

1 S.115

2 Introduced by Senator Benning

3 Referred to Committee on Judiciary

4 Date: February 25, 2015

5 Subject: Criminal record; expungement

6 Statement of purpose of bill as introduced: This bill proposes to permit
7 expungement of a criminal conviction within one year of the conviction if the
8 conduct on which the conviction was based is no longer criminal.

9 An act relating to expungement of convictions based on conduct that is no
10 longer criminal

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

12 ~~Sec. 1. 13 V.S.A. § 7601 is amended to read:~~

13 § 7601. DEFINITIONS

14 As used in this chapter:

15 * * *

16 (4) "Qualifying crime" means:

17 (A) a misdemeanor offense which is not a listed crime as defined in
18 subdivision 5301(7) of this title, an offense involving sexual exploitation of
19 ~~children in violation of chapter 64 of this title, an offense involving violation~~

1 ~~of a protection order in violation of section 1030 of this title, a prohibited act~~

2 as defined in section 2632 of this title, or a predicate offense;

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

5 (C) a violation of section 2501 of this title related to grand larceny; or

6 (D) a violation of section 1201 of this title related to burglary,
7 excluding any burglary into an occupied dwelling.

8 Sec. 2. 13 V.S.A. § 7602 is amended to read:

9 § 7602. EXPUNGEMENT AND SEALING OF RECORD,

10 POSTCONVICTION; PROCEDURE

11 (a)(1) A person ~~who was convicted of a qualifying crime or qualifying~~
12 ~~crimes arising out of the same incident or occurrence~~ may file a petition with
13 the Court requesting expungement or sealing of the criminal history record
14 related to the conviction. ~~The State's Attorney or Attorney General shall be~~
15 ~~the respondent in the matter. if:~~

16 (A) the person was convicted of a qualifying crime or qualifying
17 crimes arising out of the same incident or occurrence; or

18 (B)(i) the person was convicted of:

19 (I) an offense for which the underlying conduct is no longer
20 prohibited by law or the criminal sanctions have been repealed; or

1 ~~(H) possession of a regulated drug under 18 V.S.A. chapter 84,~~

2 subchapter 1 in an amount that is no longer prohibited by law or for which

3 criminal sanctions have been repealed; and

4 (ii) at least one year has elapsed since the completion of any

5 sentence or supervision for the offense, whichever is later.

6 (2) The State's Attorney or Attorney General shall be the respondent in

7 the matter.

8 (3) The Court shall grant the petition without hearing if the petitioner

9 and the respondent stipulate to the granting of the petition. The respondent

10 shall file the stipulation with the Court, and the Court shall issue the petitioner

11 a certificate and provide notice of the order in accordance with this section.

12 (b)(1) The Court shall grant the petition and order that the criminal history

13 record be expunged pursuant to section 7606 of this title if the following

14 conditions are met:

15 (A) At least 10 years have elapsed since the date on which the person

16 successfully completed the terms and conditions of the sentence for the

17 conviction, or if the person has successfully completed the terms and

18 conditions of an indeterminate term of probation that commenced at least

19 10 years previously.

20 (B) The person has not been convicted of a crime arising out of a new

21 incident or occurrence since the person was convicted for the qualifying crime.

1 ~~(C) Any restitution ordered by the Court has been paid in full.~~

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

4 (2) The Court shall grant the petition and order that all or part of the
5 criminal history record be sealed pursuant to section 7607 of this title if the
6 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and
7 the Court finds that:

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

10 (B) the person committed the qualifying crime after reaching
11 19 years of age.

12 (c)(1) The Court shall grant the petition and order that the criminal history
13 record be expunged pursuant to section 7606 of this title if the following
14 conditions are met:

15 (A) At least 20 years have elapsed since the date on which the person
16 successfully completed the terms and conditions of the sentence for the
17 conviction.

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

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

3 (D) Any restitution ordered by the Court for any crime of which the
4 person has been convicted has been paid in full.

5 (E) After considering the particular nature of any subsequent offense,
6 the Court finds that expungement of the criminal history record for the
7 qualifying crime serves the interest of justice.

8 (2) The Court shall grant the petition and order that all or part of the
9 criminal history record be sealed pursuant to section 7607 of this title if the
10 conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met
11 and the Court finds that:

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

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

16 (d) For petitions filed pursuant to subdivision (a)(1)(B) of this section, the
17 Court shall grant the petition and order that the criminal history record be
18 expunged pursuant to section 7606 of this title if the following conditions
19 are met:

20 (1) At least one year has elapsed since the completion of any sentence or
21 supervision for the offense, whichever is later.

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

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

4 ~~(4) The Court finds that expungement of the criminal history record~~
5 ~~serves the interest of justice.~~

6 ~~(e) For petitions filed pursuant to subdivision (a)(1)(B)(i)(II) of this~~
7 ~~section:~~

8 ~~(1) The petitioner shall bear the burden of establishing that his or her~~
9 ~~conviction was based on possessing a quantity of regulated drug that is no~~
10 ~~longer prohibited by law or for which criminal sanctions have been repealed.~~

11 ~~(2) There shall be a rebuttable presumption that the weight of the~~
12 ~~regulated drug specified in the affidavit of probable cause associated with the~~
13 ~~petitioner's conviction was the amount possessed by the petitioner.~~

14 Sec. 3. EFFECTIVE DATE

15 ~~This act shall take effect on passage.~~

~~Sec. 1. 13 V.S.A. § 7601 is amended to read:~~

~~§ 7601. DEFINITIONS~~

~~As used in this chapter:~~

~~* * *~~

~~(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; or~~

~~(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title.~~

Sec. 2. 13 V.S.A. § 7602 is amended to read:

§ 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, if:~~

~~(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; or~~

~~(B)(i) the person was convicted of:~~

~~(I) an offense for which the underlying conduct is no longer prohibited by law or the criminal sanctions have been repealed; or~~

~~(II) possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been repealed; and~~

~~(ii) at least one year has elapsed since the completion of any sentence or supervision for the offense, whichever is later.~~

~~(2) The State's Attorney or Attorney General shall be the respondent in the matter.~~

~~(3) 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.~~

~~(E) For petitions filed pursuant to subdivision 7601(4)(D) of this title, the Court finds that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.~~

~~(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)~~, and (E) 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.~~

~~(F) For petitions filed pursuant to subdivision 7601(4)(D) of this title, the Court finds that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.~~

~~(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)~~, and (F) 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.~~

~~(d) For petitions filed pursuant to subdivision (a)(1)(B) of this section, 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:~~

~~(1) At least one year has elapsed since the completion of any sentence or supervision for the offense, whichever is later.~~

~~(2) Any restitution ordered by the Court has been paid in full.~~

~~(3) The Court finds that expungement of the criminal history record serves the interest of justice.~~

~~(e) For petitions filed pursuant to subdivision (a)(1)(B)(i)(II) of this section:~~

~~(1) The petitioner shall bear the burden of establishing that his or her conviction was based on possessing a quantity of regulated drug that is no longer prohibited by law or for which criminal sanctions have been repealed.~~

~~(2) There shall be a rebuttable presumption that the weight of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.~~

Sec. 3. EFFECTIVE DATE

~~This act shall take effect on passage.~~

Sec. 1. 13 V.S.A. § 7601 is amended to read:

§ 7601. DEFINITIONS

As used in this chapter:

* * *

(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. “Predicate offense” shall not include misdemeanor possession of marijuana or a disorderly conduct offense under section 1026 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; or*

(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title.

Sec. 2. 13 V.S.A. § 7602 is amended to read:

§ 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. if:~~*

(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; or

(B) the person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense.

(2) The State’s Attorney or Attorney General shall be the respondent in the matter.

(3) *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.

* * *

(d) The Court shall grant the petition and order that the criminal history record be expunged in accordance with section 7606 of this title if the following conditions are met:

(1) The petitioner committed the qualifying crime or crimes prior to reaching 25 years of age.

(2) At least five 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 five years previously.

(3) 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 crime.

(4) The person successfully completed a term of regular employment or public service, independent of any service ordered as a part of the petitioner's sentence for the conviction, and as approved by the Community Justice Network of Vermont, which may include:

(A) community service hours completed without compensation, reparation of harm to the victim, or education regarding ways not to reoffend, or a combination of the three;

(B) at least one year of service in the U.S. Armed Forces, followed by an honorable discharge or continued service in good standing;

(C) at least one year of service in AmeriCorps or another local, state, national, or international service program, followed by successful completion of the program or continued service in good standing; or

(D) at least one year of regular employment.

(5) Any restitution ordered by the Court for any crime of which the person has been convicted has been paid in full.

(6) The Court finds that expungement of the criminal history record serves the interest of justice.

(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section, the Court shall grant the petition and order that the criminal history record be expunged in accordance with section 7606 of this title if the following conditions are met:

(1) At least one year has elapsed since the completion of any sentence or supervision for the offense, whichever is later.

(2) Any restitution ordered by the Court has been paid in full.

(3) The Court finds that expungement of the criminal history record serves the interest of justice.

(f) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a conviction for possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been removed:

(1) The petitioner shall bear the burden of establishing that his or her conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed.

(2) There shall be a rebuttable presumption that the amount of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.

(g) Prior to granting an expungement or sealing under this section for petitions filed pursuant to subdivision 7601(4)(D) of this title, the Court shall make a finding that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.