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MONTPELIER
SPRINGFIELD

TO: Chair Maxine Grad and House Judiciary Committee Members
FROM: Mairead O'Reilly, Esq., Vermont Legal Aid, Inc.
RE: Comments on S. 7, version 1.4
DATE: May 5, 2021

Dear Chair Grad and House Judiciary Committee Members:

I appreciate the Committee's work on this bill and your commitment to mitigating the collateral consequences of criminal records in Vermont. While I am disappointed that S. 7 as passed by the Senate is no longer under consideration, I appreciate that version 1.4 of this bill includes a mandate to the Joint Justice Oversight Committee to further review this area of law, an amendment to the surcharge statute, and a slight expansion of expungement-eligible offenses.

I want to briefly address one of these changes: the expansion of eligible offenses to include felony property offenses. This is a welcomed change, but Vermont Legal Aid has one concern about this provision and, and we recommend a minor amendment.

Version 1.4 of S. 7—page 18, line 10—prevents the prosecutor from stipulating to expunge or seal a felony property conviction *prior* to the expiration of the statutory wait-time. Vermont Legal Aid's position is that the removal of the prosecutor's discretion is unnecessary and sends a conflicting message about Vermont's commitment to restorative justice. Vermont Legal Aid recommends that if this bill moves forward, this committee restore the prosecutor's ability to stipulate prior to the expiration of the sealing and expungement wait-times.

I. Recommended change

S. 7, Version 1.4, Page 18, line 10:

If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for sealing as provided in this subsection, the court may grant the petition to seal or expunge without a hearing.

II. Explanation

This bill requires an individual petitioner wait 8 years after the completion of their sentence to petition to *seal* a felony property crime, and 16 years to petition to expunge this type of conviction. This is a significant amount of time for an individual to wait for record clearance.¹ Our recommendation has been, and continues to be, that a 5-year wait-time to expunge these types

¹ The wait-time to *seal* under this bill is 3 years longer than the wait-time to *expunge* some of the offenses eligible under current law, such as Felony Grand Larceny and Burglary (not in an occupied dwelling). The wait time for expungement of these crimes, including Grand Larceny, is 11 years longer than what is permitted under current law.

of convictions is appropriately protective.² The research is clear that when a person desists from criminal-legal involvement for three-seven years, their prior conviction is no longer a legitimate predictor of future criminal conduct. Waiting eight years to seal a felony property crime is abundantly cautious. As shortening this wait-time may be beyond the scope of what the committee can consider at this time, our recommendation here is that prosecutors retain the ability to stipulate prior to the expiration of that 16-year wait-time to expunge felony property offenses.

Under version 1.4 of S. 7, prosecutors—who are elected by their communities to maintain public safety—are prevented from agreeing to seal or expunge these records in all cases, regardless of their case-specific public safety assessments. It is undisputed that when people have opportunities to reintegrate into their communities and the economy, they are less likely to be involved in the criminal legal system. Prosecutors should not be prohibited from agreeing to clear a record that, in their judgment, no longer serves any public safety function or actively harms public safety by keeping an otherwise willing, ready, and able Vermonter from reintegrating into the economy and community. If the prosecutor’s judgment, based on all the circumstances, is that sealing or expungement are in the public interest, the legislation should not artificially remove that discretion.

The version of S. 7 that passed the Senate restored the ability for the prosecutor to stipulate early to the expungement and sealing of these crimes. We think this was the correct policy choice. It would be unprecedented to take away the prosecutor’s ability to make this type of public safety decision. Vermont Legal Aid respectfully requests the committee restore the discretion to state’s attorneys to make this individualized decision about expungement and sealing as it relates to their community’s public safety and well-being.

I appreciate your work on this issue and would be happy to answer any questions the committee may have and can be reached at mcoreilly@vtlegalaid.org.

Sincerely,

/s/ MCO’R

Mairead C. O’Reilly, Esq.
Staff Attorney, Vermont Legal Aid

² The 8-year wait-time to seal and 16-year wait-time to expunge does not follow the recidivism and desistance research.