

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB742

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

2. Patron: Surovell

3. Committee: Judiciary

4. Title: Expungement of offenses civil penalty.

5. Summary: Provides that an indigent person may file a petition for expungement without the payment of fees and costs, and can request court-appointed counsel, who shall be paid from the Sealing Fee Fund, to file the petition for expungement and represent the petitioner in the expungement proceedings. Provides for the automatic sealing of records for persons charged with any criminal or civil offense when such offense was a misdemeanor violation of the former § 18.2-248.1 (sell, give, or distribute marijuana) or the former § 18.2-250.1 (misdemeanor possession of marijuana), and the offense was deferred and dismissed. The bill also permits persons with either a conviction or deferral and dismissal of a felony violation of the former § 18.2-248.1 to petition the court for the sealing of the criminal history record information and court records related to the charge or conviction. The bill specifies that a petition granted solely to seal a felony violation of the former § 18.2-248.1, a violation of § 18.2-265.3(A) (possession of drug paraphernalia) as it relates to marijuana, or a probation violation shall not count against the petitioner's lifetime maximum of two petitions granted. The bill requires a business screening service to destroy all expunged records and to follow reasonable procedures to ensure that it does not maintain or sell expunged records.

6. Budget Amendment Necessary: Yes, Item 429.

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

8. Fiscal Implications: According to the Department of State Police (VSP), the provisions of § 19.2-392.6(E) of the proposed legislation would require the agency to identify probation violations on computerized criminal records that are related to previous marijuana offenses so that they can be automatically sealed. Currently, probation violations are not reported in a way that directly ties them to the underlying offense, so VSP staff would need to conduct manual research on each offense to determine if it is eligible for sealing. The criminal history repository currently has 134,523 probation violations that have a seal eligible offense on the criminal history record. VSP estimates one employee needs about 30 minutes of research time per offense to determine if it is eligible for sealing. This work could be performed by contractors, at a cost of \$25 per hour (or about \$26,000 per year). Additionally, VSP would need contract supervisor positions at a cost of \$30 per hour (\$31,200 annually) to supervise the researchers, and contract manager positions to oversee the project for \$35 per hour (or about \$36,400 per year). Any additional positions added would incur approximately

\$7,641.49 annually in office space, furniture, and IT hardware and software costs. If VSP is required to complete this work in one year, the agency estimates it would need 82 researchers, 11 supervisors, and two manager positions to research the entire backlog of 134,523 probation violation cases.

According to the Courts, petitioners for expungement who are not found to be indigent currently pay \$98 per petition, and this is used by the Courts for various functions. The proposed legislation is not anticipated to have a material fiscal impact on the Courts.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.