# Expungement in the Courts

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# Data Vault

➢ **The purpose of expungements is for the expunged case to no longer exist.**

➢ Both the case that is the subject of the order and the case in which the person asks for expungement are destroyed when the court orders expungement.

➢ Currently, the number of expungement cases is relatively low and the effect on case counts and statistics is minimal.

➢ With the anticipated expansion of expungements, we recognized that counting both cases is important for court statistical and planning purposes, including weighted caseload studies for judges and clerks. Loss of this information would have a significant detrimental impact on the courts.

➢ To preserve basic, de-identified case information for the courts to use for planning and statistical purposes, the General Assembly provided $299,403 to create a data vault related to Senate Bill 640 (2020 General Assembly), which creates a process to expunge unlawful detainer cases.

➢ The de-identified case information will be used for the judicial and clerk workload studies, which determine the number of judges and clerks needed.

➢ In addition, this information will be used to help courts and clerks understand and improve efficiency and case processing.

➢ Senate Bill 640 has a delayed effective date of January 1, 2022. We are on course and on budget to have the data vault operational by January 1, 2022.

# Data Vault

While sometimes used interchangeably, these terms refer to different processes, each with their own impact on courts and clerks' offices.

## EXPUNGEMENT

- Restricts access to the court's case file and removes electronic case information from the case management system.

- Clerks must engage in a multiple step, manual process.

- Access to expunged records is by court order only.

- Records are destroyed based on the retention period established in the Code (but must be maintained for three years after expungement order).

## SEALING

- Restricts access to the court's case file and electronic case information, although the electronic case information remains in the system.

- Can be accomplished through a combination of clerk time, although reduced, and IT changes.

- Information within the case file may be accessed as specified in the Code.

- Records are destroyed based on the retention period established in the Code.

# "Automatic" Expungement or Sealing

➤ A more accurate term for "automatic" expungement or sealing is "petitionless" expungement or sealing.

➤ "Automatic" expungement or sealing is accomplished through electronic communications and does not involve the filing of a petition or a court hearing.

➤ The cases to be sealed or expunged are based upon the information within existing case management systems.

➤ The expected result is not achieved without clerk effort.

➤ While clerk effort is reduced, significant information technology (IT) changes would be required to replace clerk effort.

➤ HB 5146 from the 2020 Special Session took this approach. We estimated a one-time cost of approximately $6,156,130 to complete the necessary IT changes.

1. Clerks deletes the original case from the case management system.

2. If docket sheets, indices or hearing disposition report are retained, clerk must delete with heavy black ink any entries identifying the individual, charge and disposition.

3. Clerk locates hard copy file for the cases (often in alternative storage area, if years have passed since disposition of the original case).

4. Clerk places original case documents, expungement letter from VSP, and expungement order in a physically sealed envelope.

5. Clerk writes the case number and the date that the enclosed materials are to be destroyed on the outside of the envelope.

6. Clerk notes on the outside of the envelope that the envelope contains expunged records, signs and dates envelope, and places a number on the envelope to include in the expungement index for future reference.

7. Clerk places sealed envelope in a place not accessible to the public.

8. If case documents are also, or instead, maintained in the court's case imaging system, clerk must delete imaged documents.

9. Clerk enters case into expungement reference index.

10. Clerk sends notice of compliance to VSP within 60 days after receiving VSP letter indicating that the expungement has been completed.

# Current Process Expungement of General District Court Records

## Summary

➢ Expungement or sealing by **petition** requires significant time of judges and clerks to process and hear the petition.  Increased case loads may result in the need for additional judges and clerks.

➢ Once a clerk's office is advised that a case should be **expunged,** the steps for expungement require significant clerk time. We estimate 10 minutes of district court clerk time for each case expunged.  **The breadth of cases that can be expunged will directly impact the estimated fiscal impact, which would result in the need for additional district court clerks.**  This is in addition to the **156 additional positions** that are **currently needed**.

➢ Although **sealing** requires clerk time, it requires less clerk time than expungements.  We estimate 6 minutes of district court clerk time for each case sealed.

➢ **"Automatic"** expungement or sealing has minimal impact on judges and clerks but will require significant changes to our IT systems to enable this process.