

Vermont Legislative Joint Fiscal Office

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FISCAL NOTE

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H.460 An act relating to sealing and expungement of criminal history records – Senate Judiciary Recommendation of Amendment – Draft 8.1

<https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Judiciary/Bills/H.460/Drafts,%20Amendments,%20and%20Summaries/H.460~Brynn%20Hare~As%20Recommended%20by%20the%20Senate%20Committee%20on%20Judiciary%20~4-25-2019.pdf>

Background

In the 2018 session the Legislature expanded several of the statutes relating to expungement and created a study group (Act 178) to consider expanding the list of qualifying crimes eligible for expungement. The recommendation from the report weighed the competing benefits of concerns of public health, economic development and law enforcement in the State and proposed that eligibility for expungement is expanded to include felony drug possession crimes where there is no evidence of firearms or selling, dispensing or trafficking in the underlying charge as well as no pending charges at the time of petition. It is these charges that are addressed in H.460.

The Judiciary requested 5 additional temporary positions within the context of the FY2019 budget adjustment in order to address some of the increased workload surrounding the 2018 expansion of the expungement statutes. The budget adjustment for FY2019 was recently signed into law by the Governor.

Bill Summary

The bill expands the number of qualifying crimes that are eligible for petitions to seal or expunge, the bill makes alterations to expungement and sealing procedures, and it would exempt motions to expunge or seal from the \$90 court filing fee. It would make certain DUI convictions eligible for sealing petitions and would subject those specific petitions to the \$90 filing fee. The revenues from the DUI petition fee would go to a newly established special fund, which would be split between the Judiciary and the Dept. of State's Attorneys and Sheriffs to cover the cost of processing the petitions.

Fiscal Impacts

FY20 and ongoing est. General Fund impact: - \$64,000 to \$78,000

FY20 and ongoing est. Special Fund impact: + \$36,000 to \$60,000

Exemption for all expungement/sealing petitions from filing fee (Sec. 10)

The number of expungements is estimated to be approximately 1,400 in FY19, which reflects the expansions passed by the Legislature in 2018. The number of expungements reported in FY18 was 719. The estimate below is based on the FY19 baseline of 1,400 cases which may have been inflated due to the 2018 expungement changes.

This bill seeks to exempt motions to expunge or seal from the \$90 court filing fee. It is estimated by the Vermont Judiciary that currently 55% of expungement petitions are already eligible for a waived fee. If the petition fee was waived in all petitions approximately \$57,000 of revenue would have been forgone in FY19 and would be forgone annually going forward. This would be a general fund impact.

Expanding list of convictions eligible for expungement/sealing petitions (Sec. 1)

The Vermont Judiciary estimates that there are 17,002 convictions that would be additionally eligible for expungement under H.460 (excluding the DUI provision). If 1%-3% of these eligible petitions file for expungement the Judiciary would expect to see a range of 75 – 230 more petitions. The Judiciary feels they can meet the additional demand generated by H.460 with the 5 additional positions already requested in BAA.

The increase in anticipated petitions in FY20 in turn increases the amount of revenue that would be forgone by the fee waiver. Depending on the uptake of expungement petitions the forgone revenue in FY20 could range from \$7,000 to \$21,000 (assuming an uptake of 1% and 3% respectively in the newly eligible convictions). This would be a general fund impact.

Certain DUI convictions become eligible for sealing petitions (Sec. 3 and Sec. 7)

The bill would allow individuals who have a DUI conviction to file a petition for sealing if they meet certain conditions:

1. At least 10 years have passed since terms of conviction were met.
2. The person has only one DUI conviction and no other unrelated convictions.
3. Any restitution has been paid in full.
4. The court finds that the sealing serves the interests of justice.

These petitions would be subject to the \$90 filing fee and revenues from the fee would go to a newly created Criminal History Record Sealing special fund for use by the Judiciary and the Dept. of State's Attorneys and Sheriffs.

Per the Judiciary, there are 32,013 DUI convictions in Vermont and 16,717 would potentially be eligible for a sealing petition in 2020. If 3-5% of those convictions filed sealing petitions in FY20, and assuming that 20% of the petitions would be eligible for the fee waiver, then there would be approximately \$36,000 to \$60,000 in new revenue in FY20, which would flow to the new special fund. This revenue would likely grow in future years as more DUIs become eligible for sealing petitions, and as more individuals become aware of the DUI sealing petition process.