



2022 Session Legislative Package

November 15, 2021



Topics

- Counsel at First Appearance
- Expungement and Sealing
- Secured Bond
- Diversion



Counsel at First Appearance

- Policy considerations from the Office of the Executive Secretary and the Committee on District Courts First Appearance Work Group.
- Any other options on the appointment of counsel and conducting bond hearings at first appearance for detained defendants?

Considerations for Future Legislation (OES)

- Consider providing the defendant with the explicit ability to waive the bond hearing at first appearance.
- Consider requiring attorneys appointed at first appearance for indigent defendants to continue representation through conclusion of the case (absent circumstances requiring withdrawal of counsel).
- Consider the amount of the attorney fee to be paid to court-appointed counsel for representation limited solely to the bond hearing.
- Consider removing provisions allowing attorneys to request waiver of the fee limitation when representation is limited to the bond hearing.
- Consider clarifying that appointment of counsel is not required for subsequent bond hearings if counsel appointed at first appearance does not continue to represent the defendant.



Expungement and Sealing

- **Overview:** The Virginia Code now includes three forms of criminal record relief with conflicting policies and processes which must be reconciled to ensure that:
 - The framework is consistent;
 - Individuals have access to the processes;
 - Post-relief protections are uniform; and,
 - Continuing resources are available.



Expungement and Sealing

- **Recommendation 1:** The Crime Commission should continue to examine the expungement and sealing of criminal and court records in order to reconcile conflicts between the three criminal conviction relief processes now in the Virginia Code.



Expungement and Sealing

- **Recommendation 2:** Legislation addressing the expungement or sealing of criminal and court records should continue to be referred to the Crime Commission until the new sealing law takes effect (July 2025 or earlier).



Expungement and Sealing

- **Recommendation 3:** Authorize funding for 2 new FTE's at the Indigent Defense Commission to provide training and support to public defenders and court-appointed counsel, educate the public, and serve as a resource for attorneys, government agencies, and community stakeholders on expungement and sealing (total estimated cost: \$215,000).



Secured Bond

- **Overview:** The potential impacts of bail reform in Virginia are unknown.
 - Will pretrial detention rates be impacted?
 - Will court appearance rates be impacted?
 - Will public safety rates be impacted?
 - Will other bail conditions, such as pretrial services agency supervision and electronic monitoring, be utilized more frequently?
 - What additional resources will be required?



Secured Bond

- **Policy Option 1:** Should the Virginia Code be amended to eliminate the requirement that a secured bond must be set when a person is arrested for a felony AND:
 - Criteria 1: has a previous felony conviction; OR,
 - Criteria 2: is on bond for an unrelated arrest; OR,
 - Criteria 3: is currently on probation or parole.



Secured Bond

- Create a presumption of release without financial conditions?
- Require the use of least restrictive bail conditions?
- Make broader systematic changes to promote pretrial release?



Diversion

- **Overview:** Expanding diversion programs in Virginia does not require additional statutes.
- Expanding diversion programs will require additional and ongoing resources for treatment, supervision, and workforce needs across Virginia.