

**Vermont Crime Information Center (VCIC)**  
**Department of Public Safety**  
**Operational Concerns Memo**  
**H.534 - An Act Relating to Sealing Criminal History Records**

The following represent technical operational concerns regarding the bill in its draft form on 01-18-22 but does not represent the full policy assessment and stance on the part of the Department of Public Safety.

As currently drafted, H.534 (An Act Relating to Sealing Criminal History Records) would create a number of substantial operational challenges for the management and maintenance of criminal history records by the Vermont Crime Information Center (VCIC). While the goal of the bill appears to be the streamlining of record keeping requirements, the language as constructed would have the opposite effect.

**Concern**

Limitation of previously sealed records for use in sentencing considerations, risk assessments, and supervision decisions only.

*Problem Statement*

Sealed records may currently be utilized by criminal justice agencies without limitation for criminal justice purposes (as defined in 20 V.S.A. § 2056a). This would include the investigation of persons convicted of criminal offenses but also access to confidential information systems and evaluation for firearm purchases or transfers.

It should be noted that entities other than criminal justice agencies (regular employers, etc.) do not have access to sealed records maintained by the VCIC.

The proposed language would limit use of these records for sentencing considerations, risk assessments, and supervision decisions. Sealed records would no longer be useable for purposes such as firearm eligibility determination or access screening for confidential data systems. It is also unclear what effect noted limitations would place on criminal justice entities outside of Vermont utilizing sealed records for criminal justice purposes.

*Potential Solution*

The noted bill may be modified to clarify what additional purposes a sealed record may or may not be utilized for. This could include firearm eligibility determination, access to confidential data systems, or other uses as determined.

**Concern**

The varying timelines that sealed records may be utilized based upon the nature of the offense.

### *Problem Statement*

Currently sealed records are available (as noted above) until such time that a subsequent expungement order is received and processed by the VCIC. While this process does require two record maintenance steps, there is no analysis needed to determine if a sealed record may be considered (based upon conviction date) for the purpose of the query.

It is unclear from the language proposed in H.534 what should happen to any sealed record once the various timelines have been reached. This could require a manual annotation of the record that it may not further be considered for sentencing purposes after the calculated date. Such a manual annotation would require significantly more staff resources than the current expungement process or require major investments in technical infrastructure.

Similarly, it is unclear if a sealed record should be removed from an individual criminal history record after all potential timelines have expired. This would place the burden of this analysis on the VCIC and require similar major investments in technical infrastructure and staff resources.

### *Potential Solution*

The noted bill could be modified to standardize record utility timelines along with requiring the courts to notify the VCIC when said timelines have been completed.

### **Concern**

Establishment of civil penalties for disclosure of a sealed record.

### *Problem Statement*

Currently, sealed records may only be utilized for criminal justice purposes and penalties exist for unauthorized disclosure (per 20 V.S.A. § 2056a). The proposed significant restriction of authorized uses of sealed records, in conjunction with retention of noted records in perpetuity significantly increases the chances that a sealed record will be unintentionally disclosed.

For example, members of the public or law enforcement may access the record multiple times before a sealing order is received by the VCIC. Would each instance constitute a separate civil violation and who would be responsible for each one? Such a scenario would create multiple layers of jeopardy for staff involved in day-to-day processing of criminal history records.

### *Potential Solution*

The noted bill could be modified to remove the civil penalty.