

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 115  
3 entitled “An act relating to expungement of convictions based on conduct that  
4 is no longer criminal” respectfully reports that it has considered the same and  
5 recommends that the House propose to the Senate that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

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

9 § 7601. DEFINITIONS

10 As used in this chapter:

11 \* \* \*

12 (4) “Qualifying crime” means:

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

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

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

1            (D) a violation of section 1201 of this title related to burglary,  
2            excluding any burglary into an occupied dwelling, as defined in subdivision  
3            1201(b)(2) of this title.

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

5            § 7602. EXPUNGEMENT AND SEALING OF RECORD,

6                            POSTCONVICTION; PROCEDURE

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

\* \* \*

(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:

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

(B) 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.

(C) 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.

(D) The person successfully completed a term of public service or programming, independent of any service or programming 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:

(i) 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;

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

3                   (iii) at least one year of service in AmeriCorps or another local,  
4 state, national, or international service program, followed by successful  
5 completion of the program or continued service in good standing.

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

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

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

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

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

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

19                  (f) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a  
20 conviction for possession of a regulated drug under 18 V.S.A. chapter 84,

1 subchapter 1 in an amount that is no longer prohibited by law or for which  
2 criminal sanctions have been removed:

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

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

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

15 Sec. 3. EFFECTIVE DATE

16 This act shall take effect on passage.

17  
18 (Committee vote: \_\_\_\_\_)

19 \_\_\_\_\_  
20 Representative \_\_\_\_\_

21 FOR THE COMMITTEE