

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

6 **Sec. 1. 13 V.S.A. § 7601 is amended to read:**

7 § 7601. DEFINITIONS

8 As used in this chapter:

9 (1) “Court” means the Criminal Division of the Superior Court.

10 (2) “Criminal history record” means all information documenting an
11 individual’s contact with the criminal justice system, including data regarding
12 identification, arrest or citation, arraignment, judicial disposition, custody, and
13 supervision.

14 (3) “Predicate offense” means a criminal offense that can be used to
15 enhance a sentence levied for a later conviction, and includes operating a
16 vehicle under the influence of alcohol or other substance in violation of 23
17 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and
18 stalking in violation of section 1062 of this title. “Predicate offense” shall not
19 include misdemeanor possession of marijuana or a disorderly conduct offense
20 under section 1026 of this title.

21

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.~~

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21

1 (4) “Qualifying crime” means:

2 (A) a misdemeanor 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;

11 (B) a violation of subsection 3701(a) of this title related to criminal
12 mischief;

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

14 (D) a violation of section 1201 of this title related to burglary,
15 excluding any burglary into an occupied dwelling, as defined in subdivision
16 1201(b)(2) of this title; ~~or~~

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

18 (F) an offense involving possession of a regulated drug under 18

19 V.S.A. chapter 84.

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 either party objects in the interest
7 of justice, the court shall issue an order sealing of the criminal history record
8 related to the citation or arrest of a person if one of the following conditions is
9 met:

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

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

13 (A) The court does not make a determination of probable cause at the
14 time of arraignment or dismisses the charge at the time of arraignment and the
15 statute of limitations has expired; or

16 (B) (3) The charge is dismissed before trial;

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

18 ~~(B) with prejudice.~~

19 ~~(4)~~(2) at any time if the prosecuting attorney and the The defendant and
20 the respondent stipulate that the court may grant the petition to expunge and
21 seal the record;

1 (3) not more than 45 days after:

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

3 (B) dismissal if the charge is dismissed with prejudice before trial.

4 (b) If a party objects to sealing a record, the court shall schedule a hearing
5 to determine if sealing the record serves the interest of justice. The State's

6 Attorney or Attorney General shall be the respondent in the matter. The
7 petitioner defendant and the respondent shall be the only parties in the matter.

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

11 [Repealed.]

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

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

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

18 (e) A person may file a petition with the court requesting sealing of a
19 criminal history record at any time. The court shall grant the petition and issue
20 an order sealing the record if it finds sealing the record serves the interest of
21 justice.

1 (f) The court may expunge any records that were sealed pursuant to this
2 section prior to July 1, 2018 unless the State’s Attorney’s office that
3 prosecuted the case objects. 30 days prior to expunging a record pursuant to
4 this subsection, the court shall provide written notice of its intent to expunge
5 the record to the State’s Attorney’s office that prosecuted the case.

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

11 (2) The special index and related documents specified in subdivision (1)
12 of this subsection (g) shall be confidential and shall be physically and
13 electronically segregated in a manner that ensures confidentiality and that
14 limits access to authorized persons.

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

1 (4) The Court Administrator shall establish policies for implementing
2 this subsection.

3 **Sec. 4. OFFICE OF THE COURT ADMINISTRATOR; AUTOMATIC**

4 **EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY**

5 **RECORDS; REPORT**

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

14 **Sec. 4. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;**

15 **EXPUNGEMENT ELIGIBLE CRIMES; AUTOMATIC**

16 **EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY**

17 **RECORDS; REPORT**

18 The Department of State’s Attorneys and Sheriffs, in consultation with the
19 Office of the Court Administrator, the Vermont Crime Information Center, the
20 Office of the Attorney General, the Office of the Defender General, and
21 Vermont Legal Aid, shall:

1 (1) consider the implications of expanding the list of qualifying crimes
2 eligible for expungement contained in 13 V.S.A. § 7601 on prevention,
3 treatment, recovery, economic development, and law enforcement efforts in
4 the State;

5 (2) consider the viability of automating the process of expunging and
6 sealing criminal history records;

7 (3) seek input from the Vermont Governor’s Opioid Coordination
8 Council; and

9 (4) report on the findings of the group, including any recommendations
10 on specific crimes to add to the list of qualifying crimes contained in 13 V.S.A.
11 § 7601, to the Joint Legislative Justice Oversight Committee on or before
12 November 1, 2018.

13 Sec. 5. EFFECTIVE DATE

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

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18 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE