

No. 57. An act relating to expungement.

(H.171)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 8005 is amended to read:

§ 8005. NOTICE OF COLLATERAL CONSEQUENCES AND
ELIGIBILITY FOR EXPUNGEMENT IN PRETRIAL
PROCEEDING

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(b) Before the ~~Court~~ court accepts a plea of guilty or nolo contendere from an individual, the ~~Court~~ court shall:

(1) confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction; and

(2) provide written notice, as part of a written plea agreement or through another form, of the following:

(A) that collateral consequences may apply because of the conviction;

(B) the Internet address of the collection of laws published under this chapter;

(C) that there may be ways to obtain relief from collateral consequences;

(D) that the conviction may be eligible for expungement or sealing pursuant to section 7602 of this title;

(E) contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

~~(E)~~(F) that conviction of a crime in this State does not prohibit an individual from voting in this State.

Sec. 2. 13 V.S.A. § 8006 is amended to read:

§ 8006. NOTICE OF COLLATERAL CONSEQUENCES AND

ELIGIBILITY FOR EXPUNGEMENT UPON RELEASE

(a) Prior to the completion of a sentence, an individual in the custody of the Commissioner of Corrections shall be given written notice of the following:

(1) that collateral consequences may apply because of the conviction;

(2) the Internet address of the collection of laws published under this chapter;

(3) that there may be ways to obtain relief from collateral consequences;

(4) that the conviction may be eligible for expungement or sealing pursuant to section 7602 of this title;

(5) contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

~~(5)~~(6) that conviction of a crime in this State does not prohibit an individual from voting in this State.

(b) For persons sentenced to incarceration, the notice shall be provided not more than 30 days and at least 10 days before completion of the sentence. If the sentence is for a term of less than 30 days then notice shall be provided when the sentence is completed.

(c) For persons receiving a sentence involving community supervision, such as probation, furlough, home confinement, conditional reentry, or parole, the notice shall be provided by the Department of Corrections in keeping with its mission of ensuring rehabilitation and public safety.

(d) For persons receiving a penalty involving a fine only, the court shall, at the time of the judgment, provide either oral or written notice that the conviction may be eligible for expungement or sealing pursuant to section 7602 of this title.

Sec. 3. 13 V.S.A. § 7601(4) is amended to read:

(4) “Qualifying crime” means:

(A) a misdemeanor offense ~~which~~ that is not:

(i) a listed crime as defined in subdivision 5301(7) of this title;

(ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;

(iii) an offense involving violation of a protection order in violation of section 1030 of this title;

(iv) ~~a prohibited act~~ prostitution as defined in section 2632 of this title, ~~or prohibited conduct under section 2601a of this title;~~ or

(v) a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief;

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

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

(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit.

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

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,

POSTCONVICTION; PROCEDURE

* * *

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

(A) At least ~~10~~ 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 ~~10~~ five years previously.

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

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

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

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

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

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

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

(A) At least ~~20~~ 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

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

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

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

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

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

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

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

~~(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:~~

~~(1) The petitioner committed the qualifying crime or crimes prior to reaching 25 years of age.~~

~~(2) 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.~~

~~(3) 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.~~

~~(4) The person successfully completed a term of regular employment or public service, independent of any service 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:~~

~~(A) 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;~~

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

~~(C) 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; or~~

~~(D) at least one year of regular employment.~~

~~(5) Any restitution ordered by the Court for any crime of which the person has been convicted has been paid in full.~~

~~(6) The Court finds that expungement of the criminal history record serves the interest of justice.~~

~~(e)~~ For petitions filed pursuant to subdivision (a)(1)(B) of this section, unless the court finds that expungement would not be in the interest of justice, the ~~Court~~ 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:

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

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

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

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Sec. 5. 13 V.S.A. § 7605 is amended to read:

§ 7605. DENIAL OF PETITION

If a petition for expungement is denied by the ~~Court~~ court pursuant to this chapter, no further petition shall be brought for at least ~~five~~ two years, unless a shorter duration is authorized by the court.

Sec. 6. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue an order to expunge all records and files related

to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence. The ~~Court~~ court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The ~~Court~~ court shall provide notice of the expungement to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

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Sec. 7. SECRETARY OF STATE; ATTORNEY GENERAL; REPORT

The Secretary of State, in consultation with the Attorney General, shall evaluate how to comply with the requirements of 13 V.S.A. chapter 230 and, on or before January 15, 2018, report to the House and Senate Committees on Judiciary to confirm such compliance.

Sec. 8. EFFECTIVE DATES

This act shall take effect on July 1, 2017, except for Sec. 3 (13 V.S.A. § 7601(4)), subdivision (E), which shall take effect on January 1, 2018.

Date Governor signed bill: June 5, 2017