

House Proposal of Amendment

S. 37

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

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

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

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

§ 7601. DEFINITIONS

As used in this subchapter:

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

(2) "Charge or conviction record" means data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) "Investigation or prosecution record" means all information documenting the investigation or prosecution of the case that is maintained by law enforcement, the prosecuting attorney, or the defense attorney.

(4) "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.

(5) "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, a prohibited act as defined in section 2632 of this title, or a predicate offense.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POST-CONVICTION; PROCEDURE

(a) 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 charge or conviction record and sealing of the investigation or prosecution record related to the conviction. The state's attorney or attorney general shall be the respondent in the matter.

(b) 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.

(c) The court shall grant the petition, after hearing, if all of 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. If the person has successfully completed the terms and conditions of an indeterminate term of probation, the court may waive this 10-year wait period.

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

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

(4) In the totality of the circumstances, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(d) The court may grant the petition, after hearing, if the following conditions are met:

(1) 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.

(2) 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 misdemeanor.

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

(4) Any restitution ordered by the court for any misdemeanor of which the person has been convicted has been paid in full.

(5) After considering the particular nature of any subsequent offense, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(e) At the time the petition is filed, 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 at any hearing on the petition. The

respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(f) Upon granting a petition pursuant to this section, 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.

(g) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

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

(a) A person who was cited or arrested for a criminal offense may petition the court to expunge the charge or conviction record, and seal the investigation or prosecution 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 charge is dismissed before trial:

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

(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. At the time the petition is filed, 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 petition being granted. The petitioner and the respondent shall be the only parties in the matter.

(c) The court may grant the petition if it finds, in the totality of the circumstances, that expungement of the charge or conviction record and sealing of the investigation or prosecution record, serve the interest of justice.

(d) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

(e) An arresting or investigating agency's records are subject only to sealing, not expungement, under this section.

§ 7604. EFFECT OF EXPUNGEMENT AND SEALING

(a) Upon entry of an order of expungement of a charge or conviction record:

(1) The court shall provide a copy of the order of expungement to the respondent, Vermont criminal information center (VCIC), center for crime victim services, and any other entity that may possess a portion of the charge or conviction record of the criminal offense which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) 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. 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 charge or conviction record only with respect to arrests or convictions that have not been expunged. Upon receiving an inquiry from any person regarding an expunged record, any person or entity that has received a copy of the order of expungement shall respond that "NO RECORD EXISTS."

(3) The court may keep a special index of cases that have been expunged together with the order for expungement and the certificate issued pursuant to section 7602 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.

(4) The special index and related documents specified in subdivision (3) of this section shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access only to authorized persons.

(5) Inspection of the expungement order or 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.

(6) All other court documents in a case that is subject to an expungement order shall be destroyed.

(7) The court administrator shall establish policies for implementing subdivisions (3) – (6) of this subsection.

(b) Upon entry of an order to seal an investigation or prosecution record:

(1) The court shall provide a copy of the sealing order to the respondent, Vermont criminal information center (VCIC), center for crime victim services,

the arresting agency, the investigating agency, and any other entity that may possess a portion of the investigation or prosecution record of the qualifying misdemeanor which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) 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. 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 investigation or prosecution record only with respect to investigations, arrests, or convictions that have not been sealed.

(c) 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."

(d)(1) Notwithstanding a sealing order:

(A) 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.

(B) An entity may use an investigation or a prosecution 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.

(2) An entity may use an investigation or prosecution record sealed in accordance with section 7602 of this title, regarding a person who was convicted, for future criminal investigations or prosecutions only upon an order of a superior court judge in the criminal division. The hearing on an application for such an order may be conducted in a confidential and nonadversarial manner substantially similar to procedures for obtaining a search warrant.

(e) The person whose record has been sealed shall maintain his or her right to access the sealed record as if the record had not been sealed.

§ 7605. NEW CHARGE

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

§ 7606. DENIAL OF PETITION

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

Sec. 2. REPORT; COURT ADMINISTRATOR

On or before January 15, 2015, the court administrator shall report to the general assembly the total number of court orders for expungement of charge or conviction records and sealing of investigation or prosecution records which have been issued by the courts of this state and the types of offenses for which a court ordered expungement of charge or conviction records and sealing of investigation or prosecution records pursuant to this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.