

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 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. [Deleted.]~~

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) The court shall grant the petition and order that the criminal history  
14 record be expunged pursuant to section 7606 of this title if the following  
15 conditions are met:

16           (1) At least five years have elapsed since the date on which the person  
17 successfully completed the terms and conditions of the sentence for the  
18 conviction, or if the person has successfully completed the terms and  
19 conditions of an indeterminate term of probation that commenced at least five  
20 years previously.

1           (2) The qualifying crime was any misdemeanor offense with a penalty  
2           of one year of imprisonment or less.

3           (3) 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           (4) Any restitution ordered by the court has been paid in full.

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

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

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

15           § 7605. DENIAL OF PETITION

16           If a petition for expungement is denied by the ~~Court~~ court pursuant to this  
17           chapter, no further petition shall be brought for at least ~~five~~ two years.

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

19           § 7606. EFFECT OF EXPUNGEMENT

20           (a) Upon entry of an expungement order, the order shall be legally effective  
21           immediately and the person whose record is expunged shall be treated in all



1 respects as if he or she had never been arrested, convicted, or sentenced for the  
2 offense. The court shall issue an order to expunge all records and files related  
3 to the arrest, citation, investigation, charge, adjudication of guilt, criminal  
4 proceedings, and probation related to the sentence. The Court shall issue the  
5 person a certificate stating that such person's behavior after the conviction has  
6 warranted the issuance of the order and that its effect is to annul the record of  
7 arrest, conviction, and sentence. The Court shall provide notice of the  
8 expungement to the respondent, Vermont Crime Information Center (VCIC),  
9 the arresting agency, and any other entity that may have a record related to the  
10 order to expunge. The VCIC shall provide notice of the expungement to the  
11 Federal Bureau of Investigation's National Crime Information Center.

12 (b) In any application for employment, license, or civil right or privilege or  
13 in an appearance as a witness in any proceeding or hearing, a person may be  
14 required to answer questions about a previous criminal history record only with  
15 respect to arrests or convictions that have not been expunged.

16 (c) Nothing in this section shall affect any right of the person whose record  
17 has been expunged to rely on it as a bar to any subsequent proceedings for the  
18 same offense.

19 (d)(1) The Court may keep a special index of cases that have been expunged  
20 together with the expungement order and the certificate issued pursuant to  
21 section 7602 or 7603 of this title. The index shall list only the name of the

1 person convicted of the offense, his or her date of birth, the docket number,  
2 and the criminal offense that was the subject of the expungement.

3 (2) The special index and related documents specified in subdivision (1)  
4 of this subsection shall be confidential and shall be physically and  
5 electronically segregated in a manner that ensures confidentiality and that  
6 limits access to authorized persons.

7 (3) Inspection of the expungement order and the certificate may be  
8 permitted only upon petition by the person who is the subject of the case or by  
9 the Court if the Court finds that inspection of the documents is necessary to  
10 serve the interest of justice. The Administrative Judge may permit special  
11 access to the index and the documents for research purposes pursuant to the  
12 rules for public access to Court records.

13 (4) All other Court documents in a case that are subject to an  
14 expungement order shall be destroyed.

15 (5) The Court Administrator shall establish policies for implementing  
16 this subsection.

17 (e) Upon receiving an inquiry from any person regarding an expunged  
18 record, an entity shall respond that "NO RECORD EXISTS."

19 Sec. 5. EFFECTIVE DATE

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

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4 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE