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Good afternoon, Committee Members:

For the record, my name is Mairead O'Reilly, and I am a staff attorney at Vermont Legal Aid.

I appreciate your invitation and am both glad to be here and disappointed that we are back discussing a piece of legislation that enjoys widespread support and is broadly understood to be a necessary restorative justice and anti-poverty measure. The contents of S. 7 have withstood scrutiny and garnered support from diverse stakeholders for years. The proposal underlying S. 7 originated in the Sentencing Commission in 2019 and received unanimous approval from that body, which included the Department of Public Safety and the Department of Sheriffs and State's Attorneys. That proposal was largely adopted in S. 294, which passed the senate in 2020, and was supported by all stakeholders. And S. 7, which mirrored the language of S. 294 (2020), passed out of the Senate in 2021 with unanimous approval from the Senate and with continued support from all stakeholders.

Legal Aid has returned each year since 2018 to advocate for the expansion of expungement eligibility, and access to this remedy, because low-income Vermonters who have served their sentences need legitimate and robust relief from collateral consequences of criminal records that prevent the full reintegration into our communities. Thousands of Vermonters have been eagerly awaiting this relief for years—people like our client Michelle. Michelle testified before the Senate Judiciary Committee in 2020 in Winooski, just before the pandemic started.

For those of you who were not in attendance, Michelle is 57 years old. She has a Felony possession of stolen property conviction on her record, from the Bennington Criminal Court. She was convicted in 1989. The crime and circumstances surrounding her charge and conviction were tragic: her brother was murdered, and another sibling took property and stored it at Michelle's home. Michelle was too caught up in her own grief—and raising her kids—to process that she was in possession of anything that was not hers. Nevertheless, she was convicted and has lived with that felony on her record for over 30 years.

Michelle has raised several children. She has been stuck in low wage jobs, making no more than \$40-odd thousand dollars each year, barely scraping enough together to pay for her mobile home, food for her kids, and her family's basic needs. Michelle is brilliant and articulate and is truly an amazing human. She has wanted nothing more than to go into mental health field, so she can help people who, like herself and her siblings, experienced early childhood trauma. Instead, she's been stuck in a low paying paraprofessional job—making an impact, no doubt, but not making enough money to become totally independent of state benefits or to pursue her professional aspirations.

When I spoke with Michelle last month, she was deeply disappointed that S. 7 did not become law. She said to me: “Now is the time, now more than ever, it’s time to pass this or a similar law. Because there are so many jobs to fill, and we need to let capable people fill them. But people like me, we’re capable, but we can’t fill them because of our criminal records.” Michelle wants to give back to her community and is prevented from doing so because of a 30-year-old record.

The scope of the problem is large—one in three Americans have a criminal record and there’s no indication that Vermont is exceptional in that regard. The consequences are immediate: folks with records struggle to get decent employment, and wages are far lower for people with criminal records. And the impacts are intergenerational: children whose parents have been incarcerated and have records have significantly diminished earning capacity as adults. Collateral consequences impact even people with lower-level misdemeanors, and they disproportionately harm BIPOC and people with disabilities. **But fortunately, the fix is easily identifiable, and it’s technical. Vermont needs to pass record clearance legislation that is as comprehensive—or more comprehensive—than S. 7.**

We know that excluding people from the economy harms public safety. People who can’t work legally find other ways to provide for themselves. Vermont, like all states, has significant restorative work to do for our communities that have been over-policed and over-incarcerated and saddled with life-long criminal records. We need to continue to be courageous and zealous in admitting the harm that our old “tough-on-crime” approach has caused to our communities and in addressing it head on. I am optimistic that this legislature can and will pass a robust second chance reform this coming session, which is a crucial part of our restorative work.

Vermont Legal Aid supports a record clearance bill that does the following:

- i. **Expands the List of Eligible Offenses:** Vermont needs legislation that, like S. 7, significantly expands access of expungement/sealing to make it available for most offenses. We believe the default should be that, at some point, every offense is cleared from public view, with a careful selection of crimes excepted from that default.
- ii. **Streamlined Process:** In light of technical advances to the Judiciary’s case management system, there may be an opportunity to create more streamlined or presumptive expungement process for some lower-level crimes—as is already done in the diversion and deferred sentence context, and as we see happening in a growing number of states that have implemented “Clean Slate” laws. This would help with the problem of low uptake rates [studies have shown that fewer than 10% of those eligible for record clearance access it because of procedural barriers]. In Vermont, this could also address concerns raised by the State’s Attorneys around resource constraints, as they already struggle to find time to process all the current expungement requests.
- iii. **Wait-times:** Wait times for expungement should be as narrowly tailored as possible, in accord with the recidivism and desistance literature. (This is 3-5 years for less severe

property and drug crimes and 7 years for the more severe, violent offenses.) Every year that Vermonters with records are excluded from the formal economy, our state and our communities are robbed of their vocational and economic contributions. Vermont pays twice for those who are unable to join our formal economy: we lose out on tax revenues from formal employment, and the State ultimately provides more financial support to ensure folks who are shut out of work opportunities have shelter, food security, medical insurance.

- iv. **Stipulation Authority:** Maintaining individual discretion of SAs to stipulate to an expungement prior to the statutory wait-time is crucial and just in our record clearance law. State’s Attorneys are the stewards of community safety in their jurisdictions, and if they deem it safe to clear records prior to the expiration of the wait-time, then they should be able to do so. Our state trusts them to wisely use their discretion in multitudes of charging and prosecuting decisions. They should maintain the same discretion to clear records early if they do not think public safety will be harmed.
 - i. **AGO Authority to Stipulate:** To the extent local SAs are willing to share the stipulation authority with the AGO, we think that makes sense, especially because this can lessen the burden on the SAs to process all of those expungement petitions.

- v. **One or Two Tracks, Sealing &/or Expungement:** Vermont Legal Aid would not be opposed to a clearance law that creates a one-track record clearance process. The simplification proposal offered by the AGO on July 15, 2021 seems reasonable. Requiring petitioners to file just one petition for record clearance rather than 2 petitions, as set out in S. 7—first to seal then to expunge—would be more accessible, especially for pro se petitioners.

We share the AGO’s optimism that a compromise could be reached among the stakeholders. And we also share the Defender General’s s primary concern about a potential compromise: any sealing-only regime should ensure that law enforcement is prohibited from using sealed records in the course of their front-line work of investigating crimes and stopping/arresting people. Vermont Legal Aid would support a sealing-only regime if access to sealed records were significantly more limited than what current law allows. We agree with Senator Baruth’s suggestion at the July 15, 2021 hearing that a law change creating a one-track sealing system must not only limit access but must also include a mechanism that holds violators of a new sealing law to account to incentivize compliance.