

Section-by-section summary of House Judiciary Amendment to H.655, An act relating to qualifying offenses for sealing criminal history records and access to sealed criminal history records

Sec. 1. CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

This section amends the chapter adopted by the General Assembly in 2012 that sets forth the process for a person to petition to have a criminal history record sealed or expunged. In general, this section moves from a complex system of sealing and expungement to one of sealing in most instances, with an expanded list of qualifying crimes, and limited access to sealed records for certain entities that require such records for criminal justice purposes and licensing.

§ 7601. DEFINITIONS

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(4) “Qualifying crime” means:

* * *

(A) all misdemeanor offenses EXCEPT...

(B) ONLY the following felonies...

(Note: You can find the offenses that are designated as a listed crime [here](#).)

§ 7602. SEALING OF RECORD, POSTCONVICTION; PROCEDURE

Sets forth the process for a person to petition for the sealing of a criminal history record if the offense is no longer a crime or if it is a “qualifying offense.”

Whichever office prosecuted the offense resulting in the conviction, the State’s Attorney or Attorney General, will be the respondent in the matter unless the prosecuting office authorizes the other to act as the respondent.

The court shall grant the order without a hearing if the petitioner and the respondent stipulate to the sealing.

The process is not available to an individual who is the holder of a commercial driver’s license or commercial driver’s permit seeking to seal a record of a conviction for an offense committed in a motor vehicle.

Offenses that are no longer prohibited by law. (No waiting period)

(1) The petitioner has completed any sentence or supervision for the offense.

(2) Any restitution and surcharges ordered by the court have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court.

Qualifying misdemeanors.

- (1) At least three years have elapsed since the date on which the person completed the terms and conditions of the sentence.
- (2) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court.
- (3) The respondent has failed to show that sealing would be contrary to the interest of justice.

Qualifying felony offenses.

- (1) At least seven years have elapsed since the date on which the person completed the terms and conditions of the sentence.
- (2) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court.
- (3) The respondent has failed to show that sealing would be contrary to the interest of justice.

Qualifying DUI misdemeanor.

- (1) At least 10 years have elapsed since the date on which the person completed the terms and conditions of the sentence.
- (2) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court.
- (3) The person is not the holder of a commercial driver's license or commercial driver's permit.
- (4) The respondent has failed to show that sealing would be contrary to the interest of justice.

Sealing a criminal history record related to a **fish and wildlife offense** does not void any fish and wildlife license suspension or revocation imposed pursuant to the accumulation of points related to the sealed offense. Points accumulated by a person shall remain on the person's license and, if applicable, completion of the remedial course shall be required.

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

Unless either party objects in the interests of justice, the court shall issue an order sealing the criminal history record related to the citation or arrest of a person if the petitioner and respondent stipulate to the sealing or within 60 days after the final disposition of the case if:

- (A) the court does not make a determination of probable cause at the time of arraignment;
- (B) the charge is dismissed before trial with or without prejudice; or
- (C) the defendant is acquitted of the charges.

(Note: “With prejudice” means the State can’t refile the charges; “without prejudice” means the State can refile the charges.)

If a party objects to sealing the record, the court will schedule a hearing to determine if sealing the record serves the interests of justice.

A person may file a petition with the court requesting sealing 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 the record if it finds that sealing the record serves the interests of justice, or if the parties stipulate to sealing of the record.

§ 7604. NEW CHARGE

A court must wait to act on a petition for sealing if the person has another criminal offense pending.

§ 7605. DENIAL OF PETITION

If a petition for sealing is denied, the petitioner must wait two years before filing again unless authorized by the court.

§ 7606. EFFECT OF EXPUNGEMENT

Retains the current law regarding the effect of expungement because there are still some areas of law, such as court diversion, where expungement is used.

§ 7607. EFFECT OF SEALING

Except for certain circumstances where entities are granted access to sealed records, a sealing order is legally effective immediately and the person whose record is sealed is to be treated in all respects as if the person had never been arrested, convicted, or sentenced for the offense.

In any 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 a previous criminal history record only with respect to arrests or convictions that have not been sealed.

The person who is the subject of the record and their attorney may have access to and use the records indefinitely, as may persons conducting research.

Other entities will be able to access sealed records for specific purposes for a period of 10 years. They include:

1. An entity or person may use in any litigation or claim arising out of the same incidence related to the record.
2. A criminal justice agency or the AG may use for criminal justice purposes.

3. Use of a conviction for DUI I may be used as a predicate offense for a penalty enhancement for any subsequent offense.
4. May be cited in a court order or decision.
5. Can be used for firearms background checks.
6. Prosecutors may use to meet discovery requirements.
7. Law enforcement agency may use when considering an applicant for a LEO position or an investigation into a current employee.
8. Three entities, the Vermont Criminal Justice Council, OPR, and the Board of Medical Practice can access records for licensing purposes provided that each entity, prior to accessing the records, adopts rules outlining a process for handling sealed records and maintaining confidentiality and the standards for determining when information contained in a sealed record may be used for the purpose of licensing decision. Access to such records will not be permitted if LCAR objects to some or all of the rules. Records will remain confidential unless and until the entity relies on the records in a public licensing decision.

A party seeking to use a sealed criminal history record in a court proceeding must, prior to any use of the record in open court or in a public filing, notify the court of the party's intent to do so. The court will determine whether the record may be used prior its disclosure in the proceeding.

Use of a sealed document pursuant to an exception does not change the effect of sealing.

The court is required to bar viewing of the sealed offense in any accessible database that it maintains. The case file remains publicly accessible until all charges on a docket have been sealed. When all charges on a docket have been sealed, the case file becomes exempt from public access.

When a sealing order is issued by the court, any person or entity, except the court, that possesses criminal history records must bar viewing of the sealed offense in any accessible database that it maintains or remove information pertaining to the sealed records from any publicly accessible database that the person or entity maintains, and clearly label the criminal history record as "SEALED."

As currently happens, the court will keep an index of sealed cases.

§ 7608. VICTIMS

Current law requires the respondent to notify any known victim if a petition for sealing has been filed. The amendment adds e-mail as a method for contacting the victim.

§ 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN INDIVIDUAL 18–21 YEARS OF AGE

Current law and not amended by the bill, this section directs that the criminal history record of a person who was 18–21 years of age at the time the person committed a qualifying crime will be expunged

within 30 days after the date on which the person completed the terms and conditions of the sentence for the conviction, absent a finding of good cause by the court.

§ 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

No changes.

§ 7611. UNAUTHORIZED DISCLOSURE

No changes.

Sec. 2. DEFERRED SENTENCE

Under current law, after a conviction the court may defer a sentence and place the defendant on probation with certain conditions. If the defendant violates the terms of probation or the deferred sentence agreement, the court will impose the sentence. If the defendant completes the terms, the defendant is discharged and the records are expunged.

The amendment in Sec. 2 changes the practice of expunging such records to sealing such records.

Sec. 3. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

Expunges municipal violations two years after satisfaction of the judgment provided the person has not received any additional municipal violations.

This section is modeled after a similar provision enacted in 2021 regarding traffic violations and will apply to municipal violations that occur on and after July 1, 2024.

Sec. 4. EXPUNGEMENT OF TRAFFIC VIOLATION RECORDS

Amends the previously adopted statute requiring expungement of traffic violations to clarify the implementation date.

Sec. 5. PETITIONLESS SEALING

On or before December 2, 2024, the Chief Superior Judge, in consultation with the Attorney General, the Department of State's Attorneys and Sheriffs, the Office of the Defender General, and the Department of Corrections, shall submit to the House and Senate Committees on Judiciary a recommendation to establish a mechanism for petitionless sealing and any resources required for the recommendation to be implemented.

Sec. 6. EFFECTIVE DATE

July 1, 2024.