

Journal of the Senate

THURSDAY, APRIL 6, 2017

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Thomas Harty of Bethel.

Proposal of Amendment; Bill Passed in Concurrence

H. 42.

House bill entitled:

An act relating to appointing municipal clerks and treasurers and to municipal audit penalties.

Was taken up.

Thereupon, pending third reading of the bill, Senators Clarkson, Ayer, Collamore, Pearson, Sears and White moved that the Senate propose to the House to amend the bill by striking out Sec. 4, 24 V.S.A. § 1686 (penalty) in its entirety and its reader assistance heading and inserting in lieu thereof the following:

Sec. 4. [Deleted.]

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Bill Passed in Concurrence

House bill of the following title was read the third time and passed in concurrence:

H. 14. An act relating to automated external defibrillators.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 17.

Joint Senate resolution of the following title:

Joint resolution rescinding the General Assembly's request, contained in 2014 Acts and Resolves No. R-454, for Congress to convene a U.S. Constitutional Convention.

Was taken up.

Thereupon, pending the question, Shall the joint resolution be adopted on the part of the Senate?, Senator Sears moved that the joint resolution be ordered to lie.

Thereupon, pending the question, Shall the Senate order the bill to lie? Senator Degree raised a *point of order* under Senate Rule No. 64 that the question was non-debatable.

Thereupon, the President *sustained* the point of order and ruled that pursuant to Senate Rule No. 64 the question was non-debatable.

Thereupon, the question, Shall the joint resolution be ordered to lie?, was disagreed to on a division of the Senate Yeas 9, Nays 20.

Thereupon, the joint Senate resolution was read the third time and adopted on the part of the Senate.

Third Readings Ordered

H. 35.

Senator Nitka, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to adopting the Uniform Voidable Transactions Act.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 152.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to the Vermont Revised Uniform Fiduciary Access to Digital Assets Act.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 171.

Senator Benning, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to expungement.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 7601. DEFINITIONS

As used in this chapter:

(1) “Court” means the Criminal Division of the Superior Court.

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. “Predicate offense” shall not include misdemeanor possession of marijuana or a disorderly conduct offense under section 1026 of this title.

(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 as defined in section 2632 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.

Sec. 2. 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. [Repealed.]~~

(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section, 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 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~~ court finds that expungement of the criminal history record serves the interest of justice.

(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:

(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.

(2) 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.

(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~~ 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.

Sec. 3. 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 years, unless a shorter duration is authorized by the court.

Sec. 4. 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.

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 297.

Senator Ashe, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to miscellaneous court operations procedures.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 357 is amended to read:

§ 357. ~~REGISTERS OF PROBATE; APPOINTMENT AND REMOVAL;~~
~~COMPENSATION; CLERKS~~

The ~~court administrator~~ Superior Court clerk or court operations manager, in consultation with the ~~probate~~ Probate judge, and following the approval of the Court Administrator, shall ~~appoint~~ hire a register of probate for each district unit. The ~~probate~~ Probate judge may request that the ~~court administrator~~ Court Administrator designate one or more staff persons as additional registers.

Sec. 2. 14 V.S.A. § 2 is amended to read:

§ 2. DEPOSIT OF WILL FOR SAFEKEEPING; DELIVERY; FINAL
DISPOSITION

(a) A testator may deposit a will for safekeeping in the Probate Division of the Superior Court for the district in which the testator resides on the payment to the ~~Court~~ court of the fee required by 32 V.S.A. § 1434(a)(17). The ~~register~~ Probate Division shall give to the testator a certificate of deposit, shall safely keep each will so deposited, and shall keep an index of the wills so deposited.

* * *

(c) During the life of the testator that will shall be delivered only to the testator, or in accordance with the testator's order in writing duly proved by oath of a subscribing witness, but the testator's duly authorized legal guardian may at any time inspect and copy the will in the presence of the judge, court operations manager, or register. ~~After the death of the testator it shall be delivered on demand to the person named in the indorsement.~~

* * *

Sec. 3. 15 V.S.A. § 816 is amended to read:

§ 816. CERTIFICATE OF CHANGE; CORRECTION OF BIRTH AND
CIVIL MARRIAGE RECORDS

Whenever a person changes his or her name, as provided in this chapter, he or she shall provide the ~~probate division of the superior court~~ Probate Division of the Superior Court with a copy of his or her birth certificate and, if married, a copy of his or her civil marriage certificate, and a copy of the birth certificate of each minor child, if any. The ~~register of with whom~~ Probate Division where the change of name is filed and recorded shall transmit the certificates and a certified copy of such instrument of change of name to the supervisor of vital records registration. The supervisor of vital records registration shall forward such instrument of change of name to the town clerk in the town

where the person was born within the state State, or wherein the original certificate is filed, with instructions to amend the original certificate and all copies thereof in accordance with the provisions of 18 V.S.A. chapter 101 of Title 18. Such amended certificates shall have the words "Court Amended" stamped, written, or typed at the top and shall show that the change of name was made pursuant to this chapter.

Sec. 4. 15A V.S.A. § 6-102 is amended to read:

§ 6-102. RECORDS CONFIDENTIAL, ~~COURT RECORDS SEALED~~

* * *

(d) All records on file with the court or agency shall be retained permanently and ~~sealed~~ kept confidential for 99 years after the date of the adoptee's birth. ~~Sealed~~ Confidential records and indices are not open to inspection or copying by any person except as provided in this title.

(e) The records of an agency ~~which~~ that ceases operation in this state State shall be transferred to the ~~department~~ Department for retention under the provisions of this title.

Sec. 5. 27 V.S.A. § 341 is amended to read:

§ 341. REQUIREMENTS GENERALLY; RECORDING

(a) Deeds and other conveyances of lands, or of an estate or interest therein, shall be signed by the party granting the same and acknowledged by the grantor before a town clerk, notary public, master, or county clerk, ~~or judge or register of probate~~ and recorded at length in the clerk's office of the town in which such lands lie. Such ~~acknowledgement~~ acknowledgment before a notary public shall be valid without an official seal being affixed to his or her signature.

* * *

Sec. 6. 27 V.S.A. § 463 is amended to read:

§ 463. BY SEPARATE INSTRUMENT

(a) Mortgages may be discharged by an acknowledgment of satisfaction, executed by the mortgagee or his or her attorney, executor, administrator, or assigns, which shall be substantially in the following form:

I hereby certify that the following described mortgage is paid in full and satisfied, viz: _____ mortgagor to _____ mortgagee, dated _____ 20____, and recorded in book _____, page _____, of the land records of the town of _____.

(b) When such satisfaction is acknowledged before a town clerk, notary public, master, or county clerk, or judge or register of probate and recorded, it shall discharge such mortgage and bar actions brought thereon.

Sec. 7. 32 V.S.A. § 7449 is amended to read:

§ 7449. ~~REGISTER OF PROBATE~~ DIVISION TO SEND COMMISSIONER NOTICE OF ESTATE

The ~~register of the Probate Court~~ Division shall send to the Commissioner by mail at the time of granting letters of administration in any estate and upon forms to be furnished by the Commissioner, the name of the decedent, the date of his or her death, and the name and address of the administrator or executor.

Sec. 8. REPEAL

12 V.S.A. chapter 216 (Windsor County Youth Court) is repealed.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Third Reading Ordered

H. 201.

Senator Cummings, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to length of stay at designated shelters.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Message from the House No. 41

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 519. An act relating to capital construction and State bonding.

In the passage of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 29. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Ashe, the Senate adjourned until eleven o'clock and fifty minutes in the morning.