

H.460

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.

(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.

~~(e) 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

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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.

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Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2019.