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H.865

Introduced by Representatives Grad of Moretown, Burditt of West Rutland,
and Conquest of Newbury

Referred to Committee on

Date:

Subject: Court procedure; expungement of criminal history records; marijuana
possession

Statement of purpose of bill as introduced: This bill proposes to provide a
mechanism to expunge misdemeanor marijuana possession convictions after
completion of the sentence or supervision for the offense.

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An act relating to expungement of misdemeanor marijuana convictions

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

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

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

(a)(1) A person may file a petition with the court requesting expungement
or sealing of the criminal history record related to the conviction if:

(A) the person was convicted of a qualifying crime or qualifying
crimes arising out of the same incident or occurrence; or

1 (B) the person was convicted of an offense for which the underlying
2 conduct is no longer prohibited by law or designated as a criminal offense.

3 (2) The State's Attorney or Attorney General shall be the respondent in
4 the matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (D) Any restitution ordered by the court for any crime of which the
21 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 (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), (C), and (D) of this subsection are met
7 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 19
11 years of age.

12 (d) For petitions filed pursuant to subdivision (a)(1)(B) of this section, or
13 for which the qualifying crime was a misdemeanor marijuana possession
14 conviction pursuant to 18 V.S.A. § 4230, 4230a, or 4230b, unless the court
15 finds that expungement would not be in the interest of justice, the court shall
16 grant the petition and order that the criminal history record be expunged in
17 accordance with section 7606 of this title if the following conditions are met:

18 (1) The petitioner has completed any sentence or supervision for the
19 offense.

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

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

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

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

11 (f) Prior to granting an expungement or sealing under this section for
12 petitions filed pursuant to subdivision 7601(4)(D) of this title, the ~~Court~~ court
13 shall make a finding that the conduct underlying the conviction under section
14 1201 of this title did not constitute a burglary into an occupied dwelling, as
15 defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the
16 burden of establishing this fact.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on passage.