

To: The Virginia Crime Commission

From: Carlos Hopkins and Patrice Lewis  
On behalf of the Virginia Court Clerks Association

Date: November 1, 2024

Re: 2021 Acts of Assembly Chapter 524 (Sealing and Expungement Legislation)

## **Background**

The Virginia Court Clerks Association (the “VCCA”) represents the 120 Circuit Court Clerks in the Commonwealth of Virginia. These clerks are essential, elected constitutional officers in the Commonwealth of Virginia who play a crucial role in our local justice system.

In accordance with 2021’s HB 2113 and SB 1339 (referred to as the “Sealing Legislation”), specifically Enactment No. 12, the VCCA was tasked with determining the necessary staffing and technology costs to implement the Sealing legislation.<sup>1</sup> The VCCA was required to report their findings to the Virginia State Crime Commission by November 1, 2021, and annually by November 1 of each subsequent year until a full assessment of implementation costs is completed.

In compliance with the General Assembly’s directive, the VCCA submits this report to the Honorable Members of the Virginia Crime Commission.

## **Executive Summary**

### **A. Status of Sealing and Expungement Legislation**

Before the 2024 Special Session I, the General Assembly (“GA”) had not allocated any funding for Circuit Court Clerks to implement the provisions of the Sealing Legislation. While funding was allocated for Commonwealth Attorneys, the State Police, and the Office of the Executive Secretary of the Virginia Supreme Court who represents the District Court Clerks, no such allocations were made for the Circuit Court Clerks. This oversight inadvertently created an unfunded mandate for the clerks, forcing them to find ways to comply without additional staff support.

To address the situation, the Virginia Court Clerks Association (VCCA) actively sought funding during the 2024 Regular and Special Sessions to conduct a workload study. This study aims to determine the appropriate staffing requirements for clerks' offices. It is important to note that over 30 years had passed since the GA last completed a workload study for the clerks.<sup>2</sup>

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<sup>1</sup> These bills were passed during the 2021 Special Session I.

<sup>2</sup> In March 1990, the Joint Legislative Audit and Review Commission (“JLARC”) submitted to the Governor and the General Assembly a technical report titled “Statewide Staffing Standards for the Funding of Clerks of Court.” This is the last known statewide staffing study for Circuit Court Clerks.

In Item 67, paragraph V(1) of the enrolled budget bill (Acts of Assembly Chapter 2), the General Assembly approved funding for a workload study aimed at examining the staffing standards used to determine and distribute funding and positions allocated to Circuit Court Clerks' offices. This examination will identify the funding needs required to support staffing for both statutorily required duties and discretionary responsibilities, as well as current local supplemental funds allocated.

Furthermore, the GA authorized the Compensation Board to collaborate with the National Center for State Courts to ensure a comprehensive and practical study. The Compensation Board must submit an initial report on the study's progress by November 1, 2024, with the final report on the study's results, anticipated costs, and other factors due by November 1, 2025. Given that the sealing and expungement legislation creates additional duties for the clerks, the costs associated with these new responsibilities are expected to be included in the final workload study.

### **B. VCCA Projected Fiscal Impacts of Sealing Legislation**

The VCCA initially projected an annual cost of \$33 million to implement the Sealing Legislation as originally enacted. However, subsequent changes to the legislation have reduced some of the anticipated manual labor costs. The VCCA has worked extensively with the Crime Commission, the Office of the Executive Secretary, the State Police, and other stakeholders over the past year to incorporate additional proposals into new legislation that the Crime Commission is currently considering. As of this report's submission, that legislation is still pending. The proposed changes to the bill are expected to significantly reduce the previously projected costs for Circuit Court Clerks, and the new workload study will provide more clarity on the overall fiscal impact, especially concerning any additional duties that may arise from the 2025 session.

Given the ongoing changes to the legislation and the anticipated timeline for completing the workload study, it is challenging for the VCCA to provide an accurate estimate of the total fiscal costs associated with the new legislation. Nonetheless, the VCCA conservatively estimates that each clerk will require at least one new employee per office to begin implementing any new legislation that takes effect before the workload study concludes. Larger offices may need additional positions, which the workload study will clarify. With the average cost to hire a new deputy clerk, including benefits, being approximately \$45,000, the initial fiscal impact for the Circuit Court Clerks would be around \$5.4 million. This cost would provide one new position across 120 clerks' offices dedicated solely to the new sealing and expungement laws.

This figure is considered a minimum estimate of costs. As previously mentioned, numerous data fields in electronic records and paper files have yet to be automated in each Circuit Court Clerk's Office. For example, in one Circuit Court Clerk's Office, a private vendor identified 64 separate data fields in the automated records where information needs to be redacted to remove references to just one criminal case.

## **Conclusion**

The VCCA remains committed to collaborating with the Crime Commission and various stakeholders to fulfill the General Assembly's intent and ensure the continued efficient operation of the clerks' offices.

Respectfully submitted,

*/s/ Carlos L. Hopkins*

*/s/ Patrice L. Lewis*

*for*

The Virginia Court Clerks Association  
November 1, 2024