

S.7

An act relating to expanding access to expungement and sealing of criminal history records

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

As used in this chapter:

* * *

(7) "Listed crime" means any of the following offenses:

(A) stalking as defined in section 1062 of this title;

(B) aggravated stalking as defined in subdivision 1063(a)(3) or (4)(b)

of this title;

(C) domestic assault as defined in section 1042 of this title;

(D) first degree aggravated domestic assault as defined in section 1043 of this title;

(E) second degree aggravated domestic assault as defined in section 1044 of this title;

(F) sexual assault as defined in section 3252 of this title or its predecessor as it was defined in section 3201 or 3202 of this title;

(G) aggravated sexual assault as defined in section 3253 of this title;

(H) lewd or lascivious conduct as defined in section 2601 of this title;

(I) lewd or lascivious conduct with a child as defined in section 2602 of this title;

(J) murder as defined in section 2301 of this title;

(K) aggravated murder as defined in section 2311 of this title;

(L) manslaughter as defined in section 2304 of this title;

(M) aggravated assault as defined in section 1024 of this title;

(N) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;

(O) arson causing death as defined in section 501 of this title;

(P) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;

(Q) maiming as defined in section 2701 of this title;

(R) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;

(S) unlawful restraint in the second degree as defined in section 2406 of this title;

(T) unlawful restraint in the first degree as defined in section 2407 of this title;

(U) recklessly endangering another person as defined in section 1025 of this title;

(V) violation of abuse prevention order as defined in section 1030 of this title, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

(W) operating vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(X) ~~careless or negligent~~ or grossly negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(Y) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);

(Z) burglary into an occupied dwelling as defined in subsection 1201(c) of this title;

(AA) the attempt to commit any of the offenses listed in this section;

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title);

(CC) aggravated sexual assault of a child in violation of section 3253a of this title;

(DD) human trafficking in violation of section 2652 of this title; and

(EE) aggravated human trafficking in violation of section 2653 of this title.

Sec. 2. 13 V.S.A. § 7282 is amended to read:

§ 7282. SURCHARGE

* * *

(b) The surcharges imposed by this section shall not be waived by the court except as part of an expungement or sealing proceeding where the petitioner demonstrates an inability to pay.

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Sec. 3. 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 cannabis, 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: any criminal offense that is not an offense listed in subdivision 5301(7) of this title or a violation of 18 V.S.A. § 4231(c), 4233(c), 4233a(b), 4234a(c), or 4230(c), or any offense for which a person has been granted an unconditional pardon from the Governor.

~~(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;~~

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

~~(F) a violation of section 1802 of this title related to uttering a forged
or counterfeited instrument;~~

~~(G) a violation of 18 V.S.A. § 4230(a) related to possession of
cannabis;~~

~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of
cocaine;~~

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

~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~

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

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

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

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

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

~~(P) any offense for which a person has been granted an unconditional
pardon from the Governor.~~

(5) “Qualifying felony property offense” means a felony level violation
of 9 V.S.A. § 4043 related to fraudulent use; section 1801 of this title related to
forgery and counterfeiting; section 1802 of this title related to uttering forged
or counterfeited instrument; section 1804 of this title related to counterfeiting
paper money; section 1816 of this title related to possession or use of credit
card skimming devices; section 2001 of this title related to false personation;
section 2002 of this title related to false pretenses or tokens; section 2029 of
this title related to home improvement fraud; section 2030 of this title related
to identity theft; section 2501 of this title related to grand larceny; section 2502
of this title related to petit larceny; section 2503 of this title related to larceny
from the person; section 2531 of this title related to embezzlement;
section 2532 of this title related to officers or servants of incorporated bank;
section 2533 of this title related to receiver or trustee; section 2537 of this title
related to holding property in official capacity or belonging to the State or a
municipality; section 2561 of this title related to receiving stolen property;
section 2575a of this title related to organized retail theft; section 2577 of this
title related to retail theft; section 2582 of this title related to theft of services;

section 2591 of this title related to theft of rented property; section 2592 of this title related to failure to return a rented or leased motor vehicle; section 3016 of this title related to false claims; section 3701 of this title related to unlawful mischief; section 3705 of this title related to unlawful trespass; section 3733 of this title related to mills, dams, or bridges; section 3761 of this title related to unauthorized removal of human remains; section 3767 of this title related to grave markers and ornaments; section 4103 of this title related to access to computer for fraudulent purposes; section 4104 of this title related to alteration, damage, or interference; or section 4105 of this title related to theft or destruction.

(6) “Subsequent offense” means the conviction of a crime committed by the person who is the subject of a petition to expunge or seal a criminal history record that arose out of a new incident or occurrence after the person was convicted of the crime to be expunged or sealed.

Sec. 4. 13 V.S.A. § 7602 is amended to read:

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

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

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

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

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

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

(2) The State's Attorney or Attorney General shall be the respondent in the matter. Notwithstanding any other provision of law, if a person petitions to seal or expunge a criminal history record prior to the date the offense is eligible for sealing or expungement as provided in this section, only the office that prosecuted the offense that is the subject of the sealing or expungement petition may stipulate to that petition.

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

(4) This section shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal or expunge a record of a conviction for a felony offense committed in a motor vehicle as defined in 23 V.S.A. § 4.

(5) A person convicted of a qualifying offense for which the person has served a term of probation with payment of restitution as a condition of that probation may petition for sealing or expungement of that offense upon satisfaction of the judgement for the qualifying offense. The petition shall request that the court, in the interest of justice, adjust the waiting period for sealing or expungement of the offense as set forth in this section. The court shall consider the nature and circumstances of the offense, typical sentences for similar offenses, and the length of the sentence served by the petitioner in determining whether to adjust the waiting period and the duration of any adjusted waiting period.

(b) Qualifying nonpredicate misdemeanors and possession of a controlled substance offenses. For petitions filed to expunge or seal a criminal history

record of a nonpredicate misdemeanor offense or a 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):

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

(A) At least five years have elapsed since:

(i) the date on which the person ~~successfully completed the terms and conditions of the sentence for the conviction~~ satisfied the judgement, or if the person has ~~successfully completed the terms and conditions of an~~ indeterminate term of probation that commenced at least five years previously;
or

(ii) if the person committed a subsequent offense, the date on which the person satisfied the judgment for the subsequent offense, whichever is later.

~~(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.~~

[Repealed.]

(C) Any restitution and surcharges ordered by the court have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

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

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

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

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

(3) If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for expungement or sealing as set forth in this subsection, the court may grant the petition without a hearing.

(c) Qualifying predicate misdemeanors. For petitions filed to expunge or seal a criminal history record of a qualifying predicate misdemeanor offense:

(1) The court shall grant the petition and order that the criminal history record be ~~expunged~~ sealed pursuant to section ~~7606~~ 7607 of this title if the following conditions are met:

(A) At least ~~10~~ five years have elapsed since:

(i) the date on which the person successfully completed the terms and conditions of the sentence for the conviction satisfied the judgement; or

(ii) if the person committed a subsequent offense, the date on which the person satisfied the judgement for the subsequent offense, whichever is later.

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

~~(C) The person has not been convicted of a misdemeanor during the past five years. [Repealed.]~~

(D) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

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

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

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

~~(B) the person committed the qualifying crime after reaching 19 years of age.~~ A criminal history record sealed pursuant to this subsection (c) shall be eligible for expungement pursuant to section 7606 of this title five years after the date on which the sealing order is issued if the person does not commit any criminal offense subsequent to the sealed offense.

(3) If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for expungement or sealing as set forth in this subsection, the court may grant the petition without a hearing.

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(g) Certain DUI offenses. For petitions filed pursuant to subdivision (a)(1)(C) of this section, only petitions to seal may be considered or granted by the court. This subsection shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be sealed in accordance with section 7607 of this title if the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

(i) Qualifying felony property offenses and selling, dispensing, or transporting regulated substances offenses. For petitions filed to expunge or seal a criminal history record of a qualifying felony property offense or a violation of 18 V.S.A. § 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4234a(b), 4234b(b), 4235(c), or 4235a(b):

(1) The court shall grant the petition and order that the criminal history record be sealed pursuant to section 7607 of this title if the following conditions are met:

(A) At least eight years have elapsed since:

(i) the date on which the person satisfied the judgment for the conviction; or

(ii) if the person committed a subsequent offense, the date on which the person satisfied the judgment for the subsequent offense, whichever is later.

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

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

(2) A criminal history record sealed pursuant to this subsection (i) shall be eligible for expungement pursuant to section 7606 of this title eight years after the date on which the sealing order is issued if the person does not commit any criminal offense subsequent to the sealed offense.

(3) If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for sealing as provided in this subsection, the court may grant the petition to seal or expunge without a hearing.

(j) Qualifying felonies. For petitions filed to expunge or seal a criminal history record of any other qualifying felony offense not specified in subsection (f), (h), or (i) of this section:

(1) The court shall grant the petition and order that the criminal history record be sealed pursuant to section 7607 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person satisfied the judgment for the conviction or, if the person committed a

subsequent offense, 10 years from the date on which the person satisfied the judgment for the subsequent offense, whichever is later.

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

(2) A criminal history record sealed pursuant to this subsection (j) shall not be eligible for expungement pursuant to section 7606 of this title unless the respondent stipulates to the expungement.

(3) If the respondent stipulates to a petition to seal filed prior to, on, or after the date the offense is eligible for sealing as provided in this subsection, the court may grant the petition to seal without a hearing.

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

§ 7607. EFFECT OF SEALING

(a) Order and notice. 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 and that its effect is to annul the record of arrest, conviction, and sentence. 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 court shall also make a reasonable effort to notify the person whose record is sealed that, pursuant to section 7602 of this title, he or she may be eligible for a

subsequent expungement after a required waiting period. “Reasonable effort” means attempting to contact the person by first-class mail at the person’s last known address and by telephone at the person’s last known phone number.

The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation’s National Crime Information Center.

* * *

Sec. 6. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(e)(1) Except as provided in subdivision (2) of this subsection, upon the entry of an order sealing such files and records under this section, the proceedings in the matter ~~under this act~~ shall be considered never to have occurred, all general index references ~~thereto~~ to the sealed record shall be deleted, and the person, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in any matter. Copies of the order shall be sent to each agency or official named in the order.

(2)(A) Any court, agency, or department that seals a record pursuant to an order under this section may keep a special index of files and records that have been sealed. This index shall only list the name and date of birth of the subject of the sealed files and records and the docket number of the proceeding

~~which~~ that was the subject of the sealing. The special index shall be confidential and may be accessed only for purposes for which a department or agency may request to unseal a file or record pursuant to subsection (f) of this section.

(B) Access to the special index shall be restricted to the following persons:

(i) the commissioner and general counsel of any administrative department;

(ii) the secretary and general counsel of any administrative agency;

(iii) a sheriff;

(iv) a police chief;

(v) a State's Attorney;

(vi) the Attorney General;

(vii) the Director of the Vermont Crime Information Center; and

(viii) a designated clerical staff person in each office identified in subdivisions (i)–(vii) of this subdivision (B) who is necessary for establishing and maintaining the indices for persons who are permitted access.

(C) Persons authorized to access an index pursuant to subdivision (B) of this subdivision (2) may access only the index of their own department or agency.

* * *

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime under the laws of this State ~~which that~~ the person committed prior to attaining ~~the age of 21~~ 25 years of age, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense ~~after the initial conviction~~ for 10 years prior to the application or motion, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the court.

* * *

Sec. 7. 23 V.S.A. § 2303 is added to read:

§ 2303. EXPUNGEMENT OF VIOLATION RECORDS

(a) Automatic expungement. The Judicial Bureau shall automatically enter an expungement order for convictions or adjudications of the following violations on the two-year anniversary of the satisfaction of the judgment:

(1) section 301 of this title (operating an unregistered vehicle);

(2) subsection 307(a) of this title (failing to possess registration);

(3) section 611 of this title (failing to possess license);

(4) subsection 676(a) of this title (operating after suspension);

(5) section 601 of this title (operating without a license);

(6) section 800 of this title (operating without insurance); and

(7) subsection 1222(c) of this title (operating an uninspected vehicle).

(b) Effect of expungement.

(1) Upon entry of an expungement order, the order shall be legally effective immediately and the individual whose record is expunged shall be treated in all respects as if he or she had never been convicted or adjudicated of the violation. This includes the expungement of any points accumulated pursuant to chapter 25 of this title.

(2) The Judicial Bureau shall report the expungement to the Department of Motor Vehicles within 14 days.

(3) The Judicial Bureau shall keep a special index of cases that have been expunged together with the expungement order. The index shall list only the name of the individual convicted or adjudicated of the violation, his or her date of birth, the docket number, and the violation that was the subject of the expungement. All other court documents and records that are subject to an expungement order, whether held by the Judicial Bureau or the Department of Motor Vehicles, shall be destroyed.

(4) Upon receiving an inquiry from any person regarding an expunged record, the Judicial Bureau and Department of Motor Vehicles shall respond that “NO RECORD EXISTS.”

(c) Policies for implementation. The Court Administrator shall establish policies for implementing this section.

Sec. 8. VERMONT SENTENCING COMMISSION; EXPUNGEMENT
AND SEALING REPORT

During the 2021 legislative interim, the Vermont Sentencing Commission shall consider how to simplify and automate the process of expungement and sealing of criminal history records and develop a comprehensive policy that provides an avenue for expungement or sealing of all offenses except those listed in 33 V.S.A. § 5204(a). On or before November 1, 2021, the Commission shall report to the Joint Legislative Justice Oversight Committee regarding its recommendations on:

(1) a policy to make all criminal history records eligible for sealing or expungement, except for records of convictions of the offenses listed in 33 V.S.A. § 5204(a);

(2) the individuals or entities that should have access to sealed criminal history records;

(3) whether Vermont should continue to employ a two-track system that provides for sealing or expungement of criminal history records based on the

nature of the offense, or whether Vermont should employ a one-track system that provides for either sealing or expungement for all eligible offenses;

(4) implementing an automated process, not requiring a petition, to seal and expunge criminal conviction records that provides for notice to the prosecuting office and an opportunity for the prosecutor to oppose the sealing or expungement.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2021.