

# VERMONT LEGAL AID, INC.

OFFICES:

BURLINGTON  
RUTLAND  
ST. JOHNSBURY

264 NORTH WINOOSKI AVE.  
BURLINGTON, VERMONT 05401  
(802) 863-5620 (VOICE AND TTY)  
FAX (802) 863-7152  
(800) 747-5022

OFFICES:

MONTPELIER  
SPRINGFIELD

TO: Senator Dick Sears, Chair, Senate Judiciary Committee  
FROM: Mairead C. O'Reilly, Poverty Law Fellow  
RE: S. 173: Additional Proposals to Expand Sealing/Expungement Remedies  
DATE: January 16, 2017

Dear Senator Sears and Members of the Committee:

Thank you for inviting testimony on S. 173. My name is Mairead O'Reilly, and I am the Poverty Law Fellow at Vermont Legal Aid. My two-year fellowship focus is on the opioid crisis—I advise and represent low-income Vermonters in civil legal matters. The majority of my clients are in recovery from Opioid Use Disorder, and many of them also have a criminal history. Frequently, I receive requests to petition for record sealing and expungement on behalf of my clients—to help them overcome criminal records-related barriers to housing, employment and educational opportunities. While the legislature made important changes to the eligibility timelines for expungement and sealing in 2017 through H 161, because of the severe consequences criminal records have on the employment and housing prospects of formerly justice-involved individuals and their families, the legislature should continue expanding access to sealing and expungement remedies.

I support S. 173, and would like to use this opportunity to recommend to the committee additional amendments to Vermont's criminal records laws.

**1. Create established timeframes for sealing/expungement of non-conviction records, by order of the court, unless the prosecutor objects for good cause. 13 V.S.A. §7603.**

- The clerk shall submit order to expunge/seal when:
  - No criminal charge filed: within 12 months, unless prosecutor objects;
  - No probable cause found: after 45 days, unless prosecutor objects;
  - Charges dismissed: at 6 months, unless prosecutor objects;
  - Charges acquitted: expunged upon acquittal.

**2. Expand the definition of qualifying crimes to include most non-violent felony offenses. 13 V.S.A. §7601.**

- The Committee should consider expanding the definition of qualifying crimes to include all felony drug offenses in Chapter 18 (possessing & selling/dispensing) except trafficking of these substances<sup>1</sup>;
- The Committee should also consider expanding the definition of qualifying crimes to include most other non-violent felony offenses<sup>2</sup>, including: Chapter 29: Conspiracy (for receiving stolen property; and for sale, delivery, manufacture or cultivation of regulated drugs); Chapter 35: Escape; Chapter 43: Forgery and Counterfeiting; Chapter 47: Frauds; Chapter 57: Larceny & Embezzlement; Chapter 81: Trespass and Malicious Injuries to Property, Subchapter 1: Injuries to Buildings and Their Appurtenances.

**3. Strike or amend the subsequent felony provision so that a person can petition to expunge or seal a qualifying crime 5-7 years after the last committed felony offense. 13 V.S.A. §7602(c)(1)(B).**

- The committee should consider amending this provision so that otherwise qualifying crimes do not become a permanent record, solely because of the chronology of convictions. This provision is not narrowly tailored to public-safety concerns and should be amended to better address those concerns.

**4. Create a Study Committee on Automating the Expungement Process for Certain Records.**

- Vermont should take a long-term view of the consequences of criminal records and the cost of manually removing these records, for individual Vermonters and for the court system. A study committee of

---

<sup>1</sup> Drug felony offenses (except for trafficking under any of the following provisions): 18 V.S.A. § 4230 (marijuana), 18 V.S.A. § 4231 (cocaine), 18 V.S.A. § 4232 (LSD), 18 V.S.A. § 4233 (Heroin), 18 V.S.A. § 4233a (Fentanyl); 18 V.S.A. § 4234 (Depressant, Stimulant, and Narcotic drugs); 18 V.S.A. § 4234a (Methamphetamine); 18 V.S.A. § 4234b (Ephedrine and pseudoephedrine); 18 V.S.A. § 4235 (Hallucinogenic Drugs); 18 V.S.A. § 4235a (Ecstasy).

<sup>2</sup> Other non-violent felony offenses: credit card fraud (9 V.S.A. §§ 4043, 4044(a)); Illegal Possession of Credit Card (9 V.S.A. § 4045(a)); Conspiracy (13 V.S.A. § 2404(c)(4) & (c)(5)(D)); Possession of Credit Card Skimming Devices and Re-coders (13 V.S.A. § 1816); False Pretenses and Tokens (13 V.S.A. § 2002); Home Improvement Fraud (13 V.S.A. § 2029(b)(1)); Identity Theft (13 V.S.A. § 2030(a)); Embezzlement (13 V.S.A. § 2531); Receiving or Aiding in the Concealment of Stolen Property and Possession of Stolen Property (13 V.S.A. § 2561); Retail Theft (13 V.S.A. § 2575); Theft of Services (13 V.S.A. § 2582(a)); Theft of Rented Property with Some Value (13 V.S.A. § 2591(a)(1)); Unlawful Mischief (13 V.S.A. § 3701); Unlawful Trespass—land, locked building, and dwelling house (13 V.S.A. § 3705(c)).

stakeholders should be convened to investigate the viability of automating the expungement/sealing process for certain convictions. The committee should report back to the General Assembly with findings and recommendations in November 2018.

**5. Enable low income Vermonters to access their criminal records without cost. 20 V.S.A. § 2063.**


- A petitioner or poverty law organization on behalf of a petitioner, who shows proof of indigency, should have access to their full criminal record from Vermont Crime Information Center (VCIC), free of charge.

**6. Prohibit employers from inquiring about expunged or arrest records, and require employers to share copy of record used in adverse employment decision. 21 V.S.A. § 495j.**

- Employers should not ask applicants about expunged or arrest records. This responsibility should be codified in the Ban the Box law.
- Additionally, any employer who premises an adverse employment decision on a criminal record should be required to share a copy of that record with the applicant, regardless of the source of that record.

Thank you for your time and consideration of this important matter. Please contact me at 802-383-2225 or [mcoreilly@vtlegalaid.org](mailto:mcoreilly@vtlegalaid.org) with questions, concerns, or requests for additional information.

Sincerely,

  
Mairead C. O'Reilly, Esq.