

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 460  
3 entitled “An act relating to sealing and expungement of criminal history  
4 records” respectfully reports that it has considered the same and recommends  
5 that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

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

8 § 7601. DEFINITIONS

9 As used in this chapter:

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

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

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

1 violation of 18 V.S.A. § 4230(a), § 4231(a), § 4232(a), § 4233(a), § 4234(a),  
2 § 4234a(a), § 4234b(a), § 4235(b), or § 4235a(a).

3 (4) “Qualifying crime” means:

4 (A) a misdemeanor offense that is not:

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

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

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

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

12 (v) a predicate offense;

13 (B) a violation of subsection 3701(a) of this title related to criminal  
14 mischief;

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

16 (D) a violation of section 1201 of this title related to burglary,  
17 excluding any burglary into an occupied dwelling, as defined in subdivision  
18 1201(b)(2) of this title; ~~or~~

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

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

1           (G) a violation of section 2001 of this title related to false  
2           personation;

3           (H) a violation of section 2002 of this title related to false pretenses  
4           or tokens;

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

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

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

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

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

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

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

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

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

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

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

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

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

8           § 7606. EFFECT OF EXPUNGEMENT

9           ~~(a) Upon entry of an expungement order, the order shall be legally effective~~  
10           ~~immediately and the person whose record is expunged shall be treated in all~~  
11           ~~respects as if he or she had never been arrested, convicted, or sentenced for the~~  
12           ~~offense. The court shall issue an order to expunge all records and files related~~  
13           ~~to the arrest, citation, investigation, charge, adjudication of guilt, criminal~~  
14           ~~proceedings, and probation related to the sentence. The court shall issue the~~  
15           ~~person a certificate stating that such person's behavior after the conviction has~~  
16           ~~warranted the issuance of the order and that its effect is to annul the record of~~  
17           ~~arrest, conviction, and sentence. Order and notice. Upon finding that the~~  
18           ~~requirements for expungement have been met, the court shall issue an order~~  
19           ~~that shall include provisions that its effect is to annul the record of the arrest,~~  
20           ~~conviction, and sentence, and that such person shall be treated in all respects as~~  
21           ~~if he or she had never been arrested, convicted, or sentenced for the offense.~~

1 The court shall provide notice of the expungement to the respondent, Vermont  
2 Crime Information Center (VCIC), the arresting agency, and any other entity  
3 that may have a record related to the order to expunge. The VCIC shall  
4 provide notice of the expungement to the Federal Bureau of Investigation's  
5 National Crime Information Center.

6 (b) Effect.

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

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

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

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

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

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

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

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

10 (d) Special index.

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

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

20 (3) Inspection of the expungement order ~~and the certificate~~ may be  
21 permitted only upon petition by the person who is the subject of the case. The

1 ~~Administrative Judge~~ Chief Superior Judge may permit special access to the  
2 index and the documents for research purposes pursuant to the rules for public  
3 access to court records.

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

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

8 ~~(e) Upon receiving an inquiry from any person regarding an expunged~~  
9 ~~record, an entity shall respond that “NO RECORD EXISTS.”~~

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

11 § 7607. EFFECT OF SEALING

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

1 sealing to the Federal Bureau of Investigation’s National Crime Information  
2 Center.

3 (b) Effect.

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

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

12 (3) The response to an inquiry from any person regarding a sealed  
13 record shall be that “NO RECORD EXISTS.”

14 (c) Exceptions. Notwithstanding a sealing order:

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

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

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



1 motions to seal or expunge a criminal history record pursuant to 13 V.S.A.

2 § 7602.

3 \* \* \*

4 Sec. 6. EFFECTIVE DATE

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

6

7

8

9

10 (Committee vote: \_\_\_\_\_)

11

\_\_\_\_\_

12

Representative \_\_\_\_\_

13

FOR THE COMMITTEE