

1 S.37

2 Introduced by Senators Sears, Benning and Hartwell

3 Referred to Committee on Judiciary

4 Date: January 28, 2011

5 Subject: Crimes and criminal procedures; expungement of a nonviolent  
6 misdemeanor criminal history record

7 Statement of purpose: This bill proposes to provide a process for a person to  
8 petition the court for expungement of a criminal history record related to his or  
9 her arrest or conviction for a nonviolent misdemeanor. The court may grant  
10 the request if it finds that expungement of the record would serve the interest  
11 of justice.

12 ~~An act relating to expungement of a nonviolent misdemeanor criminal~~  
13 ~~history record.~~

*An act relating to expungement and sealing of criminal history records*

14  
15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. 13 V.S.A. chapter 230 is added to read:~~

17 ~~CHAPTER 230. CRIMINAL HISTORY RECORD EXPUNGEMENT~~

18 ~~§ 7601. DEFINITIONS~~

19 ~~As used in this subchapter:~~

20 ~~(1) "Court" means the criminal division of the superior court.~~

1 ~~(2) "Criminal history record" means all information documenting an~~  
2 ~~individual's contact with the criminal justice system, including data regarding~~  
3 ~~identification, arrest or citation, arraignment, judicial disposition, custody and~~  
4 ~~supervision.~~

5 (3) "Nonviolent misdemeanor" means a misdemeanor offense which is  
6 not a listed crime as defined in subdivision 5301(7) of this title or an offense  
7 involving sexual exploitation of children in violation of chapter 64 or section  
8 1030 of this title.

9 § 7602. PROCEDURE; CONVICTION

10 (a) A person who was convicted of a nonviolent misdemeanor may file a  
11 petition with the court requesting expungement of the criminal history record  
12 related to the conviction.

13 (b) The court shall grant the petition if the following conditions are met:

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

16 (2) The person has not been convicted of a felony since the person was  
17 convicted for the nonviolent misdemeanor on which the expungement petition  
18 is based.

19 (3) It is the opinion of the court that expungement of the criminal history  
20 record serves the interest of justice.

1 ~~(c) If a petition for expungement is denied, no further petition shall be~~  
2 ~~brought for three years.~~

3 § 7603. PROCEDURE; ARREST

4 (a) At any time, a person who was arrested for a nonviolent misdemeanor  
5 may petition the court to expunge the criminal history record related to the  
6 arrest if:

7 (1) No criminal charge is filed by the state.

8 (2) The court does not make a determination of probable cause at the  
9 time of arraignment or dismisses the charge at the time of arraignment.

10 (3) The defendant is acquitted after a trial of all charges related to the  
11 arrest.

12 (b) The court shall grant the petition if it finds that expungement of the  
13 criminal history record serves the interest of justice.

14 § 7604. NEW CHARGE

15 If a person is charged with a criminal offense after he or she has filed a  
16 petition for expungement pursuant to this chapter, the court shall not act on the  
17 petition until disposition of the new charge.

18 § 7605. DENIAL OF PETITION

19 If a petition for expungement is denied pursuant to this chapter, no further  
20 petition shall be brought for five years.

~~§ 7606. EFFECT OF EXPUNGEMENT~~

~~(a) Upon entry of an expungement order, 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 the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall send a copy of the order to the Vermont crime information center (VIC), and VCIC shall provide notice of the expungement to the arresting agency and any other entity that may have a record related to the expungement order~~

~~(b) 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 expunged.~~

~~(c) Nothing in this section shall affect any right of the person whose record has been expunged to appeal from the conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense.~~

Sec. 2. EFFECTIVE DATE

~~This act shall take effect on July 1, 2011.~~

~~Sec. 1. 13 V.S.A. chapter 230 is added to read:~~

~~CHAPTER 230. CRIMINAL HISTORY RECORD EXPUNGEMENT~~

~~§ 7601. DEFINITIONS~~

As used in this subchapter:

(1) "Court" means the criminal division of the superior court.

(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.

(3) "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 intoxicating liquor 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.

(4) "Qualifying misdemeanor" means a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, or predicate offense.

§ 7602. PROCEDURE; CONVICTION

(a)(1) Except as provided in subdivision (2) of this subsection, a person who was convicted of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence may file a petition with the court requesting expungement of the criminal history record related to the conviction. The state attorney or attorney general shall be the respondent in the matter.

(2) The petitioner and the respondent may stipulate to an expungement of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the expungement in accordance with section 7606 of this title.

(b) The court shall grant the petition if the following conditions are met:

(1) 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.

(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying misdemeanor as defined in subdivision 7601(4) of this title on which the expungement petition is based.

(3) Any restitution ordered by the court has been paid in full.

~~(4) It is the opinion of the court that expungement of the criminal history record serves the interest of justice.~~

~~§ 7603. PROCEDURE; CITATION AND ARREST~~

~~(a) At any time, a person who was cited or arrested for a qualifying misdemeanor may petition the court to expunge the criminal history record related to the citation or arrest if:~~

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

~~(2) 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.~~

~~(3) The defendant is acquitted after a trial of all charges related to the arrest.~~

~~(b) The court shall grant the petition if it finds that expungement of the criminal history record serves the interest of justice.~~

~~§ 7604. NEW CHARGE~~

~~If a person is charged with a criminal offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.~~

~~§ 7605. DENIAL OF PETITION~~

~~If a petition for expungement is denied by the court pursuant to this chapter, no further petition shall be brought for at least five years.~~

~~§ 7606. EFFECT OF EXPUNGEMENT~~

~~(a) Upon entry of an expungement order, 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 the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the expungement to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the expungement order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.~~

~~(b) 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 expunged.~~

~~(c) Nothing in this section shall affect any right of the person whose record has been expunged to appeal from the conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense.~~

~~Sec. 2. SUNSET~~

~~On July 1, 2014, this act is repealed.~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2011.~~

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

§ 7601. DEFINITIONS

As used in this chapter:

(1) "Court" means the criminal division of the superior court.

(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.

(3) "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 intoxicating liquor 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.

(4) "Qualifying crime" means:

(A) a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief; or

(C) a violation of section 2501 of this title related to grand larceny.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POSTCONVICTION; PROCEDURE

(a)(1) A person who was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction. The state's attorney or attorney general shall be the respondent in the matter.

(2) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(b)(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, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.

(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.

(C) Any restitution ordered by the court has been paid in full.

(D) The court finds that expungement of the criminal history record serves the interest of justice.

(2) 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 the conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(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 20 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.

(C) The person has not been convicted of a misdemeanor during the past 15 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.

(2) 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 the conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

§ 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 sealing of the criminal history record related to the citation or arrest if one of the following conditions is met:

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

(2) 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.

(3) The charge is dismissed before trial:

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

(B) with prejudice.

(4) 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. The petitioner and the respondent 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.

(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.

#### § 7604. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

#### § 7605. DENIAL OF PETITION

If a petition for expungement is denied by the court pursuant to this chapter, no further petition shall be brought for at least five years.

#### § 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, 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 the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the expungement to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(b) 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 expunged.

(c) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

(d)(1) The court may 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. 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."

#### § 7607. EFFECT OF SEALING

(a) Upon entry of an order to seal, 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. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.

(b) 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.

(c) 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 in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.

(d) Upon receiving a sealing order, an entity shall:

(1) Seal the investigation or prosecution record;

(2) Enter a copy of the sealing order into the record;

(3) Flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and

(4) Upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."

#### § 7608. VICTIMS

(a) At the time a petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(b) As used in this section, "reasonable effort" means attempting to contact the victim by first class mail at the victim's last known address and by telephone at the victim's last known phone number.

#### Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.