

PHILIP B. SCOTT
GOVERNOR



State of Vermont
OFFICE OF THE GOVERNOR

April 22, 2021

The Honorable Richard Sears, Chair, Senate Judiciary
The Honorable Alice Emmons, Chair, House Corrections and Institutions
The Honorable Maxine Grad, Chair, House Judiciary

VIA EMAIL

Re: S.7, An Act Relating to Expanding Access to Expungement and Sealing of Criminal History Records

Dear Senator Sears and Representatives Emmons and Grad:

We write to respectfully request delay of S.7, *an act relating to expanding access to expungement and sealing of criminal history records*. We acknowledge and appreciate the goal of this bill to provide important second chances for Vermonters. However, this bill represents the 4th expansion of the expungement laws in four years, with no opportunity to step back and consider the impacts on Vermont's criminal justice resources or Vermonters themselves. What we know for certain is that there will be new costs and new staff demands on the courts, the offices of states attorneys, the VCIC and the Department of Corrections that have not been accounted for. What we do not know, and what we must understand before moving forward with a 5th expansion of expungements in Vermont in five years, are the unanticipated consequences, some of which are discussed below.

First, to our knowledge, the issue of cost remains unaddressed and we request a fiscal note so that the Legislature can appropriately assess the short-term and long-term costs of this newest expungement expansion. The expungement workload has only gone up over time and increases each year. Just from the perspective of the Vermont Crime Information Center (VCIC), processing an expungement or sealing averages 30 minutes of staff effort. This involves verifying the subject of the record, making any necessary modifications or deletions, updating or removing any associated fingerprint records, and a complete quality review.

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The most important factor impacting VCIC workload is the rate of uptake of eligible incidents. Additionally, changes in other operations or priorities has a significant effect, such as the recent increase in the number of dismissed cases now being expunged and mass expungement clinics.

In light of this, VCIC has seen a significant increase in the number of expungements and sealings processed annually as noted below:

Year	Annual Total	Monthly Average
2018	2,503	209
2019	7,700	642
2020	14,739	1,228
2021	3,401 (through 3/21)	1,133

The VCIC estimates it would need at least one new staff person just to process expungements if this bill were to pass and this is long term – not one time. There are likely similar, if not greater impacts on the Judiciary, State’s Attorneys and Department of Corrections.

Second, the Legislature is to be commended for its enthusiastic efforts in the area of justice reform. As representatives of the team that must implement these laws, our concern is that as reforms are made rapidly with no opportunity to assess the strengths and weaknesses of each effort or the impact of one effort immediately succeeding on the heels of another, there has been constant turmoil, inefficiency and added cost in our systems. A perfect example of this was the furlough system which had become so cumbersome and inefficient it was demonstrated to be undermining its own effectiveness. S.7 seems to work at odds with ongoing Corrections Department reforms and service delivery improvements being undertaken as part of Justice Reinvestment, ultimately to reduce recidivism and improve public safety in the community. At a moment we are trying to improve risk and needs assessments, this bill seeks to increase the number of expungements and facilitate the waiver of timeframes for expungement eligibility. If you hope to accurately assess criminogenic behaviors to attach appropriate treatments and reduce recidivism, you need a criminal history available for this purpose.

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Third, it is impossible for most Vermonters to understand the impacts of an expungement effort of this breadth of scope. All crimes are qualifying crimes other than Vermont's most violent offenses and drug trafficking. To our knowledge, there is no single list of the hundreds of crimes which would be eligible for expungement, but they include criminal threatening and domestic terrorism, all of the fraud crimes including identity theft, insurance fraud and embezzlement, and all crimes involving the sexual exploitation of children. Once these records are expunged, theoretically with no waiting period if waived by prosecutor, how are state agencies or employers to put into place the guardrails needed to protect our most vulnerable Vermonters?

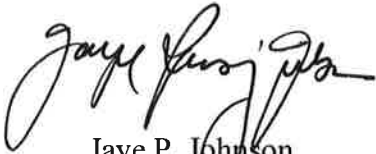
The additional concept of waiver or reduction of timeframes is also problematic. As a general policy concept, the data shows risk of recidivism is reduced with time. If a reasonable period of time passes with no intervening crime, a person becomes eligible for sealing or expungement. The idea that a prosecutor may stipulate to waive or modify a timeframe undercuts the theory. We ask that appropriate conditions which serve the interests of public safety and the interests of justice be required in support of a waiver stipulation and all stipulations to waive the timeframes for expungement eligibility for felony convictions be submitted for consideration by a court.

Additionally, it is important to recognize the unanticipated consequences which may arise when our (waivable) waiting periods are shorter than civil statutes of limitations or federal regulatory requirements. The viability of civil cases which may arise from criminal prosecutions may be threatened when a record is expunged prior to the running of a civil statute of limitations.

Finally, from the perspective of the financial services industry, there are several instances where a person's prior criminal convictions for serious financial crimes are implicated under State and federal law. For example, the FDIC has strict hiring requirements for financial institutions; the securities industry has a 10-year look back for certain industry participants; and Federal law disqualifies any person who has been convicted of a felony involving dishonesty or breach of trust from engaging in the business of insurance unless they apply for and receive written consent from the Department of Financial Regulation. Additional time is necessary to study these, and possibly other, areas of intersecting state and Federal authority and to ensure that Vermonters' personal finances remain well protected.

Thank you for your consideration.

Sincerely,



Jaye P. Johnson
Legal Counsel
Office of the Governor



Michael Pieciak
Commissioner
Financial Regulation



Michael Schirling
Commissioner
Public Safety



James Baker
Interim Commissioner
Corrections