

1 S.115

2 Introduced by Senator Benning

3 Referred to Committee on

4 Date:

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20 prohibited by law or the criminal sanctions have been repealed; or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                   (II) 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3                   criminal sanctions have been repealed; and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.