

Supreme Court of Vermont
Office of State Court Administrator

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TO: Senator Dick Sears, Chair
Senate Judiciary Committee, and Senate Judiciary Committee Members
Representative Maxine Grad, Chair
House Judiciary Committee, and House Judiciary Committee Members
Representative Kitty Toll, Chair
House Appropriations Committee, and House Appropriations Committee Members
Senator Jane Kitchel, Chair,
Senate Appropriations Committee, and Senate Appropriations Committee Members

FROM: Patricia Gabel, Esq., State Court Administrator

RE: H. 251 as Introduced
S. 114 as Introduced
H. 653 as Introduced
S. 294 as Introduced

DATE: February 26, 2020

This Memo is accompanied by a fiscal and operational analysis of the potential impacts of the above-referenced proposed bills on the Vermont Judiciary.

In light of the potential impacts on the Vermont Judiciary, we request that any proposed legislation that emerges with respect to sealing and/or expungements have an Effective Date that is no earlier than July 1, 2021; or, in the alternative, that the legislation be accompanied by an additional FY21 sealing/expungement appropriation to the Judiciary above existing Judiciary budget requests in the amount of \$1,075,000.

If the Effective Date is postponed for a year, that would give us an opportunity to evaluate the requirements of the ultimate legislation that is passed and submit an FY21 budget adjustment

request to the legislature in the autumn of 2020 to enable us to (1) do the hiring of additional permanent positions required to perform sealing and/or expungements of existing cases, to the extent that the ultimate legislation passed requires the addition of new permanent positions; and (2) conduct or contract for the configuration of the case management system that may be required with respect to future violations and offenses so that the Judiciary would be able to comply with the legislation with respect to cases that were commenced following the rollout of the electronic case management system, which is starting for all trial courts today in the Windsor, Windham, and Orange units.

If the Effective Date is not postponed, we do not know whether we will be able to comply with the proposed legislation, as introduced; but, in order to try to comply, we request an additional FY21 appropriation of \$ 1,075,000 with respect to expungement legislation (as introduced) over and above the FY21 budget requests that have already been submitted to each of the Appropriations Committees. That specific expungement appropriation request, as outlined more specifically in the accompanying Memorandum, is:

13 additional permanent positions at an estimated cost of \$75,000 per position, for a total cost of \$975,000; and

\$100,000 to cover the additional itemized costs outlined in the Memorandum.

Tari Scott, Chief of Trial Court Operations, and Joanne Charbonneau, Statewide Superior Court Clerk, who is responsible for the Judicial Bureau, can provide testimony to Committees with respect to the details of expungement and sealing with respect to records that were created during different time periods and why these processes are so time and labor intensive.

Thank you for your consideration of our requests with respect to this proposed legislation.



TO: Patricia Gabel, State Court Administrator

FROM: Theresa Scott, Chief, Trial Court Operations
Gregg Mousley, Chief Finance Officer
Joanne Charbonneau, Clerk of Statewide Courts
Laurie Canty, Special Assistant, Trial Court Operations
Linda Richard, Special Assistant to the State Court Administrator

DATE: February 25, 2020

RE: H. 251 as Introduced
S. 114 as Introduced
H. 653 as Introduced
S. 294 as Introduced

We have conducted an analysis of the potential operational and fiscal impact on the Judiciary in response to the following bills:

- H.251 as Introduced. This bill proposes to expunge all criminal history records relating to a person who was convicted of possession of marijuana in violation of 18 V.S.A. § 4230(a)(1).
- S.114 as Introduced. This bill proposes to expunge all criminal history records relating to a person who was convicted of possession of marijuana in violation of 18 V.S.A. § 4230(a)(1).
- H.653 as Introduced. This bill proposes to expand eligibility for expungement or sealing of a criminal history record to most criminal offenses and several civil offenses.
- S.294 as Introduced. This bill proposes to expand eligibility for expungement or sealing of a criminal history record to most criminal offenses and several civil offenses.

As you know, the Judiciary does not take positions on policy issues that are within the legislature's discretion. We do, however provide information to the Legislature that will help the Legislature understand procedures and impacts, including impacts on the Judiciary and the administration of the court system. This memo is sent for that purpose.

H. 251 / S.114:

There have been 12,101 possession of marijuana convictions relating to 18 V.S.A. § 4230(a)(1) from September 22, 2005 through July 1, 2019. Due to the difficulty in extracting data from the Judiciary's current case management system, more research would be needed to identify how many convictions relating to 18 V.S.A. § 4230(a)(1) exist prior to September 2005.

These bills propose automatic expungement of these convictions. The data from the last 15 years indicate there will be at least 12,101 new requests to be processed in the criminal division of the Vermont Superior Court. Convictions prior to 2005 could potentially double that total.

For each automatic expungement, the average amount of processing time required is 20 minutes. These bills would require a minimum of 4,000 hours of work to complete the expungement process in these cases. Accounting for the number of full-time annual work hours (2080 hours), that would require a minimum of 2 additional positions to process these requests. Depending on how many additional convictions pre-date September 2005, the need for 1-2 additional staff will be needed.

In addition to the staff resources needed to process these expungements, the Judiciary will incur service fees and postage costs. Court records older than 1-2 years will need to be retrieved from the Vermont State Archives and Records Administration (VSARA). The minimum fee to retrieve a record is \$7.50. The cost of retrieval of the 12,101 convictions will be approximately \$90,758.00. Depending on how many additional convictions pre-date September 2005, the cost for fees and postage could potentially double.

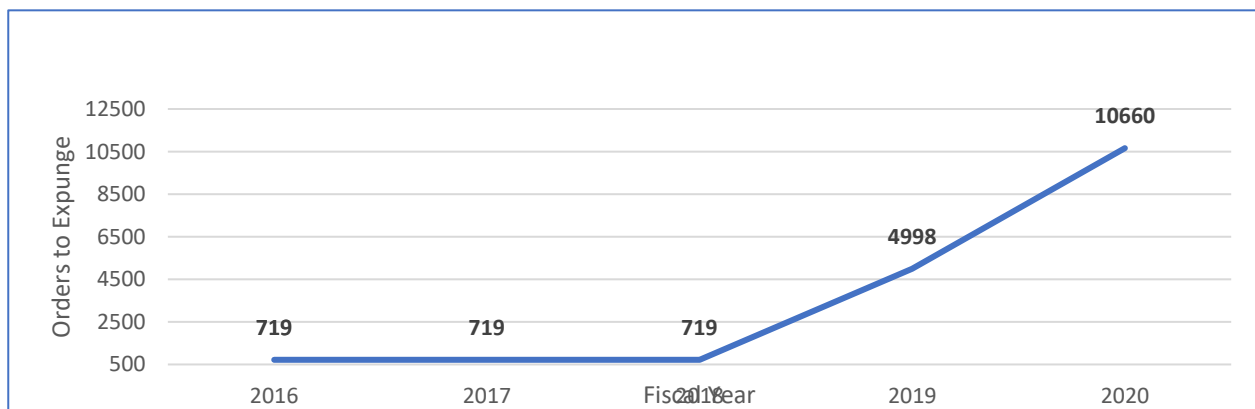
Because these bills were introduced in the 2019 legislative session, we respectfully request that the House and Senate Judiciary Committees consider changing the Effective Date of the bills from July 1, 2020 to July 1, 2021.

H.653 / S.294

Impact on the Vermont Superior Court

The 2017-2018 legislative session ushered in the passage of several bills that expanded criminal expungement eligibility and required the Judiciary to initiate “petitionless” expungement under certain circumstances. [see Act 178 (2018), Act 201 (2018), Act 8 (2018 Special Session) and more recently, Act 32 (2019)].

The Judiciary estimates that between FY15 and FY18, it expunged approximately 719 cases each year. In FY19, the Judiciary issued 4,998 orders to expunge criminal records- a 595% increase from the average number of the prior years.¹ Of the 4,998 orders to expunge, 1391 of these were by petition. 3607 were automatic expungements.



¹ This total reflects expungements only; it does not include the additional cases that were sealed and expunged, such as adult diversion cases.

FY20 is on track to far surpass FY19's number. During the first eight months of FY20, the Judiciary issued 7104 orders to expunge criminal records. Of the 7104 orders, 1418 were expungements by petition; 5686 were automatic expungements. At this rate, the Judiciary can expect to issue a total of 10,660 orders to expunge by the end of FY20.² Of these 10,660 orders, we predict that 2127 will be expungements by petition; 8533 will be automatic expungements. This represents a 1383% increase in expungement orders and expungement processing since FY18.

The work to expunge a case currently by petition and order is already a multi-step process to ensure that all the necessary check points are completed prior to the actual expungement. We have estimated a time commitment of approximately 40 minutes per case, over several days or weeks to follow through each step of the process. The actual time from filing to expungement is contingent on the response time from the State, Victims, VCIC and whether or not a hearing is required. For automatic expungements, the time is somewhat less- about 20 minutes per case.

In FY20, we predict it will require 4,262 hours of work to complete the expungement process in these cases. Accounting for the number of full-time annual work hours (2080 hours), this means that the Judiciary needs 2 additional positions to process these requests.

If expungement is expanded according to these bills, the increased burden on staff would be even greater. Although we are unable to predict at this time how many additional expungements the Vermont Superior Court would incur as a result of H.653 / S.294, it is with certainty that we can state that the workload pressure would be untenable. In addition to the 2 positions cited above, the Judiciary would require further permanent classified positions. .

Impact on the Vermont Judicial Bureau

If expungement is expanded according to these bills, we could also expect about 20,000 additional automatic expungement requests to be filed each year in the Judicial Bureau.

The expungement process in the Judicial Bureau requires, on average, 10 minutes per case. If expungement is expanding according to these bills, an additional 2 staff would be needed.

Expungements in the Judicial Bureau, unlike the criminal division of the Vermont Superior Court, can be simplified through a data exchange with the Department of Motor Vehicles. This can only occur after all fines and reinstatement fees have been paid in full. Although there is still some processing required, it is a much more simplified process. If this alternative option was considered, the workload would be cut by half and only 1 additional position would be needed.

Summary

Given this environment, the Judiciary requests additional permanent classified positions to address this emerging expungement demand.

In addition to making the 5 temporary positions permanent, we would request, at a minimum, an additional 4 permanent classified positions in the Vermont Superior Court to process expungements relating to misdemeanor marijuana convictions; 2 permanent classified positions in the Vermont Superior Court to process expanded criminal expungement eligibility, and 2 permanent classified

² This total reflects expungements only; it does not include the additional cases that were sealed and expunged, such as adult diversion cases.

positions in the Judicial Bureau to process expanded civil expungement eligibility. This is a total request for 13 new positions.

In terms of total cost to the Judiciary, the current average cost of a Docket Clerk B is \$75,000 including the average typical fringe benefits (retirement, health insurance, etc.). Eight additional staff would cost approximately \$600,000 annually. Converting the existing five temporary employees to permanent employees would cost approximately \$375,000 annually. There could also be costs associated with office space and equipment, as well as VSARA fees and postage costs (\$90,000 +).

The Judiciary does not support using temporary employees to deal with an ongoing expungement workload.

People who fill temporary positions with the Judiciary frequently leave in pursuit of full-time employment. This leaves the courts challenged with rehiring and retraining new staff. In some counties, the courts are using existing permanent docket clerks to process expungements. This is a contributing factor, in part, to the lower rate of cases over the Judiciary's disposition guidelines in the criminal docket.³

We appreciate this opportunity to provide information regarding these proposed drafts.

³ The Supreme Court has set 6 months as the disposition timeline for a standard felony case. In FY18, 43% of all felony cases met this standard; in FY19, only 39% met this standard. The Supreme Court has set 4 months as the disposition timeline for a standard misdemeanor case. In FY18, 62% of all misdemeanor cases were resolved within 4 months of filing; in FY19, only 60% met this standard.