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STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

TO: House Committee on Judiciary

FROM: John Campbell, Executive Director

RE: S.7 – An act relating to expanding access to expungement and sealing of criminal history records

DATE: April 6, 2021

Background on S.7

Section 11 of Act 32 (2019) directed the Vermont Sentencing Commission (“Commission”) to conduct a comprehensive assessment of the statutes governing expungement and sealing and make recommendations regarding:

- (A) improvements to the expungement and sealing process; and
- (B) any additional crimes or civil offenses appropriate for expungement or sealing eligibility.

The Commission assigned this request to a subcommittee with representatives from the Office of the Attorney General, the Office of the Defender General, the Department of State’s Attorneys and Sheriffs, the Court Administrator’s Office, the House Judiciary Committee, the Department of Motor Vehicles, the Judicial Bureau, the Vermont Crime Information Center, and Legal Aid to develop recommendations. The subcommittee proposed and the full commission supported a proposal that provided an avenue to sealing and/or expungement for all criminal offenses other than those listed in 13 V.S.A. 5301(7) and Title 18 offenses related to trafficking of controlled substances. The “As introduced” version of S.7 is largely a codification of these recommendations made to the General Assembly pursuant to Act 32.

Department of State’s Attorneys and Sheriffs Position on S.7 Generally

Before summarizing the Department’s position on S.7, it is important to note that without exception the State’s Attorneys are supportive of expungement. They recognize the outsized benefit expungement can provide for people who are unemployed or underemployed and for

people who are seeking professional licenses, public housing, educational opportunities, and military service. Expungement encourages rehabilitation by providing a path to full redemption for crimes committed as a result of substance use disorder. Importantly, expungement can correct geographic and racial disparities that may have resulted from outdated policy decisions and historic variances in charging or sentencing practices. In a related point, the vast majority of convictions that are the subject of expungement petitions are for crimes that are now presumptively referred to an alternative justice program or eligible for a deferred sentence, meaning many would not have resulted in a conviction had they been charged today.

While supportive of the policy underlying S.7, the State's Attorneys have raised a serious concern related to the administrative cost of this proposal. The last time the legislature expanded expungement eligibility to eleven new crimes pursuant to Act 32 (2019), the state saw a dramatic increase in the number of expungement orders. According to the Vermont Crime Information Center, the number of expungement orders has increased from 2,503 in 2018 to 7,700 in 2019 and 14,739 in 2020. Again, these numbers represent the number of orders granted; the number of actual petitions that have been reviewed by State's Attorneys and ultimately denied as non-qualifying was necessarily greater in each of these years.

From the State's Attorneys' perspective, each petition requires approximately 30 minutes of staff time on average to ensure the subject conviction is a qualifying offense, the relevant waiting periods have been satisfied, there are no disqualifying intervening convictions, restitution orders have been satisfied, and victims have been notified. Since the enactment of Act 32, the review of expungement petitions has become an ever-increasing part of State's Attorneys' and Victim Advocates' daily workload. While the State's Attorneys gladly accept this responsibility, they ask that the legislature acknowledge that S.7, which expands sealing and expungement eligibility to hundreds of new offenses, will create an extraordinary amount of administrative work. The Department respectfully requests that if the House Judiciary Committee intends to recommend S.7 favorably, the bill should include a fiscal note detailing the resources needed to implement it.

In prior expungement bills, the legislature has estimated the fiscal impact on various stakeholders by multiplying the number of historic convictions for the expanded list of eligible crimes by an approximated uptake rate—usually in the range of 1% – 3%. The result of this calculation, multiplied by 30 minutes of review per petition, can provide a rough estimate of increased work hours that will result if the expansion is enacted. We would ask that the Joint Fiscal Office conduct a similar analysis of the fiscal impact of S.7 on the relevant agencies and departments, including the Department of State's Attorneys and Sheriffs, the Court Administrator's Office, the Department of Motor Vehicles, and the Vermont Crime Information Center.

Department of State's Attorneys and Sheriffs Position Waiving Waiting Periods

Section 4 of S.7 "As passed by the Senate," amends 13 VSA 7602(a)(2) as follows:

The State's Attorney or Attorney General shall be the respondent in the matter.
Notwithstanding any other provision of law, if a person petitions to seal or

expunge a criminal history record prior to the date the offense is eligible for sealing or expungement as provided in this section, only the office that prosecuted the offense that is the subject of the sealing or expungement petition may stipulate to that petition.

In general, this provision permits the respondent to waive any of the statutory waiting periods—typically five years from completion of sentence—and stipulate to expungement petitions prior to them becoming technically eligible. While the State’s Attorneys support providing an avenue for early sealing and expungement under the appropriate circumstances, waiver of statutory timeframes can raise specialized concerns regarding victim notice and input. Oftentimes, these issues are best resolved by the office that prosecuted the case. That office will have the most information regarding the specific facts underlying the conviction and will have a pre-existing relationship with the victim of the crime.

Under current law, the State’s Attorneys and the Attorney General share concurrent authority to seal and expunge criminal history records regardless of which office actually prosecuted the crime that is the subject of a petition. This provision would grant the authority to waive waiting periods only to the office that prosecuted the crime that is the subject of a sealing or expungement petition. It does not impact the concurrent authority of the State’s Attorneys and the Attorney General to seal and expunge criminal history records in all other instances. We support Section 4 in the “As passed by the Senate” version of S.7 and request that this provision remain unchanged.