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STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

MEMORANDUM

TO: Governor's Opioid Coordination Council

FROM: John Campbell, Executive Director

RE: Request for Comment - Expungement Report pursuant to Act No. 178

DATE: October 1, 2018

Introduction & Agenda

Background on Act 178

Overview on Criminal Convictions

Why keep records of criminal convictions?

Why expunge records of criminal convictions?

Overview of Vermont's Expungement and Sealing Laws

Review of Proposals

- Office of the Attorney General
- Department of State's Attorneys and Sheriffs
- Vermont Legal Aid

Discussion: What are the impacts, if any, of each expungement expansion proposal on prevention, treatment and recovery, economic development, and law enforcement efforts in the State?

Background on Act No. 178

In the second half of the 2017–18 biennium, the Senate and House Judiciary Committees took testimony on S.173, an act related to sealing criminal history records when there is no conviction. The overall purpose of this bill was to ensure that criminal charges are promptly expunged in a number of situations where the State has not obtained a conviction, such as when a charge has been acquitted, dismissed with prejudice, or the statute of limitations for a charged crime has expired.

An early draft of S.173 also contained a provision that expanded the definition of crimes qualifying for expungement pursuant to 13 V.S.A. § 7601 to include many felony possession of regulated drug crimes under Title 18. The Department of State’s Attorneys and Sheriffs (“Department”) requested, and the General Assembly agreed that the Governor’s Opioid Coordination Council (“OCC”) should review this proposal and provide comments on how it might impact the “Recommended Strategies” contained in the OCC’s January 2018 report to the Governor or any of the on-going public health, economic development, and law enforcement efforts across the State of Vermont.

The final version of the bill, which became Act No. 178 (Attachment A), contained a requirement that the Department draft a report for the Joint Legislative Justice Oversight Committee on or before November 1, 2018, that, among other requests, makes recommendations on expanding expungement eligibility to certain specified crimes and seeks the OCC’s input regarding the recommendations. The report provision is summarized in the next section.

Report Requirements of Act No. 178

Section 4 of Act No. 178 (2018) directs the Department of State’s Attorneys and Sheriffs, in consultation with the Office of the Court Administrator, the Vermont Crime Information Center, the Office of the Attorney General, the Office of the Defender General, the Center for Crime Victim Services, and Vermont Legal Aid to consider:

- a) Expanding the list of qualifying crimes eligible for expungement pursuant to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;
- b) the implications of such an expansion on public health, economic development, and law enforcement efforts in the State; and
- c) the viability of automating the process of expunging and sealing criminal history records.

Subsection (2) of Section 4 specifically requires the Department to “seek input from the Vermont Governor’s Opioid Coordination Council” regarding any proposals to expand expungement eligibility.

Subsection (3) of Section 4 directs the Department to submit the findings of the group, including any recommendations on specific crimes to add to the definition of qualifying crimes to the Joint Legislative Justice Oversight Committee on or before November 1, 2018.

Request for Review and Comment

As an initial point, the Department would like to thank the OCC for all of the difficult work your members, and specifically Director of Drug Abuse Prevention Jolinda LaClair, have accomplished to date. The January 2018 Initial Report of Recommended Strategies is a visionary roadmap for preventing and overcoming Vermont's opioid-related challenges. The Department feels very fortunate that the OCC is willing to review these expungement proposals and is incredibly appreciative of any comments the OCC may provide regarding their potential impact on your mission and on prevention, treatment and recovery, economic development, and law enforcement efforts in Vermont.

Before presenting the specific policy proposals, it is important to note two considerations relevant to the potential effects of expanding expungement eligibility. **First, by expanding qualifying convictions, particularly felony convictions, individuals granted expungements may be able to lawfully access or own firearms.** If a disqualifying conviction is removed from an individual's criminal history record and the conviction was the only reason an individual was prohibited, his or her rights to firearm access and ownership would be restored.

Second, expungement of criminal history records – including arrest, arraignment, and/or conviction – may not remove incidents from publicly available information channels. Upon processing an expungement, incident and individual data is removed from secure and limited access criminal justice sources (such as law enforcement records management systems and the criminal history repository at VCIC). However, nothing in the expungement process can remove previously public data (including arrest notifications and public court documents) from privately held or generated criminal history 'warehouses' (generally internet based). Thus, it is entirely possible that more information on an individual could be available via a 'google search' than through a review of secure and authenticated criminal justice information sources. This discrepancy can create confusion for both the individual affected and the public (including housing and employment screening).

With those caveats in mind, the Department would ask the OCC to review the following proposals:

1. Expand the definition of “qualifying crime” to include most non-violent drug offenses (Office of the Attorney General Proposal)

This proposal from the **Office of the Attorney General** contemplates making certain drug possession crimes eligible for expungement. This proposal could be achieved by enumerating the following felony-level drug possession crimes in the definition of “qualifying crimes” pursuant to 13 V.S.A 7601(4):

Title 18

Chapter 84 (Possession and Control of Regulated Drugs)

- §4230(a) Marijuana Possession & Cultivation
- §4231(a) Cocaine Possession
- §4232(a) LSD Possession
- §4233(a) Heroin Possession
- §4234(a) Depressant, Stimulant, & Narcotic Drugs Possession
- §4234a(a) Methamphetamine Possession
- §4234b(a) Ephedrine and Pseudoephedrine, Possession
- §4235(b) Hallucinogenic drugs, Possession
- §4235a(a) Ecstasy, Possession

It is important to note that felony drug possession crimes are arguably predicate offenses under 18 VSA § 4238 and, therefore, may not be eligible for expungement without specifically addressing that conflict in the definition of “qualifying crime.”

2. Expand the definition of “qualifying crime” to include most non-violent drug offenses (Department of State’s Attorneys and Sheriffs Proposal)

This proposal from the **Department of State’s Attorneys and Sheriffs** takes the proposal of the Office of the Attorney General and adds additional criteria that must be demonstrated by the petitioner when seeking an expungement for a felony drug possession charge. Specifically, the following crimes would be eligible after demonstrating the criteria below:

Title 18

Chapter 84 (Possession and Control of Regulated Drugs)

- §4230(a) Marijuana Possession & Cultivation
- §4231(a) Cocaine Possession
- §4232(a) LSD Possession
- §4233(a) Heroin Possession
- §4234(a) Depressant, Stimulant, & Narcotic Drugs Possession
- §4234a(a) Methamphetamine Possession
- §4234b(a) Ephedrine and Pseudoephedrine, Possession

- §4235(b) Hallucinogenic drugs, Possession
- §4235a(a) Ecstasy, Possession

The court shall only grant petitions filed for felony drug possession convictions under the following conditions:

- a. Five years has elapsed from the date on which a person completes their sentence for a non-qualifying crime;
- b. No new convictions;
- c. No pending criminal charges at the time the petition is filed
- d. All restitution and court fees have been paid; and
- e. Either of the following two conditions has been met:
 - i. The State’s Attorney stipulates to the petition; or
 - ii. Petitioner can establish by clear and convincing evidence each of the following:
 1. the circumstances underlying the conviction did not involve selling, dispensing, or trafficking of a regulated drug; and
 2. the circumstances underlying the conviction did not involve firearms.

Again, it is important to note that felony drug possession crimes are arguably predicate offenses under 18 VSA § 4238 and, therefore, may not be eligible for expungement without specifically addressing that conflict in the definition of “qualifying crime.”

3. Expand the definition of “qualifying crime” to include Driving While Intoxicated, 23 V.S.A. § 1201(a)(1), (2), or (3).

This proposal contemplates making the crime of Driving While Intoxicated (first offense only), pursuant to 23 V.S.A. § 1201(a)(1), (2), or (3) eligible for expungement under the following conditions:

- a. Fifteen years has elapsed from the date on which a person completes their sentence;
- b. No new convictions;
- c. All restitution and court fees have been paid;
- d. The court finds that expungement of the criminal history record serves the interest of justice.

The crime of Driving While Intoxicated is a predicate offense, and therefore, it is not currently eligible for expungement pursuant to 13 V.S.A. §7601.

4. Expand the definition of “qualifying crime” to include all non-violent drug and property felonies and redefine the “predicate offense” exception in 13 V.S.A. 7601(3). (**Vermont Legal Aid Proposal**). (Attachment B)

This proposal from **Vermont Legal Aid** would use the existing statutory framework and timelines for expungement contained in 13 V.S.A. 7602 but would add to the list of crimes that are eligible for expungement under 13 V.S.A. 7601(4) to include non-violent drug and property felonies. Specifically, this proposal would make the following felony drug crimes expungement-eligible:

Title 18

Chapter 84 (Possession and Control of Regulated Drugs)

- §4230(a) Marijuana Possession & Cultivation
- §4231(a) Cocaine Possession
- §4231(b) Cocaine Selling or Dispensing
- §4232(a) LSD Possession
- §4232(b) LSD Selling or Dispensing
- §4233(a) Heroin Possession
- §4233(b) Heroin Selling or Dispensing
- §4234(a) Depressant, Stimulant, & Narcotic Drugs Possession
- §4234(b) Depressant, Stimulant, & Narcotic Drugs Selling or Dispensing
- §4234a(a) Methamphetamine Possession
- §4234a(b) Methamphetamine Selling or dispensing
- §4234b(a) Ephedrine and Pseudoephedrine, Possession
- §4234b(b) Ephedrine and Pseudoephedrine, Sale
- §4235(b) Hallucinogenic drugs, Possession
- §4235(c) Hallucinogenic drugs, Selling or dispensing
- §4235a(a) Ecstasy, Possession
- §4235a(b) Ecstasy, Selling or dispensing

This proposal would also expand expungement eligibility to the following felony property crimes:

Title 13

Chapter 29 (Conspiracy)

- § 1404(c)(4) Conspiracy to receive stolen property
- § 1404(c)(5) Conspiracy related to trafficking substances

Chapter 43 (Forgery and Counterfeiting)

- § 1801 Forgery and Counterfeiting of Papers, Documents, Etc.
- § 1802 Uttering Forged or Counterfeited Instrument

Chapter 47 (Frauds)

- § 2001 False Personation
- § 2002 False Pretenses or Tokens
- § 2022 Bad Checks

- § 2030 Identity Theft

Chapter 57 (Larceny and Embezzlement)

- § 2531 Embezzlement
- § 2561 Receiving Stolen Property
- § 2575 Offense of Retail Theft
- § 2582 Theft of Services
- § 2591 Theft of Rented Property

Title 9

Chapter 105 (Credit Cards)

- § 4043 Credit Card Fraud
- § 4045(a) Illegal Possession of Credit Card

As part of this proposal, Legal Aid would also seek to redefine the “predicate offense” exception in 13 V.S.A. 7601(3). Under current law, all predicate offenses are not eligible for expungement under any circumstances. Legal Aid proposes generally to condense the list of predicate offenses, and specifically make Driving While Intoxicated offenses expungement-eligible after 10 years of no additional DUI.

5. Amend 13 V.S.A. § 7602 to allow petitions to expunge any crime, not just “qualifying crimes,” after a showing of “rehabilitation, mitigating circumstances, or hardship.” (**Vermont Legal Aid Proposal**). (Attachment B)

This proposal from **Vermont Legal Aid** would afford offenders the ability to petition the Court to have any criminal conviction expunged, including currently non-qualifying offenses and predicate offenses, under the following conditions:

- a. Five years has elapsed from the date on which a person completes their sentence for a non-qualifying crime;
- b. No new convictions;
- c. All restitution and court fees have been paid;
- d. Petitioner can demonstrate
 - i. Rehabilitation;
 - ii. mitigating circumstances; or
 - iii. a significant hardship because of the criminal record.

Under this proposal, a State’s Attorney may object to the petition and a hearing will be scheduled. Following the hearing, the court may grant the petition over the State’s objection if it serves the interest of justice.

Conclusion

In the criminal justice system, prosecutors serve a dual role in protecting the public interest. On the one hand, they are responsible for bringing charges and seeking convictions against individuals who violate the law. Equally as important, they have a responsibility to remove convictions when an offender has repaid his debt to society and evidence of a conviction is no longer necessary to protect the public interest. Throughout this past year, State's Attorneys have been honoring the latter responsibility by holding expungement clinics throughout Vermont and providing assistance to qualifying individuals to help remove the burden these old convictions present.

While many State's Attorneys would like to see the expungement laws expanded, they also recognize that prosecutors only represent one aspect of the larger social fabric of Vermont. Policy initiatives that might have a positive benefit on workforce development might at the same time have a negative impact on public health outcomes or law enforcement efforts in the State. The Department alone does not have a broad enough perspective to foresee the potential unintended consequences of some of the expungement expansion proposals offered in this report and is very grateful that the OCC is willing to review them.

We strongly believe that the collective expertise of your members is an incredible resource for the State and that your advice will be a valued part of the conversation when the General Assembly considers these important policy initiatives.

Thank you for your consideration.

No. 178. An act relating to sealing criminal history records when there is no conviction.

(S.173)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,

POSTCONVICTION; PROCEDURE

* * *

(c)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(B) The person has not been convicted of a felony arising out of a new incident or occurrence ~~since the person was convicted of the qualifying crime~~ in the last 7 years.

(C) The person has not been convicted of a misdemeanor during the past five years.

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

* * *

Sec. 2. 13 V.S.A. § 7603 is amended to read:

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO
CONVICTION; PROCEDURE

(a) ~~A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or~~ Unless either party objects in the interest of justice, the court shall issue an order sealing of the criminal history record related to the citation or arrest ~~if one of the following conditions is met~~ of a person:

(1) ~~No criminal charge is filed by the State and the statute of limitations has expired.~~

~~(2) The~~ twelve months after the dismissal if:

(A) the court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment ~~and the statute of limitations has expired;~~ or

~~(3)(B) The~~ the charge is dismissed before trial:

~~(A) without prejudice and the statute of limitations has expired; or~~

~~(B) with prejudice.~~

~~(4)(2) The~~ at any time if the prosecuting attorney and the defendant and
~~the respondent~~ stipulate that the court may grant the petition to expunge and
seal the record.

(b) ~~The State's Attorney or Attorney General shall be the respondent in the~~
~~matter.~~ If a party objects to sealing or expunging a record pursuant to this
section, the court shall schedule a hearing to determine if sealing or expunging
the record serves the interest of justice. ~~The petitioner~~ defendant and the
~~respondent~~ prosecuting attorney shall be the only parties in the matter.

(c) ~~The court shall grant the petition and order that the criminal history~~
~~record be expunged pursuant to section 7606 of this title if it finds that~~
~~expungement of the criminal history record serves the interest of justice.~~

[Repealed.]

(d) ~~The court shall grant the petition and order that all or part of the~~
~~criminal history record be sealed pursuant to section 7607 of this title if:~~

(1) ~~The court finds that sealing the criminal history record better serves~~
~~the interest of justice than expungement.~~

(2) ~~The person committed the qualifying crime after reaching 19 years~~
~~of age.~~ [Repealed.]

(e) Unless either party objects in the interest of justice, the court shall issue
an order expunging a criminal history record related to the citation or arrest of
a person:

(1) not more than 45 days after:

(A) acquittal if the defendant is acquitted of the charges; or

(B) dismissal if the charge is dismissed with prejudice before trial;

(2) at any time if the prosecuting attorney and the defendant stipulate

that the court may grant the petition to expunge the record.

(f) Unless either party objects in the interest of justice, the court shall issue an order to expunge a record sealed pursuant to subsection (a) or (g) of this section after the statute of limitations has expired.

(g) A person may file a petition with the court requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interest of justice.

(h) The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record.

Sec. 3. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

* * *

(d)(1) The court ~~may~~ shall keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to ~~section 7602 or 7603 of this title~~ this chapter. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case ~~or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice~~. The Administrative Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The Court Administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that “NO RECORD EXISTS.”

Sec. 4. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS;
EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC
EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY
RECORDS; REPORT

The Department of State's Attorneys and Sheriffs, in consultation with the Office of the Court Administrator, the Vermont Crime Information Center, the Office of the Attorney General, the Office of the Defender General, the Center for Crime Victim Services, and Vermont Legal Aid, shall:

(1) consider:

(A) expanding the list of qualifying crimes eligible for expungement pursuant to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;

(B) the implications of such an expansion on public health, economic development, and law enforcement efforts in the State; and

(C) the viability of automating the process of expunging and sealing criminal history records;

(2) seek input from the Vermont Governor's Opioid Coordination Council; and

(3) on or before November 1, 2018, report to the Joint Legislative Justice Oversight Committee on the findings of the group, including any recommendations on specific crimes to add to the definition of qualifying crimes pursuant to 13 V.S.A. § 7601.

No. 178
2018

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Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

Date Governor signed bill: May 26, 2018

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MONTPELIER
SPRINGFIELD

TO: Act 178 Study Committee Members
FROM: Mairead O'Reilly
RE: Proposals from Vermont Legal Aid
DATE: August 16, 2018

I. Issue Statement

Vermont Legal Aid advises on and petitions for criminal records expungement on behalf of low-income Vermonters. Through this work, Vermont Legal Aid attorneys have seen firsthand the devastating and myriad collateral consequences of criminal charges and convictions.

Over the last 8 months, we have helped over 100 Vermonters clear their criminal records. This count does not include some of our expungement clinic clients and countless quick advice phone calls and emails. A majority of these clients have struggled with substance use disorder in the past. And nearly half have old felony or predicate offense convictions that can never be expunged, under Vermont's current expungement law. Daily, Legal Aid advocates hear from their clients that the clients desperately want "another chance." Clients share stories about the many ways in which their old criminal records have crippled their job prospects, kept them out of good housing and discouraged them from pursuing higher education. A few have described their experience of living with an old criminal record as a "second sentence" or a "life sentence."

Vermont Legal Aid takes the position that all criminal offenses should be expungement-eligible for individuals who fulfill their sentence requirements and demonstrate their rehabilitation.ⁱ Additionally, Vermont Legal Aid advocates for a law that enables routine—and for some convictions, petition-less—expungements, with post-sentence wait periods commensurate with the public safety risk posed by the underlying conviction. Below are two client stories, out of dozens, that illustrate what we see from our perspective as counsel for low-income Vermonters and why we are advocating for these changes.

Client Stories

Mike from Addison County: Mike is a father of three pre-teenage children and lives in Addison County. Mike struggled with opioid use disorder through his early twenties, and when his addiction was at its worst, he stole from stores to purchase

heroin. When he was 25, Mike was charged and convicted of a felony retail theft. He served his sentence for that felony. He also paid his restitution, completed a treatment program, and has been in recovery from opioid use disorder since. Mike got married, had kids, and has now been stably employed by the same company for years. Both Mike and his wife work full-time, but they are barely making enough to provide for their daily needs—say nothing of their ability to save for their children’s college education. A year ago, Mike applied for another job at a neighboring company—let’s call it Opportunity Inc. The hiring manager at Opportunity Inc. told Mike that he would hire him for a position that pays \$15,000-20,000 more than his current job, and has health and retirement benefits, if he could “take care of his criminal record.” Mike needs that job so he can begin saving to put his kids through college—doing so would make them the first generation college students. But under Vermont’s current expungement law, Mike will never be able to expunge that felony off his record. He cannot even get before a judge to show that he has been completely rehabilitated, that he poses no risk to his community, and that his criminal record is literally immobilizing. Unless Vermont’s expungement law changes, Mike is fated to earn wages nearly 20% lower than he is otherwise qualified to earn. His children are unlikely to attend college because his immediate bills absorb all the family income.

Christine from Windham County: Christine is a well-known community member and mother from Windham County. In the early 1990s, when she was just 24 years old, she was convicted of a felony possession of stolen property. Christine grew up in a violent home, plagued by substance use. She spent her teenage years in and out of foster care. As a young person, Christine struggled with substance use and mental health issues. Christine found her way to the right treatment services and has had no new criminal justice contacts in over 25 years.

Fortunately for Christine, about a decade ago, she landed a job as a paraprofessional educator in her local school district. But securing the position took serious efforts and depended upon her community connections, her intelligence, and her charisma. After her interview, Christine was hired by the local school district. And just one month after she started, the school received her criminal background check and summarily fired her. It took months of conversations, and countless supplemental reference letters—but Christine succeeded in convincing the school district that she was not a public safety threat, despite her felony offense. She showed the administrators that she received the help necessary to move beyond her troubled youth. Christine was uniquely lucky. Not all of our clients are as perseverant or as well connected. Not everyone can self-advocate the way she could.

But now, as a middle-aged woman, Christine wants to put her talents to better use. She dreams of finishing her graduate degree in social work and working as a counselor. We have petitioned to expunge all of her misdemeanor offenses, but under current law, she will have to live with the old felony record for the rest of her

life. Because this record will make it difficult or impossible to obtain her license and secure a job after graduation, and because she does not have financial flexibility to take that risk, she has decided not to pursue higher education and work to advance her career. Christine is now grappling with the reality that she and her children will continue subsisting on her humble wages because of this decades-old felony offense.

These two stories exemplify the real struggles that Vermonters with old criminal records face, every day, just to provide for their families and to contribute meaningfully to their communities. Below are Vermont Legal Aid’s suggestions about how our state can, immediately and concretely, remove the barriers to their successful reintegration.

II. Summary of Proposed Amendments

Vermont Legal Aid has four proposed amendments to Vermont’s expungement law for the 2019 legislative session. See Section IV for a detailed explanation and description of the proposals. First, we propose amending two definitions: “qualifying crime” should include several additional non-violent felony offenses, and “predicate offense” should be defined more narrowly. Next, we recommend adding a statutory provision that allows an individual to petition for expungement of a non-qualifying crime, upon a showing of rehabilitation, mitigating circumstances, or hardship.ⁱⁱ Third, we recommend amending the expungement law to create a petition-less process for all “qualifying crimes” and to expedite the process for low-level misdemeanor offenses. Finally, we recommend adding a provision to the expungement law that would expunge every record that is pardoned by the governor.

III. Brief Policy Rationale

It is unconscionable for any advanced nation to permanently and publicly brand a citizen as a “criminal” for their lifetime after they served their sentence, and without considering their rehabilitation.ⁱⁱⁱ Yet in Vermont and across the United States, we maintain some criminal records for decades—and even lifetimes. Effectively, this policy decision results in a protracted—or lifetime—sentence to economic and social marginalization for many people with criminal records.

Vermont policymakers understand that substance use and mental health disorders—often precipitated by childhood trauma and poverty—are the root of criminal-legal involvement for many Vermonters.^{iv} And many understand that the presence of these issues in a person’s life impacts whether that person will be a “repeat player” in the criminal-legal system.^v The evidence shows that for most

people, desistence from criminal activities is possible when they have access to mental health counseling, substance use treatment, education, job training and licensing, and an employment opportunity.^{vi} This makes intuitive sense and is widely appreciated in Vermont.^{vii} When people are engaged in meaningful activities—when they are accepted back into society and have a legal way to provide for themselves—they are less likely to reengage in criminal activity.^{viii}

But there is a troubling disconnect between our understanding of the causes of criminal-legal involvement and our laws related to criminal records. For too many Vermonters with criminal records, the very reintegration opportunities they need to desist from criminal activity are out of reach because of their criminal records. Busy employers, landlords, school administrators, state licensing boards have ready access to criminal background checks,^{ix} and often premise acceptance of an applicant on that basis.^x For many decision makers, seeing a single criminal-legal contact on a background check can result in automatic denial or rejection from an opportunity.^{xi} While the apparent seriousness of the criminal contact often has more weight—most people would weigh a felony more heavily than a misdemeanor—studies continually show that even minor misdemeanor offenses have severe collateral consequences.^{xii} Ironically, the public safety and liability concerns that underlie or justify criminal records-based denials can actually make our communities less safe, as individuals who are excluded from housing, employment and education are more likely to recidivate.^{xiii}

In addition to the safety issues that arise from maintaining criminal records for too long, Vermont policymakers must pay attention to the harmful economic impacts that dated criminal history records have on individual earnings and our state revenues. The reality is that Vermonters with criminal records struggle to advance their education or careers.^{xiv} The economic impact that a criminal record has on a family's educational attainment and earnings is intergenerational.^{xv} Vermont's most valuable resource, its human capital, is being wasted by the de facto exclusion of a subset of Vermonters who are able and willing to work—but who happen to have an old criminal record. Furthermore, the exclusion of this population also burdens community and state resources, as people with criminal records earn less income, and therefore contribute less to our tax revenues.^{xvi}

There are legitimate public safety reasons to maintain some criminal records for some amount of time. But the data contained in each record is different, and the predictive value of a criminal record varies with the crime committed and the length of time since the date of the offense.^{xvii} Therefore, not all records need to be maintained for the same amount of time.^{xviii} A criminal record can alert the public of potential danger, and it may, for a period of time, help predict whether an individual will commit a new crime based on their past behavior. But with every year that a person stays out of the criminal-legal system, the predictive value of their record decreases.^{xix} For an individual who has had no criminal activity for 5-7

years, the predictive value of their old record is minimal—and the likelihood that they will commit a new crime approximates the likelihood that someone without a conviction would commit a crime.^{xx} For individuals who remained crime-free for that time—except in the most serious of cases—there is no evidence-based justification to maintain their criminal record.

For more than a decade, our state has been committed to helping Vermonters access treatment and recovery supports for substance use disorder, making significant investments to our nationally-recognized Hub and Spoke system. But the returns on our investment are lost when Vermonters in long-term recovery cannot find decent housing and employment or access opportunities for educational advancement, as it jeopardizes their recovery and desistance from criminal activity.

IV. Proposed Amendments

Vermont Legal Aid requests your support for the following amendments to our expungement law. If passed, these amendments will help Vermonters—many of whom are in recovery from substance use disorder, have served their sentences, and do not pose a public safety threat—to fully integrate into our community and formal economy.

1. **Expand the list of “qualifying crimes,” defined in 13 V.S.A. § 7601(4) and amend 13 V.S.A. § 7601(3) to redefine predicate offenses.**

Vermont Legal Aid advocates expanding the list of “qualifying crimes” that a person can petition to expunge, pursuant to 13 V.S.A. § 7601(4), to include several additional non-violent felony offenses. Additionally, Vermont Legal Aid supports a revision of “predicate offenses,” narrowed to include Title 23, Chapter 13 offenses. (Specifics listed below.)

The Issue: Right now, only 4 felony offenses are expungement-eligible in Vermont.^{xxi} Those 4 offenses are listed as “qualifying crimes” in 13 V.S.A. § 7601(4) and are criminal mischief, grand larceny, burglary, and prescription fraud. Additionally, countless misdemeanor offense are not expungement-eligible because they are considered “predicate offenses.”

In 2018, when “passing” a background check is a prerequisite for almost any move—into a new home or apartment, into an educational program or a new job—Vermont’s policy of perpetually retaining felony records and many misdemeanor records is harmful and outdated.^{xxii}

The Opportunity: As a state, we must do more to help Vermonters break the cycles of criminal-legal involvement and poverty that is exacerbated by a criminal

record—and we can accomplish this, in large part, by allowing more people to expunge their criminal records. As a legal remedy, expungement has demonstrated positive impacts on employment opportunities and individual earnings,^{xxiii} which translates into higher tax revenues.

The first step is for Vermont lawmakers to expand the definition of “qualifying crimes” in 13 V.S.A. § 7601. Specifically, we propose including additional non-violent felony offenses that people may petition to expunge from their records, after they have served their sentences, paid their restitution, and remained crime-free for additional period of time.

Specifics of Proposal 1, Part A.

The following list are the crimes that Vermont Legal Aid sees most frequently in the course of representing Vermonters in recovery from substance use disorder. These are non-violent, property and drug offenses. We propose adding the following to the 13 V.S.A. § 7601(4) list of “qualifying crimes.”

Title 13

Chapter 29 (Conspiracy)

- § 1404(c)(4) Conspiracy to receive stolen property
- § 1404(c)(5) Conspiracy related to trafficking substances

Chapter 43 (Forgery and Counterfeiting)

- § 1801 Forgery and Counterfeiting of Papers, Documents, Etc.
- § 1802 Uttering Forged or Counterfeited Instrument

Chapter 47 (Frauds)

- § 2001 False Personation
- § 2002 False Pretenses or Tokens
- § 2022 Bad Checks
- § 2030 Identity Theft

Chapter 57 (Larceny and Embezzlement)

- § 2531 Embezzlement
- § 2561 Receiving Stolen Property
- § 2575 Offense of Retail Theft
- § 2582 Theft of Services
- § 2591 Theft of Rented Property

Title 9

Chapter 105 (Credit Cards)

- § 4043 Credit Card Fraud
- § 4045(a) Illegal Possession of Credit Card

Title 18

Chapter 84 (Possession and Control of Regulated Drugs)

- § 4230(a) Marijuana Possession & Cultivation

- §4231(a) Cocaine Possession
- §4231(b) Cocaine Selling or Dispensing
- §4232(a) LSD Possession
- §4232(b) LSD Selling or Dispensing
- §4233(a) Heroin Possession
- §4233(b) Heroin Selling or Dispensing
- §4234(a) Depressant, Stimulant, & Narcotic Drugs Possession
- §4234(b) Depressant, Stimulant, & Narcotic Drugs Selling or Dispensing
- §4234a(a) Methamphetamine Possession
- §4234a(b) Methamphetamine Selling or dispensing
- §4234b(a) Ephedrine and Psuedophedrine, Possession
- §4234b(b) Ephedrine and Psuedophedrine, Sale
- §4235(b) Hallucinogenic drugs, Possession
- §4235(c) Hallucinogenic drugs, Selling or dispensing
- §4235a(a) Ecstasy, Possession
- §4235a(b) Ecstasy, Selling or dispensing

Specifics of Proposal 1, Part B.

VLA also seeks a revision of the “predicate offense” exception in 13 V.S.A. § 7601(3). The list of offenses that can be considered predicate offenses is long, overbroad, and not well understood by attorneys or judges. The list should be narrowed to include just Title 23, Chapter 13 offenses. These should be expungement-eligible after 10 years, if the person has no subsequent DUI offense.

2. Amend 13 V.S.A. § 7602 to include a provision allowing for petitions to expunge any crime, not just “qualifying crimes,” after a showing of “rehabilitation, mitigating circumstances, or hardship.”

The Issue: As addressed above, many crimes in Vermont are never expungement-eligible. Along with most felony offenses, misdemeanors that are violent or “predicate offenses” cannot be expunged. The ostensible policy justification is that certain crimes are so violent and severe that either (1) people should have to live with the consequences of having committed them forever, or (2) the person will always be a public safety threat. But reality is not so black and white, and few people can be reduced to “good” or “bad,” or perpetually “dangerous” or “safe.” People commit violent crimes for a variety of reasons—sometimes for self-protection,^{xxiv} sometimes because of an addiction problem that exacerbates violent tendencies.^{xxv}

Thoughtful research out of Massachusetts highlights that most “violent” offenders have suffered through severe trauma and poverty.^{xxvi} The author suggests that the policy solutions should focus more on compassion and forgiveness—along with treatment—rather than lifelong punishment.^{xxvii} Still, while serious violent crimes

perhaps should not be automatically removed from a person’s record without oversight, due to public safety concerns, there is a better balance to be struck. Vermont Legal Aid attorneys have worked with countless Vermonters whose old, violent crime was aberrant. Nonetheless, these individuals are forced to live out their days with that record—without any recourse— despite the crime having been committed due to exceptional circumstances or due to conditions that no longer exist (i.e., a severe addiction that is now in remission).

The Opportunity: Vermonters should have a legal process to petition for expungement of any crime, and Vermont policymakers should support that change. If a person serves their sentence, and demonstrates rehabilitation, mitigating circumstances warranting expungement, or that continued maintenance of their criminal record will result in (further) economic hardship or other injustice, they deserve the opportunity to petition the court and make a case for expungement. The judge can hear the evidence, weigh the risks and benefits, and determine whether expungement serves the interest of justice. Stipulation by the State’s Attorney should not be required to file a petition with the court. Stipulation should be an option, but not a condition precedent.

Specifics of Proposal 2:

- a. Five years after the date on which a person completes their sentence for a non-qualifying crime, the person may petition the court for an expungement, provided they (1) have not been convicted of new crimes; (2) have paid their restitution; (3) have been “rehabilitated,”^{xxviii} or can make a showing that there are mitigating circumstances,^{xxix} or can show that the maintenance of their record could create a significant hardship.^{xxx}
- b. The State’s Attorney may object;
- c. The court will grant a hearing for petitioner whose motion meets basic threshold requirements. Court shall grant petition if doing so would serve the interests of justice.
- d. There would be a fee to file the petition.

3. Create an automatic (i.e., petition-less) expungement process for all qualifying crimes.

The Issue: As is the case for all legal remedies, premising the attainment of an expungement on a person’s ability to navigate any court process raises “access to justice” concerns, even when that process is relatively administrative. While the expungement process is one that can be completed by a self-represented person, that person still needs the competency, time and money to draft and file a petition with the court, negotiate with the prosecutor, attend a hearing—if necessary—and

pay the \$90 filing fee. This process, like all legal processes in the United States, privileges those with certain cognitive, social and economic resources.

The Opportunity: Creating a petition-less expungement process for every eligible Vermonter would be an achievement for equal access to justice and would save judicial resources. Doing so would enable all eligible Vermonters to clear their records without having to call an attorney, file the petition, or pay the filing fee (which is prohibitive for some).

Specifics of Proposal 3:

- a. Low-level misdemeanor convictions with ordered sentences of probation and/or fines, should be expunged by the court 2 years from the date sentence is finished.^{xxxii}
 - b. For all other qualifying crimes, records would be expunged 4 years from date on which the individual completed their sentence, if they have not committed a new crime since that date and have paid all restitution. ^{xxxii}
 - c. No hearing unless the State’s Attorney objects or the Court needs it for some other reason.
 - d. No filing fee.
4. **Pardoned offenses are immediately expunged by the Courts** (See, e.g., Massachusetts’ law on this topic.^{xxxiii})

Brief Policy Rationale: Currently, a pardon from a sitting Vermont governor does not necessarily address the collateral consequences of a criminal conviction. Each applicant completes a lengthy pardon application, but that person’s record does not get sealed or expunged if the pardon is granted. The effect is that decision-makers like landlords, employers, licensing agencies, and educational institutions will still see a person’s entire criminal record. A pardon, then, is largely a symbolic remedy.

Specifics of Proposal 4:

- a. When the governor approves a pardon application, the governor’s staff will send the pardon to the court clerk’s office, who will then process it as though it were an order to expunge/seal.
- b. The legal effect of a pardon shall be the same as an expungement.

ⁱ For a discussion on metrics to gauge rehabilitation, *see generally*, Jeffrey A. Butts and Vincent Schiraldi, *Recidivism Reconsidered: Preserving the Community Justice Mission of Community Corrections*, HARVARD KENNEDY SCHOOL, EXECUTIVE SESSION ON COMMUNITY CORRECTIONS (2018) (the authors suggest that policymakers considering justice interventions should focus on desistance from crime as a more accurate measure of individual and programmatic success, rather than recidivism. They assert that “recidivism is inherently a measure of person-bureaucracy interactions. It is not simply an indicator of individual failure. Thus, it would be inappropriate to place the onus for recidivism entirely and exclusively on the individual.”).

ⁱⁱ When individuals with certain convictions are broadly unable to access expungement relief, ever, this raises 8th amendment concerns, as these individuals are effectively sentenced to a “civil death.” For a discussion on the 8th amendment concerns and the history of civil death in the United States, *see generally*, Gabriel J. Chin *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Pa. L. Rev. 1789 (2012).

ⁱⁱⁱ *See generally*, G. J. Chin, *Collateral consequences*. In E. Luna (Ed.), *Reforming Criminal Justice: A Report of the Academy for Justice on Bridging the Gap between Scholarship and Reform* ACADEMY FOR JUSTICE 4, 371–395, (2017) (discussing potential constitutional concerns for people who have lifetime criminal records); *See generally*, James B. Jacobs, *The Eternal Criminal Record*, Harvard University Press (2015) (contrasting the United States’ and the European Union’s policies on criminal records and highlighting that in EU member countries, criminal record information is confidential and therefore inaccessible to the general public because of individual privacy concerns and the severe harm that a public-facing record would have on an individual’s reputation and life).

^{iv} *See generally*, James A. Reavis, PsyD, Jan Looman, PhD, Kristina A Franco, and Briana Rojas, *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live Before We Possess Our Own Lives?* THE PERMANENTE JOURNAL (2013); RH Peters, HK Wexler, AJ Lurigio, *Co-occurring substance use and mental disorders in the criminal justice system: A new frontier of clinical practice and research*. *PSYCHIATRIC REHABILITATION JOURNAL*, 38(1), 1-6, at 1 (2015)(discussing the prevalence of mental health and substance use issues within the “offender population” as compared to the general population); *See also*, *Behind Bars II: Substance Abuse and America’s Prison Population* THE NAT’L CENTER ON ADDICTION AND SUBSTANCE USE AT COLUMBIA UNIV., (2010)(discussing the prevalence of mental health and substance use in offender population); *See generally*, David Lebowitz, *“Proper Subjects for Medical Treatment?” Addiction, Prison-Based Drug Treatment, and the Eighth Amendment*, 14 DePaul J. Health Care L. 271 at 274 (2012) (asserting that 70-85% of inmates need some form of substance use treatment because of underlying disorders).
^v “First contact” is the first contact with the criminal legal system, which is typically by arrest or citation.

^{vi} *See generally*, Mark T. Berg and Beth M. Buebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, JUSTICE QUARTERLY (2011); *See also*, An Overview of Offender Reentry, NATIONAL INSTITUTE OF JUSTICE, (2018).

^{vii} *See, e.g.*, Attorney General Donovan Touts Progress on Criminal Justice Reform Initiatives (August 2, 2018), <http://ago.vermont.gov/blog/2018/08/02/attorney-general-donovan-touts-progress-on-criminal-justice-reform-initiatives/>; *See also*, *Ban the Box Bill Becomes Law*, Vermont Business Journal (May 3, 2016, 1:30 pm), <https://vermontbiz.com/news/may/%E2%80%98ban-box%E2%80%99-bill-becomes-law-vermont>

^{viii} *Id.*; *See also*, Andrew von Hirsch & Martin Wasik, *Civil Disqualifications Attending Conviction: A Suggested Conceptual Framework*, 56 CAMBRIDGE L.J. 599, 605(1997) (asserting that “[t]he more that convicted persons are restricted by law from pursuing legitimate occupations, the fewer opportunities they will have for remaining law abiding.”).

^{ix} *See, e.g.*, Michelle Rodriguez and Maurice Emsellem, *65 Million “Need Not Apply”: The Case for Reforming Criminal Background Checks for Employment*. NATIONAL EMPLOYMENT LAW PROJECT (2011) (Citing a study that found 90% of employers today use criminal background checks to screen employees).

^x They rely on the results of these checks to decide whether an applicant will be a “good” tenant, student or employee. *See generally*, David Thacher, *The Rise of Criminal Background Screening in*

Rental Housing, LAW & SOCIAL INQUIRY 33 (1) (2008); *See also*, CENTER FOR COMMUNITY ALTERNATIVES, *The Use of Criminal History Records in College Admissions Reconsidered* at 2 (citing a survey that found 66.4% of colleges collect criminal justice data on applicants, and discussing implications); *See*, Rodriguez et al., *supra* note 9 at 1.

^{xi} *See*, Eisha Jain, *Proportionality and Other Misdemeanor Myths*, B.U. L. REV. 98, 953 at 958 (2018); *But see*, 21 V.S.A. § 459j (The Vermont legislature passed a Ban the Box law in 2016—it went into effect July 2017. This law helps address the issue of “legal discrimination” of people with criminal records from employment opportunities, by prohibiting employers from asking about applicants’ criminal history on an initial application. While this is an important start, the protections of the law are limited. First, the law only applies to employers—it does not extend to colleges or training programs, or to private landlords or non-profit housing agencies. Second, applicants can be—and reportedly, are—asked the “criminal record question” early in their first interviews. Many low income applicants feel that their answer to that question is dispositive, even if the interview went exceedingly well until that point.)

^{xii} Jenny Roberts, *Informed Misdemeanor Sentencing*, HOFSTRA L. REV. 46, 171 (2018); Jain, *supra* note 11; Alexandra Natapoff, *Misdemeanors in ACADEMY FOR JUSTICE, A REPORT ON SCHOLARSHIP AND CRIMINAL JUSTICE REFORM* (Erik Luna ed. 2017); UC Irvine School of Law Research Paper No. 2017-41 at 87.

^{xiii} Rodriguez et al., *supra* note 9.

^{xiv} *See*, Cherrie Bucknor and Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Economic and Policy Research (June 2016)(finding that men who were former prisoners or who had felony convictions, their employment rate was 1.6-1.8 percentage points lower than their non-criminally involved counterparts). Vermont Legal Aid advocates regularly hear from clients with 10, 15, 20, even 30 year old convictions that they cannot get into a college program or that they still get denied by employers solely due to their old record.

^{xv} *See, e.g.* Rebecca Vallas, Melissa Boteach, Rachel West, & Jackie Odum, *Removing Barriers to Opportunity for Parents with Criminal Records and Their Children: A Two Generational Approach*, CENTER FOR AMERICAN PROGRESS (2015)(discussing the intergenerational harms caused by a parent’s criminal involvement and subsequent criminal record); *See also*, Meredith Booker, *The Crippling Effect of Incarceration on Wealth*, THE PRISON POLICY INSTITUTE (2016).

^{xvi} *See generally*, Rebecca Vallas and Shannon Dietrich, *One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*, at 9-10, CENTER FOR AMERICAN PROGRESS, (December 2014). (Discussing reduced earnings for people who have criminal records: “a history of incarceration is associated with a substantial reduction in earnings. Formerly incarcerated men work nine fewer weeks per year and take home 40 percent less pay annually, resulting in an average earnings loss of nearly \$179,000 by age 48.) *See also*, Vallas et al., *supra* note 15, at 4 (citing a National Institute of Justice study that found “having any arrest during one’s life diminishes job prospects more than any other employment-related stigma, such as long-term unemployment, receipt of public assistance, or having a GED certificate instead of a high school diploma.”)

^{xvii} *See generally*, Alfred Blumstein and Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, CRIMINOLOGY 47 (2) (2009): 331

^{xviii} Consider, by contrast, the fluidity of a credit report.

^{xix} *See*, Megan C. Kurlycheck, Robert Brame and Shawn D. Bushway, *Scarlet Letters and Recidivism: Does Old Criminal Record Predict Future Offending?*, CRIMINOLOGY & PUBLIC POLICY 483-504 (2006); *See also*, Merf Ehman & Anna Reosti, *Tenant Screening in an Era of Mass Incarceration: A Criminal Record is No Crystal Ball*, NYU J. LEGIS. & PUB. POL’Y., March 3, 2015 (for discussion on use of criminal records, and for a review of studies demonstrating the predictive ability of records on future dangerousness).

^{xx} Kurlychek *supra* note 19 at 499.

^{xxi} 33 V.S.A. § 5119(g) provides that when a person commits any crime before turning 21 years old, they can petition to seal it, 2 years after they were discharged from their sentence, if they were not subsequently convicted of a listed crime under 13 V.S.A. § 5301(7).

^{xxii} It's also worth noting that the threshold for when someone commits a felony offense—considering that it creates a life-long record—is low and arbitrary. E.g., a person is guilty of committing a felony offense for marijuana possession if they possess 2 ounces or more. 18 V.S.A. § 4230(A)(1)(2). A person is guilty of committing a felony retail theft if they stole merchandise with a retail value of over \$900. 13 V.S.A. § 2577.

^{xxiii} For a discussion of the employment benefits of expungements, *see generally*, Jeffery Selbin, Justin McCrary and Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, J. CRIM. L. & CRIMINOLOGY 1 (2018); Meyli Chapin, Alon Elhanan, Matthew Rillera, Audrey Solomon, Tyler Woods, *A Cost Benefit Analysis of Criminal-Record Expungement in Santa Clara County*, STAMFORD UNIVERSITY, PUBLIC POLICY SENIOR PRACTICUM at 15 (2014) (finding that respondents whose records were expunged earned, on average, \$6,190 more annually after obtaining an expungement).

^{xxiv} *See generally*, Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*. Yale J.L. & Feminism 20, 1 (2008).

^{xxv} Aaron A. Duke, Kathryn M. Z. Smith, Lindsay M.S. Oberleitner, Alexander Westphal, Sherry A. McKee, *Alcohol, Drugs, and Violence: A Meta-Meta Analysis*, PSYCHOLOGY OF VIOLENCE, 238-249 (2018).

^{xxvi} Bruce Western, *Violent offenders, often victims themselves, need more compassion and less punishment*, USA Today, August 9, 2018 at 4:57 pm (citing author's study showing that in study population of men reentering society after prison, "half of the 122 people we interviewed told us they had been beaten by their parents; 40 percent had witnessed someone being killed; 30 percent grew up with other family violence; and 16 percent reported being sexually abused. Nine out of ten of the people we interviewed got in fights throughout adolescence. An additional 50 percent said they were seriously injured in assaults or accidents as children...Violence is as much a characteristic of places as of people. Poor and chaotic homes, disorderly and low-income neighborhoods, and the prisons and jails that lie, in some cases, in close proximity to them, are places where violence frequently happens.")

^{xxvii} *Id.*

^{xxviii} For example, if the petitioner's crime was related to their substance use disorder, they could show that they were or are engaged in treatment, or have been working to positively contribute to their community either formally or informally.

^{xxix} E.g., petitioner may have been a victim of domestic violence who was dually arrested with the abusive party, or petitioner may have been arrested for finally "fighting back."

^{xxx} E.g., petitioner might make a showing that they are not a threat to the public safety. They could also show how their record poses a barrier to employment or other important opportunities for personal/professional development.

^{xxxi} Several states have shorter wait-times for misdemeanors, sometimes as short as one year, see, e.g., New Hampshire (Waiting periods range from one year for a violation, three years for misdemeanors, five years for a class B felony and ten years for a Class A felony and sexual assault, indecent exposure, and lewdness. NH. Stat. Ann. § 651:5(III)); Nevada (eligibility waiting period varies depending on the seriousness of the offense—for felonies, 2-10 years after the date of conviction or release from actual custody, whichever is later; for misdemeanors, 1-7 years, Nev. Rev. Stat. § 179.245(1)); Massachusetts (effective October 2018, waiting periods for sealing records are 3 years for misdemeanor offenses and 7 years for felony offenses, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69>).

^{xxxii} Currently, all qualifying crimes are non-violent property and drug-related misdemeanors and 4 felonies. Even if Vermont expanded the qualifying crimes definition to include more felony offenses, these would still be non-violent felony offenses. A person would serve their sentence—which is commensurate with the severity of the crime—and then have to wait an additional 4 years.

^{xxxiii} Mass. Gen. Laws ch. 127, § 152. “Upon approval of a petition for pardon, the governor shall direct all proper officers to seal all records relating to the offense for which the person received the pardon. Such sealed records shall not disqualify a person in any examination, appointment or application for employment or other benefit, public or private, including, but not limited to, licenses, credit or housing, nor shall such sealed record be admissible in evidence or used in any way in any court proceeding or hearing before any board, commission or other agency except in imposing sentence in subsequent criminal proceeding.... On any application or in an interview for employment, or in any other circumstances, where a person is asked whether he has been convicted of an offense, a person who has received a pardon for such offense may answer in the negative. The attorney general and the person so pardoned may enforce the provisions of this paragraph by an action commenced in the superior court department of the trial court.”