

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.115 Name of Bill: An act relating to expungement of convictions based on conduct that is no longer criminal

Agency/Dept: VSP Author of Bill Review: Detective Sergeant Maurice Lamothe

Date of Bill Review: 3-12-15 Related Bills and Key Players: Senator Joe Benning

Status of Bill: (check one)

☐ Upon Introduction ☒ As passed by 1st body ☐ As passed by both bodies

Recommended Position:

☐ Support ☐ Oppose ☒ Remain Neutral ☐ Support with modifications identified in # 8 below

Analysis of Bill

1. **Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*
This bill is designed to permit expungement or sealing of a person's criminal conviction record within one year of the conviction if the conduct on which the conviction is based is no longer criminal. In addition a petition for the convictions to now include the addition of burglary along with the existing unlawful mischief, and grand larceny can be made if criteria are met such as time since conviction and penalties met per the conviction.
Per the bill the intent is to serve the best interest of the justice.
2. **Is there a need for this bill?** *Please explain why or why not.*
This bill is designed to expunge criminal convictions that are no longer criminal and expunge convictions that have met extended time frames. This portion of the bill is worthwhile as it could more accurately depict a person's criminal record based on the most current criminal laws and recent behaviors. However, the bill also addresses some felonies to include burglary, unlawful mischief, and grand larceny. This portion of the bill is controversial.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**
The fiscal responsibilities for the Vermont State Police include the implementation of a process for which records are expunged and the cost that may be associated with each case to include time and logistic programs designed to assist in the expungement.
The programmatic issues that would affect the Vermont State Police include accurate history of a person with whom we may have professional interaction with. As an example, the issues include a person who was previously a convicted felon and has since had their record of the felony conviction expunged or sealed. Now as a Trooper we may not know that person is Brady Bill disqualified to possess a firearm. That information could be relevant in a particular incident.
4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

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Other state departments will be affected the same way as the State Police. If the individual arresting agencies have any responsibility to expunge their records it could become cost and time extensive. They may not be in favor due to the logistic portion and may not be in favor of criminal records being expunged or sealed. Other agencies will also have to contend with not knowing if a person was once a convicted felon and how that prior, unknown conviction affects the incident in which they are now investigating.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (*for example, public, municipalities, organizations, business, regulated entities, etc*)

Please see information under Other Stakeholders section 6.2 for a variety of potential entities in which this bill could affect.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Support will likely come from offender advocacy groups and individuals as well. Advocacy groups may support the bill so that some criminal convictions may be expunged or sealed potentially allowing for future job aspirations.

Individuals such as hunters who would not be able to possess a firearm if they had a felony burglary conviction or a person who regularly crosses the U.S./ Canada border may want to have their felony conviction sealed or expunged to ease the border crossing process.

6.2 Who else is likely to oppose the proposal and why?

It is likely some citizens, business owners, governmental agencies, and courts may oppose the bill for reasons to include the accuracy of a person's criminal record and the pragmatic and financial strain expungement or sealing of the records may cause. See below.

St. Albans City Police Chief Gary Taylor advised he was in favor of the portion of the bill in regards to a record that involves a conviction for a crime that is no longer a crime in Vermont. He also supports certain misdemeanor crimes on a case by case basis. The Chief is not in support of adding burglary or to the existing unlawful mischief, and grand larceny convictions to the bill. He felt these crimes and subsequent convictions should remain on a person permanent record due to the violent and personal nature of the crimes.

ATF Agent Ben Cohen, assigned to Vermont, advised the more convictions that become qualifying crimes and are subject to expungement or sealed records, the more complicated their investigations may become. He advised there are other states in the United States that have expungable or sealable felonies. For ATF to check the current status of a person in regards to the Brady Bill in states that can expunge or seal felonies, sometimes means phone calls have to be made to state agencies to verify their status. These additional steps can make determining if someone is now a felon versus was a felon can be cumbersome.

Agent Cohen also voiced that if a person knows a felony burglary conviction WILL stay on their record for life it could be a deterrent, where as if they know there is a process to expunge or seal the conviction that deterrent no longer exists.

U.S. Customs Agent Joe Hardy advised he supported the portion of the bill regarding a conviction based on a crime that is no longer a crime in Vermont. He did not support the portion of the bill that allows some felonies, to include burglary, to be expunged or sealed. Currently a legal U.S. citizen would be allowed entry from Canada despite a felony criminal conviction. However, his thought was that his fellow Customs Agents should have access to a full and accurate criminal record to be better informed when allowing someone back into the U.S.

Canadian Customs Agent Michelle Martineau advised they currently allow felony convictions into Canada as long as there was no underlying violence included in the crime and at least 10 years have passed since the conviction. He advised the record being expunged or sealed would have little effect on their process due to the time lines proposed in the expungement or sealing process outlined in bill S.115.

Vermont State Attorney James Hughes supported the bill in regards to a conviction based on a crime that is no longer a crime in Vermont. State Attorney Hughes did not support the portion of the bill that added burglary convictions. He felt the burglary is a violent and personal crime for the victims and should remain on the record.

State Court Clerk Supervisor Gaye Paquette advised she was in favor of the bill in regards to a conviction that was based on a crime that is no longer a crime in Vermont. She advised the court currently offers an application for records to be expunged or sealed. She advised the current process is both time consuming and expensive to maintain. Due to the demands placed on the court clerks currently, she is not in favor of adding any felony convictions to include burglary. Her position was that by adding these additional convictions as potentially qualifying for expungement or being sealed, petitions that may be directed to the court house will be greatly increased. Her statement was that they currently collect a fee to process any of the petitions and the court will have to increase the fees dramatically and possibly hire more court clerks to keep up with this process.

Victims Advocate Kelly Woodward advised she was in favor of the bill in regards to a conviction that was based on a crime that is no longer a crime in Vermont. Her only concern is that the victims of the original crime and conviction should be consulted prior to the petition resulting in a record being expunged or sealed.

Maurice Lamothe, a local, small business owner of over 40 years, advised he would like any and all convictions that an applicant for a position has on their record. He does not want the record to be expunged or sealed as it is no longer is an accurate representation of the person's history.

7. **Rationale for recommendation:** *Justify recommendation stated above.*
8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*
Recommend that all felony convictions remain on an individual's criminal record.

9. **Gubernatorial appointments to board or commission?**
This bill was introduced to the Judiciary Committee.

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Secretary/Commissioner has reviewed this document

A handwritten signature in blue ink, appearing to be "K. Gray", is written over a faint rectangular stamp.

Date: 4/6/15