

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

5           (3) Except as provided in subsection (c) of this section, inspection of the  
6           sealing order may be permitted only upon petition by the person who is the  
7           subject of the case. The Chief Superior Judge may permit special access to the  
8           index and the documents for research purposes pursuant to the rules for public  
9           access to court records.

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

12           Sec. X. 13 V.S.A. § 7610 is added to read:

13           § 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

14           There is established the Criminal History Record Sealing Special Fund  
15           which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.  
16           Fees collected pursuant to 32 V.S.A. § 1431(e) for the filing of a petition to  
17           seal a criminal history record of a violation of 23 V.S.A. § 1201(a) shall be  
18           deposited and credited to this Fund. This Fund shall be available to the Office  
19           of the Court Administrator and the Department of State's Attorneys and  
20           Sheriffs to offset the administrative costs of sealing such records. Balances in

1 the Fund at the end of the fiscal year shall be carried forward and remain in the  
2 Fund.

3 Sec. 6. 23 V.S.A. § 1205 is amended to read:

4 § 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

5 \* \* \*

6 (e) Effective date of suspension.

7 (1) First offense. Unless a hearing is requested, a suspension under this  
8 section of the license of a person who the officer has reasonable grounds to  
9 believe violated section 1201 of this title a first time becomes effective on the  
10 11th day after the person receives notice or is deemed to have received notice  
11 under subsection (c) of this section. If a hearing is requested, a suspension  
12 shall not become effective unless the court orders a suspension after hearing as  
13 provided in this section.

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

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

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



1 (i) had his or her operator’s license suspended pursuant to this  
2 section; or

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

4 \* \* \*

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

6 § 1210. PENALTIES

7 (a) Screening. Before sentencing a defendant under this section, the ~~Court~~  
8 court may order that the defendant submit to an alcohol assessment screening.  
9 Such a screening report may be considered at sentencing in the same manner as  
10 a presentence report. At sentencing, the defendant may present relevant  
11 evidence, including the results of any independent alcohol assessment ~~which~~  
12 that was conducted at the person’s own expense. Evidence regarding any such  
13 screening or an alcohol assessment performed at the expense of the defendant  
14 shall not be admissible for any other purpose without the defendant’s consent.

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

18 (c) Second offense. A person convicted of violating section 1201 of this  
19 title who has been convicted of another violation of that section within the last  
20 20 years shall be fined not more than \$1,500.00 or imprisoned not more than  
21 two years, or both. At least 200 hours of community service shall be

1 performed, or 60 consecutive hours of the sentence of imprisonment shall be  
2 served and may not be suspended or deferred or served as a supervised  
3 sentence, except that credit for a sentence of imprisonment may be received for  
4 time served in a residential alcohol facility pursuant to sentence if the program  
5 is successfully completed.

6 (d) Third offense. A person convicted of violating section 1201 of this title  
7 who has previously been convicted two times of a violation of that section,  
8 including at least one violation within the last 20 years, shall be fined not more  
9 than \$2,500.00 or imprisoned not more than five years, or both. At least 96  
10 consecutive hours of the sentence of imprisonment shall be served and may not  
11 be suspended or deferred or served as a supervised sentence, except that credit  
12 for a sentence of imprisonment may be received for time served in a residential  
13 alcohol facility pursuant to sentence if the program is successfully completed.  
14 The ~~Court~~ court may impose a sentence that does not include a term of  
15 imprisonment or that does not require that the 96 hours of imprisonment be  
16 served consecutively only if the ~~Court~~ court makes written findings on the  
17 record that such a sentence will serve the interests of justice and public safety.

18 (e)(1) Fourth or subsequent offense. A person convicted of violating  
19 section 1201 of this title who has previously been convicted three or more  
20 times of a violation of that section, including at least one violation within the  
21 last 20 years, shall be fined not more than \$5,000.00 or imprisoned not more

1 than 10 years, or both. At least 192 consecutive hours of the sentence of  
2 imprisonment shall be served and may not be suspended or deferred or served  
3 as a supervised sentence, except that credit for a sentence of imprisonment may  
4 be received for time served in a residential alcohol treatment facility pursuant  
5 to sentence if the program is successfully completed. The ~~Court~~ court shall not  
6 impose a sentence that does not include a term of imprisonment unless the  
7 ~~Court~~ court makes written findings on the record that there are compelling  
8 reasons why such a sentence will serve the interests of justice and public  
9 safety.

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

13 \* \* \*

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

15 § 1431. FEES IN SUPREME AND SUPERIOR COURTS

16 \* \* \*

17 (e) Prior to the filing of any postjudgment motion in the Civil, Criminal, or  
18 Environmental Division of the Superior Court, including motions to reopen  
19 civil suspensions ~~and motions for sealing or expungement in the Criminal~~  
20 ~~Division pursuant to 13 V.S.A. § 7602~~, or motions to reopen existing cases in  
21 the Probate Division of the Superior Court, there shall be paid to the clerk of

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. The \$90.00 filing fee shall apply for  
4 a motion to seal a criminal history record of a violation of 23 V.S.A. § 1201(a)  
5 pursuant to 13 V.S.A. § 7602(a)(1)(C), but shall not apply for any other motion  
6 to seal or expunge a expunge a criminal history record pursuant to 13 V.S.A.  
7 § 7602.

8 \* \* \*

9 Sec. 9. VERMONT SENTENCING COMMISSION; COUNCIL OF STATE  
10 GOVERNMENTS; JUSTICE OVERSIGHT COMMITTEE; REPORTS ON  
11 EXPUNGEMENT AND SEALING

12 During the 2019 legislative interim:

13 (1) the Vermont Sentencing Commission, established under 13 V.S.A.  
14 § 5451, shall conduct a comprehensive assessment of the statutes governing the  
15 expungement and sealing of criminal history records in Vermont, including  
16 reviewing the crimes eligible for expungement or sealing, the process by which  
17 criminal history records are expunged or sealed, the mechanism by which  
18 expunged or sealed records are indexed, and the effect of sealing or  
19 expungement. As a part of its assessment, the Commission shall evaluate all  
20 Vermont civil offenses and the crime of negligent operation of a motor vehicle

1 under 23 V.S.A. § 1091(a) for their suitability for expungement or sealing  
2 eligibility.

3 (2) on or before November 1, 2019, the Commission shall report to the  
4 Joint Legislative Justice Oversight Committee and the House and Senate  
5 Committees on Judiciary with recommendations regarding:

6 (A) improvements to the expungement and sealing process; and

7 (B) any additional crimes or civil offenses appropriate for  
8 expungement or sealing eligibility.

9 (3) the Joint Legislative Justice Oversight Committee, working with the  
10 Council of State Governments Justice Center, shall conduct a review of the  
11 Vermont statutes governing expungement and sealing of criminal history  
12 records and develop a comprehensive policy to help individuals with a criminal  
13 record overcome barriers to employment and licensing through clearing their  
14 records. Any recommendations for reform of the expungement and sealing  
15 chapter and other relevant statutes shall be introduced in the form of proposed  
16 legislation for the 2020 legislative session.

17 Sec. 10. SURCHARGES STUDY GROUP

18 During the 2019 legislative interim, the Vermont Center for Crime Victim  
19 Services, the Office of the Court Administrator, and Vermont Legal Aid shall  
20 examine the issue of requiring a petitioner to pay outstanding surcharges prior  
21 to a court granting an expungement or sealing petition. On or before October

1     15, 2019, the group shall report to the Joint Legislative Justice Oversight  
2     Committee with its findings and any recommendations for legislative action.

3     Sec. 11. EFFECTIVE DATES

4         This act shall take effect on July 1, 2019, except that Sec. 2 (expungement  
5     and sealing of record; postconviction; procedure) shall take effect on October  
6     1, 2019.

7

8

9

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

11

\_\_\_\_\_

12

Senator \_\_\_\_\_

13

FOR THE COMMITTEE