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GENERAL ASSEMBLY
JOINT LEGISLATIVE JUSTICE
OVERSIGHT COMMITTEE

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MEMORANDUM

To: The Vermont General Assembly
From: Joint Legislative Justice Oversight Committee
Date: November 5, 2021
Subject: Expungement and Sealing of Criminal History Records

The General Assembly has worked on policy regarding expungement and sealing of Vermont criminal history records for several years to ensure that old records of nonviolent offenses do not unduly hinder Vermonters from obtaining jobs, housing, or educational opportunities once a sentence has been completed. The Legislature recognizes that any such policy must balance the goal of minimizing the negative impacts of a criminal history record on the subject of the record with ensuring public safety and minimizing impacts on victims.

In 2021, the General Assembly passed Act 58 (S.7) of 2021, "An act relating to expanding access to expungement and sealing of criminal history records." Sec. 5 of this act provides:

During the 2021 legislative interim, the Joint Legislative Justice Oversight Committee shall consider how to simplify and automate the process of expungement and sealing of criminal history records and consider a comprehensive policy that provides an avenue for expungement or sealing of records for all or most offenses except those listed in 33 V.S.A. § 5204(a). In its analysis of what offenses should be eligible, the Committee shall consider whether to exclude from eligibility those offenses associated with and resulting from domestic and sexual violence. The Committee shall propose legislation for the 2022 legislative session on its recommendations regarding:

- (1) a policy to make all or most criminal history records eligible for sealing or expungement, except for conviction records of offenses listed in 33 V.S.A. § 5204(a) and any other offenses the Committee deems appropriate for exclusion;*
- (2) the individuals or entities that should have access to sealed criminal history records;*
- (3) whether Vermont should continue to employ a two-track system that provides for sealing or expungement of criminal history records based on the nature of the offense, or whether Vermont should employ a one-track system that provides for either sealing or expungement for all eligible offenses;*

(4) implementing an automated process, not requiring a petition, to seal and expunge criminal conviction records that provides for notice to the prosecuting office and an opportunity for the prosecutor to oppose the sealing or expungement.

The Committee took up the issue at its meetings on July 15, August 8, September 14, October 15, and November 5, 2021. Agendas for these meetings can be found here: <https://legislature.vermont.gov/committee/meeting-history/2022/40>

While the Committee’s charge directs it to propose legislation for the 2022 session, the Committee believes that it is most appropriate for it to provide guidance to the Senate and House Committees on Judiciary on the issues identified in Act 58 and to allow those standing committees to develop the details of legislation due to the very complex and detailed decisions that must be made in developing a forward-thinking comprehensive expungement/sealing system for Vermont. To this end, the Committee recommends the General Assembly pursue legislation that adheres to the policy recommendations below.

Currently, Vermont employs a two-track system for expunging/sealing criminal history records.¹ Whether criminal history records² are eligible for expungement³ or sealing⁴ is determined by the type of offense, the length of time since the person completed the sentence, and whether the court finds that expungement or sealing the record “serves the interests of justice”, among other factors. The current system is overly complex, the result of years of amendments and a piecemeal approach to the issue. The Committee recommends jettisoning the two-track system in favor of a one-track sealing process that limits most access to the records in a manner similar to expungement while allowing for narrow exceptions. The scope of the exceptions—who has access and under what circumstances—should favor confidentiality and be very specific. The Committee believes current access to sealed records by law enforcement to be overly broad and asks the Committees on Judiciary to explore in depth the exact circumstances that should

¹ <https://legislature.vermont.gov/statutes/chapter/13/230>.

² “‘Criminal history record’ means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.” 13 V.S.A. § 7601(2).

³ Expungement’s “effect is to annul the record of the arrest, conviction, and sentence and that such person shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.” A special index of expunged records is kept by the court, and inspection of the record is only permitted by the person who is the subject of the record.
<https://legislature.vermont.gov/statutes/section/13/230/07606>

⁴ Sealing’s effect is similar to expungement in terms of public access to the criminal history records; however, there are circumstances in which the records can be accessed, most notably by law enforcement “without limitation for criminal justice purposes...”
<https://legislature.vermont.gov/statutes/section/13/230/07607>

warrant such access rather than relying on the current threshold of “law enforcement purposes.”⁵

With respect to eligible offenses, the Committee recommends that the list be expanded to include all misdemeanor offenses except:

- (i) a “listed crime” as defined in 13 V.S.A. § 5301(7);
- (ii) a violation of 13 V.S.A. chapter 64 relating to sexual exploitation of children;
- (iii) a violation of 13 V.S.A. § 1030 relating to a violation of an abuse prevention order, an order against stalking or sexual assault, or a protective order concerning contact with a child;
- (iv) a violation of 13 V.S.A. chapter 28 related to abuse, neglect, and exploitation of a vulnerable adult;
- (v) a violation of 13 V.S.A. § 2605(b) or (c) related to voyeurism;
- (vi) a violation of 13 V.S.A. § 352(1)–(10) related to cruelty to animals;
- (vii) a violation of 13 V.S.A. § 1026a related to aggravated disorderly conduct;
- (viii) a violation of 13 V.S.A. § 3006 related to neglect of duty by a public officer;
- (ix) a violation of 13 V.S.A. § 5409 related to failure to comply with sex offender registry requirements;
- (x) a violation of 13 V.S.A. §§ 2802, 2802a, 2803, 2804, or 2804b related to obscenity;
- (xi) a violation of 13 V.S.A. § 1455 related to hate motivated crimes; and
- (xii) a violation of 13 V.S.A. § 1456 related to burning of a religious symbol.

The Committee recommends that most felonies not be included at this time, except that the following felonies shall be eligible:

- (i) a violation of 13 V.S.A. § 1201 related to burglary, excluding any burglary into an occupied dwelling, unless the person was 25 years of age or younger at the time of the offense and did not carry a weapon during the commission of the offense;
- (ii) designated felony property offenses;⁶

⁵ “‘Criminal justice purposes’ means the investigation, apprehension, detention, adjudication, or correction of persons suspected, charged, or convicted of criminal offenses. Criminal justice purposes shall also include criminal identification activities; the collection, storage, and dissemination of criminal history records; and screening for criminal justice employment.” 20 V.S.A. § 2056a.

⁶ “Designated felony property offense” means:

- (A) a felony violation of 9 V.S.A. § 4043 related to fraudulent use of a credit card;
- (B) 13 V.S.A. § 1801 related to forgery and counterfeiting;
- (C) 13 V.S.A. § 1802 related to uttering a forged or counterfeited instrument;
- (D) 13 V.S.A. § 1804 related to counterfeiting paper money;
- (E) 13 V.S.A. § 1816 related to possession or use of credit card skimming devices;
- (F) 13 V.S.A. § 2001 related to false personation;
- (G) 13 V.S.A. § 2002 related to false pretenses or tokens;
- (H) 13 V.S.A. § 2029 related to home improvement fraud;
- (I) 13 V.S.A. § 2030 related to identity theft;

- (iii) offenses relating to selling, dispensing, or transporting regulated drugs, including violations of 18 V.S.A. §§ 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4234b(b), 4235(c), or 4235a(b); and
- (iv) any offense for which a person has been granted an unconditional pardon from the Governor.

While the Committee is not recommending that most felonies be eligible for sealing at this time, the Committee believes that the list should be expanded over time to include most nonviolent felonies, provided sealing such records serves the interests of justice and prosecutors continue to be notified of such a petition and have an opportunity to weigh in on the petition before the court.

In moving to a one-track sealing system, the Committee believes that a new definition of “sealing” must be developed providing that the vast majority of sealed records are confidential to everyone but the subject of the record, while allowing only necessary and limited access to such records by law enforcement and others under specific circumstances that are clearly identified in statute. The Committee hopes that the Committees on Judiciary can work through the special circumstances that warrant such access.

The Committee supports designating some offenses as eligible for automatic sealing, meaning that the subject of the record does not need to file a petition, but rather the record is sealed automatically a number of years after the sentence was completed. However, currently, the time and expense required for such an undertaking are unclear and more research is needed into the technological capabilities of the entities required to seal and the time and expense of such an effort. Delays within the court system due to COVID-19 have impacted the rollout of current expungement and sealing laws, and the Committee recognizes that time is necessary to fulfill our current obligations before adding to them.

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- (J) 13 V.S.A. § 2501 related to grand larceny;
 - (K) 13 V.S.A. § 2531 related to embezzlement;
 - (L) 13 V.S.A. § 2532 related to embezzlement by officers or servants of an incorporated bank;
 - (M) 13 V.S.A. § 2533 related to embezzlement by a receiver or trustee;
 - (N) 13 V.S.A. § 2561 related to receiving stolen property;
 - (O) 13 V.S.A. § 2575 related to retail theft;
 - (P) 13 V.S.A. § 2582 related to theft of services;
 - (Q) 13 V.S.A. § 2591 related to theft of rented property;
 - (R) 13 V.S.A. § 2592 related to failure to return a rented or leased motor vehicle;
 - (S) 13 V.S.A. § 3016 related to false claims;
 - (T) 13 V.S.A. § 3701 related to unlawful mischief;
 - (U) 13 V.S.A. § 3705 related to unlawful trespass;
 - (V) 13 V.S.A. § 3733 related to mills, dams, or bridges;
 - (W) 13 V.S.A. § 3761 related to unauthorized removal of human remains;
 - (X) 13 V.S.A. § 3766 related to grave markers and ornaments;
 - (Y) 13 V.S.A. chapter 87 related to computer crimes; and
 - (Z) 18 V.S.A. § 4223 related to fraud or deceit in obtaining a regulated drug.

Finally, the Committee believes there should be something in statute that provides penalties for unauthorized access or disclosure of sealed records and recommends that any legislation include such a provision.

The Committee wishes to express its unanimous support in moving forward with expanding sealing and believes it is an important piece in the General Assembly's efforts toward sensible criminal justice reform.