

1 TO THE HONORABLE SENATE:

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

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

8 § 7601. DEFINITIONS

9 As used in this chapter:

10 * * *

11 (4) “Qualifying crime” means:

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

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

19 (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)(i) the person was convicted of:

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16 prohibited by law or the criminal sanctions have been repealed; or

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19 criminal sanctions have been repealed; and

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

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

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

7 (b)(1) The Court shall grant the petition and order that the criminal history
8 record be expunged pursuant to section 7606 of this title if the following
9 conditions are met:

10 (A) At least 10 years have elapsed since the date on which the person
11 successfully completed the terms and conditions of the sentence for the
12 conviction, or if the person has successfully completed the terms and
13 conditions of an indeterminate term of probation that commenced at least
14 10 years previously.

15 (B) The person has not been convicted of a crime arising out of a new
16 incident or occurrence since the person was convicted for the qualifying crime.

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

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

20 (E) For petitions filed pursuant to subdivision 7601(4)(D) of this title,
21 the Court finds that the conduct underlying the conviction under section 1201

1 of this title did not constitute a burglary into an occupied dwelling, as defined
2 in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of
3 establishing this fact.

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

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

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

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

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

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

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

8 (3) 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)(i)(II) of this
11 section:

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

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

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on passage.

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9 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE