



CHIEF SUPERIOR JUDGE
REPORT TO THE VERMONT LEGISLATURE
PURSUANT TO H. 655 (ACT 174) § 1 (2024)

*REPORT ON PETITIONLESS SEALING OF
CRIMINAL HISTORY RECORDS*

November 21, 2024

Submitted to: House and Senate Committees on Judiciary

Submitted by: Chief Superior Judge Thomas Zonay

Copy to:

Vermont Attorney General

Vermont Department of State's Attorneys and Sheriffs

Vermont Office of the Defender General

Vermont Department of Corrections

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I. Reporting Requirement

H. 655 (Act 174) of 2024, Sec. 1, requires the Chief Superior Judge to report on petitionless sealing of criminal history records, as follows:

On or before December 2, 2024, the Chief Superior Judge, in consultation with the Attorney General, the Department of State’s Attorneys and Sheriffs, the Office of the Defender General, and the Department of Corrections, shall examine the laws and procedures of other states regarding petitionless sealing of criminal history records and shall submit to the House and Senate Committees on Judiciary a recommendation on how to establish a mechanism for petitionless sealing and any resources required for the recommendation to be implemented.

Pursuant to Section 1 of Act 174, this Report examines the laws and procedures of other states regarding petitionless sealing of criminal history records,¹ and provides a recommendation on how to establish a mechanism for petitionless sealing and resources required to implement the recommendation, in the event the Legislature considers implementing petitionless sealing in the future.

II. Overview

According to the National Center for State Courts (NCSC), “[a]s of March 2024, 38 states and the District of Columbia allow people with felony and misdemeanor convictions to obtain expungement, sealing, or set-asides. Each jurisdiction includes and excludes specific types of offenses within those categories, so the breadth of convictions that are eligible for record clearing varies widely.” Andrea L. Miller and Nikole Hotchkiss, *Making the Promise of Expungement a Reality: A Guide to Record Relief in the State Courts*, National Center for State Courts, 8 (July 11, 2024), *available at* www.ncsc.org/__data/assets/pdf_file/0014/102614/ncsc-blueprint-record-relief-report.pdf (July 2024 NCSC Report). Depending on the state, eligible convictions for record clearing are identified by an individual petitioning the court or through an automated record clearing process where “the state initiates the process, and the court verifies the eligibility of each individual case and/or offense.” *Id.* at 21. NCSC reports that, as of March 2024, “at least 24 states have passed automatic record clearing for at least one type of criminal offense after a designated waiting period (although not all of these laws have taken effect).” *Id.*; *see also* Automatic and/or Automated Criminal Record Clearing Resource, National Conference of State Legislatures (updated March 20, 2024), *available at* www.ncsl.org/civil-and-criminal-justice/automatic-criminal-record-clearing-database (linking to an interactive map and additional information on where automated record relief is being implemented). States using automatic

¹ “Petitionless sealing” of criminal history records may also be referred to in this report as “automatic record clearing” or “automatic set asides.” Reference materials in this report may refer to laws requiring criminal record clearing as “Clean Slate” laws.

record clearing do so either through a manual process or by automated means using technology, although automated systems may still require human review and quality control. *See* July 2024 NCSC Report, at 21 (“In 12 of these states, automatic record clearing is also *automated*. In automated states, the eligible record is identified and verified using technology (rather than using manual verification by people), thereby limiting the need for staff resources to clear records.”). The purpose of the petitionless model is to simplify the record clearing process and avoid requiring an individual to petition the judge or court, hire an attorney, and/or pay a filing fee. Anne Teigen and Michael Hartman, *Lawmakers Discuss Ways to Make Clearing a Criminal Record Easier*, National Conference of State Legislatures (May 31, 2023), *available at* www.ncsl.org/state-legislatures-news/details/lawmakers-discuss-ways-to-make-clearing-a-criminal-record-easier.

In my review of the laws and procedures of other states, petitionless record clearing laws routinely include the following elements:

- Specifying the agency or branch of government that is responsible for initiating the automatic record clearing process;
- Indicating if the automatic record clearing process requires the development of new technology;
- A date for implementation to develop any required technology or other systems;
- Whether implementation is subject to appropriations and if so, to include a provision for any necessary appropriations;
- What the automatic record clearing means with respect to accessing record information in the future;
- Details of eligible offenses including waiting periods, opportunities to object, and other details or limitations;
- A mechanism for reviewing the eligible cases to ensure that there are no ineligible cases or objections to the cases being sealed; and
- Data governance and reporting requirements, if any.

As is set forth in more detail in the Recommendation section below, at Part V, the undersigned recommends that the Legislature consider these elements if it decides to enact a petitionless sealing procedure in Vermont.

As is required by Section 1 of Act 174, the undersigned consulted with the Office of the Attorney General, the Department of State’s Attorneys and Sheriffs, the Office of the Defender General, and the Department of Corrections in preparing this report. All entities, including the Judiciary, noted challenges with workplace stability at the time of this report, as well as the continuing efforts across the criminal justice system to reduce the pandemic-induced backlog of criminal cases. The consulted entities indicated that they would like to maintain focus on the basic principles of workforce stabilization and backlog reduction before adding sealing requirements that would exponentially increase the volume of petitionless record clearing.

III. Vermont's System for Petitionless Record Clearing

Vermont already has petitionless record clearing procedures in place for several different case types, such as:

1. When probable cause is not found or a charge is dismissed before trial without prejudice or when a defendant is acquitted of charges or a charge is dismissed with prejudice (13 V.S.A. § 7603);
2. When a defendant successfully completes a diversion program (3 V.S.A. § 164); and
3. On fulfillment of the terms of probation and of a deferred sentence agreement (13 V.S.A. § 7041).

The current mechanism for identifying cases triggering these petitionless processes starts by running custom reports developed by the Judiciary's Technology Services Center and Trial Court Operations. These reports identify the cases that are potentially eligible for petitionless record clearing. The Vermont Judiciary has an internal process, developed as a checklist review procedure, for each case before it is sent to the judge to review and finalize through an expungement or sealing order. After the judge reviews each case and signs an order for sealing or expungement, Judiciary staff members are responsible for informing the defendant (by regular mail) and other required recipients (by electronic mail), which may include the State's Attorney's Office, Vermont Crime Information Center, arresting agency, defendant's attorney, the Department of Motor Vehicles, the Probation and Parole Office, or the Court Diversion Unit.

Judiciary staff also are responsible for destruction of paper files and/or uploading information to the Special Index of expunged and sealed cases. Judiciary staff also manage bail or bonds associated with the case. Given the highly manual nature of this process, as is set forth in more detail in the Recommendation Section, Part V.3.b, below, I recommend that the Legislature consider whether there is technology that could be developed to aid the Judiciary and other impacted criminal justice agencies in identifying, analyzing, ordering and managing a petitionless sealing process.

IV. Sample of States with Automatic Record Clearing

This section provides a few sample statutory approaches from states with automated record clearing, focusing on states that have begun implementation of these laws.

Pennsylvania – First to Adopt, Records Identified by Court Administrator

Pennsylvania was the first state in the country to pass an automated criminal record clearing process in 2018. The law has been added to since then, "expanding the list of criminal offenses

that are afforded limited access and reduc[ing] the amount of time an individual must stay conviction-free before a record of a misdemeanor or summary offense becomes eligible for clean slate.” *Governor Shapiro Hosts Legislative Leaders and Reform Advocates for Ceremonial Bill Signing of Clean Slate Legislation, Giving More Pennsylvanians a Second Chance at Success*, Governor’s Press Office (June 11, 2024), available at www.pa.gov/en/governor/newsroom/2024-press-releases/governor-shapiro-hosts-legislative-leaders-and-reform-advocates-0.html (PA June 2024 Press Release). Under the Pennsylvania code, the court will order that eligible records automatically become “limited access” if certain conditions are met. 18 Pa. C.S. § 9122.2. Eligible records include all summary convictions after 5 years, certain misdemeanors after 7 years, and certain felonies after 10 years, so long as the person pays any required restitution and, in the case of a misdemeanor or felony, the person does not have another conviction during the waiting period. *Id.*

The mechanism for petitionless sealing in Pennsylvania is generally as follows:

1. The Pennsylvania Court Administrator’s Office sends the Pennsylvania State Police a record of any eligible conviction monthly, including the record of charges or the record of conviction;
2. The Pennsylvania State Police then has 30 days to review the data and let the Court Administrator’s Office know if there are ineligible records on the list; and
3. Each court then issues a monthly “order for limited access for any record in its judicial district for which no notification of ineligibility was received.”

18 Pa. C.S. § 9122.2.

In June 2024, a press release announced the signing of an expanded bill that would impact 6 million criminal records. PA June 2024 Press Release. The press release notes that the Pennsylvania State Police were working to “build out the process” to support for the expanded bill, with plans to roll out the program in 2025. *Id.* Vermont may want to learn from what has worked in states like Pennsylvania that have built and expanded on systems that automatically process a large volume² of convictions for criminal record clearing.

Utah – Records Identified by the Department of Public Safety

In 2019, Utah passed legislation that automatically clears eligible criminal records. Utah Code §§ 77-40a-201 - 203. The law took effect in 2022 and was expected to clear 400,000 criminal records automatically at that time, plus “hundreds of thousands of criminal records into the future.” *Launching Utah’s Clean Slate Law*, Utah Governor Spencer J. Cox Press Release (Feb. 10, 2022), available at governor.utah.gov/2022/02/10/utahs-clean-slate-law/. Utah law automatically clears records that were dismissed with prejudice and certain qualifying misdemeanor conviction records. *Id.* Record clearing requires a waiting period of 5-7 years (depending on the level of the offense). Utah Code § 77-40a-204.

² “A report produced in May 2020 about Pennsylvania’s automated sealing showed that, as of April of that year, the state had sealed over 33 million criminal records.” July 2024 NCSC Report, at 22.

In Utah, the law applies retroactively to all arrests and convictions, regardless of the timing of the arrest or conviction. UT Code § 77-40a-103. The Utah Department of Public Safety was given authority to make rules, create forms, and implement procedures, among other things, to process the automatic expungements. UT Code § 77-40a-104. The Utah code also has a reporting requirement whereby the Court Administrator’s Office and the Bureau of Criminal Identification of the Department of Public Safety submit annual reports with record clearing data. UT Code § 77-40a-107. Vermont may want to learn from states like Utah if the Legislature is considering a retroactive application or having a law enforcement agency take responsibility for identifying eligible cases.

Michigan – Technology Based Solution Managed by Michigan State Police

In 2020, Michigan enacted its “Clean Slate package,” a set of laws that impacted the rules and procedures to set aside a conviction, including a petitionless process for eligible offenses. *See* MI Clean Slate Legislation Overview, at 1, *available at* www.courts.michigan.gov/4a8409/siteassets/court-administration/scao-communications/2021-01.pdf; *see also* J. J. Prescott and Sonja Starr, The Power of a Clean Slate, CATO Institute (Summer 2020), *available at* www.cato.org/regulation/summer-2020/power-clean-slate (assessing Michigan’s expungement system). Michigan’s system makes the Michigan State Police responsible for the automatic set aside for felony convictions (10 years after the sentence was imposed or completion of the term of imprisonment) and for misdemeanor convictions (after 7 years), except the Michigan court system is responsible for the set aside of certain misdemeanor convictions that are maintained by the court and not the State Police. MCL 780.621g. The law provided for a two-year implementation timeline to allow for technical changes and receiving necessary appropriations. *Id.*

In Michigan, the law directs the Department of Technology, Management & Budget to “develop and maintain a computer-based program for setting aside convictions.” MCL 780.621g(11) and (13). In addition, the law directs the Michigan State Police to create a system whereby the court can access convictions that were set aside. *Id.* For those misdemeanors where the court is responsible for sealing, it will notify the arresting law enforcement agency every month of convictions that were set aside. MCL 780.621g(1). Michigan created a fund within the state treasury to be used for implementation costs, system upgrades, and staffing needs. MCL 780.621i. Convictions that are set aside are nonpublic but may be used for sentencing and related purposes. MCL 780.623. Vermont may want to learn from states like Michigan that incorporated development of technology and appropriations into their legislation.

V. Recommendation

Based on my examination of the laws and procedures of other states regarding petitionless clearing of criminal records, Vermont’s current procedures for petitionless record clearing, and

the implementation considerations set forth in the July 2024 NCSC Report, the undersigned makes the following recommendations for how to establish a mechanism to expand petitionless sealing of criminal records in Vermont.

1. **Mechanics of Sealing.**

- a. Responsible Entity. Other states typically make either a law enforcement agency or the court system responsible for identifying eligible convictions for automatic record clearing (Responsible Entity). *See* Pennsylvania, 18 Pa. C.S. § 9122.2 (Court Administrator’s Office responsible for identifying eligible convictions); Utah, UT Code § 77-40a-104 (Department of Public Safety responsible for implementing automatic record clearing procedures); Michigan, MCL 780.621g (State Police responsible unless only the court system holds eligible records); Oklahoma, 22 O.S. § 19 (OSCN 2024) (Oklahoma State Bureau of Investigation will automatically review records monthly). As described in Section III, *supra*, the Vermont Judiciary currently identifies cases for its petitionless record clearing process through reports generated by its case management system, Enterprise Justice. Whether the Judiciary should continue that practice or if it should be performed by a law enforcement agency is something for the Legislature to decide based on the requirements of the new law. I recommend that any legislation provide for the necessary shared collaboration and partnership across entities.
- b. Triggering Event. The July 2024 NCSC Report provides: “It is . . . important that records include the necessary information about conviction, sentencing, or release dates to correctly calculate eligibility dates.” At 23. If the Legislature adopts a future bill for petitionless sealing, I recommend that it give direction for the Responsible Entity to receive any necessary information it will need to calculate eligibility, such as identification of completion of the terms and conditions of a sentence, if the Responsible Entity does not receive that information in the regular course of business. In addition, it may also be necessary to update fields in certain records and/or databases to allow collection of any information necessary to review charges or cases for eligibility for petitionless sealing in collaboration with the Department of Corrections and any other relevant areas.
- c. Objection Mechanism. Other states have a system by which the prosecutor’s office or law enforcement agency may object to a case’s automatic record clearing. Oklahoma, 22 O.S. § 19 (OSCN 2024) (Oklahoma State Bureau of Investigation will send eligible records to the prosecuting and arresting agencies who have 45 days to object before the case is sent to the court for an expungement order); Pennsylvania, 18 Pa. C.S. § 9122.2 (permitting 30 days for the State Police to let the Court Administrator’s Office know if there are any ineligible cases on their monthly list); Utah, UT Code § 77-40a-204 (giving the prosecuting agency

35 days to provide written notice of any objection to an automatic expungement). If a new law gives the prosecutor or law enforcement agency the ability to object to sealing a case, I recommend that it state the method and time period for that review.

- d. Subsequent Offense. Other states have provisions addressing the impact of subsequent offenses on the ability to clear a criminal record. *See, for example*, New York Clean Slate Act, Automatic Sealing of Convictions (S.7551A/A.1029C) § 160.57 (the clock for the waiting period before sealing will restart if parole or probation is revoked, resulting in defendant’s reincarceration, or if there is a new conviction); Pennsylvania, 18 Pa. C.S. § 9122.2 (eligibility requires no new conviction during the waiting period). If Vermont adopts a procedure that resets the waiting period due to a subsequent offense, I recommend that the law set forth who is responsible for making sure no other criminal offense is pending, what will trigger that limitation, and how it impacts future sealing.
- e. Sealing Orders. The Vermont Judiciary’s current practice for petitionless record clearing has judicial officers ordering sealing or expungement on a case-by-case basis. Pennsylvania adopted a system whereby each court will issue one monthly order of all cleared charges. *See* Pennsylvania, 18 Pa. C.S. § 9122.2(b)(5) (providing that each court will issue a monthly “order for limited access for any record in its judicial district for which no notification of ineligibility was received”). I recommend that the Legislature consider permitting the Judiciary to utilize a group order if doing so would be more efficient to manage the anticipated volume of expanded criminal record sealing under this type of bill. Regardless of whether the court orders sealing by group or individual case, any future law must still require that the Judiciary transmit any sealing order to the other involved justice agencies so that they may implement the order’s terms.
- f. Retroactivity. Although not the focus of this report, some states, like Utah and New Jersey, have made petitionless record clearing retroactive. UT Code § 77-40a-103; NJ Rev Stat § 2C:52-25 (2023). If the Legislature is considering making petitionless sealing in Vermont retroactive, it should be aware that in February 2021, the Vermont Judiciary finalized replacement of its legacy case management system (commonly referred to as “VTADS”) with Enterprise Justice Enterprise Case Manager (Enterprise Justice), formerly known as the Odyssey Case Management System. Due to the phased transition of the Vermont Judiciary from VTADS to Enterprise Justice, which occurred between June 2019 and February 2021, there is a lack of comparability between some data elements in the two systems. Therefore, there would be more manual work required to automatically seal legacy cases from the VTADS time period given the lack of comparability in data elements, that some offense codes were manually entered in

VTADS, and that there were variations in data entry between courts before moving to Enterprise Justice.³ Thus, retroactivity would require additional budgetary funds to hire additional staffing for the Judiciary and other impacted justice agencies. I would therefore not recommend retroactive application of a future bill given the significant costs and difficulties in implementation.

2. **Sealing Practices.** The July 2024 NCSC Report notes that what a sealing or expungement means to the individual’s criminal record varies by state: “In many cases... expungement and sealing laws specifically call for records to be maintained and used in some limited types of decision-making (such as in background checks for firearm purchases). These are situations in which the incompleteness of the record clearing process is by design.” At 14. The Judiciary’s current practice is to inform all relevant individuals and criminal justice agencies of a sealing or expungement order to update their records. I recommend that the Judiciary continue this notification practice in an expanded bill, and any future legislation provide direction on which entities and individuals may access sealed information and in what circumstances.

3. Implementation Considerations

- a. **Implementation Dates.** Many other states include extended implementation dates to allow time to develop any required technology or other procedures. *See for example* New York, S.7551A/A.1029C (1 year implementation period, and then the New York State Office of Court Administration has up to 3 years from that date to implement the processes necessary to identify and seal all eligible records); Oklahoma, H. 3316, 22 O.S. 2021, Section 18, *available at* http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/3316%20ENR.PDF (3 year time period, to take effect in 2025); Utah, UT Code § 77-40a-204 (requiring individuals to petition for expungement for 2 year period until automatic expungement process begins in 2026); *but see* NJ Rev Stat § 2C:52-25 (2023) (no specified implementation timeline for automated system authorized by law); Alex Putterman, *Connecticut is behind in erasing convictions under Clean Slate. Again.*, CT Insider (July 19, 2024), *available at* www.ctinsider.com/news/article/connecticut-clean-slate-lamont-criminal-records-19577881.php (reporting on a delay in implementation of all convictions due to what an official described as “persistent and continued problems with data systems and data quality”). I recommend that the Legislature consider the experience of other states⁴ when establishing an

³ By way of example, in 2020, Act 167, *An act related to miscellaneous judiciary procedures*, was enacted, which directed the Judiciary to expunge all retroactive convictions of 18 V.S.A. § 4230(a)(1). Completion of the requirements of Act 167 required 4-5 staff members plus utilization of 2 retired judges over 2 years to expunge approximately 16,000 eligible convictions.

⁴ Some states, such as Oregon, Utah, and New Jersey have noted processing delays due to the increased volume of automatic expungements and/or petition-based applications, and New Jersey’s Office of the Public Defender filed a

implementation date if a future bill significantly expands petitionless record clearing, perhaps building in extra time for implementation and/or permitting a petition-based process during the pendency of implementation of a petitionless system.

- b. **Consider Technology Solutions.** In enacting its petitionless record clearing laws, Michigan specifically incorporated development of new technology. *See* Michigan Clean Slate Law, MCL 780.621g (directing development of a computer program to effectuate the new law). Other states, like Utah, incorporated time to implement a system, but did not specify whether it requires development of new technology. UT Code § 77-40a-204; *see also* PA June 2024 Press Release (noting that the Pennsylvania State Police is working to “build out the process” for the expanded expungements, including necessary changes to the criminal history database, with plans to roll out the program in 2025). Given the highly manual nature of the Judiciary’s current processes, the Legislature may want to consider authorizing funding for the responsible entities to upgrade their respective case management systems and to determine whether there is new technology to develop that will help process petitionless sealing, including the feasibility for an interconnected statewide system.

In addition, according to the July 2024 NCSC Report, “Automatic and automated record clearing approaches are difficult to evaluate, as many have only recently gone into effect. At 22. I therefore further recommend that there be the opportunity for continued assessment of the best systems to effectuate petitionless sealing given the recent statutory developments in other states and ongoing work to develop mechanisms to support those new laws.

- c. **Appropriations.** Michigan’s Clean Slate package created a fund within the state treasury to be used for implementation costs, system upgrades, and staffing needs. MCL 780.621i. Other states made implementation of automatic record clearing statutes contingent on funding. *See* Oklahoma, H. 3316, 22 O.S. 2021, Section 18 at 15C, *available at* http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB3316%20ENR.PDF (implementation is contingent on available state funding); District of Columbia, Second Chance Amendment Act of 2022, D.C. Law 24-284 § 301 (record clearing law enacted but cannot go into effect until funding is secured). If the Vermont Legislature does not create a fund specifically for implementation and ongoing management of expanded automatic record clearing, I recommend a similar caveat in any legislation that it is

class action lawsuit against the New Jersey State Police due to alleged delays in removing expunged criminal offenses from background checks. *See* Amanda Hernández, *High fees, long waits cast shadow over new criminal expungement laws*, Pennsylvania Capital-Star (Dec. 4, 2023), *available at* penncapital-star.com/criminal-justice/high-fees-long-waits-cast-shadow-over-new-criminal-expungement-laws/.

contingent on funding. Notably such funding would need to take into account the additional budgetary needs of the Judiciary, prosecutors, law enforcement, and other involved justice agencies which would arise for staffing, training, and technology to implement petitionless sealing.

- d. **Data Governance and Reporting.** Finally, the Legislature may want to consider incorporating any data governance or reporting requirements into a new law. *See* Utah, UT Code § 77-40a-107 (required annual reporting). The July 2024 NCSC Report points out that information required for automatic record clearing may be housed in multiple systems or with different justice partners. At 23. The Legislature may therefore want to consider whether there are opportunities to improve data governance, data quality, and data storage through technological updates or other improvements to help the involved justice agencies in the sealing procedures work together. *See id.* (noting that “caseflow management and record linkage . . . will make it more feasible for legislatures, courts, and other justice partners to work together to accomplish automatic record clearing”).

VI. Required Resources

At a minimum, development of an expanded petitionless sealing procedure would require new funding to build out systems to identify, process, review and order records that are eligible for sealing; transfer data across organizations; and for ongoing maintenance. Those resources include funding for any new technology or upgrades as well as ongoing staffing and training costs. The July 2024 NCSC Report provides that a challenge to automated record clearing systems is that they can “require a large investment of funds at one time” to put an automated system in place. At 23. That report points to Pennsylvania as a state that “suggests that, if implemented well, the payoff of these programs can be great.” *Id.* If there is a new technology solution to consider, it would likely have a significant up front cost, plus ongoing maintenance.

If the Judiciary continues to use a manual system for petitionless sealing, I expect increased and ongoing staffing costs due to the anticipated volume of charges or cases to seal. The precise requirements for funding depend on what type of cases are eligible for petitionless sealing, whether doing so was retroactive, and the state of the technical options available or that can be developed at the time. Other impacted justice agencies will likely also have significant required upfront and ongoing staffing, training, and systems costs.

VII. Conclusion

This report presents findings and recommendations from an examination of the laws and procedures of other states regarding petitionless criminal history record clearing, Vermont’s existing procedures for petitionless sealing and expungement, reporting by NCSC and other

organizations, and related considerations. It is possible that the research engaged in to compile this report did not capture methods used in other jurisdictions that are not publicly available or easily accessible for research purposes. Given that this is also an area of continuous development where many states have recently enacted legislation impacting record clearing practices that are not yet fully implemented, I would expect continuing developments in this area for Vermont to monitor for best practices. Finally, I would reiterate that all consulted entities noted concerns with expanding petitionless record clearing in Vermont at this time given the current focus on building workplace stability and addressing the backlog of criminal cases.

Appendix

Automatic and/or Automated Criminal Record Clearing Resource, National Conference of State Legislatures (updated March 20, 2024), *available at* www.ncsl.org/civil-and-criminal-justice/automatic-criminal-record-clearing-database

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