

EXPUNGEMENT OVERVIEW

FOR HOUSE JUDICIARY COMMITTEE – 2.14.2019



OUTLINE

- I. Why maintain criminal records
- II. Why expunge criminal records
- III. Expungement vs. Sealing
 - A. Effect of expungement vs. sealing
 - B. Comparison to other states
 - C. Qualifying Crimes and Predicate offenses
- IV. Review of proposal



WHY MAINTAIN CRIMINAL RECORDS

- Establish patterns; predictive value on future behavior
- Prohibit gun ownership and possession rights of violent offenders
- Inform charging, bail, sentencing, and alternative justice decisions
- Officer safety is aided by knowledge of criminal histories
- Generally speaking, reducing the consequences of committing a crime will have a negative impact on deterrence



WHY EXPUNGE CRIMINAL RECORDS

- Predictive value of criminal records diminishes over time while the collateral consequences on employment, housing, educational opportunities do not
- Employers and landlords often use the existence of a criminal record as a shorthand for dangerous or risky
- People are more than a criminal record
- Expungement can correct geographical disparities in charging decisions
- Expungement of drug possession charges supports a shift in thinking about drug possession and use from a criminal matter to a health issue
- A path to expungement encourages rehabilitation



EXPUNGEMENT VS. SEALING – EFFECT OF EXPUNGEMENT - 13 VSA 7606

- “Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The **court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence.**”
- “application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about...convictions that have not been expunged”

EXPUNGEMENT VS. SEALING – EFFECT OF SEALING

- 13 VSA 7607

- “Upon entry of an order to seal, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.”
- Notwithstanding a sealing order:
- (1) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.
- (2) An entity may use the criminal history record sealed...regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – NEW HAMPSHIRE

- The court records relating to an annulled arrest, conviction, or sentence shall be sealed and available only to the person whose record was annulled, his or her attorney, a court for sentencing pursuant to subparagraph (a), law enforcement personnel for legitimate law enforcement purposes, or as otherwise provided in this section
- N.H. Rev. Stat. Ann. § 651:5



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – NEW HAMPSHIRE

- Nothing in this section shall affect any right:
- **Of law enforcement officers to maintain arrest and conviction records and to communicate information regarding the annulled record of arrest or conviction to other law enforcement officers for legitimate investigative purposes**



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES - MASSACHUSETTS

- Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions, **except in imposing sentence in subsequent criminal proceedings**
- Mass. Gen. Laws Ann. ch. 276, § 100A (West)



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – MASSACHUSETTS (CONT'D)

- Notwithstanding any provision of section 100A, 100B, or 100C of this chapter, **criminal justice agencies as defined in section 167 of chapter 6 shall have immediate access to, and be permitted to use as necessary for the performance of their criminal justice duties**, any sealed criminal offender record information as defined in section 167 of chapter 6 and any sealed information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 17.
- Mass. Gen. Laws Ann. ch. 276, § 100D (West)



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – RHODE ISLAND

- (2) “Expungement of records and records of conviction” means the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation.
 - 12 R.I. Gen. Laws Ann. § 12-1.3-1 (West)
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- (a) Any person having his or her record expunged shall be released from all penalties and disabilities resulting from the crime of which he or she had been convicted, except, upon conviction of any subsequent crime, the expunged conviction may be considered as a prior conviction in determining the sentence to be imposed.
 - 12 R.I. Gen. Laws Ann. § 12-1.3-4 (West)



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – RHODE ISLAND (CONT'D)

- Whenever the records of any conviction and/or probation of an individual for the commission of a crime have been expunged under the provisions of this chapter, any custodian of the records of conviction relating to that crime shall not disclose the existence of the records upon inquiry from any source **unless the inquiry is that of:**
- individual whose record was expunged,
- sentencing court
- bar admission, character and fitness, or disciplinary committee, board, or agency,
- commissioner of elementary and secondary education, or that of
- any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of the person having been previously convicted of the same offense.12 R.I. Gen. Laws Ann. § 12-1.3-4 (West)

EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – INDIANA

- If the court orders conviction records expunged under sections 2 through 3 of this chapter, the court shall do the following with respect to the specific records expunged by the court...
 - to prohibit the release of the person's records or information in the person's records to anyone without a court order, **other than a law enforcement officer acting in the course of the officer's official duty.**



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – TENNESSEE

- The clerk of the court maintaining records expunged pursuant to this subsection (g) or subsection (h) shall keep such records confidential. These records shall not be public and **can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime.** This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney and the circuit or criminal court judge.
- Tenn. Code Ann. § 40-32-101 (West)



EXPUNGEMENT VS. SEALING - COMPARISON TO OTHER STATES – KANSAS

- After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:
- (1) **Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;**
- (2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:
- Kan. Stat.Ann. § 21-6614 (West)



QUALIFYING CRIMES AND PREDICATE OFFENSES

- **Qualifying crime**
- **At least 5 years have elapsed-** since date person successfully completes terms and conditions of sentence
- **No new convictions**
- **Restitution and fees paid**
- **Interest of Justice**



QUALIFYING CRIMES AND PREDICATE OFFENSES

- “Qualifying crime” means:
 - (A) a misdemeanor offense that is not:
 - (i) a listed crime as defined in subdivision 5301(7) of this title;
 - (ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;
 - (iii) an offense involving violation of a protection order in violation of section 1030 of this title;
 - (iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this title; or
 - **(v) a predicate offense;**
 - Vt. Stat. Ann. tit. 13, § 7601 (West)

QUALIFYING CRIMES AND PREDICATE OFFENSES

- “**Predicate offense**” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of alcohol or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. “**Predicate offense**” shall not include misdemeanor possession of marijuana or a disorderly conduct offense under section 1026 of this title.
- Vt. Stat. Ann. tit. 13, § 7601 (West)

QUALIFYING CRIMES AND PREDICATE OFFENSES

- § 3017. Resisting arrest
- (a) A person who intentionally attempts to prevent a lawful arrest on himself or herself, which is being effected or attempted by a law enforcement officer, when it would reasonably appear that the latter is a law enforcement officer, shall:
 - (1) **for the first offense, be imprisoned not more than one year or fined not more than \$500.00, or both;**
 - (2) **for the second offense and subsequent offenses, be imprisoned not more than two years or fined not more than \$1,000.00, or both.**

QUALIFYING CRIMES AND PREDICATE OFFENSES

- **§ 1044. Second degree aggravated domestic assault**
- (a) A person commits the crime of second degree aggravated domestic assault if the person:
 - (2) commits the crime of domestic assault; and
 - (B) has a prior conviction for domestic assault under [section 1042](#) of this title.
- (b) A person who commits the crime of second degree aggravated domestic assault shall be imprisoned not more than five years or fined not more than \$10,000.00, or both



QUALIFYING CRIMES AND PREDICATE OFFENSES

- § 4231. Cocaine
 - (a) Possession.
 - (I) A person knowingly and unlawfully possessing cocaine shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.
- **§ 4238. Second and subsequent offenses**
- **A person convicted of a second or subsequent offense of violating section 4228, 4230, 4231, 4232, 4233, 4234, 4235, 4236 or 4237 of this title, except a violation of subdivision 4230(a)(1), shall be subject to a term of imprisonment or fined up to twice that authorized by those sections, or both.**



REVIEW OF PROPOSAL

- De Minimis Misdemeanors: e.g., disorderly conduct [and other offenses where maximum sentence is 6 months]
 - Sealed (or expunged) after 2 years from date person completed sentence, or sooner with SA stipulation
 - Expunged at 5 years from date completed sentence



REVIEW OF PROPOSAL

Non-predicate, non-listed misdemeanors

- Sealed after 5 years from date completed sentence, or sooner with SA stipulation
- Expunged at 10 years



REVIEW OF PROPOSAL

- Predicate offense Misdemeanors
 - Sealed at 10 years from date person completed sentence, or sooner with SA stipulation
 - Expunged at 20 years from date person completed sentence



REVIEW OF PROPOSAL

Felony Offenses

- Seal or expunge at 5 years from date person completed sentence, or sooner with SA stipulation
- Expunge at 10 years from date completed sentence



REVIEW OF PROPOSAL

- 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



REVIEW OF PROPOSAL

- 13 V.S.A. § 1404(c)(4); 13 vsa § 2001 False Personation;
- 13 vsa § 2002 False Pretenses or Tokens;
- 13 vsa § 2561 Receiving Stolen Property;
- 13 vsa § 2575 Offense of Retail Theft;
- 13 vsa § 1801 Forgery and Counterfeiting of Papers, Documents, Etc.;
- 13 vsa § 1802 Uttering Forged or Counterfeited Instrument;
- 13 vsa § 2582 Theft of Services;
- § 2591 Theft of Rented Property



REVIEW OF PROPOSAL

- Other non-listed, non-predicate felonies
 - Seal at 10 years from date person completed sentence, or sooner w/ SA stip
 - Expunge at 15-20 from date person completed sentence



REVIEW OF PROPOSAL

- Non-listed Felony Predicates Offenses
- Seal at 20 years from date person completed sentence
- Expunge at 30 years from date person completed sentence



REVIEW OF PROPOSAL

- Listed Crimes and Drug Trafficking not eligible for sealing or expungement
- Eliminate filing fee for expungement petitions (32 V.S.A. § 1431)

