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H.460

Introduced by Representatives Grad of Moretown, Burditt of West Rutland,

Colburn of Burlington, and LaLonde of South Burlington

Referred to Committee on

Date:

Subject: Court procedure; criminal history records; expungement

Statement of purpose of bill as introduced: This bill proposes to amend generally the statutes relating to expungement and sealing of criminal history records.

An act relating to sealing and expungement of criminal history records

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

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

~~§ 7601. DEFINITIONS~~

~~As used in this chapter:~~

~~(1) "Court" means the Criminal Division of the Superior Court.~~

~~(2) "Criminal history record" means all information documenting an individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.~~

1 ~~(3) "Predicate offense" means a criminal offense that can be used to~~  
2 ~~enhance a sentence levied for a later conviction, and includes operating a~~  
3 ~~vehicle under the influence of alcohol or other substance in violation of 23~~  
4 ~~V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and~~  
5 ~~stalking in violation of section 1062 of this title. "Predicate offense" shall not~~  
6 ~~include misdemeanor possession of marijuana or a disorderly conduct offense~~  
7 ~~under section 1026 of this title qualifying predicate misdemeanor or a~~  
8 ~~qualifying predicate felony.~~

9 (4) "Qualifying crime" means:

10 (A) a misdemeanor offense that is not:

11 (i) a listed crime as defined in subdivision 5301(7) of this title;

12 (ii) an offense involving sexual exploitation of children in  
13 violation of chapter 64 of this title;

14 (iii) an offense involving violation of a protection order in  
15 violation of section 1030 of this title; or

16 (iv) prostitution as defined in section 2632 of this title, or  
17 prohibited conduct under section 2601a of this title; or

18 (v) a predicate offense;

19 (B) a violation of subsection 3701(a) of this title related to criminal  
20 mischief;

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

1 ~~(D) a violation of section 1201 of this title related to burglary,~~

2 ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~

3 ~~1201(b)(2) of this title; or~~

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

5 ~~offense for which a person has been granted an unconditional pardon from the~~

6 ~~Governor.~~

7 ~~(5) “Qualifying lesser misdemeanor” means all misdemeanors that are~~

8 ~~not predicate offenses and for which the maximum penalty is six months~~

9 ~~imprisonment.~~

10 ~~(6) “Qualifying misdemeanor” means all misdemeanors that are not~~

11 ~~predicate offenses and for which the maximum penalty is greater than~~

12 ~~six months imprisonment.~~

13 ~~(7) “Qualifying predicate misdemeanor” means:~~

14 ~~(A) a violation of 10 V.S.A. § 4518 related to big game violations~~

15 ~~and threatened and endangered species;~~

16 ~~(B) a violation of section 1027 of this title related to disturbing the~~

17 ~~peace by use of telephone or other electronic communications;~~

18 ~~(C) a violation of subdivision 1028(a)(1) of this title related to simple~~

19 ~~assault on a protected professional;~~

20 ~~(D) a violation of subsection 2028(b) of this title related to fiduciary~~

21 ~~fraud,~~

1 ~~(E) a violation of subdivision 2029(d)(1) of this title related to home~~  
2 ~~improvement fraud;~~

3 ~~(F) a violation of subdivision 2031(c)(1) related to insurance fraud;~~  
4 ~~(G) a violation of section 3017 of this title related to resisting arrest;~~  
5 ~~(H) a violation of section 3019 of this title related to hindering arrest;~~  
6 ~~(I) a violation of section 5409 of this title related to the sex offender~~  
7 ~~registration;~~

8 ~~(J) a violation of 23 V.S.A. § 674(b) related to operating after~~  
9 ~~suspension or revocation of license;~~

10 ~~(K) a violation of 23 V.S.A. § 1091(a) related to negligent operation;~~  
11 ~~(L) a violation of 23 V.S.A. § 1097 related to excessive speed; and~~  
12 ~~(M) a violation of 23 V.S.A. § 1201 related to operating under the~~  
13 ~~influence.~~

14 ~~(8) "Qualifying lesser felony" means:~~

15 ~~(A) a violation of subsection 3701(a) of this title related to criminal~~  
16 ~~mischief;~~

17 ~~(B) a violation of section 2501 of this title related to grand larceny;~~

18 ~~(C) a violation of section 1201 of this title related to burglary;~~

19 ~~(D) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~

20 ~~(E) a violation of subdivision 1404(c)(4) of this title related to~~  
21 ~~conspiracy to receive stolen property;~~

- 1 ~~(E) a violation of section 1801 of this title related to forgery and~~  
2 ~~counterfeiting;~~
- 3 ~~(G) a violation of section 1802 of this title related to uttering a forged~~  
4 ~~or counterfeited instrument;~~
- 5 ~~(H) a violation of section 2001 of this title related to false~~  
6 ~~personation;~~
- 7 ~~(I) a violation of section 2002 of this title related to false pretenses or~~  
8 ~~tokens;~~
- 9 ~~(J) a violation of section 2561 of this title related to receiving stolen~~  
10 ~~property;~~
- 11 ~~(K) a violation of section 2575 of this title related to retail theft;~~
- 12 ~~(L) a violation of section 2582 of this title related to theft of services;~~
- 13 ~~(M) a violation of section 2591 of this title related to theft of rented~~  
14 ~~property;~~
- 15 ~~(N) a violation of 18 V.S.A. § 4230(a) related to marijuana~~  
16 ~~possession and cultivation;~~
- 17 ~~(O) a violation of 18 V.S.A. § 4231(a) related to cocaine possession;~~
- 18 ~~(P) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~
- 19 ~~(Q) a violation of 18 V.S.A. § 4233(a) related to possession of~~  
20 ~~heroin,~~

1 (R) a violation of 18 V.S.A. § 4234(a) related to possession of a  
2 depressant, stimulant, or narcotic drug;

3 (S) a violation of 18 V.S.A. § 4234a(a) related to possession of  
4 methamphetamine;

5 (T) a violation of 18 V.S.A. § 4234b(a) related to possession of  
6 ephedrine and pseudoephedrine;

7 (U) a violation of 18 V.S.A. § 4235(b) related to possession of  
8 hallucinogenic drugs; and

9 (V) a violation of 18 V.S.A. § 4235a(a) related to possession of  
10 ecstasy.

11 (9) “Qualifying felony” means all felony offenses that are not:

12 (A) qualifying lesser felonies as defined in this section;

13 (B) offenses listed in subdivision 5301(7) of this title; or

14 (C) predicate offenses.

15 (10) “Qualifying predicate felony” means:

16 (A) a violation of subdivision 1028(a)(2) of this title related to  
17 assault on a protected professional;

18 (B) a violation of subsection 2028(c) of this title related to fiduciary  
19 fraud;

20 (C) a violation of subdivision 2029(d)(2) of this title related to home  
21 improvement fraud.

1 ~~(D) a violation of subdivisions section 2031(c)(2) and (3) of this title~~  
2 related to insurance fraud;

3 (E) a violation of 23 V.S.A. § 1091(a) related to grossly negligent  
4 operation; and

5 (F) a third, fourth, or subsequent violation of 23 V.S.A. § 1201  
6 related to operating under the influence.

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

8 § 7602. EXPUNGEMENT AND SEALING OF RECORD,

9 POSTCONVICTION; PROCEDURE

10 (a)(1) A person may file a petition with the court requesting expungement  
11 or sealing of the criminal history record related to the conviction if:

12 (A) the person was convicted of a qualifying crime or qualifying  
13 crimes as defined in subdivisions 7601(4)–(9) of this title arising out of the  
14 same incident or occurrence; or

15 (B) the person was convicted of an offense for which the underlying  
16 conduct is no longer prohibited by law or designated as a criminal offense.

17 (2) The State's Attorney or Attorney General shall be the respondent in  
18 the matter.

19 (3) The court shall grant the petition without hearing if the petitioner  
20 ~~and the respondent stipulate to the granting of the petition. The respondent~~

1 ~~shall file the stipulation with the court, and the court shall issue the petitioner a~~  
2 certificate and provide notice of the order in accordance with this section.

3 (b) Requirements for qualifying lesser misdemeanors.

4 (1) The court shall grant the petition and order that the criminal history  
5 record be expunged or sealed pursuant to section 7606 or 7607 of this title if  
6 the following conditions are met:

7 (A) ~~At least five~~ two years have elapsed since the date on which the  
8 person successfully completed the terms and conditions of the sentence for the  
9 conviction, ~~or if the person has successfully completed the terms and~~  
10 ~~conditions of an indeterminate term of probation that commenced at least five~~  
11 ~~years previously.~~

12 (B) ~~The person has not been convicted of a crime arising out of a~~  
13 ~~new incident or occurrence since the person was convicted for the qualifying~~  
14 ~~crime.~~ [Repealed.]

15 (C) ~~Any~~ All surcharges, and any restitution ordered by the court, ~~has~~  
16 have been paid in full.

17 (D) The court finds that expungement of the criminal history record  
18 serves the interests of justice.

19 (2) The court shall grant the petition and order that all or part of the  
20 criminal history record be sealed expunged pursuant to section 7607 7606 of  
21 ~~this title if at least five years have elapsed since the date on which the person~~



1 ~~successfully completed the terms and conditions of the sentence for the~~  
2 ~~conviction and the conditions of subdivisions (1)(A), (B), and (C), and (D) of~~  
3 ~~this subsection are met and the court finds that:~~

4 ~~(A) sealing the criminal history record better serves the interests of~~  
5 ~~justice than expungement; and~~

6 ~~(B) the person committed the qualifying crime after reaching 19 years~~  
7 ~~of age.~~

8 (c) Requirements for qualifying misdemeanors.

9 (1) The court shall grant the petition and order that the criminal history  
10 record be ~~expunged~~ sealed pursuant to section ~~7606~~ 7607 of this title if the  
11 following conditions are met:

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

15 (B) ~~The person has not been convicted of a felony arising out of a~~  
16 ~~new incident or occurrence in the last seven years. [Repealed.]~~

17 (C) ~~The person has not been convicted of a misdemeanor during the~~  
18 ~~past five years. [Repealed.]~~

19 (D) ~~Any~~ All surcharges, and any restitution ordered by the court for  
20 ~~any crime of which the person has been convicted has, have been paid in full.~~

1 ~~(E) After considering the particular nature of any subsequent offense,~~  
2 the court finds that expungement of the criminal history record for the  
3 qualifying crime serves the interests of justice.

4 (2) The court shall grant the petition and order that all or part of the  
5 criminal history record be ~~sealed~~ expunged pursuant to section ~~7607~~ 7606 of  
6 this title if at least 10 years have elapsed since the date on which the person  
7 successfully completed the terms and conditions of the sentence for the  
8 conviction and the conditions of subdivisions (1)(A), (B), (C), and (D), and  
9 (E) of this subsection are met and the court finds that:

10 (A) ~~sealing the criminal history record better serves the interests of~~  
11 ~~justice than expungement; and~~

12 (B) ~~the person committed the qualifying crime after reaching 19 years~~  
13 ~~of age.~~

14 (d) For petitions filed pursuant to subdivision (a)(1)(B) of this section,  
15 unless the court finds that expungement would not be in the interests of justice,  
16 the court shall grant the petition and order that the criminal history record be  
17 expunged in accordance with section 7606 of this title if the following  
18 conditions are met:

19 (1) The petitioner has completed any sentence or supervision for the  
20 ~~offense.~~

1 ~~(2) Any All surcharges and any restitution ordered by the court has~~  
2 have been paid in full.

3 (e) 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 (f) ~~Prior to granting an expungement or sealing under this section for~~  
14 ~~petitions filed pursuant to subdivision 7601(4)(D) of this title, the court shall~~  
15 ~~make a finding that the conduct underlying the conviction under section 1201~~  
16 ~~of this title did not constitute a burglary into an occupied dwelling as defined~~  
17 ~~in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of~~  
18 ~~establishing this fact. [Repealed.]~~

19 ~~(g) Requirements for qualifying predicate misdemeanors.~~

1 ~~(1) The court shall grant the petition and order that the criminal history~~  
2 ~~record be sealed pursuant to section 7607 of this title if the following~~  
3 ~~conditions are met:~~

4 ~~(A) At least 10 years have elapsed since the date on which the person~~  
5 ~~successfully completed the terms and conditions of the sentence for the~~  
6 ~~conviction.~~

7 ~~(B) All surcharges, and any restitution ordered by the court for any~~  
8 ~~crime of which the person has been convicted, have been paid in full.~~

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

12 ~~(2) The court shall grant the petition and order that all or part of the~~  
13 ~~criminal history record be expunged pursuant to section 7606 of this title if at~~  
14 ~~least 20 years have elapsed since the date on which the person successfully~~  
15 ~~completed the terms and conditions of the sentence for the conviction and the~~  
16 ~~conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.~~

17 ~~(h) Requirements for qualifying lesser felonies:~~

18 ~~(1) The court shall grant the petition and order that the criminal history~~  
19 ~~record be expunged or sealed pursuant to section 7606 or 7607 of this title if~~  
20 ~~the following conditions are met.~~

1 (A) At least five years have elapsed since the date on which the  
2 person successfully completed the terms and conditions of the sentence for the  
3 conviction.

4 (B) All surcharges, and any restitution ordered by the court, have  
5 been paid in full.

6 (C) The court finds that granting the petition serves the interests of  
7 justice.

8 (2) The court shall grant the petition and order that all or part of the  
9 criminal history record be expunged pursuant to section 7606 of this title if at  
10 least 10 years have elapsed since the date on which the person successfully  
11 completed the terms and conditions of the sentence for the conviction and the  
12 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.

13 (i) Requirements for qualifying felonies:

14 (1) The court shall grant the petition and order that the criminal history  
15 record be sealed pursuant to section 7607 of this title if the following  
16 conditions are met:

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

20 (B) All surcharges, and any restitution ordered by the court, have  
21 been paid in full.

1 (C) The court finds that granting the petition serves the interests of  
2 justice.

3 (2) The court shall grant the petition and order that all or part of the  
4 criminal history record be expunged pursuant to section 7606 of this title if at  
5 least 15 years have elapsed since the date on which the person successfully  
6 completed the terms and conditions of the sentence for the conviction and the  
7 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.

8 (j) Requirements for qualifying predicate felonies:

9 (1) The court shall grant the petition and order that the criminal history  
10 record be sealed pursuant to section 7607 of this title if the following  
11 conditions are met:

12 (A) At least 20 years have elapsed since the date on which the person  
13 successfully completed the terms and conditions of the sentence for the  
14 conviction.

15 (B) All surcharges, and any restitution ordered by the court, have  
16 been paid in full.

17 (C) After considering the particular nature of any subsequent offense,  
18 the court finds that granting the petition serves the interests of justice.

19 (2) The court shall grant the petition and order that all or part of the  
20 criminal history record be expunged pursuant to section 7606 of this title if at  
21 least 30 years have elapsed since the date on which the person successfully

1 ~~completed the terms and conditions of the sentence for the conviction and the~~  
2 ~~conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.~~

3 Sec. 3. 13 V.S.A. § 7606 is amended to read:

4 § 7606. EFFECT OF EXPUNGEMENT

5 (a) ~~Upon entry of an expungement order, the order shall be legally~~  
6 ~~effective immediately and the person whose record is expunged shall be~~  
7 ~~treated in all respects as if he or she had never been arrested, convicted, or~~  
8 ~~sentenced for the offense. The court shall issue an order to expunge all records~~  
9 ~~and files related to the arrest, citation, investigation, charge, adjudication of~~  
10 ~~guilt, criminal proceedings, and probation related to the sentence. The court~~  
11 ~~shall issue the person a certificate stating that such person's behavior after the~~  
12 ~~conviction has warranted the issuance of the order and that its effect is to annul~~  
13 ~~the record of arrest, conviction, and sentence. Notice. The court shall provide~~  
14 ~~notice of the expungement to the respondent, Vermont Crime Information~~  
15 ~~Center (VCIC), the arresting agency, and any other entity that may have a~~  
16 ~~record related to the order to expunge. The VCIC shall provide notice of the~~  
17 ~~expungement to the Federal Bureau of Investigation's National Crime~~  
18 ~~Information Center.~~

19 (b) Effect.

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

1 ~~ted in all respects as if he or she had never been arrested, convicted, or~~  
2 ~~sentenced for the offense.~~

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

7 ~~(3) The response to an inquiry from any person regarding an expunged~~  
8 ~~record shall be that "NO RECORD EXISTS."~~

9 ~~(4) Nothing in this section shall affect any right of the person whose~~  
10 ~~record has been expunged to rely on it as a bar to any subsequent proceedings~~  
11 ~~for the same offense.~~

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

15 ~~(1) The court shall remove the expunged offense from any publicly and~~  
16 ~~privately accessible database that it maintains.~~

17 ~~(2) Until all charges on a docket are expunged, the case file shall remain~~  
18 ~~publicly accessible.~~

19 ~~(3) When all charges on a docket have been expunged, the case file shall~~  
20 ~~become exempt from public access.~~



1 ~~(4) A case file that is subject to an expungement order may be destroyed~~  
2 ~~pursuant to policies established by the Court Administrator.~~

3 (d) Special index.

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

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

13 (3) Inspection of the expungement order and the certificate may be  
14 permitted only upon petition by the person who is the subject of the case. The  
15 ~~Administrative Judge~~ Chief Superior Judge may permit special access to the  
16 index and the documents for research purposes pursuant to the rules for public  
17 access to court records.

18 (4) ~~All other court documents in a case that are subject to an~~  
19 ~~expungement order shall be destroyed [Repealed].~~

20 (5) The Court Administrator shall establish policies for implementing  
21 ~~this subsection.~~

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

3 Sec. 4. 13 V.S.A. § 7607 is amended to read:

4 § 7607. EFFECT OF SEALING

5 ~~(a) Upon entry of an order to seal, the order shall be legally effective~~  
6 ~~immediately and the person whose record is sealed shall be treated in all~~  
7 ~~respects as if he or she had never been arrested, convicted, or sentenced for the~~  
8 ~~offense. The court shall issue the person a certificate stating that such person's~~  
9 ~~behavior after the conviction has warranted the issuance of the order and that~~  
10 ~~its effect is to annul the record of arrest, conviction, and sentence Notice. The~~  
11 ~~court shall provide notice of the sealing to the respondent, Vermont Crime~~  
12 ~~Information Center (VCIC), the arresting agency, and any other entity that~~  
13 ~~may have a record related to the order to seal. The VCIC shall provide notice~~  
14 ~~of the sealing to the Federal Bureau of Investigation's National Crime~~  
15 ~~Information Center.~~

16 (b) Effect.

17 (1) Upon entry of an order to seal, the order shall be legally effective  
18 immediately and the person whose record is sealed shall be treated in all  
19 respects as if he or she had never been arrested, convicted, or sentenced for the  
20 offense.

1 ~~(2) In any application for employment, license, or civil right or privilege~~  
2 or in an appearance as a witness in any proceeding or hearing, a person may be  
3 required to answer questions about a previous criminal history record only  
4 with respect to arrests or convictions that have not been sealed.

5 (3) The response to an inquiry from any person regarding a sealed  
6 record shall be that "NO RECORD EXISTS."

7 (c) Exceptions. Notwithstanding a sealing order:

8 (1) An entity that possesses a sealed record may continue to use it for  
9 any litigation or claim arising out of the same incident or occurrence or  
10 involving the same defendant.

11 (2) An entity may use the criminal history record sealed in accordance  
12 with section 7603 of this title, regarding a person who was cited or arrested,  
13 for future criminal investigations or prosecutions without limitation.

14 (d) ~~Upon receiving a sealing order, an entity shall:~~ Process.

15 (1) ~~seal the investigation or prosecution record;~~ The court shall bar  
16 viewing of the sealed offense in any publicly and privately accessible database  
17 that it maintains.

18 (2) ~~enter a copy of the sealing order into the record;~~ Until all charges on  
19 ~~a docket have been sealed, the case file shall remain publicly accessible.~~

1 ~~(3) flag the record as "SEALED" to prevent inadvertent disclosure of~~  
2 ~~sealed information; and When all charges on a docket have been sealed, the~~  
3 ~~case file shall become exempt from public access.~~

4 ~~(4) upon receiving an inquiry from any person regarding a sealed record,~~  
5 ~~respond that "NO RECORD EXISTS."~~

6 Sec. 5. 13 V.S.A. § 7609 is amended to read:

7 § 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN  
8 INDIVIDUAL 18–21 YEARS OF AGE

9 (a) Procedure. Except as provided in subsection (b) of this section, the  
10 record of the criminal proceedings for an individual who was 18–21 years of  
11 age at the time the individual committed a qualifying crime shall be expunged  
12 within 30 days after the date on which the individual successfully completed  
13 the terms and conditions of the sentence for the conviction of the qualifying  
14 crime, absent a finding of good cause by the court. The court shall issue an  
15 order to expunge all records and files related to the arrest, citation,  
16 investigation, charge, adjudication of guilt, criminal proceedings, and  
17 probation related to the sentence. A copy of the order shall be sent to each  
18 agency, department, or official named in the order. Thereafter, the court, law  
19 enforcement officers, agencies, and departments shall reply to any request for  
20 ~~information that no record exists with respect to such individual.~~

1 ~~Notwithstanding this subsection, the record shall not be expunged until~~

2 ~~restitution has and surcharges have been paid in full.~~

3 \* \* \*

4 Sec. 6. 32 V.S.A. § 1431 is amended to read:

5 § 1431. FEES IN SUPREME AND SUPERIOR COURTS

6 \* \* \*

7 (e) Prior to the filing of any postjudgment motion in the Civil, Criminal, or  
8 Environmental Division of the Superior Court, including motions to reopen  
9 civil suspensions and motions for sealing or expungement in the Criminal  
10 Division pursuant to 13 V.S.A. § 7602, or motions to reopen existing cases in  
11 the Probate Division of the Superior Court, there shall be paid to the clerk of  
12 the court for the benefit of the State a fee of \$90.00 except for small claims  
13 actions and estates. A filing fee of \$90.00 shall be paid to the clerk of the  
14 court for a civil petition for minor settlements. For motions to seal or expunge  
15 a criminal history record pursuant to 13 V.S.A. § 7602, the filing fee shall  
16 apply per petition, and each petition may contain multiple requests to seal or  
17 expunge the records of one individual. If the State's Attorney's Office is filing  
18 the motion to seal or expunge the record of an individual pursuant to 13 V.S.A.  
19 § 7609, the filing fee shall not apply.

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~~Sec. 7. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

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

*§ 7601. DEFINITIONS*

*As used in this chapter:*

*(1) "Court" means the Criminal Division of the Superior Court.*

*(2) "Criminal history record" means all information documenting an individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.*

*(3) "Predicate offense" means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of alcohol or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. "Predicate offense" shall not include misdemeanor possession of marijuana, ~~or a disorderly conduct offense under section 1026 of this title, or possession of a controlled substance in violation of 18 V.S.A. § 4230(a), § 4231(a), § 4232(a), § 4233(a), § 4234(a), § 4234a(a), § 4234b(a), § 4235(b), or § 4235a(a).~~*

*(4) "Qualifying crime" means:*

~~*(A) a misdemeanor offense that is not.*~~

- ~~(i) a listed crime as defined in subdivision 5301(7) of this title;~~
- (ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;
- (iii) an offense involving violation of a protection order in violation of section 1030 of this title;
- (iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this title; or
- (v) 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;
- (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;
- (F) a violation of subdivision 1404(c)(4) of this title related to conspiracy to receive stolen property;
- (G) a violation of section 2001 of this title related to false personation;
- (H) a violation of section 2002 of this title related to false pretenses  
or tokens,

(I) a violation of section 2561 of this title related to receiving stolen property;

(J) a violation of section 2575 of this title related to retail theft;

(K) a violation of 18 V.S.A. § 4230(a) related to possession of marijuana;

(L) a violation of 18 V.S.A. § 4231(a) related to possession of cocaine;

(M) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;

(N) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;

(O) a violation of 18 V.S.A. § 4234(a) related to possession of depressant, stimulant, and narcotic drugs;

(P) a violation of 18 V.S.A. § 4234a(a) related to possession of methamphetamine;

(Q) a violation of 18 V.S.A. § 4234b(a) related to possession of ephedrine and pseudoephedrine;

(R) a violation of 18 V.S.A. § 4235(b) related to possession of hallucinogenic drugs;

(S) a violation of 18 V.S.A. § 4235a(a) related to possession of ecstasy; or

(T) any offense for which a person has been granted an unconditional pardon from the Governor.



~~Sec. 2. 13 V.S.A. § 7606 is amended to read:~~

~~§ 7606. EFFECT OF EXPUNGEMENT~~

~~(a) Upon entry of an expungement order, the order shall be legally effective immediately, and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order, and that its effect is to annul the record of arrest, conviction, and sentence. Order and notice. Upon finding that the requirements for expungement have been met, the court shall issue an order that shall include provisions that its effect is to annul the record of the arrest, conviction, and sentence, and that such person shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall provide notice of the expungement to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.~~

~~(b) Effect.~~

~~(1) Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.~~

~~(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged.~~

~~(3) The response to an inquiry from any person regarding an expunged record shall be that "NO RECORD EXISTS."~~

~~(4) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.~~

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

~~(1) The court shall remove the expunged offense from any publicly and privately accessible database that it maintains.~~

~~(2) Until all charges on a docket are expunged, the case file shall remain publicly accessible.~~

~~(3) When all charges on a docket have been expunged, the case file shall be destroyed pursuant to policies established by the Court Administrator.~~

~~(d) Special index.~~

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

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

~~(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case. The ~~Administrative Judge~~ Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.~~

~~(4) All other court documents in a case that are subject to an expungement order shall be destroyed [Repealed].~~

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

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

Sec. 3. 13 V.S.A. § 7607 is amended to read:

§ 7607. EFFECT OF SEALING

~~(a) Upon entry of an order to seal, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence Notice. The court shall provide notice of the sealing to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.~~

~~(b) Effect.~~

~~(1) Except as provided in subdivision (c) of this section, upon entry of a sealing order, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.~~

~~(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed.~~

~~(3) The response to an inquiry from any person regarding a sealed record shall be that "NO RECORD EXISTS."~~

~~(c) Exceptions. Notwithstanding a sealing order:~~

~~(1) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.~~

~~(2) An entity may use the criminal history record sealed in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.~~

~~(d) Upon receiving a sealing order, an entity shall: Process.~~

~~(1) seal the investigation or prosecution record; The court shall bar viewing of the sealed offense in any publicly and privately accessible database that it maintains.~~

~~(2) enter a copy of the sealing order into the record; Until all charges on a docket have been sealed, the case file shall remain publicly accessible.~~

~~(3) flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and When all charges on a docket have been sealed, the case file shall become exempt from public access.~~

~~(4) upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."~~

*Sec. 4. 32 V.S.A. § 1431 is amended to read:*

*§ 1431. FEES IN SUPREME AND SUPERIOR COURTS*

*\* \* \**

~~(e) Prior to the filing of any postjudgment motion in the Civil, Criminal, or Environmental Division of the Superior Court, including motions to reopen civil suspensions and motions for sealing or expungement in the Criminal Division pursuant to 13 V.S.A. § 7602, or motions to reopen existing cases in the Probate Division of the Superior Court, there shall be paid to the clerk of the court for the benefit of the State a fee of \$90.00 except for small claims actions and estates. A filing fee of \$90.00 shall be paid to the clerk of the court for a civil petition for minor settlements. There shall be no filing fee for motions to seal or expunge a criminal history record pursuant to 13 V.S.A. § 7602.~~

*\* \* \**

*Sec. 5. EFFECTIVE DATE*

~~This act shall take effect on July 1, 2019.~~

*Sec. 1. 13 V.S.A. § 2658 is amended to read:*

*§ 2658. ~~PROSTITUTION CONVICTION~~; MOTION TO VACATE BY  
VICTIM OF HUMAN TRAFFICKING*

*(a) As used in this section,:*

*(1) “Qualifying crime” means a criminal offense in this State that is not listed in 33 V.S.A. § 5204(a).*

*(2) ~~“victim”~~ Victim of human trafficking” means:*

*~~(1)(A)~~ a victim of a violation of section 2652 or 2653 of this title;*

*or*

*~~(2)(B)~~ “a victim of a severe form of trafficking” as defined by 22 U.S.C. § 7102(14) (federal Trafficking Victims Protection Act).*

*(b) A person convicted of ~~prostitution in violation of section 2632 of this title~~ a qualifying crime may file a motion to vacate the conviction if it was obtained as a result of the person having been a victim of human trafficking. The motion shall be in writing, describe the supporting evidence with particularity, and include copies of any documents showing that the moving party is entitled to relief under this section.*

*(c) The court shall hold a hearing on the motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert a claim for which relief may be granted.*

*(d)(1) The court shall grant the motion if it finds by a preponderance of the*

*evidence that:*

*(A) the moving party was convicted of ~~prostitution in violation of~~ section 2632 of this title a qualifying crime; and*

*(B) the conviction was obtained as a result of the moving party's having been a victim of human trafficking.*

*(2) If the motion is granted, the court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.*

*(e) Official documentation of a person's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the person's ~~prostitution~~ conviction was obtained as a result of having been a victim of human trafficking. Such documentation shall not be required to grant a motion under this section.*

*Sec. 2. 13 V.S.A. § 7601 is amended to read:*

*§ 7601. DEFINITIONS*

*As used in this chapter:*

*(1) "Court" means the Criminal Division of the Superior Court.*

*(2) "Criminal history record" means all information documenting an*



*individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.*

*(3) "Predicate offense" means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of alcohol or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. "Predicate offense" shall not include misdemeanor possession of marijuana, ~~or~~ a disorderly conduct offense under section 1026 of this title, or possession of a controlled substance in violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a).*

*(4) "Qualifying crime" means:*

*(A) a misdemeanor offense that is not:*

*(i) a listed crime as defined in subdivision 5301(7) of this title;*

*(ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;*

*(iii) an offense involving violation of a protection order in violation of section 1030 of this title;*

*(iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this title; or*

*(v) 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;*

*(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;*

*(F) a violation of section 1802 of this title related to uttering a forged or counterfeited instrument;*

*(G) a violation of 18 V.S.A. § 4230(a) related to possession of marijuana;*

*(H) a violation of 18 V.S.A. § 4231(a) related to possession of cocaine;*

*(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;*

*(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;*

*(K) a violation of 18 V.S.A. § 4234(a) related to possession of depressant, stimulant, and narcotic drugs;*

*(L) a violation of 18 V.S.A. § 4234a(a) related to possession of methamphetamine;*

*(M) a violation of 18 V.S.A. § 4234b(a) related to possession of*

ephedrine and pseudoephedrine;

(N) a violation of 18 V.S.A. § 4235(b) related to possession of hallucinogenic drugs;

(O) a violation of 18 V.S.A. § 4235a(a) related to possession of ecstasy; or

(P) any offense for which a person has been granted an unconditional pardon from the Governor.

Sec. 3. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,

*POSTCONVICTION; PROCEDURE*

*(a)(1) A person may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction if:*

*(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; ~~or~~*

*(B) the person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense;*

*(C) pursuant to the conditions set forth in subsection (g) of this section, the person was convicted of a violation of 23 V.S.A. § 1201(a) related to operating under the influence of alcohol or other substance, excluding a violation of that section resulting in serious bodily injury or death to any person other than the operator, or related to operating a school bus with a*

blood alcohol concentration of 0.02 or more or operating a commercial vehicle with a blood alcohol concentration of 0.04 or more; or

(D) pursuant to the conditions set forth in subsection (h) of this section, the person was convicted under 1201(c)(3)(A) of a violation of subdivision 1201(a) of this title related to burglary when the person was 25 years of age or younger, and the person did not carry a dangerous or deadly weapon during commission of the offense.

(2) *The State's Attorney or Attorney General shall be the respondent in the matter.*

(3) *The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner ~~a certificate~~ an order of expungement and provide notice of the order in accordance with this section.*

(4) This section shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal or expunge a record of a conviction for a felony offense committed in a motor vehicle as defined in 23 V.S.A. § 4.

\* \* \*

(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only petitions to seal may be considered or granted by the court. This subsection

shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be sealed in accordance with section 7607 of this title if the following conditions are met:

(1) At least 10 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 years previously.

(2) At the time of the filing of the petition:

(A) the person has only one conviction of a violation of 23 V.S.A. § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

(B) the person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of 23 V.S.A. § 1201(a).

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

(4) The court finds that sealing of the criminal history record serves the interests of justice.

(h) For petitions filed pursuant to subdivision (a)(1)(D) of this section, unless the court finds that expungement or sealing would not be in the interests

of justice, the court shall grant the petition and order that the criminal history record be expunged or sealed in accordance with section 7606 or 7607 of this title if the following conditions are met:

(1) At least 15 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 15 years previously.

(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of subdivision 1201(c)(3)(A) of this title.

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

(4) The court finds that expungement or sealing of the criminal history record serves the interests of justice.

Sec. 4. 13 V.S.A. § 7603 is amended to read:

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO

CONVICTION; PROCEDURE

(a) Unless either party objects in the interests of justice, the court shall issue an order sealing the criminal history record related to the citation or arrest of a person:

(1) ~~12 months after the dismissal~~ within 60 days after the final

disposition of the case if:

(A) ~~the court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment; or~~

(B) ~~the charge is dismissed before trial without prejudice; or~~

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

(b) ~~If a party objects to sealing or expunging a record pursuant to this section, the court shall schedule a hearing to determine if sealing or expunging the record serves the interests of justice. The defendant and the prosecuting attorney shall be the only parties in the matter.~~

(c), (d) [Repealed.]

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

(1) ~~not more than 45 days after~~ within 60 days after the final disposition of the case if:

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

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

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

(f) ~~Unless either party objects in the interests of justice, the court shall~~

*issue an order to expunge a record sealed pursuant to subsection (a) or (g) of this section ~~after the statute of limitations has expired~~ eight years after the date on which the record was sealed.*

*(g) A person may file a petition with the court requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interests of justice, or if the parties stipulate to sealing or expungement of the record.*

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

*Sec. 5. 13 V.S.A. § 7606 is amended to read:*

*§ 7606. EFFECT OF EXPUNGEMENT*

*(a) ~~Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal~~*



~~proceedings, and probation related to the sentence. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence.~~ Order and notice. Upon finding that the requirements for expungement have been met, the court shall issue an order that shall include provisions that its effect is to annul the record of the arrest, conviction, and sentence and that such person shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall provide notice of the expungement to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(b) Effect.

(1) Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.

(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only

*with respect to arrests or convictions that have not been expunged.*

*(3) The response to an inquiry from any person regarding an expunged record shall be that “NO CRIMINAL RECORD EXISTS.”*

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

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

*(1) The court shall remove the expunged offense from any accessible database that it maintains.*

*(2) Until all charges on a docket are expunged, the case file shall remain publicly accessible.*

*(3) When all charges on a docket have been expunged, the case file shall be destroyed pursuant to policies established by the Court Administrator.*

*(d) Special index.*

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

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

*(3) Inspection of the expungement order ~~and the certificate~~ may be permitted only upon petition by the person who is the subject of the case. The ~~Administrative Judge~~ Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.*

*(4) ~~All other court documents in a case that are subject to an expungement order shall be destroyed [Repealed].~~*

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

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

*Sec. 6. 13 V.S.A. § 7607 is amended to read:*

*§ 7607. EFFECT OF SEALING*

*(a) Order and notice. Upon entry of an order to seal, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. ~~The court shall issue the person a certificate stating~~*

~~that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.~~

~~(b) Effect.~~

~~(1) Except as provided in subdivision (c) of this section, upon entry of a sealing order, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense.~~

~~(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed.~~

~~(3) The response to an inquiry from any member of the public regarding a sealed record shall be that "NO CRIMINAL RECORD EXISTS."~~

~~(c) Exceptions. Notwithstanding any other provision of law or a sealing order:~~

~~(1) An entity that possesses a sealed record may continue to use it for~~

*any litigation or claim arising out of the same incident or occurrence or involving the same defendant.*

*(2) ~~An entity~~ A criminal justice agency as defined in 20 V.S.A. § 2056a may use the criminal history record sealed in accordance with section 7602 or 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation for criminal justice purposes as defined in 20 V.S.A. § 2056a. A sealed record of a prior violation of 23 V.S.A. § 1201(a) shall be admissible as a predicate offense for the purpose of imposing an enhanced penalty for a subsequent violation of that section, in accordance with the provisions of 23 V.S.A. § 1210.*

*(d) ~~Upon receiving a sealing order, an entity shall:~~ Process.*

*(1) ~~seal the investigation or prosecution record;~~ The court shall bar viewing of the sealed offense in any accessible database that it maintains.*

*(2) ~~enter a copy of the sealing order into the record;~~ Until all charges on a docket have been sealed, the case file shall remain publicly accessible.*

*(3) ~~flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and~~ When all charges on a docket have been sealed, the case file shall become exempt from public access.*

*(4) ~~upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."~~*

*(e) Special index.*

(1) The court shall keep a special index of cases that have been sealed together with the sealing order. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the sealing.

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

(3) Except as provided in subsection (c) of this section, inspection of the sealing order may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

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

Sec. 7. 13 V.S.A. § 7610 is added to read:

§ 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

There is established the Criminal History Record Sealing Special Fund, which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5. Fees collected pursuant to 32 V.S.A. § 1431(e) for the filing of a petition to seal a criminal history record of a violation of 23 V.S.A. § 1201(a) shall be

deposited into and credited to this Fund. This Fund shall be available to the Office of the Court Administrator, the Department of State's Attorneys and Sheriffs, the Department of Motor Vehicles, and the Vermont Crime Information Center to offset the administrative costs of sealing such records. Balances in the Fund at the end of the fiscal year shall be carried forward and remain in the Fund.

Sec. 8. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

\* \* \*

(e) *Effective date of suspension.*

(1) *First offense. Unless a hearing is requested, a suspension under this section of the license of a person who the officer has reasonable grounds to believe violated section 1201 of this title a first time becomes effective on the 11th day after the person receives notice or is deemed to have received notice under subsection (c) of this section. If a hearing is requested, a suspension shall not become effective unless the court orders a suspension after hearing as provided in this section.*

(2) *Second or subsequent offense. A suspension of a person's license under this section shall become effective on the 11th day after the person receives notice or is deemed to have received notice under subsection (c) of this section if:*

(A) *the officer has reasonable grounds to believe the person has violated section 1201 of this title; and*

(B) *after July 1, 1991 within the last 20 years, the person has:*

(i) *had his or her operator's license suspended pursuant to this section; or*

(ii) *been convicted of a violation of section 1201 of this title.*

\* \* \*

*Sec. 9. 23 V.S.A. § 1210 is amended to read:*

*§ 1210. PENALTIES*

(a) *Screening. Before sentencing a defendant under this section, the ~~Court~~ court may order that the defendant submit to an alcohol assessment screening. Such a screening report may be considered at sentencing in the same manner as a presentence report. At sentencing, the defendant may present relevant evidence, including the results of any independent alcohol assessment ~~which~~ that was conducted at the person's own expense. Evidence regarding any such screening or an alcohol assessment performed at the expense of the defendant shall not be admissible for any other purpose without the defendant's consent.*

(b) *First offense. A person who violates section 1201 of this title may be fined not more than \$750.00~~7~~, or imprisoned for not more than two years, or both.*

(c) *Second offense. A person convicted of violating section 1201 of this*



*title who has been convicted of another violation of that section within the last 20 years shall be fined not more than \$1,500.00 or imprisoned not more than two years, or both. At least 200 hours of community service shall be performed, or 60 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed.*

*(d) Third offense. A person convicted of violating section 1201 of this title who has previously been convicted two times of a violation of that section, including at least one violation within the last 20 years, shall be fined not more than \$2,500.00 or imprisoned not more than five years, or both. At least 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The ~~Court~~ court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the ~~Court~~ court makes written findings on the record that such a sentence will serve the interests of justice and public safety.*

*(e)(1) Fourth or subsequent offense. A person convicted of violating*

*section 1201 of this title who has previously been convicted three or more times of a violation of that section, including at least one violation within the last 20 years, shall be fined not more than \$5,000.00 or imprisoned not more than 10 years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol treatment facility pursuant to sentence if the program is successfully completed. The ~~Court~~ court shall not impose a sentence that does not include a term of imprisonment unless the ~~Court~~ court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.*

*(2) The Department of Corrections shall provide alcohol and substance abuse treatment, when appropriate, to any person convicted of a violation of this subsection.*

*\* \* \**

*Sec. 10. 32 V.S.A. § 1431 is amended to read:*

*§ 1431. FEES IN SUPREME AND SUPERIOR COURTS*

*\* \* \**

*(e) Prior to the filing of any postjudgment motion in the Civil, Criminal, or Environmental Division of the Superior Court, including motions to reopen civil suspensions ~~and motions for sealing or expungement in the Criminal~~*

*Division pursuant to ~~13 V.S.A. § 7602~~, or motions to reopen existing cases in the Probate Division of the Superior Court, there shall be paid to the clerk of the court for the benefit of the State a fee of \$90.00 except for small claims actions and estates. A filing fee of \$90.00 shall be paid to the clerk of the court for a civil petition for minor settlements. The \$90.00 filing fee shall apply for a motion to seal a criminal history record of a violation of 23 V.S.A. § 1201(a) pursuant to 13 V.S.A. § 7602(a)(1)(C), but shall not apply for any other motion to seal or expunge a criminal history record pursuant to 13 V.S.A. § 7602.*

\* \* \*

*Sec. 11. VERMONT SENTENCING COMMISSION; COUNCIL OF STATE  
GOVERNMENTS; JUSTICE OVERSIGHT COMMITTEE;  
REPORTS ON EXPUNGEMENT AND SEALING*

*During the 2019 legislative interim:*

*(1) the Vermont Sentencing Commission, established under 13 V.S.A. § 5451, shall conduct a comprehensive assessment of the statutes governing the expungement and sealing of criminal history records in Vermont, including reviewing the crimes eligible for expungement or sealing, the process by which criminal history records are expunged or sealed, the mechanism by which expunged or sealed records are indexed, and the effect of sealing or expungement. As a part of its assessment, the Commission shall evaluate all*

Vermont civil offenses and the crime of negligent operation of a motor vehicle under 23 V.S.A. § 1091(a) for their suitability for expungement or sealing eligibility.

(2) on or before November 1, 2019, the Commission shall report to the Joint Legislative Justice Oversight Committee and the House and Senate Committees on Judiciary with recommendations regarding:

(A) improvements to the expungement and sealing process; and

(B) any additional crimes or civil offenses appropriate for expungement or sealing eligibility.

(3) the Joint Legislative Justice Oversight Committee, working with the Council of State Governments Justice Center, shall conduct a review of the Vermont statutes governing expungement and sealing of criminal history records and develop a comprehensive policy to help individuals with a criminal record overcome barriers to employment and licensing through clearing their records. Any recommendations for reform of the expungement and sealing chapter and other relevant statutes shall be introduced in the form of proposed legislation for the 2020 legislative session.

**Sec. 12. SURCHARGES STUDY GROUP**

During the 2019 legislative interim, the Vermont Center for Crime Victim Services, the Office of the Court Administrator, Vermont Legal Aid, and a representative of the special investigative units created pursuant to 24 V.S.A.

§ 1940 shall examine the issue of requiring a petitioner to pay outstanding surcharges prior to a court granting an expungement or sealing petition. On or before October 15, 2019, the group shall report to the Joint Legislative Justice Oversight Committee with its findings and any recommendations for legislative action.

*Sec. 13. REVIEW OF PROSTITUTION AND HUMAN TRAFFICKING*

*LAWS*

The Attorney General's Office, the Center for Crime Victim Services, and the Network Against Domestic and Sexual Violence, in consultation with other entities with expertise in these issues, shall review 13 V.S.A. chapter 59, subchapter 2 (prostitution) and 13 V.S.A. chapter 60 (human trafficking), 13 V.S.A. § 1311 (unlawful sheltering; aiding a runaway), and 33 V.S.A. § 5304 (designated shelters for runaway children) for the purpose of making recommendations to the General Assembly regarding modernization of these laws and employment of best practices in addressing the issue of prostitution and human trafficking. The group shall also make a recommendation as to whether 13 V.S.A. § 2658 (motion to vacate by victim of human trafficking) should be amended to allow a person to file a motion to vacate a conviction for any criminal offense if it was obtained as a result of the moving party's having been a victim of human trafficking. The group shall report its recommendations to the General Assembly not later than October 15, 2019.

Recommendations may be made through proposed legislation and do not require a report.

*Sec. 14. EFFECTIVE DATES*

This act shall take effect on July 1, 2019, except that Sec. 3 (expungement and sealing of record; postconviction; procedure) shall take effect on October 1, 2019.