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Re: Expungement Bills

Dear Chair and Judiciary Members:

I take this opportunity to address this committee to express an interest in support for several bills that are presently before this committee regarding expungement eligibility. Several of these bills address specific considerations that are intended to help individuals continue their rehabilitative trajectory. Let me start with a couple of qualifications. None of the bills presented affect me in any way. My testimony here is simply because of my own personal beliefs and the credible results from the numerous other states that provide similar forms of clemency and consideration. I begin my testimony with a couple of observations and questions with the hope that we can share my same thinking.

Oftentimes, individuals are raised in situations that bring about a sense of hopelessness to their lives. Their lives may not be focused either because of their household or lack of, or because of those around them. No one is born a criminal. Yet, too many of us fall into this false premise of monetary safety, monetary need or sense of belonging. Other times we are the target of situations, like the opioid epidemic which targeted those weaker in spirit for monetary gain. **This can no longer be denied.** These situations cause a spiraling effect on individuals who turn to crime as a solution. What you often see is women selling their bodies to get drugs. Helping drug dealers as mules or in other capacities to support their habit. Boosting or in legal terms shoplifting is another resort. Men turning into petty drug dealers, with no consideration of the drugs they are peddling. In many cases, most of these people are still living in poverty with perhaps the exception of better transportation. While this is not always the case, most individuals that fall into this category are the same ones that would normally fall into the category that should be addressed by our current laws on expungement. Some of these crimes are what one would consider continuous in nature but for the interruption caused by apprehension. This chamber has addressed this issue in their change to those prosecuted for prostitution.

Bill H-5178 and its Senate counterpart addresses the time when one becomes eligible for expungement. Its sole intent is to reduce the period from 5 to 3 and 10 to 5 for misdemeanors and felonies respectively. Why does this matter?

Expungement is a limited act of clemency, not for the sentence imposed since the sentence is already completed. This state recognizes clemency through its constitutional power; however, it is not available as it is never used. These chambers created this limited act of clemency to remove a lifetime barrier that affects many situations that are taken for granted by

these individuals before their life spiraled out of control. Employment; renting an apartment; opportunities and even travel to certain places sometimes are affected by the old convictions. In an age where our data is all too public, access to our records can easily be accessed and impede progress for those convicted. In its wisdom, these chambers along with our executive office devised this limited act of clemency to help certain individuals along. However, a big factor remains: **Timing.**

If we consider the age of offenders when they are first charged, then we include the time it takes to adjudicate and then we factor the time it takes to complete their sentence, oftentimes it is over a decade. Now we add another decade of wait before the barrier is removed. These individuals are approaching 40 years of age or more before the barrier is lifted on average. Meanwhile, the individual has suffered tremendous hardship beyond their original sentence. This is not to say that their conduct did not warrant it. It is more to say that as a society we can look to do better. Imagine a more productive citizenry. Many of our neighbors already do.

New Hampshire provides the court with the ability of an annulment. There has to be good cause for the annulment, but the court can remove all the barriers to allow for a more successful full reintegration into society. While I will never be fully reintegrated into society because of the enormous amounts of barriers I still have before me, I can attest that I started my life over at 45 years of age and this will make 20 years since my release. I am a more productive citizen to my family, my employer, my neighbors and my state. I got there through the belief of others. The nun that would visit me every week to see how I was doing. The counselor who could see a better me. The college professor who instilled in me the belief that I could be educated. The attorneys who offered me a job upon release, taking the second risk, only to my family who never left my side. Eventually, these chambers also pitched in and provided some relief as well.

I do not consider myself an extremist, alarmist, progressive or any of those terms that we use to define people today. Instead, I like to think of myself as a pragmatic person. I try to weigh the pros and cons and look for a balance solution where one is warranted. So, what are they here?

If we look to the north, the south or west, we find that other states are doing much more in this area to help with full integration. New Hampshire has an annulment via the court system.¹ This gives the court discretion to provide relief from the barriers of convictions.

¹ Expungement, sealing & other record relief

A. Annulment of conviction records

Most crimes (exclusions described below) may be “annulled” by the sentencing court in response to a petition, if “in the opinion of the court, the annulment will assist in the petitioner’s rehabilitation and will be consistent with the public welfare.” N.H. Rev. Stat. Ann. § [651:5\(I\)](#).³ The court may grant or deny an annulment without a hearing,

Arizona has what it calls a set-aside.² Arkansas has sealing of records upon completion of sentence.³ These are just three states picked at random that have gone further than Rhode Island

unless a hearing is requested by the petitioner. *Id.* In a 2012 opinion, the Supreme Court of New Hampshire ruled that, in exercising discretion to grant an annulment pursuant to the “public welfare” standard, the court

may consider such factors as the number and circumstances of the convictions at issue, the defendant’s age at the time of each conviction, the time span of the convictions, and the particular manner in which annulment would aid the defendant’s rehabilitation—for example, by allowing him to obtain a professional license or to pursue a calling otherwise prohibited to those convicted of a crime.

State v. Baker, 55 A.3d 1001, 1005 (2012). Other relevant factors may also be considered. *Id.* Courts “may not consider simply the fact of the defendant’s convictions without considering the specific facts and circumstances that led to them.” *Id.* at 1004.

Waiting periods range from one year for a violation, two years for Class B misdemeanors, three years for most Class A misdemeanors, five years for most class B felony convictions and ten years for a Class A felony, sexual assault, indecent exposure, domestic battery, and lewdness. § 651:5(III). There may be no conviction during the waiting period. People with multiple convictions must satisfy waiting periods for all crimes, and may not have any excludable crime. § 651:5(VI).

² Procedures: In March 2018, Arizona enacted a series of provisions that elaborate the procedures for applying for set-aside. [HB 2312](#). First, fees may no longer be charged for an application to set aside. *Id.* § 13-905(B). Second, a person may now apply to any court, instead of only to the sentencing court. *Id.* § 13-905(A). Third, a person must be informed at sentencing of the right to seek a set aside (previously it was at discharge). *Id.* Fourth, for the first time courts are required to consider several specific factors in making a decision: (1) the nature and circumstances of the offense; (2) the applicant’s compliance with conditions of probation; (3) the sentence imposed and any correctional rules or regulations; (4) any prior or subsequent convictions; (4) the victim’s input and the status of victim restitution, if any; (5) the time elapsed since the completion of the sentence; (6) the applicant’s age at time of the conviction; and (7) any other relevant factor. *Id.* § 13-905(B). Fifth, a victim has a right to be present and heard at any proceeding regarding the application for set aside. *Id.* § 13-905(I). Sixth, a court that denies an application must state its reasons in writing and on the record. *Id.* § 13- 905(H). Seventh, if a conviction is set aside, the court clerk must notify the Department of Public Safety, which must update the person’s criminal history with an annotation that the conviction has been set aside. *Id.* § 13-905(F).

³ [Arkansas](#)

1. Eligibility

Conviction records: Non-violent Class C and D felonies and Class A and B drug felonies are eligible for sealing after completion of sentence and payment of court costs. [§ 16-90-1406\(a\)](#). “Completion of sentence” is defined in § 16-90-1404(1) to include payment of “fine, court costs, or other monetary obligation as defined in [§ 16-13-701](#) in full, unless the obligation has been excused by the sentencing court.” Violent Class C and D felonies must wait an additional five years. § 16-90-1406 (b). A person may not have more than one previous felony conviction—all felony offenses committed as part of the same episode are counted as a single conviction for these purposes). § 16-90-1406 (c). Most misdemeanor convictions and infractions are eligible for sealing after completion of sentence, [§ 16-90-1405](#), except that certain serious offenses including DUIs have a waiting period. The 2019 law eliminated a 5-year

to address this issue. I implore both committees to start moving in this direction. Use people like myself as examples of the good that can come of it. If not me, think about the member that sits on the parole board today. His journey started with this limited clemency. Or think about the lawyer who through this limited clemency served as a solicitor prosecuting offenders. Or the lawyer that went on to earn a degree from Brown and later from Yale University. There are many good examples that you can hang your hat on.

As you can see by this limited letter here in support of these bills, I could discuss this issue at nauseum. There is a certain belief today for me about doing the right thing. And there is no worse critic about me than I. I wear the scarlet letter inside my eyelids. No one needs to remind me. I will forever remind myself. However, I have been able to accomplish more than I ever planned to or wanted to; all to prove worthy of the efforts of those that put their trust in me. This is in part because of some of these clemencies discussed here as well though expungement is not one of them.

Please give serious weight to these bills.

waiting period and a predicate felony disqualification for non-violent felony convictions, and eliminated a 60-day waiting period for some misdemeanors and retained it for others. It also eliminated filing fees. There is a special provision for sealing certain drug possession convictions immediately upon completion of sentence in [§ 16-90-1407](#).

Ineligible for sealing: Class A and B felonies (other than drug felonies), violent and sexual felonies, felonies for which the maximum sentence is 10 years or more, motor vehicle felonies committed by a holder of a commercial driver's license. [§ 16-90-1408](#).

In 2021, a provision of this statute making anyone who had served a prison sentence ineligible was repealed. See [Act 341](#), HB1256.