

1 S.173

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 3, 2018

5 Subject: Court procedure; sealing of criminal history records

6 Statement of purpose of bill as introduced: This bill proposes to expand the
7 availability of sealing criminal history records when there is no conviction to
8 individuals cited or arrested for any crime.

9 An act relating to sealing criminal history records when there is no
10 conviction

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

12 ~~Sec. 1. 13 V.S.A. § 7603 is amended to read:~~

13 ~~§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO~~
14 ~~CONVICTION; PROCEDURE~~

15 ~~(a) A person who was cited or arrested for a qualifying crime or qualifying~~
16 ~~crimes arising out of the same incident or occurrence may file a petition with~~
17 ~~the court requesting expungement or sealing of the criminal history record~~
18 ~~related to the citation or arrest if one of the following conditions is met:~~

19 ~~(1) No criminal charge is filed by the State and the statute of limitations~~
20 ~~has expired.~~

1 ~~(2) The court does not make a determination of probable cause at the~~
2 time of arraignment or dismisses the charge at the time of arraignment and the
3 statute of limitations has expired.

4 (3) The charge is dismissed before trial:

5 (A) without prejudice and the statute of limitations has expired; or

6 (B) with prejudice.

7 (4) The defendant and the respondent stipulate that the court may grant
8 the petition to ~~expunge and~~ seal the record.

9 (b) The State's Attorney or Attorney General shall be the respondent in the
10 matter. The petitioner and the respondent shall be the only parties in the
11 matter.

12 (c) The court shall grant the petition and order that the criminal history
13 record be ~~expunged~~ sealed pursuant to section ~~7606~~ 7607 of this title if it finds
14 that ~~expungement of~~ sealing the criminal history record serves the interest of
15 justice.

16 (d) ~~The court shall grant the petition and order that all or part of the~~
17 ~~criminal history record be sealed pursuant to section 7607 of this title if:~~

18 (1) ~~The court finds that sealing the criminal history record better serves~~
19 ~~the interest of justice than expungement.~~

20 (2) ~~The person committed the qualifying crime after reaching 19 years~~
21 ~~of age. [Repealed.]~~

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~~Sec. 2. EFFECTIVE DATE
This act shall take effect on July 1, 2018.~~

~~Sec. 1. 13 V.S.A. § 7602 is amended to read:~~

~~§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POSTCONVICTION; PROCEDURE~~

~~* * *~~

~~(c)(1) The 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 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 in the last 7 years.~~

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

~~(D) Any restitution ordered by the 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 finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.~~

~~* * *~~

~~Sec. 2. 13 V.S.A. § 7603 is amended to read:~~

~~§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO
CONVICTION; PROCEDURE~~

~~(a) A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or Unless either party objects in the interest of justice, the court shall issue an order sealing of the criminal history record related to the citation or arrest if one of the following conditions is met of a person:~~

~~(1) No criminal charge is filed by the State and the statute of limitations has expired.~~

~~(2) The twelve months after the citation or arrest if:~~

~~(A) the court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired; or~~

~~(3)(B) The charge is dismissed before trial:~~

~~(A) without prejudice and the statute of limitations has expired; or~~

~~(B) with prejudice.~~

~~(4)(2) The at any time if the prosecuting attorney and the defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.~~

~~(b) The State's Attorney or Attorney General shall be the respondent in the matter. If a party objects to sealing or expunging a record pursuant to this section, the court shall schedule a hearing to determine if sealing or expunging the record serves the interest of justice. The petitioner defendant and the respondent prosecuting attorney shall be the only parties in the matter.~~

~~(c) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice. [Repealed.]~~

~~(d) The 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:~~

~~(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.~~

~~(2) The person committed the qualifying crime after reaching 19 years of age. [Repealed.]~~

~~(e) Unless either party objects in the interest of justice, the court shall issue an order expunging a criminal history record related to the citation or arrest of a person:~~

~~(1) not more than 45 days after:~~

~~(A) acquittal if the defendant is acquitted of the charges; or~~

~~(B) dismissal if the charge is dismissed with prejudice before trial;~~

~~(2) at any time if the prosecuting attorney and the defendant stipulate that the court may grant the petition to expunge the record.~~

~~(f) Unless either party objects in the interest of justice, the court shall issue an order to expunge a record sealed pursuant to subsection (a) or (g) of this~~

~~section after the statute of limitations has expired.~~

~~(g) A person may file a petition with the court requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interest of justice.~~

~~(h) The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record.~~

~~(i)(1) The court shall keep a special index of cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.~~

~~(2) The special index and related documents specified in subdivision (1) of this subsection (i) shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.~~

~~(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.~~

~~(4) The Court Administrator shall establish policies for implementing this subsection.~~

~~Sec. 3. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS;
EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC
EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY
RECORDS; REPORT~~

~~The Department of State's Attorneys and Sheriffs, in consultation with the Office of the Court Administrator, the Vermont Crime Information Center, the Office of the Attorney General, the Office of the Defender General, the Center for Crime Victim Services, and Vermont Legal Aid, shall:~~

~~(1) consider:~~

~~(A) expanding the list of qualifying crimes eligible for expungement~~

~~amend to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;~~

~~(B) the implications of such an expansion on public health, economic development, and law enforcement efforts in the State; and~~

~~(C) the viability of automating the process of expunging and sealing criminal history records;~~

~~(2) seek input from the Vermont Governor's Opioid Coordination Council; and~~

~~(3) on or before November 1, 2018, report to the Joint Legislative Justice Oversight Committee on the findings of the group, including any recommendations on specific crimes to add to the definition of qualifying crimes pursuant to 13 V.S.A. § 7601.~~

Sec. 4. EFFECTIVE DATE

~~This act shall take effect on July 1, 2018.~~

Sec. 1. 13 V.S.A. § 7602 is amended to read:

*§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POSTCONVICTION; PROCEDURE*

* * *

(c)(1) The 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 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 in the last 7 years.

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

(D) Any restitution ordered by the 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 finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

* * *

Sec. 2. 13 V.S.A. § 7603 is amended to read:

§ 7603. ~~EXPUNGEMENT AND SEALING OF RECORD, NO
CONVICTION; PROCEDURE~~

~~(a) A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or Unless either party objects in the interest of justice, the court shall issue an order sealing of the criminal history record related to the citation or arrest if one of the following conditions is met of a person:~~

~~(1) No criminal charge is filed by the State and the statute of limitations has expired.~~

~~(2) The twelve months after the dismissal if:~~

~~(A) the court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired.; or~~

~~(3)(B) The charge is dismissed before trial:~~

~~(A) without prejudice and the statute of limitations has expired; or~~

~~(B) with prejudice.~~

~~(4)(2) The at any time if the prosecuting attorney and the defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.~~

~~(b) The State's Attorney or Attorney General shall be the respondent in the matter. If a party objects to sealing or expunging a record pursuant to this section, the court shall schedule a hearing to determine if sealing or expunging the record serves the interest of justice. The petitioner defendant and the respondent prosecuting attorney shall be the only parties in the matter.~~

~~(c) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice. [Repealed.]~~

~~(d) The 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:~~

~~(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.~~

~~(2) The person committed the qualifying crime after reaching 19 years of age. [Repealed.]~~

~~(e) Unless either party objects in the interest of justice, the court shall issue~~

an order expunging a criminal history record related to the citation or arrest of a person:

(1) not more than 45 days after:

(A) acquittal if the defendant is acquitted of the charges; or

(B) dismissal if the charge is dismissed with prejudice before trial;

(2) at any time if the prosecuting attorney and the defendant stipulate that the court may grant the petition to expunge the record.

(f) Unless either party objects in the interest of justice, the court shall issue an order to expunge a record sealed pursuant to subsection (a) or (g) of this section after the statute of limitations has expired.

(g) A person may file a petition with the court requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interest of justice.

(h) The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record.

Sec. 3. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

* * *

(d)(1) The court ~~may~~ shall keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to section 7602 or 7603 of this title this chapter. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case ~~or by the court if the court finds that inspection of the documents is necessary to~~

~~serve the interest of justice. The Administrative Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.~~

~~(4) All other court documents in a case that are subject to an expungement order shall be destroyed.~~

~~(5) The Court Administrator shall establish policies for implementing this subsection.~~

~~(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."~~

~~Sec. 4. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS;
EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC
EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY
RECORDS; REPORT~~

~~The Department of State's Attorneys and Sheriffs, in consultation with the Office of the Court Administrator, the Vermont Crime Information Center, the Office of the Attorney General, the Office of the Defender General, the Center for Crime Victim Services, and Vermont Legal Aid, shall:~~

~~(1) consider:~~

~~(A) expanding the list of qualifying crimes eligible for expungement pursuant to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;~~

~~(B) the implications of such an expansion on public health, economic development, and law enforcement efforts in the State; and~~

~~(C) the viability of automating the process of expunging and sealing criminal history records;~~

~~(2) seek input from the Vermont Governor's Opioid Coordination Council; and~~

~~(3) on or before November 1, 2018, report to the Joint Legislative Justice Oversight Committee on the findings of the group, including any recommendations on specific crimes to add to the definition of qualifying crimes pursuant to 13 V.S.A. § 7601.~~

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.