

**S.115 (expungement) – comparison of House & Senate versions
Prepared for the Committee of Conference, May 2015**

Sec. No.	House	Senate	Comments
Definitions: Qualifying Crimes			
1	13 V.S.A. § 7601, definitions Identical to Senate		
Expungement Procedure			
2	<p>13 V.S.A. § 7602, expungement and sealing of record, postconviction; procedure</p> <p>(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:</p> <p style="padding-left: 40px;">(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; or</p> <p style="padding-left: 40px;">(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.</p> <p>(2) <u>The State's Attorney or Attorney General shall be the respondent in the matter.</u></p>	<p>(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:</p> <p style="padding-left: 40px;"><u>(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; or</u></p> <p style="padding-left: 40px;"><u>(B)(i) the person was convicted of:</u></p> <p style="padding-left: 80px;"><u>(I) an offense for which the underlying conduct is no longer prohibited by law or the criminal sanctions have been repealed; or</u></p> <p style="padding-left: 80px;"><u>(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chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been repealed; and</u></p> <p style="padding-left: 40px;"><u>(ii) at least one year has elapsed since the completion of any sentence or</u></p>	<p>Differences highlighted in yellow.</p> <p>House version distills (B)(i)(I) and (II) into (B) and omits (B)(i)(II) as encompassed within (B). House also eliminates (B)(ii) as redundant.</p>

Sec. No.	House	Senate	Comments
	<p>(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:</p> <p>(A) The petitioner committed the qualifying crime or crimes prior to reaching 25 years of age.</p> <p>(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.</p> <p>(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.</p> <p>(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:</p> <p>(i) community service hours completed without compensation, reparation of</p>	<p><u>supervision for the offense, whichever is later.</u></p> <p>(2) <u>The State's Attorney or Attorney General shall be the respondent in the matter.</u></p> <p style="text-align: center;">* * *</p>	<p>House adds new subsection (d), which provides that a person who committed a qualifying crime prior to turning 25 can petition the court for expungement after 5 years if the person has completed a term of public service as approved by the Community Justice Network of Vermont.</p>

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	<p><u>harm to the victim, or education regarding ways not to reoffend, or a combination of the three:</u></p> <p style="padding-left: 40px;"><u>(ii) at least one year of service in the U.S. Armed Forces, followed by an honorable discharge or continued service in good standing; or</u></p> <p style="padding-left: 40px;"><u>(iii) 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.</u></p> <p><u>(E) Any restitution ordered by the Court for any crime of which the person has been convicted has been paid in full.</u></p> <p><u>(F) The Court finds that expungement of the criminal history record serves the interest of justice.</u></p> <p>[House version subsection (e) identical to Senate version subsection (d).]</p> <p><u>(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:</u></p> <p style="padding-left: 40px;"><u>(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.</u></p>	<p>[Senate version subsection (d) identical to House version subsection (e).]</p> <p><u>(e) For petitions filed pursuant to subdivision (a)(1)(B)(i)(II) of this section:</u></p> <p style="padding-left: 40px;"><u>(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.</u></p> <p style="padding-left: 40px;"><u>(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</u></p>	<p>House version (f) and Senate version (e) are substantively the same. Because the House removed the redundant language at (a)(1)(B)(i)(II), the House version adds clarifying language that this section applies if petitioner is filing for expungement for drug possession.</p>

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	<p>(2) <u>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.</u></p> <p><u>(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.</u></p>	<p><u>by the petitioner.</u></p>	<p>House version changes format so that rather than repeating throughout the section, the provision that a petitioner seeking expungement of a burglary conviction bears the burden of proving the underlying crime was not committed in an occupied dwelling is a separate subsection applicable to the entire section.</p>
Effective Date			
3	Identical to Senate.		