



Expungement and Sealing

Sarah Robinson, Deputy Director

Joint Legislative Justice Oversight Committee, July 15th, 2021

Thank for you for the invitation to offer testimony today as the Committee considers further changes to expungement and sealing processes available in Vermont.

The Network understands and supports the availability of sealing and/or expungement for certain crimes. The barriers to employment and other opportunities posed by criminal records are significant for Vermonters and impact the economic and overall vitality of our state. In addition, many victims of domestic and sexual violence themselves have criminal records that pose major barriers to their ability to leave abusive situations and seek safety through economic stability and employment, safe housing and other vital supports.

The Network testified in support of S. 7 as it passed the legislature. We are glad that the Joint Legislative Justice Oversight Committee will be looking at issues related to expungement and sealing over the coming months. We would like to highlight some current considerations for the Committee in your discussions:

- **Future expansion of crimes eligible for expungement and/or sealing.** As the legislature considers future expansion of crimes eligible for expungement and/or sealing, the Vermont Network would suggest slow, careful and detailed consideration of any crimes that may pertain to domestic and sexual violence. Many of these crimes occur as a pattern of behavior, or an overall course of conduct, sometimes slowly escalating from less severe offenses to more significant crimes. Because of the nature of these crimes, and how difficult it is for victims to participate in legal proceedings, it is common for these crimes to be pled down to lesser offenses. Without careful consideration and additional victim input, we would not support expanding the list of crimes eligible for expungement to include any offenses directly related to sex crimes, domestic violence or criminal violations of protection orders.
- **Victim notification.** It is critically important that victims of record are notified of expungement petitions and proceedings. Under current law, respondents of expungement petitions (prosecutors) have a duty to notify the victim of the petition “if the victim is known to the respondent” (13 V.S.A. § 7608). If the victim is known, reasonable efforts must be made to inform the victims so that they may offer a statement to the respondent or to the court. When expungement petitions are received by prosecutors without knowledge of a case or a previous relationship with a particular victim, or if there is limited capacity for prosecutors’ offices to pursue their reasonable efforts to contact the victim, a victim may never be notified and lose their right to have a voice in that proceeding. If or when the crimes eligible for expungement or sealing expand, we can reasonably expect there to be more crimes that have a victim of record and more victims who will need to be contacted.



- **Automation.** If further automation of expungement and/or sealing progresses in Vermont, the statutes related to victim notification in these processes must be modified so that victim notification is a key component of any revised process. Currently, victim notification is not an automated process.
- **Effect of sealing or expungement on access to Victims' Compensation.** In order to access victims' compensation, victims must produce records indicating (at a minimum) that probable cause was established by law enforcement for a crime. If records are sealed or expunged, there does not currently appear to be any pathway in statute to allow for the Victims' Compensation program to access those records connecting a victim to a crime. Many victims seek victims' compensation to help defray the costs of mental health counseling or other needed supports years after offenses occur. Sometimes the impact of crimes on an individual's health and wellbeing is not evident for years after an experience.

In juvenile law (33 V.S.A. § 5119 (i)), there is a provision allowing confidential and minimal records to be held by State's Attorneys that associate a victim with a particular sealed offense and date, while all information related to the defendant is not recorded. This allows for victims in certain juvenile cases to access this information explicitly for purposes of victims' compensation. We would be interested in ensuring that victims retain access to the minimal information needed to access victims' compensation as the legislature contemplates further statutory changes.

- **Impacts on Professional Regulation and Public Protection.** The Vermont Network would urge consideration of the impacts of sealing and/or expungement and access to the special index as it pertains to public protections and investigations in professional regulation proceedings. There are certain regulated professions that provide access to highly vulnerable individuals, and the ability to access criminal history for certain types of crimes (such as sex crimes) will remain essential to protecting the public.

Thank you for your consideration and for all of your excellent work on efforts to balance reducing barriers for individuals with criminal histories with the rights and voice of victims of crime.