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Vermont Legal Aid Proposals

TO THE HONORABLE SENATE:

The Committee on Judiciary to which was referred Senate Bill No. 173 entitled “An act relating to sealing criminal history records when there is no conviction” respectfully reports that it has considered the same and recommends that

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 alcohol 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.

- 1 (4) “Qualifying crime” means:
- 2 (A) a misdemeanor or felony offense that is not:
- 3 (i) a listed crime as defined in subdivision 5301(7) of this title;
- 4 (ii) an offense involving sexual exploitation of children in violation
- 5 of chapter 64 of this title;
- 6 (iii) an offense involving violation of a protection order in
- 7 violation of section 1030 of this title;
- 8 (iv) prostitution as defined in section 2632 of this title, or
- 9 prohibited conduct under section 2601a of this title; ~~or~~
- 10 (v) a predicate offense; or
- 11 (vi) an offense involving trafficking of a regulated drug under 18
- 12 V.S.A. chapter 84;
- 13 ~~(B) a violation of subsection 3701(a) of this title related to criminal~~
- 14 ~~mischief;~~
- 15 ~~(C) a violation of section 2501 of this title related to grand larceny;~~
- 16 ~~(D) a violation of section 1201 of this title related to burglary,~~
- 17 ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~
- 18 ~~1201(b)(2) of this title; ~~or~~~~
- 19 ~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit.~~

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

2 § 7602. EXPUNGEMENT AND SEALING OF RECORD,
3 POSTCONVICTION; PROCEDURE

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

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

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

10 (2) The State’s Attorney or Attorney General shall be the respondent in
11 the matter.

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

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

19 (A) At least five years have elapsed since the date on which the
20 person successfully completed the terms and conditions of the sentence for the
21 conviction, or if the person has successfully completed the terms and

1 conditions of an indeterminate term of probation that commenced at least five
2 years previously.

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

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

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

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

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

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

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

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

1 (B) The person has not been convicted of a felony arising out of a
2 new incident or occurrence ~~since the person was convicted of the qualifying~~
3 ~~crime~~ in the last 7 years.

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

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

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

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

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

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

19 (d) For petitions filed pursuant to subdivision (a)(1)(B) of this section,
20 unless the court finds that expungement would not be in the interest of justice,
21 the court shall grant the petition and order that the criminal history record be

1 expunged in accordance with section 7606 of this title if the following
2 conditions are met:

3 (1) The petitioner has completed any sentence or supervision for the
4 offense.

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

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

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

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

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

1 Sec. 3. 13 V.S.A. § 7603 is amended to read:

2 § 7603. ~~EXPUNGEMENT AND SEALING OF RECORD, NO~~
3 ~~CONVICTION; PROCEDURE~~

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

10 (1) after twelve months from the citation or arrest if no ~~No~~ criminal
11 charge is filed by the State ~~and the statute of limitations has expired.~~

12 (2) after 45 days from the citation or arrest if the ~~The~~ court does not
13 make a determination of probable cause at the time of arraignment or dismisses
14 the charge at the time of arraignment ~~and the statute of limitations has expired.~~

15 (3) after 6 months from the citation or arrest if the ~~The~~ charge is
16 dismissed before trial:

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

18 (B) with prejudice.

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

21 (5) upon acquittal if the defendant is acquitted of the charges.

1 (b) The State’s Attorney or Attorney General shall be the respondent in the
2 matter. The petitioner and the respondent shall be the only parties in the
3 matter.

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

7 [Repealed.]

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

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

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

14 Sec. 4. 20 V.S.A. § 2063 is amended to read:

15 § 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY

16 RECORD CHECK FUND

17 (a) Except as otherwise provided for in this section, the cost of each check
18 for a criminal history record as defined in section 2056a of this title or a
19 criminal conviction record as defined in section 2056c of this title based on
20 name and date of birth shall be \$30.00. Out-of-state criminal history record

1 checks shall include any additional fees charged by the state from which the
2 record is requested.

3 (b) Requests made by criminal justice agencies for criminal justice
4 purposes or other purposes authorized by State or federal law shall be exempt
5 from all criminal history record check fees. The following types of requests
6 shall be exempt from the Vermont criminal history record check fee:

7 (1) Requests made by any individual, organization, or governmental
8 body doing business in Vermont that has one or more individuals performing
9 services for it within this State and is a qualified entity that provides care or
10 services to children, elders, or persons with disabilities as defined in 42 U.S.C.
11 § 5119c.

12 (2) Requests made by researchers approved by the Vermont Crime
13 Information Center to conduct research related to the administration of
14 criminal justice. ~~A fee, however, may be charged by the~~ The Center may
15 charge a fee, which shall reflect the cost of generating the requested
16 information.

17 (3) Requests made by individuals to review their own criminal history
18 record at the Vermont Crime Information Center; however, copies of the
19 individual's record are not exempt from the criminal history record check fee.

20 (4) Requests made by the Vermont State Housing Authority and other
21 public housing authorities pursuant to 24 V.S.A § 4010(c).

1 (5) Requests made by environmental enforcement officers employed by
2 the Agency of Natural Resources.

3 (6) Requests made by an individual who completes a notarized
4 certification attesting that the individual's income is at or below 200 percent of
5 the federal poverty level.

6 (c)(1) The Criminal History Record Check Fund is established and shall be
7 managed by the Commissioner of Public Safety in accordance with the
8 provisions of 32 V.S.A. chapter 7, subchapter 5. The fees paid each year under
9 this section shall be placed in the Fund and used for personal services and
10 operating costs related to the processing, maintenance, and dissemination of
11 criminal history records. The Commissioner of Finance and Management may
12 draw warrants for disbursements from this Fund in anticipation of receipts.

13 (2) At the end of each fiscal year, any undesignated surplus in the Fund
14 shall be transferred to the General Fund.

15 (d) The Department of Public Safety shall have the authority, with the
16 approval of the Secretary of Administration, to establish limited service
17 positions as are necessary to provide criminal history record checks in a timely
18 manner, provided that there are sufficient funds in the Criminal History Record
19 Check Fund to pay for the costs of these positions.

1 Sec. 5. OFFICE OF THE COURT ADMINISTRATOR; AUTOMATIC
2 EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY
3 RECORDS; REPORT

4 The Office of the Court Administrator, the Vermont Crime Information
5 Center, the Office of the Attorney General, the Office of the Defender General,
6 Vermont Legal Aid, and the Department of State’s Attorneys and Sheriffs shall
7 convene and consider the viability of automating the process of expunging and
8 sealing criminal history records and report on the findings of the group,
9 including any recommended legislation and necessary funding, to the Joint
10 Legislative Justice Oversight Committee on or before November 1, 2018.

11 Sec. 6. EFFECTIVE DATE

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

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16 (Committee vote: _____)

17 _____

18 Senator _____

19 FOR THE COMMITTEE