

## **DPS Notes on S. 12 as passed by Senate**

### **I. Current practice**

- DPS response to expungement order: VCIC deletes case cycle from record of arrest and prosecution (RAP sheet, 10/29C, III). DPS staff removes connection between expunged case and individual defendant in computer-aided dispatch and record management system (CAD/RMS, Valcour).
- DPS response to sealing order: VCIC converts case disposition to “sealed” with annotation in record of arrest and prosecution (RAP sheet, 10/29C, III). Case remains visible to criminal justice agencies only. (Non-criminal justice agencies do not receive sealed case cycles when obtaining a criminal conviction report.) DPS staff partitions sealed cases in CAD/RMS so sealed case is only viewable by law enforcement staff.

### **II. DPS does not support deleting criminal history records**

- The government should not destroy records of government action that may affect the constitutional rights of individuals, nor should the government erase records of harm inflicted on crime victims.
- Criminal history records can and do become relevant during subsequent civil litigation and regulatory proceedings relating to the same incident, as well as subsequent criminal investigations, prosecutions, and dispositions involving the same defendant. The continued relevance of these records is not theoretical; it is a current issue we experience under the existing expungement laws. Deleting criminal history records in response to expungement orders fails to account for the continued relevance of these records for various proceedings beyond the original criminal case.
- DPS supports a balance between a fresh start (by shielding criminal history records under certain circumstances for purposes of housing and employment) and the legitimate governmental interests in preserving records for certain purposes.
- Note: other states may use the term “expungement” in a way that means what we call “sealing” in Vermont. This has led to confusion in recent years when discussing research and comparing states.

### III. Expungement and deferred sentences under 13 V.S.A. § 7041

- Last year, H. 655 as passed by the House ([page 35](#)) transitioned from expunging to sealing criminal history records related to deferred sentences.
- This year, S. 12 as introduced ([page 36](#)) preserved this transition from expunging to sealing criminal history records related to deferred sentences.
- S. 12 as passed by the Senate removed this provision so 13 V.S.A. § 7041 would still permit the expungement of records related to deferred sentences. These expungement orders are handled like other expungement orders under DPS current practice.
- DPS obtained from CRG the total number of offenses sentenced to deferred sentences from 2018-2024 by offense type. They include:
  - **891 domestic assaults**
  - **153 sexual assaults**
  - **764 assaults**
  - **2540 other offenses**
- Officers and prosecutors should be aware of a suspect's history of domestic or sexual violence when investigating and seeking dispositions in subsequent cases involving the same person.
- Note: domestic assaults are [Brady-disqualifying offenses](#). Removing these offenses from a RAP sheet in response to an expungement order means that this disqualifying offense will not appear in a NICS (National Instant Criminal Background Check System) check for purposes of purchasing a firearm.
- Note: the professional regulation subcommittee of the Vermont Criminal Justice Council has run into the specific issue of not being able to obtain expunged records relating to domestic assaults committed by law enforcement officers who received deferred sentences.

### IV. Expungement and adult diversion records under 3 V.S.A. § 164

- Adult diversion cases may also be expunged under 3 V.S.A. § 164(h) ("all index references thereto shall be deleted"). The practice is maintained under [Act 180](#) specifically for **post-charge** diversion records (now under section 164(f)(8), "all index references thereto shall be deleted").
- These expungement orders are handled by DPS under current practice like other expungement orders.

- According to the [AGO diversion data](#), 6406 cases were referred to diversion between 2020 and 2024, with about 586 referrals for DUI#1 during that timeframe.<sup>1</sup>
- The expungement of diversion records relating to DUI#1 referrals after 2 years is inconsistent with the special 10-year timeframe to seal records related to convictions for DUI ([page 17](#), line 17).
- Criminal history information relating to DUIs should not be expunged, especially after such a short period of time. Law enforcement and prosecutors should be aware of whether offenders have a history involving DUIs so they can achieve appropriate dispositions in subsequent cases involving the same person.

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<sup>1</sup> See <https://crgvt.shinyapps.io/restorativejustice/#office-of-the-attorney-general-funded-programs>. Charge types and number of offenses: DUI#1-Influence (329); DUI #1-INFLUENCE 23VSA1201(a)(2) 23V1201A2#1 (127); DUI #1 >LEGAL LIMIT 23VSA1201(a)(1) 23V1201A1#1 (95); DUI #1-DRUG OR BOTH 23VSA1201(a)(3) 23V1201A3#1 (35); Total DUI#1 referrals: 586.

### Number of Charges Sentenced to Deferred Sentence by Year

Category	2018	2019	2020	2021	2022	2023	2024	Total 2018-2024
Arson	1	4	1	0	2	2	7	17
Assaults	98	114	69	45	86	161	191	764
Domestic Assault	131	135	52	74	110	183	206	891
Drug Offenses	67	54	22	30	23	41	48	285
DUI	11	15	4	5	12	20	21	88
Fish and Game	0	2	0	0	2	1	3	8
Fraud	32	28	7	16	11	33	19	146
GNO	13	7	5	5	8	8	16	62
Homicide	0	0	0	0	1	0	0	1
Motor Vehicle- Other	57	51	25	10	32	27	53	255
Municipal Ordinance	0	0	0	0	0	1	0	1
Public Order	185	192	78	62	132	176	175	1000
Robbery	6	6	2	0	1	1	4	20
Sex Assaults	23	20	25	10	18	23	34	153
Theft Offenses	105	99	42	35	36	75	58	450
VAPO	33	33	13	15	26	33	43	196
Weapons	0	1	1	0	0	4	3	9
NA	2	0	0	0	0	0	0	2
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Number of Dockets Sentenced to Deferred, most serious charge

	2018	2019	2020	2021	2022	2023	2024
1 Arson	1	4	1	0	2	2	5
2 Assaults	92	107	61	41	81	116	154
3 Domestic Assault	129	133	51	73	108	154	185
4 Drug Offenses	56	46	18	29	19	26	39
5 DUI	11	14	4	5	12	14	21
6 Fish and Game	0	2	0	0	2	1	1
7 Fraud	27	23	5	15	11	19	13
8 GNO	12	6	4	4	8	5	15
9 Homicide	0	0	0	0	1	0	0
10 Motor Vehicle- Oth	51	45	18	10	26	22	42
11 Municipal Ordinances	0	0	0	0	0	1	0
12 Public Order	142	144	54	46	97	115	133
13 Robbery	3	6	2	0	1	1	4
14 Sex Assaults	21	19	21	9	15	17	29
15 Theft Offenses	89	83	26	32	36	48	52
16 VAPO	29	33	12	14	24	32	39
17 Weapons	0	1	1	0	0	1	2
18 NA	1	0	0	0	0	0	0

5 Municipal Ordinances  
10 Fish and Game  
15 Public Order  
20 Motor Vehicle- Other  
30 Drug Offenses  
40 Fraud  
50 Theft Offenses  
53 GNO  
55 DUI  
60 Arson  
63 Weapons  
65 Assaults  
67 VAPO  
70 Robbery  
75 Domestic Assault  
80 Sex Assaults  
90 Homicide  
90 Homicide