

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

4 (A) At least 10 years have elapsed since the date on which the person  
5 successfully completed the terms and conditions of the sentence for the  
6 conviction, or if the person has successfully completed the terms and  
7 conditions of an indeterminate term of probation that commenced at least  
8 10 years previously.

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

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

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

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

19 (2) The Court shall grant the petition and order that all or part of the  
20 criminal history record be sealed pursuant to section 7607 of this title if the

1 conditions of subdivisions (1)(A), (B), ~~and (C)~~, and (E) of this subsection are  
2 met and the Court finds that:

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

5 (B) the person committed the qualifying crime after reaching  
6 19 years of age.

7 (c)(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 20 years have elapsed since the date on which the person  
11 successfully completed the terms and conditions of the sentence for the  
12 conviction.

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

16 (C) The person has not been convicted of a misdemeanor during the  
17 past 15 years.

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

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

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

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

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

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

17           (d) The Court shall grant the petition and order that the criminal history  
18 record be expunged pursuant to section 7606 of this title if the following  
19 conditions are met:

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

1           (B) At least five years have elapsed since the date on which the  
2           person successfully completed the terms and conditions of the sentence for the  
3           conviction, or if the person has successfully completed the terms and  
4           conditions of an indeterminate term of probation that commenced at least five  
5           years previously.

6           (C) The person has not been convicted of a crime arising out of a new  
7           incident or occurrence since the person was convicted of the qualifying crime.

8           (D) The person:

9                   (i) successfully completed programming as approved by a  
10           Restorative Justice Center, which shall include at least 200 hours of  
11           community or public service completed without compensation, and is  
12           independent of any programming ordered as a part of petitioner's sentence for  
13           the conviction;

14                   (ii) served in the U.S. Armed Forces for at least one year and  
15           continues to serve in good standing or was honorably discharged; or

16                   (iii) participated in an AmeriCorps or other local, state, national,  
17           or international service program for at least one year and continues to  
18           participate in good standing or successfully completed the program.

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

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

3           (G) For petitions filed pursuant to subdivision 7601(4)(D) of this  
4           title, the Court finds that the conduct underlying the conviction under section  
5           1201 of this title did not constitute a burglary into an occupied dwelling, as  
6           defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the  
7           burden of establishing this fact.

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

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

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

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

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

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

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

7           **Sec. 3. RESTORATIVE JUSTICE NETWORK; ACCELERATED**

8           **EXPUNGEMENT PROGRAM**

9           The Restorative Justice Network shall, in consultation with the Department  
10          of State’s Attorneys and Sheriffs, the Defender General, and the Chief Superior  
11          Court Judge, develop a community service-based program for individuals  
12          seeking expungement under 13 V.S.A. § 7602(e). Such program shall require  
13          participants to complete at least 200 hours of community or public service  
14          without compensation, and may require reparation of harm to the victim or  
15          education regarding ways to not reoffend or both. The Restorative Justice  
16          Center offering the program may charge a reasonable administrative fee to  
17          individuals seeking to participate in the program.



1       Sec. 4. EFFECTIVE DATE

2           This act shall take effect on passage.

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8           (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE