

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 171  
3 entitled “An act relating to expungement” respectfully reports that it has  
4 considered the same and recommends that the Senate propose to the House that  
5 the bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

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

8 § 7601. DEFINITIONS

9 As used in this chapter:

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

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

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

1 (4) “Qualifying crime” means:

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

3 (i) a listed crime as defined in subdivision 5301(7) of this title;<sub>2</sub>

4 (ii) an offense involving sexual exploitation of children in  
5 violation of chapter 64 of this title;<sub>2</sub>

6 (iii) an offense involving violation of a protection order in  
7 violation of section 1030 of this title;<sub>2</sub>

8 (iv) a prohibited act as defined in section 2632 of this title;<sub>2</sub> or

9 (v) a predicate offense;

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

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

13 (D) a violation of section 1201 of this title related to burglary,  
14 excluding any burglary into an occupied dwelling, as defined in subdivision  
15 1201(b)(2) of this title.

16 Sec. 2. 13 V.S.A. § 7602 is amended to read:

17 § 7602. EXPUNGEMENT AND SEALING OF RECORD,

18 POSTCONVICTION; PROCEDURE

19 \* \* \*

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

4 (A) At least ~~40~~ five years have elapsed since the date on which the  
5 person 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 ~~40~~  
8 five 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~~ court has been paid in full.

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

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

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

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

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

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

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

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

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

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

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

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

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

5           (d) ~~The Court shall grant the petition and order that the criminal history~~  
6 ~~record be expunged in accordance with section 7606 of this title if the~~  
7 ~~following conditions are met:~~

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

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

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

17           (4) ~~The person successfully completed a term of regular employment or~~  
18 ~~public service, independent of any service ordered as a part of the petitioner's~~  
19 ~~sentence for the conviction, and as approved by the Community Justice~~  
20 ~~Network of Vermont, which may include:~~

1           ~~(A) community service hours completed without compensation,~~  
2           ~~reparation of harm to the victim, or education regarding ways not to reoffend,~~  
3           ~~or a combination of the three;~~

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

6           ~~(C) at least one year of service in AmeriCorps or another local, state,~~  
7           ~~national, or international service program, followed by successful completion~~  
8           ~~of the program or continued service in good standing; or~~

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

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

12           ~~(6) The Court finds that expungement of the criminal history record~~  
13           ~~serves the interest of justice. [Repealed.]~~

14           (e) For petitions filed pursuant to subdivision (a)(1)(B) of this section, the  
15           ~~Court~~ court shall grant the petition and order that the criminal history record be  
16           expunged in accordance with section 7606 of this title if the following  
17           conditions are met:

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

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

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

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

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

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

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

1 Sec. 3. 13 V.S.A. § 7605 is amended to read:

2 § 7605. DENIAL OF PETITION

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

6 Sec. 4. 13 V.S.A. § 7606 is amended to read:

7 § 7606. EFFECT OF EXPUNGEMENT

8 (a) Upon entry of an expungement order, the order shall be legally effective  
9 immediately and the person whose record is expunged shall be treated in all  
10 respects as if he or she had never been arrested, convicted, or sentenced for the  
11 offense. The court shall issue an order to expunge all records and files related  
12 to the arrest, citation, investigation, charge, adjudication of guilt, criminal  
13 proceedings, and probation related to the sentence. The ~~Court~~ court shall issue  
14 the person a certificate stating that such person's behavior after the conviction  
15 has warranted the issuance of the order and that its effect is to annul the record  
16 of arrest, conviction, and sentence. The ~~Court~~ court shall provide notice of the  
17 expungement to the respondent, Vermont Crime Information Center (VCIC),  
18 the arresting agency, and any other entity that may have a record related to the  
19 order to expunge. The VCIC shall provide notice of the expungement to the  
20 Federal Bureau of Investigation's National Crime Information Center.

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1       Sec. 5. EFFECTIVE DATE

2           This act shall take effect on July 1, 2017.

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7           (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE