

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 173  
3 entitled “An act relating to sealing criminal history records when there is no  
4 conviction” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

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

8 § 7602. EXPUNGEMENT AND SEALING OF RECORD,

9 POSTCONVICTION; PROCEDURE

10 \* \* \*

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

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

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

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

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

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

6 \* \* \*

7 Sec. 2. 13 V.S.A. § 7603 is amended to read:

8 § 7603. EXPUNGEMENT AND SEALING OF RECORD, NO  
9 CONVICTION; PROCEDURE

10 (a) ~~A person who was cited or arrested for a qualifying crime or qualifying~~  
11 ~~crimes arising out of the same incident or occurrence may file a petition with~~  
12 ~~the court requesting expungement or~~ Unless either party objects in the interest  
13 of justice, the court shall issue an order sealing of the criminal history record  
14 related to the citation or arrest if one of the following conditions is met of a  
15 person:

16 (1) ~~No criminal charge is filed by the State and the statute of limitations~~  
17 ~~has expired.~~

18 (2) ~~The twelve months after the citation or arrest if:~~

19 (A) the court does not make a determination of probable cause at the  
20 time of arraignment or dismisses the charge at the time of arraignment and the  
21 statute of limitations has expired; or

1           ~~(3)(B)~~ The the charge is dismissed before trial:

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

3                   ~~(B) with prejudice.~~

4           ~~(4)(2) The at any time if the prosecuting attorney and the defendant and~~  
5 ~~the respondent stipulate that the court may grant the petition to expunge and~~  
6 ~~seal the record.~~

7           ~~(b) The State's Attorney or Attorney General shall be the respondent in the~~  
8 ~~matter. If a party objects to sealing or expunging a record pursuant to this~~  
9 ~~section, the court shall schedule a hearing to determine if sealing or expunging~~  
10 ~~the record serves the interest of justice. The ~~petitioner~~ defendant and the~~  
11 ~~respondent prosecuting attorney shall be the only parties in the matter.~~

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

15           ~~[Repealed.]~~

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

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

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

1        (e) Unless either party objects in the interest of justice, the court shall issue  
2        an order expunging a criminal history record related to the citation or arrest of  
3        a person:

4            (1) not more than 45 days after:

5                (A) acquittal if the defendant is acquitted of the charges; or

6                (B) dismissal if the charge is dismissed with prejudice before trial;

7            (2) at any time if the prosecuting attorney and the defendant stipulate  
8        that the court may grant the petition to expunge the record.

9        (f) Unless either party objects in the interest of justice, the court shall issue  
10       an order to expunge a record sealed pursuant to subsection (a) or (g) of this  
11       section after the statute of limitations has expired.

12       (g) A person may file a petition with the court requesting sealing or  
13       expungement of a criminal history record related to the citation or arrest of the  
14       person at any time. The court shall grant the petition and issue an order sealing  
15       or expunging the record if it finds that sealing or expunging the record serves  
16       the interest of justice.

17       (h) The court may expunge any records that were sealed pursuant to this  
18       section prior to July 1, 2018 unless the State's Attorney's office that  
19       prosecuted the case objects. Thirty days prior to expunging a record pursuant  
20       to this subsection, the court shall provide to the State's Attorney's office that  
21       prosecuted the case written notice of its intent to expunge the record.

1        (i)(1) The court shall keep a special index of cases that have been expunged  
2        pursuant to this section together with the expungement order. The index shall  
3        list only the name of the person convicted of the offense, his or her date of  
4        birth, the docket number, and the criminal offense that was the subject of the  
5        expungement.

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

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

16       (4) The Court Administrator shall establish policies for implementing  
17       this subsection.

1       Sec. 4. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;  
2               EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC  
3               EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY  
4               RECORDS; REPORT

5       The Department of State’s Attorneys and Sheriffs, in consultation with the  
6       Office of the Court Administrator, the Vermont Crime Information Center, the  
7       Office of the Attorney General, the Office of the Defender General, the Center  
8       for Crime Victim Services, and Vermont Legal Aid, shall:

9               (1) consider:

10              (A) expanding the list of qualifying crimes eligible for expungement  
11              pursuant to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;

12              (B) the implications of such an expansion on public health, economic  
13              development, and law enforcement efforts in the State; and

14              (C) the viability of automating the process of expunging and sealing  
15              criminal history records;

16              (2) seek input from the Vermont Governor’s Opioid Coordination  
17              Council; and

18              (3) on or before November 1, 2018, report to the Joint Legislative  
19              Justice Oversight Committee on the findings of the group, including any  
20              recommendations on specific crimes to add to the definition of qualifying  
21              crimes pursuant to 13 V.S.A. § 7601.

1       Sec. 5. EFFECTIVE DATE

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

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5           (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE