

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 of a person if one of the following conditions is
15 met:

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

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

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

1 ~~(B)(3) 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) at any time if the prosecuting attorney and the~~ The defendant and
5 the respondent stipulate that the court may grant the petition to expunge and
6 seal the record;

7 (b) If a party objects to sealing or expunging a record pursuant to this
8 section, the court shall schedule a hearing to determine if sealing or expunging
9 the record serves the interest of justice. ~~The State's Attorney or Attorney~~
10 ~~General shall be the respondent in the matter.~~ 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 subsections (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. 30 days prior to expunging a record pursuant to
20 this subsection, the court shall provide written notice of its intent to expunge
21 the record to the State's Attorney's office that prosecuted the case.

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 non-violent 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 on the findings of the group,
19 including any recommendations on specific crimes to add to the definition of
20 qualifying crimes pursuant to 13 V.S.A. § 7601, to the Joint Legislative
21 Justice Oversight Committee.

1 Sec. 5. EFFECTIVE DATE

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

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6 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE