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To: Hon. Martin LaLonde, Chair
House Committee on Judiciary

From: S. Lauren Hibbert, Deputy Secretary of State
Jennifer Colin, General Counsel, Office of Professional Regulation

Re: S.12 – An act relating to sealing criminal history records

Dear Committee Members:

Thank you for the opportunity to testify about S.12, an act relating to sealing criminal records. OPR supports S.12 and has been on the

In our testimony today, we will provide a bit of background about the Office of Professional Regulation (“OPR”) and how information regarding criminal histories and background checks is used in our licensing determinations and enforcement processes. Then we will discuss three suggested language adjustments in S.12, the purpose of which would be to ensure regulatory agencies like OPR will not be held responsible for inadvertently running afoul of this law when the agency has not been notified of a sealed/expunged criminal records in its possession.

Overall OPR supports S.12, as removing unnecessary barriers for individuals to become licensed in regulated occupations has been an important policy priority the agency has implemented in various ways in recent years.

Background

The Office of Professional Regulation (OPR) is an umbrella agency staffed by 40 people and organized under the Secretary of State. OPR oversees about 84,000 licensees in 53 diverse and wide-ranging professions and occupations, from health care professions like nursing, osteopaths, dentists, pharmacists and mental health professions, to accountants, architects, appraisers, real estate brokers, tattooists, barbers, cosmetologists, and others. OPR is a public protection agency that accomplishes its public protection mandate by establishing minimum licensure qualifications and enforcing professional conduct standards through its complaint and disciplinary processes. OPR balances this principal protection function against ensuring that individuals have the ability to practice in their chosen professions or occupations without undue governmental interference. This balancing is reflected in the



provisions of Chapter 57 of Title 26, which authorizes regulation only in professions where necessary for public protection, and then, only in the least restrictive manner to ensure public protection. See 26 V.S.A. §3101.

OPR Licensing and Disciplinary Processes

In the process of licensing or pre-licensing determinations, OPR obtains criminal history information from applicants and also conducts fingerprint-supported criminal background checks in certain professions. If an individual has been convicted of a serious felony or another crime that is related to the practice of the profession and within the last ten years, the individual may be denied licensure or they may be granted a license with sanctions or conditions on their ability to practice. In such situations, there is a public disciplinary process in which a professional board or administrative law officer hears evidence about the crime and makes a determination about whether the license should issue and, if so, whether sanctions or conditions are appropriate to protect the public. If the license is issued with sanctions or conditions, the pleadings, exhibits, and orders are a matter of public record, and the discipline is posted on OPR's website. If, after this process occurs, OPR is notified that a criminal history is sealed or expunged, OPR must take measures to ensure that information is removed from its website and will not be disclosed in connection with public records requests.

Suggested Language Revisions

- **Page 15, line 13**

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POSTCONVICTION; PROCEDURE

(a) Petition.

(4) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner an order of sealing and provide notice of the order ~~in accordance with this section~~ **to all entities provided by the petitioner and § 7607(a).**

This revision is suggested to work with the next change that we are suggesting in § 7607 regarding the process and effect of sealing.

- **Section begins on Page 23**

Revision to Page 24, line 1:

§ 7607. EFFECT OF SEALING

(a) Upon entry of an order to seal, the court shall send a copy of any order sealing a criminal history record to all of the parties and attorneys representing the parties, including to the prosecuting agency that prosecuted the offense, the Vermont Crime Information Center (VCIC), the arresting agency, and any other entity **identified by the petitioner** that may have a record subject to the sealing order.

This revision is suggested to narrow the language "Any other entity that may have record subject to the sealing order." Courts will not necessarily have knowledge that a petitioner is licensed by an agency that has criminal records in its licensing files. The suggested language gives the petitioner the ability to alert the court to send an order to seal or expunge to an agency the court would otherwise not be aware of.

- **Page 28, line 20:**

(d) Process.

(4) When a sealing order is issued by the court, any person or entity, except the court, that possesses criminal history records **and that has been provided the sealing order, either by the court or by the individual whose record was sealed,** shall: (A) bar viewing of the sealed offense in any **publicly** accessible database that it maintains or remove information pertaining to the sealed records from any publicly accessible database that the person or entity maintains;

This revision is suggested to ensure the agency has clear authority to seal records when otherwise the records would be subject to disclosure in certain circumstances under the Public Records Act or in the context of disciplinary proceedings where exhibits and other information are not confidential.