VERMONT

VERMONT CENTER FOR CRIME VICTIM SERVICES

Testimony on H. 460
An Act Relating to Sealing and Expungement of Criminal History Records

House Committee on Judiciary
March 12, 2019

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Thank you for inviting the Center to offer comment on H.460.

The Center has actively engaged in criminal justice reform conversations for many years. 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 Center supports proposals that are informed by evidence-based practices, ensure access to adequate community resources, and demonstrate the potential to reduce recidivism, improve public safety, and heal trauma in communities.

Policies on criminal record sealing and expungement have tremendous consequences for criminal defendants, crime victims, and the public at large. The Center is hopeful that this bill strikes a reasonable balance to support the needs and interests of all concerned, both in the short and long term.

This testimony outlines some of the key aspects of the bill that impact the Center's work and ways the bill has addressed victim-centered issues.

Repayment of Criminal Surcharges
The Center supports language in the bill clarifying that repayment of all court surcharges, as well as restitution, is a pre-requisite for obtaining sealing or expungement. Title 13, Section 7282 (b) already provides that these surcharges "shall not be waived by the court." Nonetheless, the Center has learned that some judges do not interpret this provision as applying to sealing and

expungement proceedings. **Ultimately, waiving or "writing off" even small surcharge amounts could have consequences for victims and victim services.**

All of the Center's direct service programs, including the Victims Compensation Program, the Restitution Unit, and the Sexual Assault Program, as well as the Center's training and community outreach efforts, rely heavily on criminal surcharges to remain in operation. Vermont is among a handful of states that currently fund its share of state-based crime victim services entirely with traffic ticket surcharges and criminal court surcharges instead of general taxpayer funds or some blend of both.[1]

Surcharges have supported victim services in Vermont since 1991.[2] In the 2000s, the General Assembly gradually increased criminal surcharge amounts while decreasing the allocation of general funds to support victim services.

In recent years, revenues into the Victims Compensation Special Fund have been on an overall declining trend. In 2013, the General Assembly formed a study committee to consider the health of the special fund and identify opportunities to limit expenditures. Improving surcharge collections was an area of concern addressed by the group.

The Center is grateful that the Committee is considering the surcharge language in keeping with the General Assembly's longstanding commitment to supporting victim services in Vermont.

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[1] In the Center's current budget, some small amounts amounts of general fund are allocated either to be passed-through as matching grants or to pay for the Center's access to the state's VISION accounting software. The Center does not receive any general funds to support its operations. Vermont also heavily relies on federal grant funds to support the state-mandated Victim Assistance Program, which has not added any new staffing positions in over ten years.

[2] Currently, for criminal offenses or traffic violations committed after June 30, 2013, the court surcharge of $47.00 includes $29.75 for the Victims Compensation Special Fund, with the remainder going to the Judiciary. 13 V.S.A. § 7282. For criminal offenses that include a fine as part of the criminal sentence, a surcharge of 15% of the fine is added to support the Crime Victims Restitution Special Fund.

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. Vermont law does not allow courts to order defendants to pay arbitrary restitution amounts as a form of punishment.

Six full-time Restitution Case Managers at CCVS 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 requirements concerning sealing and expungement are properly applied. Restitution is 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. The introduced bill has appropriately factored these considerations by retaining the requirement that restitution is paid in full.

If crime victims and survivors have anything in common, it's a desire for no new victims.

The Right to be Heard in Expungement Proceedings

It should be noted that the concept of expungement can be painful for victims who perceive the removal of a criminal record as an erasure of what happened to them and an invalidation of their story. It's important that this bill retains the victims' right to be heard at expungement proceedings to the extent the expanded list of crimes eligible for expungement increases the number of cases that involve harm to victims.

Thank you considering these comments.