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BILL NO.

2 Introduced by

3 Referred to Committee on

4 Date:

5 Subject:

6 Statement of purpose of bill as introduced: This bill proposes to amend Vermont's existing
7 expungement and sealing laws to create a single process for sealing criminal history records.

8 An act relating to sealing criminal records

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

10 Sec. 1. 13 V.S.A. Ch. 230 is amended to read:

11 Chapter 230. Sealing of Criminal History Records

12 § 7601. DEFINITIONS

13 As used in this chapter:

14 (1) "Court" means the Criminal Division of the Superior Court.

15 (2) "Criminal history record" means all information documenting an individual's contact with
16 the criminal justice system, including data regarding identification, arrest or citation,
17 arraignment, judicial disposition, custody, and supervision.

18 (3) "Predicate offense" means a criminal offense that can be used to enhance a sentence
19 levied for a later conviction and includes operating a vehicle under the influence of alcohol
20 or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section
21 1042 of this title, and stalking in violation of section 1062 of this title. "Predicate offense"
22 shall not include misdemeanor possession of cannabis, a disorderly conduct offense under

Commented [ME1]: The legislature could choose to use the word expungement instead of sealing as many other jurisdictions do even though the underlying records aren't completely destroyed.

1 section 1026 of this title, or possession of a controlled substance in violation of 18 V.S.A. §
2 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a).

3 (4) “Qualifying crime” means:

4 (A) all offenses except for:

5 (i) predicate offenses;

6 (ii) abandonment or exposure of a baby in violation of 13 V.S.A. § 1303;

7 (iii) abuse, neglect, and exploitation of a vulnerable adult in violation of 13 V.S.A. §§
8 1376, 1377, 1378, 1379, 1380, or 1381;

9 (iv) aggravated assault in violation of 13 V.S.A. § 1024;

10 (v) aggravated cruelty to animals in violation of 13 V.S.A. § 352a;

11 (vi) aggravated human trafficking in violation of 13 V.S.A. § 2653;

12 (vii) aggravated murder in violation of 13 V.S.A. § 2311;

13 (viii) aggravated sexual assault in violation of 13 V.S.A. § 3253;

14 (ix) aggravated sexual assault of a child in violation of 13 V.S.A. § 3253a;

15 (x) aggravated stalking in violation of 13 V.S.A. § 1063(b);

16 (xi) animal fights in violation of 13 V.S.A. § 364;

17 (xii) arson causing death in violation of 13 V.S.A. § 501;

18 (xiii) assault of a correctional officer in violation of 13 V.S.A. § 1028a;

19 (xiv) assault of a protected professional in violation of 13 V.S.A. § 1028;

20 (xv) assault and robbery in violation of 13 V.S.A. §§ 608(b) and (c);

21 (xvi) bribery in violation of 13 V.S.A. §§ 1101-1104;

22 (xvii) burglary into an occupied dwelling in violation of 13 V.S.A. § 1201(c)(3);

23 (xvii) burning forests in violation of 13 V.S.A. § 507;

Commented [ME2]: This definition is derived from the table attached to the VT Dept. of State’s Attorneys October 13, 2021 memo to the Joint Legislative Justice Oversight Committee. As the footnote to that table states, the offenses listed therein do not necessarily represent the offenses the Department wants to exclude, but instead represents the offenses the legislature may wish to consider excluding, i.e., the table should function like a menu of options. Consequently, the purpose of this definition in this draft is to illustrate how the list from the table could be translated into statutory language.

In general, there are two potential ways to address this definition. The first is to create a long list of excluded offenses for which the state and certain individuals or groups (such as pharmacies and animal care organizations) may have a legitimate interest in knowing about. The second is to create a shorter list, but then create mechanisms whereby such individuals and groups may gain access to sealed records.

- 1 (xix) confinement of animals in vehicles in violation of 13 V.S.A. § 386;
- 2 (xx) criminal use of anesthetics in violation of 13 V.S.A. § 12;
- 3 (xxi) cruelty to animals in violation of 13 V.S.A. § 352;
- 4 (xxii) cruelty to a child in violation of 13 V.S.A. 1304;
- 5 (xxiii) cruelty by a person having custody of another in violation of 13 V.S.A. § 1305;
- 6 (xxiv) disarming a law enforcement officer in violation of 13 V.S.A. § 3019;
- 7 (xxv) disseminating indecent material to a minor in violation of 13 V.S.A. §§ 2802 or
- 8 282a.
- 9 (xxvi) domestic assault in violation of 13 V.S.A. § 1042;
- 10 (xxvii) domestic terrorism in violation of 13 V.S.A. § 1703;
- 11 (xxviii) eluding a police officer with serious bodily injury or death resulting in
- 12 violation of 13 V.S.A. §§ 1133(b)(3) or (4);
- 13 (xxix) embezzlement in violation of 13 V.S.A. § 2531 when committed by an
- 14 individual while acting as a state, municipal, or school employee;
- 15 (xxx) embezzlement in violation of 13 V.S.A. §§ 2532-2358;
- 16 (xxxix) employers without worker's compensation insurance in violation of 13 V.S.A.
- 17 § 2025;
- 18 (xxxii) extortion in violation of 13 V.S.A. § 1701;
- 19 (xxxiii) false alarms to agencies of public safety with bodily injury or death resulting
- 20 in violation of 13 V.S.A. § 1751(b);
- 21 (xxxiv) false claims in violation of 13 V.S.A. § 3016;
- 22 (xxxv) false personation in violation of 13 V.S.A. § 2001;
- 23 (xxxvi) female genital mutilation or cutting in violation of 13 V.S.A. § 3151;

- 1 (xxxvii) first degree aggravated domestic assault in violation of 13 V.S.A. § 1043;
- 2 (xxxviii) first degree arson in violation of 13 V.S.A. § 502;
- 3 (xxxix) furnishing information to an enemy in violation of 13 V.S.A. § 3482;
- 4 (xl) grossly negligent operation with serious bodily injury or death results in violation
- 5 of 23 V.S.A. § 1091(b);
- 6 (xli) hate motivated crimes in violation of 13 V.S.A. § 1455;
- 7 (xlii) hindering an officer responding to a riot in violation of 13 V.S.A. § 903;
- 8 (xliii) human trafficking in violation of 13 V.S.A. § 2652;
- 9 (xliv) identity theft in violation of 13 V.S.A. § 2030;
- 10 (xlv) illegally practicing medicine in violation of 26 V.S.A. § 1314;
- 11 (xlvi) impeding public officers in violation of 13 V.S.A. § 3001;
- 12 (xlvii) impersonation of an officer in violation of 13 V.S.A. § 3002;
- 13 (xlviii) injuries caused by destructive devices in violation of 13 V.S.A. § 1605;
- 14 (xlix) injuries caused by explosives in violation of 13 V.S.A. § 1608;
- 15 (l) installation of object in lieu of air bag in violation of 13 V.S.A. § 2026;
- 16 (li) interference with access to emergency services in violation of 13 V.S.A. § 1031;
- 17 (lii) interference with or cruelty to a guide dog in violation of 13 V.S.A. § 355;
- 18 (liii) kidnapping in violation of 13 V.S.A. § 2405 or its predecessor as formerly
- 19 defined in 13 V.S.A. § 2401;
- 20 (liv) law enforcement use of chokeholds in violation of 13 V.S.A. § 1032;
- 21 (lv) leaving the scene of an accident with serious bodily injury or death resulting in
- 22 violation of 23 V.S.A. §§ 1128(b) or (c);
- 23 (lvi) lewd or lascivious conduct in violation of 13 V.S.A. § 2601;

- 1 (lvii) lewd or lascivious conduct with a child in violation of 13 V.S.A. § 2602;
- 2 (lviii) maiming in violation of 13 V.S.A. § 2701;
- 3 (lix) manslaughter in violation of 13 V.S.A. § 2304;
- 4 (lx) mistreatment of a person with impaired cognitive function in violation of 13
- 5 V.S.A. § 1306;
- 6 (lxi) murder in violation of 13 V.S.A. § 2301;
- 7 (lxii) neglect of duty by a public officer in violation of 13 V.S.A. § 3006;
- 8 (lxiii) obstruction of justice in violation of 13 V.S.A. § 3015;
- 9 (lxiv) officer aiding or voluntarily allowing escape in violation of 13 V.S.A. § 1506;
- 10 (lxv) operating a vehicle under the influence of alcohol or other substance with death
- 11 or serious bodily injury resulting in violation of 23 V.S.A. §§ 1210(f) and (g);
- 12 (lxvi) perjury, perjury by inconsistent statements, subornation of perjury, attempt to
- 13 suborn perjury, and false swearing in violation of 13 V.S.A. §§ 2901-2904 when
- 14 committed by an individual while acting as a law enforcement officer;
- 15 (lxvii) placing a hoax device in violation of 13 V.S.A. § 1612;
- 16 (lxviii) poisoning food, drink, medicine, or water in violation of 13 V.S.A. § 2306;
- 17 (lxix) possession and use of weapons of mass destruction in violation of 13 V.S.A. §
- 18 3502;
- 19 (lxx) promotion of anarchy in violation of 13 V.S.A. § 3405;
- 20 (lxxi) recklessly endangering another person as defined in 13 V.S.A. § 1025;
- 21 (lxxii) refusing or delaying to execute criminal process in violation of 13 V.S.A. §
- 22 3009;

- 1 (lxxiii) sale or trade of motor vehicle with an inoperable air bag in violation of 13
2 V.S.A. § 2027;
- 3 (lxxiv) second degree aggravated domestic assault in violation of 13 V.S.A. § 1044;
4 (lxxv) second degree arson in violation of 13 V.S.A. § 503;
- 5 (lxxvi) selling or dispensing of a regulated drug with death resulting in violation of 18
6 V.S.A. § 4250;
- 7 (lxxvii) sexual assault in violation of 13 V.S.A. § 3252 or its predecessor as formerly
8 defined in 13 V.S.A. §§ 3201 or 3202;
- 9 (lxxviii) sexual exploitation of children in violation of 13 V.S.A. Ch. 64;
- 10 (lxxix) sexual exploitation of an inmate in violation of 13 V.S.A. § 3257;
- 11 (lxxx) sexual exploitation of a minor in violation of 13 V.S.A. § 3258;
- 12 (lxxxi) sexual exploitation of a person in the custody of a law enforcement officer in
13 violation of 13 V.S.A. § 3259;
- 14 (lxxxii) simple assault in violation of 13 V.S.A. § 1023 when committed by an
15 individual while acting as a law enforcement officer;
- 16 (lxxxiii) slave traffic as defined in 13 V.S.A. § 2635;
- 17 (lxxxiv) stalking as defined in 13 V.S.A. § 1062;
- 18 (lxxxv) taking illegal fees in violation of 13 V.S.A. § 3010;
- 19 (lxxxvi) treason in violation of 13 V.S.A. § 3401;
- 20 (lxxxvii) unlawfully aiding prisoners in violation of 13 V.S.A. § 1502 when
21 committed by an individual while acting as a correctional officer or other employee
22 of the Department of Corrections;
- 23 (lxxxviii) unlawful restraint in the second degree in violation of 13 V.S.A. § 2406;

1 (lxxxix) unlawful restraint in the first degree in violation of 13 V.S.A. § 2407;
2 (xc) unlawful sheltering of or aiding a runaway child in violation of 13 V.S.A. §
3 1311;
4 (xci) unlawful transportation of animals in violation of 13 V.S.A. §§ 381 and 382;
5 (xcii) violation of an abuse prevention order in violation of 13 V.S.A. § 1030 except
6 for a violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 or 33
7 V.S.A. § 6936;
8 (xciii) violation of an extreme risk protection order in violation of 13 V.S.A. §
9 4058(b)(1);
10 (xciv) a violation of the Sabotage Prevention Act in violation of 13 V.S.A. §§ 3431-
11 3445;
12 (xcv) voyeurism in violation of 13 V.S.A. § 2605 when committed by an individual
13 while acting as a employee of the Department of Corrections, a school, or business
14 having the care or custody of other individuals;
15 (xcvi) willful and malicious injuries caused by explosives in violation of 13 V.S.A. §
16 1601;
17 (xcvii) an attempt to commit any of the offenses listed in this subsection;
18 (xcviii) conspiracy to commit any of the offenses listed in this subsection in violation
19 of 13 V.S.A. § 1404;
20 (xcix) being an accessory to any of the offenses listed in this subsection in violation
21 of 13 V.S.A. §§ 3-5;
22 (B) any offense for which a person has been granted an unconditional pardon from the
23 Governor.

1 § 7602. PETITION TO SEAL RECORD

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

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

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

8 (2) The State's Attorney, or Attorney General if it prosecuted the case resulting in the
9 conviction, shall be the respondent in the matter. The State's Attorney and Attorney General
10 may authorize each other to act as a respondent in matters where the other prosecuted the
11 case resulting in the conviction.

12 (3) Prior to filing a petition with the court the petitioner shall contact the respondent to
13 determine whether the respondent stipulates that the conditions in subsection (b) of this
14 section have been met or that granting the petition otherwise serves the interests of justice. If
15 the respondent stipulates to the petition, it shall file the petition with the court. If the
16 respondent does not stipulate to the petition, the petitioner shall disclose that fact in the
17 petition. If no stipulation is filed with the petition, the court shall hold a hearing on the
18 petition. If a stipulation is filed with the petition, the court may but is not required to hold a
19 hearing on the petition.

20 (4) This section shall not apply to an individual licensed as a commercial driver pursuant to
21 23 V.S.A. chapter 39 seeking to seal or ~~expunge~~ a record of a conviction for a felony offense
22 committed in a motor vehicle as defined in 23 V.S.A. § 4.

1 (5) the petitioner shall provide a complete record check to the respondent and include it with
2 the petition when filed.

3 (b) The court shall grant the petition and order that the criminal history record be sealed pursuant
4 to this chapter if the following conditions are met:

5 (1) At least **five** years have elapsed since the date on which the person successfully
6 completed the terms and conditions of the sentence for the conviction, or if the person has
7 successfully completed the terms and conditions of an indeterminate term of probation that
8 commenced at least five years previously;

Commented [ME3]: The legislature could choose to revisit this number.

9 (2) The person has not been convicted of a crime arising out of a new incident or occurrence
10 in the **INSERT** years preceding the filing of the petition;

Commented [ME4]: This number should be determined. My recollection is that six years has been previously suggested.

11 (3) The person has not been convicted of a crime arising out of a new incident or occurrence
12 while the petition was pending before the court;

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

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

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

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

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

4 (d) Prior to granting a petition seeking to seal criminal history records related to a conviction for
5 violating section 1202 of this title, the court shall make a finding that the conduct underlying the
6 conviction did not constitute a burglary into an occupied dwelling, as defined in subdivision
7 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.

8 (e) Absent a stipulation from respondent, when criminal history records eligible for sealing under
9 this section pertain to one charge in a docket containing multiple charges, the criminal history
10 records shall not be eligible for sealing until all of the charges in the docket are eligible for
11 sealing either pursuant to this section or section 7603 of this title.

12 § 7603. AUTOMATIC SEALING OF RECORD

13 (a) Unless the court rules otherwise pursuant to subsection (b) of this section, custodians of
14 criminal history records pertaining to the following cases shall seal them without the need for a
15 petition to be filed pursuant to section 7601 of this title:

16 (1) criminal history records of an arrest or citation when no criminal charges have been filed
17 and the applicable statute of limitations has expired;

18 (2) criminal history records pertaining to a charge that has been dismissed without prejudice
19 and the applicable statute of limitations has expired;

20 (3) criminal history records pertaining to a charge that has been dismissed with prejudice;

21 (4) criminal history records pertaining to a charge for which the defendant has been
22 acquitted;

1 (5) criminal history records pertaining to a conviction that has been vacated without the
2 possibility of further legal proceedings; and

3 (6) criminal history records pertaining to a conviction for which the defendant has received
4 from the Governor an unconditional pardon.

5 (b) Absent a stipulation from respondent, when criminal history records eligible for sealing under
6 this section pertain to one charge in a docket containing multiple charges, the criminal history
7 records shall not be eligible for sealing until all of the charges in the docket are eligible for
8 sealing either pursuant to this section or section 7602 of this title.

9 (c) The defendant and any custodian of criminal history records eligible for sealing pursuant to
10 this section may file with the court no later than thirty (30) days from the date the criminal
11 history records become eligible for sealing a motion with the court requesting permission not to
12 seal the criminal history records. Upon receipt of such a motion, the court shall schedule a
13 hearing to determine whether sealing serves the interests of justice. The defendant, prosecuting
14 attorney, and custodian of the relevant criminal history records shall be the only parties in the
15 matter.

16 § 7604. NEW CHARGE

17 If a person is charged with a criminal offense after he or she has filed a petition pursuant to this
18 chapter, the court shall not act on the petition until disposition of the new charge.

19 § 7605. DENIAL OF PETITION

20 If a petition is denied by the court pursuant to this chapter, no further petition shall be brought
21 for at least two years, unless a shorter duration is authorized by the court.

22 § 7606. EFFECT OF SEALING

1 (a) Order and notice. The court shall send a copy of any order order granting a petition to seal a
2 criminal history record to all of the parties to the petition, all other parties to and attorneys
3 representing the parties to the prosecution leading to the conviction subject to the granted
4 petition, the Vermont Crime Information Center (VCIC), the arresting agency, and any other
5 entity that the court determines has criminal history records related to the conviction which in the
6 interests of justice should be sealed. The VCIC shall provide notice of the sealing to the Federal
7 Bureau of Investigation's National Crime Information Center.

8 (b) Effect.

9 (1) Any order granting a petition to seal a criminal history record shall be legally effective
10 immediately and shall include provisions explaining the effects of sealing as set forth in this
11 section.

12 (2) When an order to seal a criminal history record has been granted or when a criminal
13 history record is automatically sealed, the effect shall be that the record of arrest, conviction,
14 and sentence is annulled while the record remains sealed and the person whose record is
15 sealed shall be treated in all respects as if he or she had never been arrested, convicted, or
16 sentenced for the offense.

17 (2) In any application for employment, license, or civil right or privilege or in an appearance
18 as a witness in any proceeding or hearing, a person may be required to answer questions
19 about a previous criminal history record only with respect to arrests or convictions that have
20 not been sealed. Notwithstanding the foregoing, when information contained in a sealed
21 criminal history record would otherwise be admissible to impeach the person's testimony, the
22 court may at the request of either party or on its own motion inform the jury about the

1 information, explain to the jury that the information has been sealed, and explain to the jury
2 the effect of sealing under this chapter.

3 (3) Any entity or individual who receives an order granting a petition to seal a criminal
4 history record or who possesses criminal history records that have been automatically sealed
5 shall respond to any inquiry from any person regarding the sealed record shall be that “NO
6 CRIMINAL RECORD EXISTS.”

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

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

10 (1) the individual whose criminal history records have been sealed may inspect and receive
11 copies of the sealed records.

12 (2) the State’s Attorney and Attorney General may disclose information contained in a sealed
13 criminal history record when required to meet their otherwise legally required discovery
14 obligations.

15 (3) the State’s Attorney and Attorney General may disclose information contained in a sealed
16 criminal history record when a reasonable lawyer would believe such disclosure is required
17 to protect a witness, victim, defendant, or prosecution from the substantial undue prejudicial
18 effect of recent publicity not initiated by the State’s Attorney or Attorney General. A
19 disclosure made pursuant to this paragraph shall be limited to such information as is
20 necessary to mitigate the recent adverse publicity.

21 (4) any entity or individual who possesses sealed criminal history records may disclose those
22 records to the Center for Crime Victim services for the purposes of administering the Crime
23 Victim’s Restitution Special Fund and its Restitution Unit.

Commented [ME5]: This standard was derived from Vermont Rule of Professional Responsibility 3.6.

Commented [ME6]: The Center should be consulted about the sufficiency of this language.

1 (5) a law enforcement agency as defined in 20 V.S.A. § 2351a may use information
2 contained in a sealed criminal history record for criminal justice purposes as defined in 20
3 V.S.A. § 2056a.
4 (6) the court may consider any sealed criminal history information at sentencing for a
5 subsequent conviction.
6 (7) the court may issue an order permitting information from a sealed criminal history record
7 to be disclosed to an employer or an individual or entity that issues licenses, professional
8 licenses, or professional certifications upon a showing by the employer, individual, or entity
9 that the sealed information is relevant to the employment, license, or certification and that
10 there is a substantial risk that the employer, individual, entity, or public may suffer physical
11 or financial harm if the disclosure is not permitted. An employer, individual, or entity
12 seeking disclosure pursuant to this subsection shall serve a copy of any motion seeking the
13 disclosure upon the individual whose criminal history records have been sealed and upon the
14 holder of the criminal history record from whom disclosure is sought.
15 (d) Process. When a petition to seal a criminal history record is granted or when criminal history
16 records are automatically sealed, any entity or individual who receives the order granting the
17 petition and any entity or individual who possesses records that are automatically sealed shall:
18 (1) remove information pertaining to the sealed offense from any publicly accessible
19 database that it maintains.
20 (2) clearly label the criminal history record as “SEALED” to ensure it provides the response
21 required by subsection (b)(3) of this section.
22 (d) Special index.

Commented [ME7]: This exception is slightly modified from the existing exception contained in 13 VSA 7607(b)(2). The modification is that this exception refers to “law enforcement agencies” as defined in 20 VSA 2351a whereas the existing exception refers to “criminal justice agencies” as defined in 20 VSA 2056a. The rationale for the modification is that the State’s Attorneys Offices meet the definition of “criminal justice agency,” but only absolutely need exceptions 2-4.

The language of this exception may be modified depending upon whether the legislature wants to narrow the scope of when law enforcement agencies can access sealed criminal history records. Such agencies should be consulted prior to making a decision.

Commented [ME8]: This is designed simply as a placeholder standard. Other witnesses, such as from regulated industries, should be consulted prior to finalizing any standard.

1 (1) The court shall keep and each custodian of sealed criminal history records may keep a
2 special index of cases that have been sealed. The index shall list only the name of the person
3 convicted of the offense, his or her date of birth, the docket number, and the criminal offense
4 that was the subject of the sealing.

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

8 (3) The Chief Superior Judge may permit special access to the index maintained by the court
9 and the documents for research purposes pursuant to the rules for public access to court
10 records. The Court Administrator shall establish policies for implementing this subsection.

11 (4) Repealed by 2019, No. 32, § 5, eff. July 1, 2019.

12 (e) Deleted by 2019, No. 32, § 5, eff. July 1, 2019.

13 § 7607. PETITION TO UNSEAL

14 (a) When an individual who has had a criminal history record sealed pursuant to section 7602 of
15 this title is convicted of committing a subsequent criminal offense within INSERT years of
16 having the criminal history record sealed, the court shall upon request of the respondent unseal
17 the criminal history record.

18 (b) An individual may petition to seal a criminal history record that has been unsealed pursuant
19 to this section when the time periods and conditions in section 7602 measured from the date of
20 unsealing have been met.

21 § 7608. VICTIMS

22 (a) At the earlier of the time the respondent is asked to stipulate to a petition or the time a
23 petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any

Commented [ME9]: The legislature could choose to impose a time limit on this process. This process and a time limitation is consistent with one of the stated justifications for expungement/sealing: the longer an individual refrains from committing a subsequent offense the less likely it is to do so.

1 victim of the offense who is known to the respondent. The victim shall have the right to offer the
2 respondent a statement prior to any stipulation or to offer the court a statement. The disposition
3 of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The
4 respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar
5 to granting a petition.

6 (b) As used in this section, "reasonable effort" means attempting to contact the victim by first-
7 class mail at the victim's last known address, ~~and~~ by telephone at the victim's last known phone
8 number, and by electronic mail at the victim's last known electronic mail address.

9 § 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

10 There is established the Criminal History Record Sealing Special Fund, which shall be managed
11 in accordance with 32 V.S.A. chapter 7, subchapter 5. Fees collected pursuant to 32 V.S.A. §
12 1431(e) for the filing of a petition to seal a criminal history record of a violation of 23 V.S.A. §
13 1201(a) shall be deposited into and credited to this Fund. This Fund shall be available to the
14 Office of the Court Administrator, the Department of State's Attorneys and Sheriffs, the
15 Department of Motor Vehicles, and the Vermont Crime Information Center to offset the
16 administrative costs of sealing such records. Balances in the Fund at the end of the fiscal year
17 shall be carried forward and remain in the Fund.

18 Sec. 2. 13 V.S.A. § 7041 is amended to read:

19 (a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the
20 court may defer sentencing and place the respondent on probation upon such terms and
21 conditions as it may require if a written agreement concerning the deferring of sentence is
22 entered into between the State's Attorney and the respondent and filed with the clerk of the court.

1 (b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the
2 respondent on probation without a written agreement between the State's Attorney and the
3 respondent if the following conditions are met:

4 (1) Repealed by 2019, No. 77, § 18, eff. June 19, 2019.

5 (2) the crime for which the respondent is being sentenced is not a listed crime as defined in
6 subdivision 5301(7) of this title;

7 (3) the court orders a presentence investigation in accordance with the procedures set forth in
8 V.R.C.P. Rule 32, unless the State's Attorney agrees to waive the presentence investigation;

9 (4) the court permits the victim to submit a written or oral statement concerning the
10 consideration of deferment of sentence;

11 (5) the court reviews the presentence investigation and the victim's impact statement with the
12 parties; and

13 (6) the court determines that deferring sentence is in the interests of justice.

14 (c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for
15 a violation of section 3253a (aggravated sexual assault of a child, section 2602 (lewd and
16 lascivious conduct with a child unless the victim and the defendant were within five years of age
17 and the act was consensual), 3252(c) (sexual assault of a child under 16 unless the victim and the
18 defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual
19 assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of
20 a child) of this title.

21 (d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal
22 in accordance with 12 V.S.A. § 2383 and V.R.A.P. Rule 3. Except as otherwise provided, entry
23 of deferment of sentence shall constitute imposition of sentence solely for the purpose of

1 sentence review in accordance with section 7042 of this title. The court may impose sentence at
2 any time if the respondent violates the conditions of the deferred sentence during the period of
3 deferment.

4 (e) Upon violation of the terms of probation or of the deferred sentence agreement, the court
5 shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence
6 agreement, the court shall strike the adjudication of guilt and discharge the respondent. Except as
7 provided in subsection (h) of this section, the record of the criminal proceedings shall be sealed
8 upon the discharge of the respondent from probation, absent a finding of good cause by the court.

9 The court shall issue an order to seal all records and files related to the arrest, citation,
10 investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the
11 deferred sentence. Copies of the order shall be sent to all parties to and attorneys representing the
12 parties to the prosecution leading to the conviction subject to the granted petition, the Vermont
13 Crime Information Center (VCIC), the arresting agency, and any other entity that the court
14 determines has criminal history records related to the conviction which in the interests of justice
15 should be sealed. Thereafter, all individuals and entities receiving the order, with the exception
16 of the subject of the sealed records, shall reply to any request for information that no record
17 exists with respect to such person upon inquiry in the matter. Notwithstanding this subsection,
18 the record shall not be sealed until restitution has been paid in full.

19 (f) A deferred sentence imposed under subsection (a) or (b) of this section may include a
20 restitution order issued pursuant to section 7043 of this title. Nonpayment of restitution shall not
21 constitute grounds for imposition of the underlying sentence.

22 (g) Deleted.

1 (h) The Vermont Crime Information Center shall retain a special index of deferred sentences for
2 sex offenses that require registration pursuant to subchapter 3 of chapter 167 of this title. This
3 index shall only list the name and date of birth of the subject of the ~~sealed expunged~~ files and
4 records, the offense for which the subject was convicted, and the docket number of the
5 proceeding that was the subject of the sealing. The special index shall be confidential and may be
6 accessed only by the director of the Vermont Crime Information Center and a designated clerical
7 staff person for the purpose of providing information to the Department of Corrections in the
8 preparation of a presentence investigation in accordance with 28 V.S.A. §§ 204 and 204a.

9 Sec. 3. 33 V.S.A. § 5287 is amended to read:

10 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

11 (a) A motion or stipulation may be filed at any time in the Family Division requesting that the
12 court terminate the youth's status as a youthful offender and discharge him or her from probation.
13 The motion may be filed by the State's Attorney, the youth, the Department, or the court on its
14 own motion.

15 (b) In determining whether a youth has successfully completed the terms of probation, the court
16 shall consider:

- 17 (1) the degree to which the youth fulfilled the terms of the case plan and the probation order;
- 18 (2) the youth's performance during treatment;
- 19 (3) reports of treatment personnel; and
- 20 (4) any other relevant facts associated with the youth's behavior.

21 (c) If the court finds that the youth has successfully completed the terms of the probation order, it
22 shall terminate youthful offender status, discharge the youth from probation, and file a written

Commented [ME10]: This section does not propose any changes to sealing and expungement in juvenile proceedings except to specify that when an individual successfully completes YO probation any records in the Criminal Division shall be sealed rather than expunged. Under existing law, those are the only records related to juvenile proceedings that are expunged. All other records are sealed. Consequently, this change advances consistency amongst juvenile proceedings and is consistent with moving to a one track system.

1 order dismissing the Family Division case. The Family Division shall provide notice of the

2 dismissal to the Criminal Division, which shall dismiss the criminal case.

3 (d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the

4 case in the Criminal Division shall be sealed, and all records relating to the case in the Family

5 Court shall be sealed pursuant to section 5119 of this title.

6 (e) If the court denies the motion to discharge the youth from probation, the court may extend or

7 amend the probation order as it deems necessary.

8 (f) Upon the termination of the period of probation, the youth shall be discharged from

9 probation.

10 Sec. 4. EFFECTIVE DATE

11 This act shall take effect upon passage.