

1 TO THE HONORABLE SENATE:

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 Senate propose to the House that the bill be amended by striking out all
6 after the enacting clause and 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
18 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title,
19 and stalking in violation of section 1062 of this title. “Predicate offense” shall
20 not include misdemeanor possession of marijuana, ~~or~~ a disorderly conduct
21 offense under section 1026 of this title, or possession of a controlled substance

1 in 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 section 1802 of this title related to uttering a forged
21 or counterfeited instrument;

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

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

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

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

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

19 (2) The State’s Attorney or Attorney General shall be the respondent in
20 the matter.

1 conditions of an indeterminate term of probation that commenced at least 10
2 years previously.

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

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

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

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

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

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

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

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

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

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

7 Sec. 3. 13 V.S.A. § 7603 is amended to read:

8 § 7603. EXPUNGEMENT AND SEALING OF RECORD, NO
9 CONVICTION; PROCEDURE

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

13 (1) ~~12 months after the dismissal~~ within 60 days after the final
14 disposition of the case if:

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

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

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

20 (b) If a party objects to sealing or expunging a record pursuant to this
21 section, the court shall schedule a hearing to determine if sealing or expunging

1 the record serves the interests of justice. The defendant and the prosecuting
2 attorney shall be the only parties in the matter.

3 (c), (d) [Repealed.]

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

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

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

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

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

13 (f) Unless either party objects in the interests of justice, the court shall issue
14 an order to expunge a record sealed pursuant to subsection (a) or (g) of this
15 section ~~after the statute of limitations has expired~~ eight years after the date on
16 which the record was sealed.

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

1 the interests of justice, or if the parties stipulate to sealing or expungement of
2 the record.

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

8 Sec. 4. 13 V.S.A. § 7606 is amended to read:

9 § 7606. EFFECT OF EXPUNGEMENT

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

1 if he or she had never been arrested, convicted, or sentenced for the offense.

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

7 (b) Effect.

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

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

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

18 (4) Nothing in this section shall affect any right of the person whose
19 record has been expunged to rely on it as a bar to any subsequent proceedings
20 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 accessible
5 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. 5. 13 V.S.A. § 7607 is amended to read:

11 § 7607. EFFECT OF SEALING

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

1 provide notice of the sealing to the Federal Bureau of Investigation’s National
2 Crime Information 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 member of the public regarding
13 a sealed record shall be that “NO CRIMINAL RECORD EXISTS.”

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

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

19 (2) ~~An entity~~ A criminal justice agency as defined in 20 V.S.A. § 2056a
20 may use the criminal history record sealed in accordance with section 7602 or
21 7603 of this title, ~~regarding a person who was cited or arrested, for future~~

1 ~~criminal investigations or prosecutions~~ without limitation for criminal justice
2 purposes as defined in 20 V.S.A. § 2056a. A sealed record of a prior violation
3 of 23 V.S.A. § 1201(a) shall be admissible as a predicate offense for the
4 purpose of imposing an enhanced penalty for a subsequent violation of that
5 section, in accordance with the provisions of 23 V.S.A. § 1210.

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

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

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

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

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

16 (e) Special index.

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

1 shall not become effective unless the court orders a suspension after hearing as
2 provided in this section.

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

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

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

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

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

13 * * *

14 Sec. 7. 23 V.S.A. § 1210 is amended to read:

15 § 1210. PENALTIES

16 (a) Screening. Before sentencing a defendant under this section, the ~~Court~~
17 court may order that the defendant submit to an alcohol assessment screening.
18 Such a screening report may be considered at sentencing in the same manner as
19 a presentence report. At sentencing, the defendant may present relevant
20 evidence, including the results of any independent alcohol assessment ~~which~~
21 that was conducted at the person's own expense. Evidence regarding any such

1 screening or an alcohol assessment performed at the expense of the defendant
2 shall not be admissible for any other purpose without the defendant's consent.

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

6 (c) Second offense. A person convicted of violating section 1201 of this
7 title who has been convicted of another violation of that section within the last
8 20 years shall be fined not more than \$1,500.00 or imprisoned not more than
9 two years, or both. At least 200 hours of community service shall be
10 performed, or 60 consecutive hours of the sentence of imprisonment shall be
11 served and may not be suspended or deferred or served as a supervised
12 sentence, except that credit for a sentence of imprisonment may be received for
13 time served in a residential alcohol facility pursuant to sentence if the program
14 is successfully completed.

15 (d) Third offense. A person convicted of violating section 1201 of this title
16 who has previously been convicted two times of a violation of that section,
17 including at least one violation within the last 20 years, shall be fined not more
18 than \$2,500.00 or imprisoned not more than five years, or both. At least 96
19 consecutive hours of the sentence of imprisonment shall be served and may not
20 be suspended or deferred or served as a supervised sentence, except that credit
21 for a sentence of imprisonment may be received for time served in a residential

1 alcohol facility pursuant to sentence if the program is successfully completed.

2 The ~~Court~~ court may impose a sentence that does not include a term of
3 imprisonment or that does not require that the 96 hours of imprisonment be
4 served consecutively only if the ~~Court~~ court makes written findings on the
5 record that such a sentence will serve the interests of justice and public safety.

6 (e)(1) Fourth or subsequent offense. A person convicted of violating
7 section 1201 of this title who has previously been convicted three or more
8 times of a violation of that section, including at least one violation within the
9 last 20 years, shall be fined not more than \$5,000.00 or imprisoned not more
10 than 10 years, or both. At least 192 consecutive hours of the sentence of
11 imprisonment shall be served and may not be suspended or deferred or served
12 as a supervised sentence, except that credit for a sentence of imprisonment may
13 be received for time served in a residential alcohol treatment facility pursuant
14 to sentence if the program is successfully completed. The ~~Court~~ court shall not
15 impose a sentence that does not include a term of imprisonment unless the
16 ~~Court~~ court makes written findings on the record that there are compelling
17 reasons why such a sentence will serve the interests of justice and public
18 safety.

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

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Sec. 8. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME AND SUPERIOR COURTS

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(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. 9. VERMONT SENTENCING COMMISSION; REPORT ON
EXPUNGEMENT AND SEALING

(a) During the 2019 legislative interim, 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

1 eligible for expungement or sealing, the process by which criminal history
2 records are expunged or sealed, the mechanism by which expunged or sealed
3 records are indexed, and the effect of sealing or expungement. As a part of its
4 assessment, the Commission shall evaluate all Vermont civil offenses and the
5 crime of negligent operation of a motor vehicle under 23 V.S.A. § 1091(a) for
6 their suitability for expungement or sealing eligibility.

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

10 (1) improvements to the expungement and sealing process; and

11 (2) any additional crimes or civil offenses appropriate for expungement
12 or sealing eligibility.

13 Sec. 10. EFFECTIVE DATES

14 This act shall take effect on July 1, 2019, except that Sec. 2 (expungement
15 and sealing of record; postconviction; procedure) shall take effect on October
16 1, 2019.

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21 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE