

The bill contains a delayed effective date of July 1, 2026, for the provisions related to the sealing of former possession of marijuana offenses without entry of a court order and the sealing of charges and convictions related to automatic sealing and such petitions. The bill delays the repeal of the relevant law related to marijuana possession, limits on dissemination of criminal history record information, and prohibited practices by employers, educational institutions, and state and local governments until January 1, 2026.

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Budget Amendment Necessary: Yes

Items Impacted: Item 31, Item 33, Item 40, and
Item 415, Front Page

Explanation: See below

Fiscal Summary: This bill would require additional funding for the Supreme Court and the Virginia State Police to implement information technology system changes and one Senior Trial Attorney position for the Indigent Defense Commission. The fiscal impact the bill may have on Circuit Court Clerks and Commonwealth's Attorneys cannot be determined at this time, but is expected to be significant. In order to manage the required data analysis and workload review for Circuit Court Clerks and Commonwealth's Attorneys, the Compensation Board may need one Policy Manager position. The bill repeals and deposits funding earmarked for the Sealing Fee Fund into the general fund (Criminal Fund impact) and has an indeterminate general fund revenue loss as a result of eliminating filing fees associated with expungement petitions. This bill is not expected to have a fiscal impact on the Department of Motor Vehicles or the Virginia State Crime Commission.

General Fund Expenditure Impact:

| <u>Agency</u> | <u>FY2025</u> | <u>FY2026</u> | <u>FY2027</u> | <u>FY2028</u> | <u>FY2029</u> | <u>FY2030</u> |
|---|--------------------|-------------------------------|------------------|------------------|------------------|------------------|
| Supreme Court | \$573,414 | | | | | |
| Indigent Defense Commission | | \$138,193 | \$138,193 | \$138,193 | \$138,193 | \$138,193 |
| Compensation Board (impact on Circuit Court Clerks/ Commonwealth Attorneys) | | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate |
| Compensation Board (Policy Manager Position) | | \$137,175 | \$137,175 | \$137,175 | \$137,175 | \$137,175 |
| Virginia State Police | \$886,171 | \$687,830 | | | | |
| Circuit Courts (Criminal Fund) | | \$(100,000) | | | | |
| Front Page (fee revenue reduction) | | Indeterminate | Indeterminate | Indeterminate | Indeterminate | Indeterminate |
| TOTAL | \$1,459,585 | At least \$863,198 | \$275,368 | \$275,368 | \$275,368 | \$275,368 |

Position Impact:

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| <u>Agency</u> | <u>FY2025</u> | <u>FY2026</u> | <u>FY2027</u> | <u>FY2028</u> | <u>FY2029</u> | <u>FY2030</u> |
|-----------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Indigent Defense Commission | | 1 | 1 | 1 | 1 | 1 |
| Compensation Board | | 1 | 1 | 1 | 1 | 1 |
| TOTAL | | 2 | 2 | 2 | 2 | 2 |

Fiscal Analysis: The Compensation Board reports that according to analysis conducted by Virginia State Police and the Virginia State Crime Commission, there are approximately 28,556 individuals who were previously tried in Circuit Court with one or more convictions who would immediately be eligible for automatic sealing, with 66 percent of these falling into small and mid-sized clerks' offices. Additionally, there may be up to 705,976 individuals with a single conviction who could immediately be eligible for petition-based sealing, although this number requires further analysis because a small percentage of individuals across categories of offenses may be double counted.

The following agencies provided information to help assess the fiscal impact of this bill:

Office of the Executive Secretary of the Supreme Court (OES)

According to the OES, this bill would require additional information technology system changes beyond the those currently underway to successfully implement the sealing legislation that is set to become effective on July 1, 2025. The system enhancements would include creating a new batch process to identify and seal former possession of marijuana cases without entry of a court order, configuring fiscal systems to allow filing of civil petitions of expungement and sealing without the assessment of filing fees, implementing additional electronic interface rules with Virginia State Police, configuring systems to capture additional data and enable detailed reporting to the Virginia State Crime Commission on sealing petitions and orders, and adding new filing types and sealing authority to seal ancillary cases, defined by the bill, via petition. The estimated one-time cost for the system updates is \$573,414. OES believes that this amount would need to be provided as soon as possible so that work can begin immediately, despite the delayed effective date for certain provisions of the bill.

Item 33 J. of Chapter 2, 2024 Acts of Assembly Special Session I, directs that \$100,000 from the Circuit Courts' general fund budget in fiscal year (FY) 2026 is to be deposited into the Sealing Fee Fund (established in § 17.1-205.1, Code of Virginia). Because the bill repeals this section and reverts any funding, the \$100,000 would be reverted to the general fund.

The bill would also reduce revenue deposited into the general fund by eliminating the filing fee associated with submitting an expungement petition. OES reports that in FY 2023 and FY 2024, the total amounts deposited for such fees were \$78,019 and \$148,010 respectively.

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Indigent Defense Commission (IDC)

The IDC reports that it would need an additional Senior Trial Attorney position at a cost of \$138,193, general fund, annually (includes salary and benefits) to create the curriculum, conduct trainings, provide expungement and sealing support, and develop the library of resources the bill requires.

Virginia State Police (VSP)

According to VSP, programming changes to the Criminal and Rapback Information System (CRIS) would be needed to account for the various changes the bill makes including accepting sealing orders from the OES, linking original charges with ancillary charges, identifying and disseminating information to additional agencies that are eligible to receive sealed criminal history records, and identifying offenses that are eligible for sealing that occurred after January 1, 1986. Working with the CRIS vendor, VSP estimates that the cost to make the required changes is \$886,171 general fund in FY 2025 and \$238,426 general fund in FY 2026 to ensure the changes are made in time to meet the deadlines set by the bill. VSP notes that the changes required by this bill may impact other programming changes for CRIS currently underway. The cost estimates provided do not include any impacts to the schedule that is already in place.

VSP's estimates the one-time cost to create the secure portal required by the bill for government agencies to determine whether records have been sealed prior to responding to a Freedom of Information Act (FOIA) request, which is required to be in place by October 1, 2026, at \$404,404 general fund in FY 2026.

Compensation Board

The Compensation Board reports that automatic sealing requires Circuit Court Clerks to receive monthly and annual lists of sealed offenses, enter an order to seal the offenses, electronically notify VSP of the sealing order, and then seal the order. The court clerk is also required to enter sealing orders for charges that are sealed upon the conclusion of the case for acquittals and dismissals with prejudice. Petition-based sealing requires the clerk to receive and process petitions, responses and other pleadings, receive and destroy the criminal history record from VSP, electronically notify VSP when a sealing order is entered, maintain the sealing order, petition and any responsive pleadings under seal, and collect service fees for petitions filed. Records sealing also requires circuit court clerks to physically relocate files, electronically seal offenses in any case management systems not operated by the Office of the Executive Secretary of the Supreme Court of Virginia (OES), make certain determinations about cases in question, receive and process filings to access sealed records or unseal records that should not have been sealed, and continue to collect fines, costs, forfeitures, penalties or restitution for sealed offenses.

Automatic sealing for charges to be sealed upon the conclusion of the case for acquittals and dismissals with prejudice require the Commonwealth's Attorney to concur with or object to the sealing. For petition-based sealing, the Commonwealth's Attorney must receive and respond to petitions for sealing within 30 days, notify victims when a sealing petition is filed, and participate in sealing hearings in the circuit court, including any appeals. All record sealings require the Commonwealth's Attorney to ensure that sealed records in their possession are not publicly disseminated, to prosecute improper disclosures or prohibited uses of sealed

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records, to produce sealed records as exculpatory, mitigating and impeachment evidence, and to file and litigate any motions to unseal any offense that was sealed contrary to law.

Although the workload the bill ultimately has on Circuit Court Clerks and Commonwealth's Attorneys will depend on the number and timing of petitions resulting from the bill, the Compensation Board reports that it is expected to be significant. The Compensation Board would continue to evaluate and update workload-based staffing standards for both groups over the next few years. To manage the data analysis and ongoing workload review, the Compensation Board reports the need for a Policy Manager position at a cost of \$137,175, general fund, annually (includes salary and benefits). The agency believes that this task cannot be absorbed by existing staff resources given the cumulative effect of recent and ongoing workload studies and staffing and salary analyses for constitutional offices and jails.

Other Entities

According to the Department of Motor Vehicles and the Virginia State Crime Commission, this bill is not expected to have a fiscal impact on agency operations.

Other: This bill is the same as SB1466 ER. The Conference budget provides \$13.4 million from the general fund over the biennium to support the provisions of this bill:

| Agency | FY2025 | FY2026 | Purpose |
|-----------------------------|--------------------|---------------------|--|
| Supreme Court | \$572,414 | \$0 | Systems Changes |
| Circuit Courts | | \$(100,000) | Sealing Fee Fund repeal |
| Indigent Defense Commission | | \$138,193 | Position for Expungement Resource Counsel |
| Compensation Board | | \$5,524,340 | 117 Deputy Clerk positions |
| Compensation Board | | \$5,506,783 | 70 Assistant Commonwealth Attorney positions |
| Compensation Board | | \$137,175 | Position to cover increased workload |
| Virginia State Police | \$886,171 | \$687,830 | Systems Changes |
| Total | \$1,458,585 | \$11,894,321 | |