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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 (F) 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 assault
17 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 new~~
13 ~~incident or occurrence since the person was convicted for the qualifying crime.~~
14 [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 ~~40~~ 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 (E)~~
9 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 effective~~
6 ~~immediately and the person whose record is expunged 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 an order to expunge all records and files related~~
9 ~~to the arrest, citation, investigation, charge, adjudication of guilt, criminal~~
10 ~~proceedings, and probation related to the sentence. The court shall issue the~~
11 ~~person a certificate stating that such person's behavior after the conviction has~~
12 ~~warranted the issuance of the order and that its effect is to annul the record of~~
13 ~~arrest, conviction, and sentence~~ Notice. The court shall provide notice of the
14 expungement to the respondent, Vermont Crime Information Center (VCIC),
15 the arresting agency, and any other entity that may have a record related to the
16 order to expunge. The VCIC shall provide notice of the expungement to the
17 Federal Bureau of Investigation's National Crime Information Center.

18 (b) Effect.

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

1 in all respects as if he or she had never been arrested, convicted, or sentenced
2 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 with
6 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 may
13 have a record related to the order to seal. The VCIC shall provide notice of the
14 sealing to the Federal Bureau of Investigation’s National Crime Information
15 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 with
4 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, for
13 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 court
14 for a civil petition for minor settlements. For motions to seal or expunge a
15 criminal history record pursuant to 13 V.S.A. § 7602, the filing fee shall apply
16 per petition, and each petition may contain multiple requests to seal or expunge
17 the records of one individual. If the State's Attorney's Office is filing the
18 motion to seal or expunge the record of an individual pursuant to 13 V.S.A.
19 § 7609, the filing fee shall not apply.

20 * * *

- 1 Sec. 7. EFFECTIVE DATE
- 2 This act shall take effect on passage.