

1 H.171

2 Introduced by Representatives Grad of Moretown, Burditt of West Rutland,
3 Conquest of Newbury, LaLonde of South Burlington, and
4 Morris of Bennington

5 Referred to Committee on

6 Date:

7 Subject: Criminal procedure; expungement

8 Statement of purpose of bill as introduced: This bill proposes to allow people
9 convicted of some nonviolent felony crimes to petition for expungement;
10 shortens the amount of time a person is required to wait to seek expungement
11 after successful completion of the person's sentence; and shortens the amount
12 of time a person must wait to petition again after an expungement petition is
13 denied.

14 An act relating to expungement

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

16 ~~Sec. 1. 13 V.S.A. § 7601(4) is amended to read:~~

17 (4) "Qualifying crime" means:

18 (A) a misdemeanor offense which is not a listed crime as defined in
19 ~~subdivision 5501(7) of this title, an offense involving sexual exploitation or~~

1 ~~children in violation of chapter 64 of this title, an offense involving violation~~

2 of a protection order in violation of section 1030 of this title, a prohibited act
3 as defined in section 2632 of this title, or a predicate offense;

4 (B) a violation of subsection 3701(a) of this title related to criminal
5 mischief;

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

7 ~~or~~

8 (D) a violation of section 1201 of this title related to burglary,
9 excluding any burglary into an occupied dwelling, as defined in subdivision
10 1201(b)(2) of this title; or

11 (E) a violation of 18 V.S.A. § 4223 related to fraud or deceit.

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

13 § 7602. EXPUNGEMENT AND SEALING OF RECORD,
14 POSTCONVICTION; PROCEDURE

15 * * *

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

19 (A) At least ~~10~~ 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 10~~
2 ~~five years previously.~~

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

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

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

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

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

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

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

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

1 conviction

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

5 (C) The person has not been convicted of a misdemeanor during the
6 past ~~15~~ seven years.

7 (D) Any restriction ordered by the ~~Court~~ court for any crime of
8 which the person has been convicted has been paid in full.

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

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

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

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

20 (d) The ~~Court~~ court shall grant the petition and order that the criminal

21 history record be expunged in accordance with section 7606 of this title if the

1 following conditions are met:

2 (1) The petitioner committed the qualifying crime or crimes prior to
3 reaching 25 years of age.

4 (2) At least ~~five~~ three 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 ~~five~~
8 three years previously.

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

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

15 (A) community service hours completed without compensation,
16 reparation of harm to the victim, or education regarding ways not to reoffend,
17 or a combination of the three;

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

20 (C) at least one year of service in AmeriCorps or another local, state,
21 national, or international service program, followed by successful completion

1 ~~of the program or continued service in good standing; or~~

2 (D) at least one year of regular employment.

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

5 (6) The ~~Court~~ court finds that expungement of the criminal history
6 record serves the interest of justice.

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

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

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

14 (3)(2) The ~~Court~~ court finds that expungement of the criminal history
15 record serves the interest of justice.

16 * * *

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

18 § 7605. DENIAL OF PETITION

19 If a petition for expungement is denied by the ~~Court~~ court pursuant to this
20 chapter, no further petition shall be brought for at least ~~five years~~ one year.

21 ~~Sec. 4. EFFECTIVE DATE~~

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

Sec. 1. 13 V.S.A. § 8005 is amended to read:

*§ 8005. NOTICE OF COLLATERAL CONSEQUENCES AND
ELIGIBILITY FOR EXPUNGEMENT IN PRETRIAL
PROCEEDING*

* * *

(b) Before the ~~Court~~ court accepts a plea of guilty or nolo contendere from an individual, the ~~Court~~ court shall:

(1) confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction; and

(2) provide written notice, as part of a written plea agreement or through another form, of the following:

(A) that collateral consequences may apply because of the conviction;

(B) the Internet address of the collection of laws published under this chapter;

(C) that there may be ways to obtain relief from collateral consequences;

(D) that the conviction may be eligible for expungement or sealing

pursuant to section 7602 of this title;

(E) contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

~~(E)~~(F) that conviction of a crime in this State does not prohibit an individual from voting in this State.

Sec. 2. 13 V.S.A. § 8006 is amended to read:

§ 8006. NOTICE OF COLLATERAL CONSEQUENCES AND ELIGIBILITY FOR EXPUNGEMENT UPON RELEASE

(a) Prior to the completion of a sentence, an individual in the custody of the Commissioner of Corrections shall be given written notice of the following:

(1) that collateral consequences may apply because of the conviction;

(2) the Internet address of the collection of laws published under this chapter;

(3) that there may be ways to obtain relief from collateral consequences;

(4) that the conviction may be eligible for expungement or sealing pursuant to section 7602 of this title;

(5) contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

~~(5)~~(6) that conviction of a crime in this State does not prohibit an individual from voting in this State.

(b) For persons sentenced to incarceration, the notice shall be provided not more than 30 days and at least 10 days before completion of the sentence. If the sentence is for a term of less than 30 days then notice shall be provided when the sentence is completed.

(c) For persons receiving a sentence involving community supervision, such as probation, furlough, home confinement, conditional reentry, or parole, the notice shall be provided by the Department of Corrections in keeping with its mission of ensuring rehabilitation and public safety.

(d) For persons receiving a penalty involving a fine only, the court shall, at the time of the judgment, provide either oral or written notice that the conviction may be eligible for expungement or sealing pursuant to section 7602 of this title.

Sec. 3. 13 V.S.A. § 7601(4) is amended to read:

(4) “Qualifying crime” means:

(A) a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or 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; or

(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit.

Sec. 4. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,

POSTCONVICTION; PROCEDURE

** * **

(b)(1) ~~The Court~~ Unless the court finds that expungement would not be in the interest of justice, 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~~ three 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~~ three 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 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~~ Unless the court finds that expungement would not be in the interest of justice, 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 ~~20~~ five 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 three 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 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.~~

~~(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section, unless the court finds that expungement would not be in the interest of justice, 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 The petitioner has completed 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 finds that expungement of the criminal history record serves the interest of justice.~~

* * *

~~Sec. 5. 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~~ one year, unless a shorter duration is authorized by the court.~~

~~Sec. 6. JUDICIARY; NEXT GENERATION CASE MANAGEMENT~~

~~SYSTEM; AUTOMATION OF EXPUNGEMENT PROCESS~~

On or before January 15, 2018, the Court Administrator shall report to the House and Senate Committees on Judiciary on the feasibility of automating the expungement and sealing petition process through the Next Generation Case Management System or any other available method.

*Sec. 7. OFFICE OF THE ATTORNEY GENERAL; PUBLIC NOTICE OF
EXPUNGEMENT OPPORTUNITY*

The Office of the Attorney General shall provide public education and awareness regarding the availability of the expungement petition process to inform Vermonters of the opportunity to expunge or seal the record of a criminal conviction.

Sec. 8. LEGISLATIVE INTENT

Because the expungement of criminal history records serves the interests of rehabilitative justice, the General Assembly expresses its intent to continue examining the issue, and to consider whether to expand the range of offenses for which a person's criminal history records can be expunged.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.