



WINDSOR POLICE DEPARTMENT
29 UNION STREET
WINDSOR, VERMONT 05089
PHONE: (802) 674-9042, FAX (802) 674-1017
<http://www.windsorvt.org>
"A Tradition of Excellence"



February 29, 2024

TESTIMONY: Chief Jennifer Frank, 04/29/2024 @ 0900 hours

HB. 655 - An act relating to qualifying offenses for sealing criminal history records and access to sealed criminal history records

Good morning, Chief Jennifer Frank of the Windsor Police Department. I would like to thank the committee for the invitation to testify before the legislature at this morning's judiciary discussion regarding qualifying offenses for sealing criminal history records and access to sealed criminal history records. I am here by invitation of this committee as a working Vermont Chief of Police with lived occupational experience relevant to the considerations being discussed in HB 655. As it is relevant to the testimony I am about to share, I am the past president of the Vermont Association of Chiefs of Police, the current Vice Chair of the Vermont Criminal Justice Council, and a member of the Criminal Justice Professional Regulations sub-committee. My testimony today is representative of my position and experience as an 18-year veteran of law enforcement and as the Chief of Police for the Town of Windsor. Although my experience on the aforementioned committees and organizations has contributed to forming my position, recommendations, and testimony today; they have not been reviewed or presented for endorsement to or by the Criminal Justice Council or the Vermont Association of Chiefs of Police.

I would like to take this opportunity to highlight two particular areas of consideration reference the language and intent of this bill and to thank the committee for the opportunity to speak on this topic. It is apparent and evidenced through the most recent redrafting of the legislative language that the committee has already spent considerable time and effort in examining the language and intent of the legislation and has been thoughtful in its consideration of the various stakeholders that would be impacted by its enactment.

It is my understanding that the committee has already received a significant amount of testimony on this proposed bill and I believe there is a shared understanding of the value of providing an individual who has committed an offense, the opportunity to have the negative impacts and barriers created by the resulting record removed from consideration when applying for employment or seeking housing, allowing for a second chance of sorts. With that in mind, there are parallel considerations that should also be considered, in particular the following two considerations:

Consideration 1: Ensuring access to sealed criminal history records for the purposes of internal investigations.

In 2014, President Barack Obama signed an executive order establishing the Task Force on 21st Century Policing which at its conclusion outlined 6 topical areas of recommendations, the first two of which were Building Trust and Legitimacy and Policy and Oversight. Vermont Law Enforcement has embraced these pillars and works assiduously to build trust and legitimacy with our stakeholders. One element of that trust is established through a commitment to hold our officers to a high standard of professionalism and accountability for their actions. Recently, however, with an increase in the number of expunged

record applications working their way through the judicial system, we have found a potential unintended roadblock that has been created. This is perhaps best illustrated by example. As the Chief of Police for my agency, I receive a complaint regarding the actions of one of my officers and open an internal investigation. For illustration purposes, and all names and departments redacted, let's state that an individual who was arrested for disorderly conduct alleges that the arresting officer utilized excessive force when effectuating the arrest and unlawfully detained the person. The internal affairs investigation would be conducted, and in the event the officer was found to be responsible, internal discipline would be levied, an Act 56 submission would be made to the Criminal Justice Council, and an examination into criminal charges would be conducted. While all of those steps are co-occurring, the offender takes responsibility for their actions and successfully completes diversion. The case as it stands is submitted for expungement and an order is affirmed by the court. As a member of the professional regulations sub-committee I can attest to the fact that we have had to dismiss unprofessional conduct complaints for lack of evidence, or re-investigate cases if witnesses are available, when an officer with a Category A conduct complaint (criminal conduct) has had their criminal record(s) either expunged or sealed, pre- or post-conviction, prior to the Council acting on the unprofessional conduct complaint. Currently, the VCJC does not meet the definition of a criminal justice agency as defined in 20 VSA § 2056a(2). As such, in the event, a record is expunged and the matter is then placed before the professional regulations sub-committee for review, there would be no documents or records to examine or substantiate any claims. Furthermore, civil rights claims and union grievance examinations resulting from discipline levied would be significantly hampered by not only the inability to examine the record but the inability to even acknowledge it existed. This is applicable in many instances to include allegations that may result years after the fact such as a claim that an officer failed to return a watch that was taken from an offender however the property records and arrest body camera footage no longer exist as a result of the destruction of records. It is in support of the importance of accountability and oversight that I applaud the committees forward thinking to shift away from the deleting and destruction of records to a single-track sealing system that would eliminate the unintended consequences created by expungement.

Consideration 2: The value and significance of maintaining criminal justice access to sealed records for criminal justice purposes. The safety considerations of this provision is invaluable. Officers are called to respond to a variety of matters and situations and utilize a multitude of information to aid in that response. As you all well know, no two incidents are alike and as an informed profession, it is incumbent upon us in law enforcement to utilize relevant information to inform our response. Much of that relevant information is gathered and stored in dispatch and records management systems. As an illustrative example, an officer who responds to an incident that is later referred to diversion in order to assist the involved individual with transitioning to actions that promote responsible behavior may have personal knowledge of the underlying mental health challenges the individual was working through at the time of their unlawful activity. The elimination of access to that information, as an unintended consequence of expungement or via restricting criminal justice access to sealed records would likely significantly impact in a negative manner, any other officers' ability to best respond to the crisis at hand as they would not have the broader understanding of the contributing factors. Furthermore, it is not uncommon for offices to respond to a complaint or call for service of one nature, only to have information revealed regarding an entirely separate matter. An example of this is illustrated in a recent police investigation of a misdemeanor shoplifting report, in which upon recovery of the businesses' property which had been located in the purse of the offender, evidence of financial exploitation of a vulnerable older adult was discovered, that subsequently resulted in a secondary felony criminal investigation. The initial shoplifting charge was diverted to diversion resulting in an order from the courts to destroy all associated records. In a third matter, an investigation involving a vulnerable adult who was the victim of nearly 1.5 million dollars as a result of a financial exploitation case was transferred to federal court and prosecuted by the US Attorney's Office. In the interim, the local state charge was not pursued and as a result the case was expunged for lack of a probable cause finding, not because of the lack of the elements but because of the court transition from local to federal. The federal case was under secret indictment which levied a gag order on the investigating officer forbidding the ability to reveal the federal matter was

scheduled for indictment. With such a limitation in existence, it is not possible to provide justification for rebutting expungement without being in direct violation of a federal court order, potentially resulting in the destruction of all relevant case evidence and materials if so ordered.

I am appreciative of the broad support for a wholesale shift from expungement to sealing that underlies much of the drafted bill and would ask that the committee additionally keep in mind how that will look in practicality for criminal justice officials who may need access to these records at 2am when responding to an incident during court closed hours or drafting an affidavit application for a search warrant, and to include prosecutors and the criminal justice council as identified criminal justice officials who should similarly have unfettered access as a component of their regular course of business practices. Without their inclusion, officers would have relevant information that they were aware of but could not share with the prosecutor as to why a particular statutory offense was chosen.

In summation, the shift from expungement to sealing with access for criminal justice and or internal affairs investigative purposes retains the ability for access in relevant predicate offenses, for offenders who may later need those documents to show evidence in refute of inaccurate media and open source reports, and for an informed police response to calls for service.

Respectfully,

A handwritten signature in black ink, appearing to read "Jennifer Frank". The signature is fluid and cursive, with a small "1981" written below the name.

Chief Jennifer Frank
Windsor, VT Police Department
29 Union Street, Windsor, VT 05089
(802) 674-5189 (Fax), (802) 674-9042 (Office), (802) 295-9425 (Dispatch)
E: Jennifer.Frank@vermont.gov