

1 H.653

2 Introduced by Representatives Grad of Moretown, LaLonde of South

3 Burlington, and Colburn of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Criminal procedures; expungement and sealing of criminal history

7 records

8 Statement of purpose of bill as introduced: This bill proposes to expand
9 eligibility for expungement or sealing of a criminal history record to most
10 criminal offenses and several civil offenses.

11 An act relating to expanding access to expungement and sealing of criminal
12 history records

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

14 Sec. 1. 13 V.S.A. § 5301 is amended to read:

15 § 5301. DEFINITIONS

16 As used in this chapter:

17 * * *

18 (7) "Listed crime" means any of the following offenses:

19 (A) stalking as defined in section 1062 of this title;

1 (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4)(b)
2 of this title;

3 (C) domestic assault as defined in section 1042 of this title;

4 (D) first degree aggravated domestic assault as defined in section
5 1043 of this title;

6 (E) second degree aggravated domestic assault as defined in section
7 1044 of this title;

8 (F) sexual assault as defined in section 3252 of this title or its
9 predecessor as it was defined in section 3201 or 3202 of this title;

10 (G) aggravated sexual assault as defined in section 3253 of this title;

11 (H) lewd or lascivious conduct as defined in section 2601 of this title;

12 (I) lewd or lascivious conduct with a child as defined in section 2602
13 of this title;

14 (J) murder as defined in section 2301 of this title;

15 (K) aggravated murder as defined in section 2311 of this title;

16 (L) manslaughter as defined in section 2304 of this title;

17 (M) aggravated assault as defined in section 1024 of this title;

18 (N) assault and robbery with a dangerous weapon as defined in
19 subsection 608(b) of this title;

20 (O) arson causing death as defined in section 501 of this title;

1 (P) assault and robbery causing bodily injury as defined in subsection
2 608(c) of this title;

3 (Q) maiming as defined in section 2701 of this title;

4 (R) kidnapping as defined in section 2405 of this title or its
5 predecessor as it was defined in section 2401 of this title;

6 (S) unlawful restraint in the second degree as defined in section 2406
7 of this title;

8 (T) unlawful restraint in the first degree as defined in section 2407 of
9 this title;

10 (U) recklessly endangering another person as defined in section 1025
11 of this title;

12 (V) violation of abuse prevention order as defined in section 1030 of
13 this title, excluding violation of an abuse prevention order issued pursuant to
14 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

15 (W) operating vehicle under the influence of alcohol or other
16 substance with either death or serious bodily injury resulting as defined in
17 23 V.S.A. § 1210(f) and (g);

18 (X) ~~careless or~~ negligent or grossly negligent operation resulting in
19 serious bodily injury or death as defined in 23 V.S.A. § 1091**(b)**;

20 (Y) leaving the scene of an accident with serious bodily injury or
21 death as defined in 23 V.S.A. § 1128(b) or (c);

1 (Z) burglary into an occupied dwelling as defined in subsection
2 1201(c) of this title;

3 (AA) the attempt to commit any of the offenses listed in this section;

4 (BB) abuse (section 1376 of this title), abuse by restraint (section
5 1377 of this title), neglect (section 1378 of this title), sexual abuse (section
6 1379 of this title), financial exploitation (section 1380 of this title), and
7 exploitation of services (section 1381 of this title);

8 (CC) aggravated sexual assault of a child in violation of section
9 3253a of this title;

10 (DD) human trafficking in violation of section 2652 of this title; and

11 (EE) aggravated human trafficking in violation of section 2653 of
12 this title.

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

14 § 7601. DEFINITIONS

15 As used in this chapter:

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

17 (2) “Criminal history record” means all information documenting an
18 individual’s contact with the criminal justice system, including data regarding
19 identification, arrest or citation, arraignment, judicial disposition, custody, and
20 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
4 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title,
5 and stalking in violation of section 1062 of this title. “Predicate offense” shall
6 not include misdemeanor possession of marijuana, a disorderly conduct
7 offense under section 1026 of this title, or possession of a controlled substance
8 in violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a),
9 4234a(a), 4234b(a), 4235(b), or 4235a(a).

10 (4) “Qualifying crime” means: any criminal offense that is not an
11 offense listed in subdivision 5301(7) of this title or a violation of 18 V.S.A.
12 § 4231(c), 4233(c), 4233a(b), 4234a(c), or 4230(c), or any offense for which a
13 person has been granted an unconditional pardon from the Governor.

14 ~~(A) a misdemeanor offense that is not:~~

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

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

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

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

1 ~~(v) a predicate offense;~~

2 ~~(B) a violation of subsection 3701(a) of this title related to criminal~~
3 ~~mischief;~~

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

5 ~~(D) a violation of section 1201 of this title related to burglary,~~
6 ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~
7 ~~1201(b)(2) of this title;~~

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

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

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

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

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

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

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

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

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

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

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

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

9 (5) “Subsequent offense” means a crime committed by the person who
10 is the subject of a petition to expunge or seal a criminal history record that
11 arose out of a new incident or occurrence after the person was convicted of the
12 crime to be expunged or sealed.

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

14 § 7602. EXPUNGEMENT AND SEALING OF RECORD,
15 POSTCONVICTION; PROCEDURE

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

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

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

1 (C) pursuant to the conditions set forth in subsection (g) of this
2 section, the person was convicted of a violation of 23 V.S.A. § 1201(a) related
3 to operating under the influence of alcohol or other substance, excluding a
4 violation of that section resulting in serious bodily injury or death to any
5 person other than the operator, or related to operating a school bus with a blood
6 alcohol concentration of 0.02 or more or operating a commercial vehicle with a
7 blood alcohol concentration of 0.04 or more; or

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

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

15 (3) The court shall grant the petition without hearing if the petitioner
16 and the respondent stipulate to the granting of the petition. The respondent
17 shall file the stipulation with the court, and the court shall issue the petitioner
18 an order of expungement and provide notice of the order in accordance with
19 this section.

20 (4) This section shall not apply to an individual licensed as a
21 commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal or expunge

1 a record of a conviction for a felony offense committed in a motor vehicle as
2 defined in 23 V.S.A. § 4.

3 (b) Qualifying nonpredicate misdemeanors and possession of a controlled
4 substance offenses. For petitions filed to expunge or seal a criminal history
5 record of a nonpredicate misdemeanor offense or a violation of 18 V.S.A.
6 § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or
7 4235a(a):

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

11 (A) At least five years have elapsed since:

12 (i) the date on which the person ~~successfully~~ completed the terms
13 and conditions of the sentence for the conviction, or if the person has
14 ~~successfully~~ completed the terms and conditions of an indeterminate term of
15 probation that commenced at least five years previously; or

16 (ii) if the person committed a subsequent offense, the date on
17 which the person completed the terms and conditions of the sentence for the
18 subsequent offense, whichever is later.

19 ~~(B) The person has not been convicted of a crime arising out of a new~~
20 ~~incident or occurrence since the person was convicted for the qualifying crime.~~

21 [Repealed.]

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

2 (D) The court finds that expungement of the criminal history record
3 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 pursuant to section 7607 of this title if the
6 conditions of subdivisions (1)(A), ~~(B)~~, and (C) of this subsection are met and
7 the court finds that:

8 (A) sealing the criminal history record better serves the interests of
9 justice than expungement; and

10 (B) the person committed the qualifying crime after reaching 19
11 years of age.

12 (3) If the respondent stipulates to a petition filed prior to, on, or after the
13 date the offense is eligible for expungement or sealing as set forth in this
14 subsection, the court may grant the petition without a hearing.

15 (c) Qualifying predicate misdemeanors. For petitions filed to expunge or
16 seal a criminal history record of a qualifying predicate misdemeanor offense:

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

20 (A) At least ~~10~~ five years have elapsed since:

1 (i) the date on which the person ~~successfully~~ completed the terms
2 and conditions of the sentence for the conviction; or

3 (ii) if the person committed a subsequent offense, the date on
4 which the person completed the terms and conditions of the sentence for the
5 subsequent offense, whichever is later.

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

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

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

12 (E) After considering the particular nature of any subsequent offense,
13 the court finds that expungement of the criminal history record for the
14 qualifying crime serves the interests of justice.

15 (2) ~~The court shall grant the petition and order that all or part of the~~
16 ~~criminal history record be sealed pursuant to section 7607 of this title if the~~
17 ~~conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met~~
18 ~~and the court finds that:~~

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

1 ~~(B) the person committed the qualifying crime after reaching 19 years~~
2 ~~of age.~~ A criminal history record sealed pursuant to this subsection (c) shall be
3 eligible for expungement pursuant to section 7606 of this title five years after
4 the date on which the sealing order is issued if the person does not commit any
5 subsequent offense. If the person commits a subsequent offense, the sealed
6 record shall be eligible for expungement five years after the date on which the
7 person completed the terms and conditions of the sentence for the subsequent
8 offense.

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

14 (1) The petitioner has completed any sentence or supervision for the
15 offense.

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

17 (e) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a
18 conviction for possession of a regulated drug under 18 V.S.A. chapter 84,
19 subchapter 1 in an amount that is no longer prohibited by law or for which
20 criminal sanctions have been removed:

1 (1) The petitioner shall bear the burden of establishing that his or her
2 conviction was based on possessing an amount of regulated drug that is no
3 longer prohibited by law or for which criminal sanctions have been removed.

4 (2) There shall be a rebuttable presumption that the amount of the
5 regulated drug specified in the affidavit of probable cause associated with the
6 petitioner's conviction was the amount possessed by the petitioner.

7 (f) Prior to granting an expungement or sealing under this section for
8 petitions filed pursuant to subdivision 7601(4)(D) of this title, the court shall
9 make a finding that the conduct underlying the conviction under section 1201
10 of this title did not constitute a burglary into an occupied dwelling, as defined
11 in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of
12 establishing this fact.

13 (g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only
14 petitions to seal may be considered or granted by the court. This subsection
15 shall not apply to an individual licensed as a commercial driver pursuant to
16 23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the
17 interests of justice, the court shall grant the petition and order that the criminal
18 history record be sealed in accordance with section 7607 of this title if the
19 following conditions are met:

20 (1) At least 10 years have elapsed since the date on which the person
21 ~~successfully~~ completed the terms and conditions of the sentence for the

1 conviction, or if the person has ~~successfully~~ completed the terms and
2 conditions of an indeterminate term of probation that commenced at least 10
3 years previously.

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

5 (A) the person has only one conviction of a violation of 23 V.S.A.
6 § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

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

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

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

13 (h) For petitions filed pursuant to subdivision (a)(1)(D) of this section,
14 unless the court finds that expungement or sealing would not be in the interests
15 of justice, the court shall grant the petition and order that the criminal history
16 record be expunged or sealed in accordance with section 7606 or 7607 of this
17 title if the following conditions are met:

18 (1) At least 15 years have elapsed since the date on which the person
19 ~~successfully~~ completed the terms and conditions of the sentence for the
20 conviction, or the person has ~~successfully~~ completed the terms and conditions

1 of an indeterminate term of probation that commenced at least 15 years
2 previously.

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

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

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

9 (i) Qualifying felony property offenses and selling, dispensing, or
10 transporting regulated substances offenses. For petitions filed to expunge or
11 seal a criminal history record of a nonpredicate felony theft, fraud, or property
12 damage offense or a violation of 18 V.S.A. §§ 4230(b), 4231(b), 4232(b),
13 4233(b), 4234(b), 4234a(b), 4234b(b), 4235(c), or 4235a(b):

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:

18 (i) the date on which the person completed the terms and
19 conditions of the sentence for the conviction; or

1 (ii) if the person committed a subsequent offense, the date on
2 which the person completed the terms and conditions of the sentence for the
3 subsequent offense, whichever is later.

4 (B) Any restitution ordered by the court for any crime of which the
5 person has been convicted has been paid in full.

6 (C) After considering the particular nature of any subsequent offense,
7 the court finds that expungement of the criminal history record for the
8 qualifying crime serves the interests of justice.

9 (2) A criminal history record sealed pursuant to this subsection (i) shall
10 be eligible for expungement pursuant to section 7606 of this title 10 years after
11 the date on which the sealing order is issued if the person does not commit any
12 subsequent offense. If the person commits a subsequent offense, the sealed
13 record shall be eligible for expungement 10 years after the date on which the
14 person completed the terms and conditions of the sentence for the subsequent
15 offense.

16 (3) If the respondent stipulates to a petition filed prior to, on, or after the
17 date the offense is eligible for sealing as provided in this subsection, the court
18 may grant the petition to seal without a hearing.

19 (j) Qualifying felonies. For petitions filed to expunge or seal a criminal
20 history record of any other qualifying felony offense not specified in
21 subsection (f), (h), or (i) of this section:

1 court having jurisdiction over such a person, after notice to all parties of record
2 and hearing, the court shall order the sealing of all files and records related to
3 the proceeding if it finds:

4 (1) two years have elapsed since the final discharge of the person;

5 (2) the person has not been convicted of a listed crime as defined in
6 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial
7 conviction, and no new proceeding is pending seeking such conviction or
8 adjudication; and

9 (3) the person's rehabilitation has been attained to the satisfaction of the
10 court.

11 * * *

12 Sec. 5. 23 V.S.A. § 2303 is added to read:

13 § 2303. EXPUNGEMENT OF VIOLATION RECORDS

14 (a) Automatic expungement. The Judicial Bureau shall automatically enter
15 an expungement order for convictions or adjudications of the following
16 violations on the two-year anniversary of the conviction or adjudication:

17 (1) 7 V.S.A. § 656(a)(2) (underage alcohol);

18 (2) 18 V.S.A. § 4230b(a) (underage marijuana);

19 (3) section 301 of this title (operating an unregistered vehicle);

20 (4) subsection 307(a) of this title (failing to possess registration);

21 (5) section 611 of this title (failing to possess license); and

1 (6) subsection 676(a) of this title (operating after suspension).

2 (b) Effect of expungement.

3 (1) Upon entry of an expungement order, the order shall be legally
4 effective immediately and the individual whose record is expunged shall be
5 treated in all respects as if he or she had never been convicted or adjudicated of
6 the violation. This includes the expungement of any points accumulated
7 pursuant to chapter 25 of this title.

8 (2) The Judicial Bureau shall report the expungement to the Department
9 of Motor Vehicles within 14 days.

10 (3) The Judicial Bureau shall keep a special index of cases that have
11 been expunged together with the expungement order. The index shall list only
12 the name of the individual convicted or adjudicated of the violation, his or her
13 date of birth, the docket number, and the violation that was the subject of the
14 expungement. All other court documents and records that are subject to an
15 expungement order, whether held by the Judicial Bureau or the Department of
16 Motor Vehicles, shall be destroyed.

17 (4) Upon receiving an inquiry from any person regarding an expunged
18 record, the Judicial Bureau and Department of Motor Vehicles shall respond
19 that "NO RECORD EXISTS."

20 (c) Policies for implementation. The Court Administrator shall establish
21 policies for implementing this section.

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on July 1, 2020.