



Victim/Survivor Issues to Consider  
Regarding Sealing and Expungement of Convicted Crimes

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### **About CCVS and Our Responsibility to Vermont's Crime Victims**

By statute, CCVS is charged with promoting the rights and needs of crime victims statewide and serving as a clearinghouse for information. To that end, CCVS is actively engaged in statewide conversations regarding proposed criminal justice reform measures. Crime victims and criminal defendants share many of the same needs, especially access to housing, jobs, mental and behavioral health services, affordable childcare, and timely, trauma-informed dispositions in criminal cases.

### **The Right to Be Notified and The Right to be Heard in Expungement Proceedings**

The right to notification and to offer a statement in sealing and expungement proceedings is a fundamental victim right.

- The respondent in an expungement proceeding (the prosecutor) is required to notify victims "any time a petition" for expungement or sealing has been filed. 13 V.S.A. § 7608.
- "The victim shall have the right to offer the respondent (the prosecutor) a statement prior to any stipulation or to offer the court a statement." 13 V.S.A. § 7608.

The victim's role in these proceedings is to address the relevant factors. Does the expungement or sealing of the record serve the interests of justice if the offender has not shown remorse? If the offender repeatedly violated probation conditions that concerned the victim? If the offender has harassed the victim's family or partner during the intervening years? Likewise, the victim may want to testify in support of the petition and speak to the offender's rehabilitation. Any change to sealing or expungement procedures should not erode the victim's rights to be notified and to be heard.

### **The Right to Restitution**

The Restitution Unit of CCVS is responsible for enforcing Restitution Judgment Orders (RJOs) on behalf of victims and helping them access the Crime Victims Restitution Special Fund where eligible. An RJO is the portion of a criminal sentence requiring the defendant to repay uninsured financial losses caused by the crime. Although many RJOs only concern repayment to individual or business victims, plenty of orders also concern repayment to state agencies or to the Victims Compensation Special Fund for financial losses advanced to victims prior to conviction. Every criminal defendant has an opportunity to be heard and to contest the amount of restitution claimed at a restitution hearing prior to the issuance of an RJO.

Six full-time Restitution Case Managers work with approximately 5,500 offenders who currently owe restitution. They make efforts to locate and contact every offender on their caseloads at least once each month, provide information about job programs and support services, and help offenders

understand the role of repaying the victim in their own rehabilitation. Repairing financial harm is a point of pride for many offenders on the RU caseload. In FY18, the Restitution Unit collected over one million dollars on behalf of victims and the State of Vermont.

The opportunity for sealing and/or expungement is a major incentive to pay restitution in full, so long as the Title 13, Chapter 230, concerning sealing and expungement is properly applied. Likewise, RJOs are not enforceable without evidence of a conviction, plea agreement, or diversion contract to provide a basis for the amount owed. When sealing or expungement are granted despite an offender's failure to pay restitution in full, the victim and/or the state are left with nothing to pursue. Currently, court staff do make efforts to contact the RU to confirm that sealing and expungement petitioners do not owe restitution prior to granting these orders. Any amendments to current law concerning sealing and expungement should consider the impact on the enforceability of RJOs and the debts owed to victims and the state, especially if procedure changes are anticipated.

### **Expungement and Sealing in the Context of Evidence-Based Criminal Justice Reform**

Trying new things always poses a potential risk and offers a potential reward. Crime victims and the community at large are the recipients of the ultimate outcome. For this reason, criminal justice reform efforts should be evidence-based and guided by measures known to reduce recidivism, improve public safety, and heal trauma in communities while sustaining positive results for the long term. Plans should be put in place to measure outcomes, so that we know if the community is better off because of the effort.

A criminal conviction does not determine an individual's capacity for change, and the opportunity for sealing or expungement provides an incentive to engage in positive change. Reducing recidivism is an interest many of us share. CCVS is interested in learning more about whether any evidence base exists to demonstrate a public safety benefit to sealing and expungement, especially when the underlying crime involves financial fraud or deceit or violent crime.

An evidence base does exist to support the use of criminal history to better inform pre-trial release and conditions decisions, thereby making the system more fair, objective, and safety-focused. A group of Vermont's criminal justice stakeholders convened by the Department of Public Safety through a grant from the National Governor's Association as part of the National Criminal Justice Reform Project has been exploring the potential for evidence-based pre-trial risk assessment in Vermont. The group is examining a risk assessment tool created by the Laura and John Arnold Foundation, among others: <https://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf>

Pre-trial risk assessment is especially valuable because it does not rely on subjective factors like race, class or geography. Nor do these tools rely on the current charged offense alone, which is an especially dangerous in domestic and sexual violence cases.

Evidence shows that prior convictions and prior sentences to incarceration are predictive of whether the defendant will commit new crimes. Likewise, prior violent convictions are predictive of new violent criminal activity. The Arnold Foundation PSA uses an algorithm that gives weight to criminal history commensurate with the science. Expanding expungement eligibility requirements too far could ultimately impede efforts to use objective, evidence-based methodology—like the Arnold PSA tool—to bring about better pre-trial outcomes.