designed to ensure the prompt expungement or sealing of police records.

The bill creates the Expungement Fee Fund, administered by the Office of the Executive Secretary (OES), who must use such funds solely to fund the costs for the compensation of court-appointed counsel pursuant to the provisions of this bill. The bill also provides that if data from a case management system is not provided to the OES through an interface, the data must be provided to the Department of State Police (VSP) through an interface for the purposes of complying with this bill. The parameters of the interface must be determined by VSP, and the costs of designing, implementing, and maintaining such interface will be the responsibility of the circuit court clerk.

Additionally, the bill provides that in instances where (i) (a) a person was convicted of a violation of § 4.1-305 (unlawful purchase/possession of marijuana), § 18.2-250.1 (misdemeanor possession of marijuana), or § 18.2-371.2(B) (purchase or possession of tobacco or related products while underage), (b) the person was under 21 years of age on the date of the incident leading to the conviction, (c) all court costs and fines, and all orders of restitution have been satisfied, and (d) five years have passed since the date of conviction, or (ii) (a) a person was charged with a violation of § 4.1-305, 18.2-250 (possession of controlled substances), or 18.2-250.1 and such charge was discharged and dismissed, and (b) all court costs and fines and all orders of restitution have been satisfied, he may file a petition requesting the expungement of the police and court records relating to the charge or conviction. A person filing for expungement is not required to pay any fees or costs for filing a petition if such person files a petition requesting to proceed without the payment of fees and costs, and the petition: (a) states that (i) the final disposition of the criminal charge, civil offense, or conviction eligible for expungement occurred within the last 12 calendar months, as shown by an attached copy of the final case disposition, and (ii) the petitioner was represented by court-appointed counsel or a public defender, as certified by such person or his attorney with documentation of such representation attached; or (b) requests a determination of indigency, and the court with which such person files his expungement petition finds such person to be indigent. Any costs collected during the expungement process must be deposited in the Expungement Fee Fund.

Additionally, if a petitioner qualifies to file a petition for expungement without the payment of fees and costs and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for expungement and represent the petitioner in the expungement proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject to guidelines issued by the OES, in a total amount not to exceed $120, as determined by the court, and such compensation shall be paid from the Expungement Fee Fund. A petition filed under this section and any responsive pleadings filed by the attorney for the Commonwealth must be maintained under seal by the clerk unless otherwise ordered by the court.

The Department of Motor Vehicles (DMV) must not 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) until three years after all statutory requirements associated with a driver's license suspension have been complied with if the DMV is required to administratively suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be expunged. Upon receipt of an order directing that an offense be expunged, the DMV must expunge all records if the federal regulatory record retention period has run or three years have passed since the date that all statutory requirements associated with an administrative suspension have been satisfied. However, if the DMV cannot expunge an offense pursuant to this subsection at the time it is ordered, the DMV must (a) notify VSP of the reason the record cannot be expunged and cite the authority prohibiting expungement at the time it is ordered, (b) notify VSP of the date on which such record can be expunged, (c) expunge such record on that date, and (d) notify VSP when such record has been expunged from the records of the DMV. Any provision in any plea agreement that purports to waive, release, or extinguish the right to file a petition requesting expungement of the police records and the court records is void and unenforceable as against public policy.

If a person is charged with the commission of a misdemeanor criminal offense and is acquitted, or the charge against him is dismissed with prejudice, including dismissal by accord and satisfaction, he may immediately upon the acquittal or dismissal orally request expungement of the police records and the court records relating to the charge. Upon such request and with the concurrence of the attorney for the Commonwealth, if the court finds that the continued existence and possible dissemination of information relating to the arrest of the person causes or may cause circumstances that constitute a manifest injustice to the person, it must order the expungement of the police and court records, including electronic records, relating to the charge. Otherwise, it must deny the request. Upon the entry of such order, it must be treated as provided in this section. Any denial of a request for expungement, including a denial based on the attorney for the Commonwealth's objection to such request, must be without prejudice, and the person may seek expungement in circuit court. Upon receipt of orders of dismissal and expungement, and payment by the person of $100 in court costs, unless as provided in this section, the clerk of the court must forward a copy of such orders to VSP, which must direct the manner by which the appropriate expungement or removal of such records shall be effected. Any costs collected pursuant to this section will be deposited in the Expungement Fee Fund. A person will not be required to pay any court costs pursuant to this section if such person has been determined to be indigent. If (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, any order entered is voidable upon motion and notice made within three years of the entry of such order.

A person who has been convicted of a (i) traffic infraction, (ii) misdemeanor offense, or (iii) Class 5 or 6 felony or violation of § 18.2-95 (grand larceny) or any other felony offense where the defendant is deemed guilty of larceny and punished as provided in § 18.2-95 or who has received a simple pardon for any crime or any offense defined elsewhere in the Code may file a petition setting forth the relevant facts and requesting sealing of the police and court records relating to the arrest, charge, or conviction, provided that such person has

(a) never been convicted of a Class 1 or 2 felony, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any felony within the past 10 years of his petition. A person is not required to pay any fees or costs for filing a petition pursuant to this section if such person files a petition to proceed without the payment of fees and costs, and the court with which such person files his petition finds such person to be indigent. The petition with a copy of the warrant, summons, or indictment if reasonably available must be filed in the circuit court of the county or city in which the case was disposed of and must contain, except where not reasonably available, the date of arrest, the name of the arresting agency, and date of conviction. Where this information is not reasonably available, the petition must state the reason for such unavailability. The petition must further state the specific traffic offense or criminal conviction to be sealed, the date of final disposition of the offense or conviction as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest or summons. A petitioner may only have two petitions granted pursuant to this section within his lifetime. A copy of the petition must be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is served on him. The petitioner must obtain from a law enforcement agency one complete set of his fingerprints and must provide that agency with a copy of the petition for sealed records. The law enforcement agency must submit the set of fingerprints to the CCRE with a copy of the petition for sealing of the police and court records attached. The CCRE must forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to seal, if applicable, the set of fingerprints, and a copy of any prior orders entered pursuant to this section that were previously granted to the petitioner. Upon completion of the hearing, the court must return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order of sealing or an order denying the petition for sealing, the court must cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card. After receiving the criminal history record information from the CCRE, the court must conduct a hearing on the petition. If the court finds that: (i) during a period after the date of the conviction or release from incarceration, whichever date occurred later, the person has not been convicted of violating any law that requires a report to the CCRE, excluding traffic infractions for (a) three years for any non-misdemeanor traffic offense; (b) five years for any misdemeanor traffic offense, other than a violation of § 18.2-266 (driving while intoxicated), or any misdemeanor offense that is not a crime of moral turpitude; or (c) 10 years for any misdemeanor offense that involves moral turpitude, a violation of § 18.2-266, a Class 5 or Class 6 felony offense, or a violation of § 18.2-95 or any other felony offense where the defendant is deemed guilty of larceny and punished as provided in § 18.2-95; (ii) if the records relating to the offense indicate that the occurrence leading to the conviction involved the use or dependence upon alcohol or any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, the petitioner has demonstrated his rehabilitation; (iii) the petitioner has not previously obtained the sealing of more than two other convictions arising out of different sentencing events; and (iv) the continued existence and possible dissemination of information relating to the arrest,

charge, or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, then the court must enter an order requiring the sealing of the police and court records, including electronic records, relating to the arrest, charge, or conviction. Otherwise, it must deny 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) when the arrest, charge, or conviction to be sealed is a misdemeanor offense that involves moral turpitude, a violation of § 18.2-266, or a felony offense, stipulates in such written notice that the petitioner is eligible to have such misdemeanor or felony offense sealed and the continued existence and possible dissemination of information relating to the arrest, charge, or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, the court may enter an order of sealing without conducting a hearing.

Upon entry of a court order for the sealing of the police and court records pursuant to this section, the OES and any circuit court clerk who maintains a case management system that interfaces with VSP must ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing and must not disseminate any court record of such arrest, criminal charge, or conviction to the public, except as provided in this section. Upon the entry of an order of sealing, the clerk of the court must cause a copy of such order to be forwarded to VSP, which must, pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134, direct the manner by which the appropriate sealing and removal of such records will be affected. 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 sealed, except for where permitted in this section. VSP must also electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated as allowed by this section. Any costs collected pursuant to this section will be deposited in the Expungement Fee Fund. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of sealing of the police and court records contrary to law is voidable upon motion and notice made within three years of the entry of such order. If a petitioner qualifies to file a petition for sealing of the police and court records without the payment of fees and costs and has requested court-appointed counsel, the court must then appoint counsel to file the petition for sealing of the police and court records and represent the petitioner in the sealed records proceedings. Counsel appointed to represent such a petitioner will be compensated for his services subject to guidelines issued OES. A petition filed under this section and any responsive pleadings filed by the attorney for the Commonwealth must be maintained under seal by the clerk unless otherwise ordered by the court.

Additionally, when any person is arrested, charged, or convicted for (i) a Class 3 or 4 misdemeanor that is reported to the CCRE or (ii) a violation of § 4.1-305, 18.2-250.1, or 18.2-265.3 (sale, etc. of drug paraphernalia) involving marijuana, a circuit court must enter an order for any person sealing the police and court records for such offense, provided that (a) 10 years have passed since the date of final disposition, whichever is the latest date, and (b) the person arrested, charged, or convicted of the offense has not been convicted of violating any law that requires a report to the CCRE, including traffic violations that result in

a point assignment pursuant to § 46.2-492. Any number of arrests or charges that do not result in a conviction must be sealed in accordance with this section, but a person may only have his convictions from two sentencing events sealed pursuant to this section over the course of his lifetime. Any convictions from a third or subsequent sentencing event are ineligible for sealing under this section. On a monthly basis, VSP must determine which arrests, charges, or convictions in the CCRE meet the criteria for automatic sealing of records set forth in this bill. After making such determination, VSP must provide an electronic list of all persons with arrests, charges, or convictions that meet the criteria for automatic sealing of records 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 a monthly basis the OES must provide an electronic list of all persons with arrests, charges, or convictions that meet the criteria for automatic sealing of records set forth in this section 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 OES. Upon receipt of the electronic list, on at least a monthly basis the clerk of each circuit court must prepare an order and the chief judge of that circuit court must enter such order directing that the arrests, charges, or convictions that meet the criteria for automatic sealing of records be automatically sealed and removed. Such order must contain the names of the persons arrested, charged, or convicted. Upon entry of a court order for the sealing of the police and court records pursuant to this section, the OES and any circuit court clerk who maintains a case management system that interfaces with VSP must ensure that the court record of such arrest, criminal charge, or conviction is not available for public online viewing and must not disseminate any court record of such arrest, criminal charge, or conviction to the public. The clerk of each circuit court must provide an electronic copy of any order entered to VSP on at least a monthly basis. Upon receipt of such order, VSP may 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 sealed, except for as provided in the bill. VSP must also electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated as provided in this section. All electronic lists created in accordance with this section are not subject to further dissemination unless explicitly provided for by this section. Any willful and intentional unlawful dissemination is punishable as an unlawful dissemination of criminal history record information in violation of § 9.1-136.

The bill also provides that it is unlawful for a person having or acquiring access to an expunged police or court record pursuant to § 19.2-392.2 or the proposed 19.2-392.2:1 to open or review it or to disclose to another person any information from it without an order from the court that ordered the record expunged; a violation is a Class 6 felony. The bill also provides that it is unlawful for any person having or acquiring access to a sealed police or court record pursuant to the proposed § 19.2-392.2:2 or 19.2-392.2:3 to open or review it or to disclose to another person any information from it without an order from the court that ordered the record sealed or unless such disclosure is provided for in the bill. Any person who is the subject of a sealed police or court record order entered pursuant to the proposed § 19.2-392.2:2 or 19.2-392.2:3 may submit a request to the circuit court that entered such sealing order to obtain a copy of the sealed records for himself or his designee. Such request must be made under oath and on a form provided by the Supreme Court of Virginia. Upon

receipt of the request from the subject, or the subject's designee, the clerk of the circuit court must provide a copy of the requested sealed records to the subject of the records or his designee, as appropriate, depending on if the subject or his designee made such request. Records relating to an arrest, charge, or conviction that was ordered to be sealed pursuant to § 19.2-392.2:2 or 19.2-392.2:3 may not be open for public inspection or otherwise disclosed, provided that such records may be disseminated in the following instances:

(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 Automated Fingerprint Information System (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, the 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;
(vi) to any employee of the Department of Forensic Science (DFS) for the purpose of screening any person for employment with the agency;
(vii) to the chief law enforcement officer of a locality, or his designee who must 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 full-time or part-time employee of the 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 state or 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, subject to certain provisions;
(xiv) to any employee of a court, the OES, the Division of Legislative Services, or the Chairmen of the House Committee for Courts of Justice or 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 the OES;

(xv) to any employer or prospective employer or its designee that is authorized access to such sealed records pursuant to this bill; or

(xvi) to the person arrested, charged, or convicted of the offense that was sealed.

Any person who willfully violates this section is guilty of a Class 1 misdemeanor. Any person who maliciously and intentionally violates this section is guilty of a Class 6 felony.

Additionally, 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 may not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, charge, or conviction against him that has been sealed pursuant to these sections. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been sealed. Except as provided elsewhere in this section, agencies, officials, and employees of state and local governments must 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 sealed. 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 sealed. 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 sealed. No person may in any application for the sale or rental of a dwelling, require an applicant to disclose information concerning any arrest, charge, or conviction against him that has been sealed. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that have been sealed. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, charge, or conviction against him that has been sealed.

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;

(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; or

(v) the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 allow the employer to access such sealed records.

A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation. If any entity or person listed in this section includes a question about a prior criminal arrest, charge, or conviction in an application for one or more of the purposes set forth in such subsections, such application must include a notice to the applicant that a charge or conviction that has been sealed does not have to be disclosed in the application.

Any person who has had an arrest, charge, or conviction expunged pursuant to these sections may stand in the place as if such expunged arrest, charge, or conviction never happened and any legal consequences of such arrest, charge, or conviction are nullified. Any person who has had an arrest, charge, or conviction sealed pursuant to these sections may not have such an arrest, charge, or conviction used to impeach his credibility as a testifying witness at any hearing or trial if such arrest, charge, or conviction occurred more than 10 years from the date of such hearing or trial unless the probative value of the impeachment evidence, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and the proponent of such impeachment evidence gives the adverse party written notice of his intent to use such arrest, charge, or conviction, so that the adverse party may contest such use. Any arrest, charge, or conviction sealed may be admissible in proceedings relating to the care and custody of a child. Any arrest, charge, or conviction sealed pursuant must not be disclosed in any sentencing report and must not be considered when ascertaining the punishment of a criminal defendant. Any arrest, charge, or conviction sealed may operate as a barrier crime as defined in § 19.2-392.02. Any arrest, charge, or conviction sealed must not be maintained, sold, or reported by any third party unless the disclosure of such arrest, charge, or conviction is made in accordance with the provisions of this chapter.

With the exception of the provisions regarding the Expungement Fee Fund, and the funding provisions of such fund, the bill has a delayed effective date of July 1, 2022. The bill directs the Department of Criminal Justice Services to adopt emergency regulations to implement the provisions of the bill. The bill also directs the Secretary of Public Safety and Homeland Security to establish a work group to evaluate the feasibility of and provide recommendations for destroying expunged or sealed police and court records. The work group shall report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2021.

6. **Budget Amendment Necessary**: Yes, Items 39, 402, and 425.

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

8. **Fiscal Implications:** The Department of State Police (VSP) is responsible for processing expungement orders in the Commonwealth. According to VSP, there are currently 277,723 records in the Department's Computerized Criminal History (CCH) system that would meet the criteria for expungement, according to the bill. There are an additional 3,065,466 records that would meet this bill's criteria for record sealing. Additionally, based on a three-year data average, there would be approximately 140,008 new records eligible for expungement at the moment of dismissal or nolle prosse per year. According to VSP, the automatic record sealing process requires the review of in-state, out-of-state, and Department of Motor

Vehicles (DMV) records for eligibility. The agency's current processes would require that the review of DMV and out-of-state records be completed manually.

At a minimum, this proposal will require modifications to the CCH system to accommodate the new automatic expungement process, and to store additional data. This one-time cost has been estimated by VSP at $3,084,400.

There is no way to determine how many individuals would pursue a petition-based expungement or sealing, who would be eligible for automatic record sealing, and how many such requests would be granted by the court. Given the manual nature of this process, VSP could require a number of new positions. As an example, VSP estimates that if 10 percent of eligible records for petition-based expungement and sealing would go through the sealing or expungement process, and if 90 percent of prior year records that are eligible for expungement as a result of being nolle prossed or dismissed would be required to be expunged, then over 600 additional positions would be required by the agency. An employee in VSP's expungement section can process approximately 500 court ordered expungements per year. VSP estimates an employee could process approximately 1,000 petition-based requests for record sealing per year, as this is a simpler process, and each analyst could review approximately 6,000 out-of-state and DMV records a year that may be eligible for expungement or sealing.

For every 100 positions needed, at an average cost of $86,000 per position (personal and nonpersonal services costs), the cost would be approximately $8.6 million annually. The estimated costs for the various positions are as follows: management analyst costs $84,833.50 per position annually (salary and benefits); CCRE manager costs $94,537.63 annually; office services supervisor costs $75,902.83 annually; program support technician costs $75,593.31 annually; and a lieutenant position costs $160,654 annually. Other costs associated with these positions include approximately $3,570 per year in office space rental expenses, $4,861 in one-time furniture costs, and information technology expenses in the amount of $1,991 the first year and $1,540 thereafter per position.

According to the Office of the Executive Secretary (OES), it will need to perform system enhancements to comply with the bill's provisions concerning automatic record sealing. This includes modifying 17 public or external facing systems to prohibit access to automatically sealed cases and modifications of more than 20 internal systems and interfaces; developing and implementing incoming and outgoing interfaces with VSP to receive and process cases for automatic sealing and orders voiding sealing; developing a new Expungement Management System (EXMS), which includes project setup, infrastructure configuration, and development of capabilities to fully implement the bill's requirements; modifying multiple systems to allow receipt of sealings and sealing void orders entered from EXMS; testing the performance and load of all affected systems; addressing database security and roles to ensure that only authorized users see the automatically sealed data; and assigning additional processing units to systems to handle the increased load during seal list processing, which will also include additional data storage capabilities and software licensing costs. The OES estimates these system enhancements will cost $6,156,130.

Additionally, to implement the provisions of this legislation related to oral request for expungement, a new data field would need to be added to four divisions of the case management systems, as well as to two automated forms. In addition, 10 electronic interfaces would need to be updated, and the fields would need to be audited and secured. The OES estimates the one-time cost to perform these modifications at $92,845.

The OES also notes that the proposed legislation would increase the workload on general district court clerks. Adding up all of the expected workload requirements placed on the clerks, the OES estimates that roughly 44 additional positions, at a cost of $66,134 per position, could be needed, at a total cost of $2.9 million annually. Additionally, the OES estimates the bill as a whole would increase the workload on magistrates, who would be tasked with reviewing their files for applicable records and removing those that had been expunged or sealed. OES estimates one additional staff position would be necessary, at an annual cost of $77,183.

The OES also anticipates an indeterminate workload impact to circuit court judges and judicial law clerks. If the workload sufficiently increases, it may create the need for additional circuit court judge and law clerk positions.

The proposed legislation establishes a new Class 1 misdemeanor for the unauthorized disclosure of a sealed record, and a Class 6 felony for any person who makes an unauthorized disclosure of such record maliciously and intentionally. 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. A Class 6 felony is punishable by a term of imprisonment of between one and five 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 6 felony for maliciously and intentionally disclosing an expunged record, and creates a new Class 1 misdemeanor prohibiting employers, landlords, educational institutions, and state and local agencies from requiring an individual to disclose sealed records. A person who willfully and falsely swears to any material matter related to obtaining sealed records for himself or his designee is guilty of a Class 5 felony, according to the bill. A Class 5 felony is punishable by a prison term 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.

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 sealed records, or under the proposed Class 6 felonies for intentional and malicious disclosure of sealed or expunged records, according to the Virginia Criminal Sentencing Commission. According to data obtained by the Virginia Criminal Sentencing Commission from the General District Court Case Management System (CMS) data for fiscal years 2015 to 2020, one individual was convicted of a Class 1 misdemeanor under § 19.2-392.3 for illegal disclosure of expunged records. This was the only offense at sentencing, and the offender did not receive an active term of incarceration to serve after sentencing. Existing CMS data for the same time period indicate there were no Class 1 misdemeanor convictions under § 19.2-392.4 for requiring disclosure of expunged criminal records.

Because the bill expands the applicability of an existing felony offense and creates new Class 6 felonies, 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.

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 misdemeanant 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.

There is no anticipated fiscal impact as a result of the provisions of this bill on the Office of the Attorney General (OAG). According to the Department of Criminal Justice Services (DCJS), any additional workload generated as a result of this proposed legislation can be absorbed within existing resources.

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 potential revenue generated for the Expungement Fee Fund created by this legislation is indeterminate, as are the potential costs that could be incurred by this Fund to cover the attorney costs for indigent petitioners seeking record expungement. If the costs against this Fund are greater than revenues generated, the general fund likely would need to cover the difference unless an additional source of revenue is identified.

9. **Specific Agency or Political Subdivisions Affected:** Department of State Police, Courts, Magistrates, Department of Motor Vehicles, Office of the Attorney General, Department of Criminal Justice Services.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.