

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

1           (G) a violation of section 1802 of this title related to uttering forged

2           or counterfeited instrument;

3           (H) a violation of section 2001 of this title related to false  
4           personation;

5           (I) a violation of section 2002 of this title related to false pretenses or  
6           tokens;

7           (J) a violation of section 2561 of this title related to receiving stolen  
8           property;

9           (K) a violation of section 2575 of this title related to retail theft;

10          (L) a violation of 18 V.S.A. § 4230(a) related to possession of  
11          marijuana;

12          (M) a violation of 18 V.S.A. § 4231(a) related to possession of  
13          cocaine;

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

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

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

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

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

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

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

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

9           Sec. 2. 13 V.S.A. § 7602 is amended to read:

10           § 7602. EXPUNGEMENT AND SEALING OF RECORD,  
11           POSTCONVICTION; PROCEDURE

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

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

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

18           (C) pursuant to the conditions set forth in subsection (g) of this  
19           section, the person was convicted of a violation of 23 V.S.A. § 1201(a)(1) or  
20           (2) related to operating under the influence; or

1           (D) pursuant to the conditions set forth in subsection (h) of this  
2           section, the person was convicted of a violation of subdivision 1201(c)(3)(A)  
3           of this title related to burglary when the person was 25 years of age or younger.

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

6           (3) The court shall grant the petition without hearing if the petitioner and  
7           the respondent stipulate to the granting of the petition. The respondent shall  
8           file the stipulation with the court, and the court shall issue the petitioner a  
9           certificate an order of expungement and provide notice of the order in  
10          accordance with this section.

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

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

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

1           (D) The court finds that expungement of the criminal history record  
2 serves the interests of justice.

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

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

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

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

14           (A) At least 10 years have elapsed since the date on which the person  
15 successfully completed the terms and conditions of the sentence for the  
16 conviction.

17           (B) The person has not been convicted of a felony arising out of a  
18 new incident or occurrence in the last seven years.

19           (C) The person has not been convicted of a misdemeanor during the  
20 past five years.

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

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

6           (2) The court shall grant the petition and order that all or part of the  
7 criminal history record be sealed pursuant to section 7607 of this title if the  
8 conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met  
9 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.

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

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

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

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

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

17 (g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only  
18 petitions to seal may be considered or granted by the court. Unless the court  
19 finds that sealing would not be in the interests of justice, the court shall grant  
20 the petition and order that the criminal history record be sealed in accordance  
21 with section 7607 of this title if the following conditions are met:



1           (1) At least 10 years have elapsed since the date on which the person  
2           successfully completed the terms and conditions of the sentence for the  
3           conviction, or if the person has successfully completed the terms and  
4           conditions of an indeterminate term of probation that commenced at least 10  
5           years previously.

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

7                   (A) the person has only one conviction of a violation of 23 V.S.A. §  
8                   1201(a)(1) or (2); and

9                   (B) the person has not been convicted of a crime arising out of a new  
10                  incident or occurrence since the person was convicted of a violation of 23  
11                  V.S.A. § 1201(a)(1) or (2).

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

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

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

20                   (1) At least 15 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 15  
3 years previously.

4 (2) The person has not been convicted of a crime arising out of a new  
5 incident or occurrence since the person was convicted of a violation of  
6 1201(c)(3)(A) of this title.

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

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

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

11 **§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO**  
12 **CONVICTION; PROCEDURE**

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

16 (1) ~~12 months after the dismissal~~ within 30 days after the final  
17 disposition of the case if:

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

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

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

3           (b) If a party objects to sealing or expunging a record pursuant to this  
4 section, the court shall schedule a hearing to determine if sealing or expunging  
5 the record serves the interests of justice. The defendant and the prosecuting  
6 attorney shall be the only parties in the matter.

7           (c), (d) [Repealed.]

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

11           (1) ~~not more than 45 days after~~ within 30 days after the final disposition  
12 of the case if:

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

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

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

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

1 (g) A person may file a petition with the court requesting sealing or  
2 expungement of a criminal history record related to the citation or arrest of the  
3 person at any time. The court shall grant the petition and issue an order sealing  
4 or expunging the record if it finds that sealing or expunging the record serves  
5 the interests of justice, or if the parties stipulate to sealing or expungement of  
6 the record.

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

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

13 § 7606. EFFECT OF EXPUNGEMENT

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

1 ~~arrest, conviction, and sentence.~~ Order and notice. Upon finding that the  
2 requirements for expungement have been met, the court shall issue an order  
3 that shall include provisions that its effect is to annul the record of the arrest,  
4 conviction, and sentence, and that such person shall be treated in all respects as  
5 if he or she had never been arrested, convicted, or sentenced for the offense.

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

11 (b) Effect.

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

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

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

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

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

7           (1) The court shall remove the expunged offense from any accessible  
8           database that it maintains.

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

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

13          (d) Special index.

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

19           (2) The special index and related documents specified in subdivision (1)  
20           of this subsection shall be confidential and shall be physically and

1 electronically segregated in a manner that ensures confidentiality and that  
2 limits access to authorized persons.

3 (3) Inspection of the expungement order ~~and the certificate~~ may be  
4 permitted only upon petition by the person who is the subject of the case. The  
5 ~~Administrative Judge~~ Chief Superior Judge may permit special access to the  
6 index and the documents for research purposes pursuant to the rules for public  
7 access to court records.

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

10 (5) The Court Administrator shall establish policies for implementing  
11 this subsection.

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

14 Sec. 5. 13 V.S.A. § 7607 is amended to read:

15 § 7607. EFFECT OF SEALING

16 (a) ~~Upon entry of an order to seal, the order shall be legally effective~~  
17 ~~immediately and the person whose record is sealed shall be treated in all~~  
18 ~~respects as if he or she had never been arrested, convicted, or sentenced for the~~  
19 ~~offense. The court shall issue the person a certificate stating that such person’s~~  
20 ~~behavior after the conviction has warranted the issuance of the order and that~~  
21 ~~its effect is to annul the record of arrest, conviction, and sentence~~ Notice. The

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

6 (b) Effect.

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

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

17 (c) Exceptions. Notwithstanding a sealing order:

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





1 the court for the benefit of the State a fee of \$90.00 except for small claims  
2 actions and estates. A filing fee of \$90.00 shall be paid to the clerk of the court  
3 for a civil petition for minor settlements. There shall be no filing fee for  
4 motions to seal or expunge a criminal history record pursuant to 13 V.S.A.  
5 § 7602.

6 \* \* \*

7 Sec. 7. VERMONT SENTENCING COMMISSION; REPORT ON  
8 EXPUNGEMENT

9 During the 2019 legislative interim, the Vermont Sentencing Commission,  
10 established under 13 V.S.A. § 5451, shall evaluate all Vermont civil offenses  
11 and the crime of negligent operation of a motor vehicle under 23 V.S.A.  
12 § 1091(a), and, on or before November 1, 2019, report to the Joint Legislative  
13 Justice Oversight committee with a list of offenses the Commission  
14 recommends as appropriate for expungement eligibility.

15 Sec. 8. EFFECTIVE DATE

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

17  
18 (Committee vote: \_\_\_\_\_)

19 \_\_\_\_\_  
20 Senator \_\_\_\_\_

21 FOR THE COMMITTEE