

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 7
3 entitled “An act relating to expanding access to expungement and sealing of
4 criminal history records” respectfully reports that it has considered the same
5 and recommends that the House propose to the Senate that the bill be amended
6 by striking out all after the enacting clause and inserting in lieu thereof the
7 following:

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

9 § 5301. DEFINITIONS

10 As used in this chapter:

11 * * *

12 (7) “Listed crime” means any of the following offenses:

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

14 (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4)(b)
15 of this title;

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

17 (D) first degree aggravated domestic assault as defined in section
18 1043 of this title;

19 (E) second degree aggravated domestic assault as defined in section
20 1044 of this title;

- 1 (F) sexual assault as defined in section 3252 of this title or its
2 predecessor as it was defined in section 3201 or 3202 of this title;
- 3 (G) aggravated sexual assault as defined in section 3253 of this title;
- 4 (H) lewd or lascivious conduct as defined in section 2601 of this title;
- 5 (I) lewd or lascivious conduct with a child as defined in section 2602
6 of this title;
- 7 (J) murder as defined in section 2301 of this title;
- 8 (K) aggravated murder as defined in section 2311 of this title;
- 9 (L) manslaughter as defined in section 2304 of this title;
- 10 (M) aggravated assault as defined in section 1024 of this title;
- 11 (N) assault and robbery with a dangerous weapon as defined in
12 subsection 608(b) of this title;
- 13 (O) arson causing death as defined in section 501 of this title;
- 14 (P) assault and robbery causing bodily injury as defined in subsection
15 608(c) of this title;
- 16 (Q) maiming as defined in section 2701 of this title;
- 17 (R) kidnapping as defined in section 2405 of this title or its
18 predecessor as it was defined in section 2401 of this title;
- 19 (S) unlawful restraint in the second degree as defined in section 2406
20 of this title;

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

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

5 (V) violation of abuse prevention order as defined in section 1030 of
6 this title, excluding violation of an abuse prevention order issued pursuant to
7 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

8 (W) operating vehicle under the influence of alcohol or other
9 substance with either death or serious bodily injury resulting as defined in
10 23 V.S.A. § 1210(f) and (g);

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

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

15 (Z) burglary into an occupied dwelling as defined in subsection
16 1201(c) of this title;

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

18 (BB) abuse (section 1376 of this title), abuse by restraint (section
19 1377 of this title), neglect (section 1378 of this title), sexual abuse (section
20 1379 of this title), financial exploitation (section 1380 of this title), and
21 exploitation of services (section 1381 of this title);

1 (CC) aggravated sexual assault of a child in violation of section
2 3253a of this title;

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

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

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

7 § 7282. SURCHARGE

8 * * *

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

12 * * *

13 Sec. 3. 13 V.S.A. § 7607 is amended to read:

14 § 7607. EFFECT OF SEALING

15 (a) Order and notice. Upon entry of an order to seal, the order shall be
16 legally effective immediately and the person whose record is sealed shall be
17 treated in all respects as if he or she had never been arrested, convicted, or
18 sentenced for the offense and that its effect is to annul the record of arrest,
19 conviction, and sentence. The court shall provide notice of the sealing to the
20 respondent, Vermont Crime Information Center (VCIC), the arresting agency,
21 and any other entity that may have a record related to the order to seal. The

1 court shall also make a reasonable effort to notify the person whose record is
2 sealed that, pursuant to section 7602 of this title, he or she may be eligible for a
3 subsequent expungement after a required waiting period. “Reasonable effort”
4 means attempting to **notify the person by electronic means** or first-class mail at
5 the person’s last known address. The VCIC shall provide notice of the sealing
6 to the Federal Bureau of Investigation’s National Crime Information Center.

7 * * *

8 Sec. 4. 33 V.S.A. § 5119 is amended to read:

9 § 5119. SEALING OF RECORDS

10 * * *

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

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

1 subject of the sealed files and records and the docket number of the proceeding
2 ~~which~~ that was the subject of the sealing. The special index shall be
3 confidential and may be accessed only for purposes for which a department or
4 agency may request to unseal a file or record pursuant to subsection (f) of this
5 section.

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

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

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

12 (iii) a sheriff;

13 (iv) a police chief;

14 (v) a State's Attorney;

15 (vi) the Attorney General;

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

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

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

4 * * *

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

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

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

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

18 * * *

1 Sec. 5. 23 V.S.A. § 2303 is added to read:

2 § 2303. EXPUNGEMENT OF VIOLATION RECORDS

3 (a) Expungement. Two years following the satisfaction of a judgment
4 resulting from an adjudication or conviction of a violation identified in this
5 subsection the Judicial Bureau shall make an entry of “expunged” and notify
6 the Department of Motor Vehicles of such action consistent with the data
7 transfer policy between the Judicial Bureau and the Department. The data
8 transfer to the Department shall include the name, date of birth, ticket number,
9 offense, license number, and personal identifying number. The Judicial
10 Bureau shall make the expungement entry pursuant to this section for the
11 following violations:

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

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

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

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

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

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

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

19 (b) Effect of expungement.

20 (1) Upon entry of an expungement order, the order shall be legally
21 effective immediately and the individual whose record is expunged shall be

1 treated in all respects as if he or she had never been convicted or adjudicated of
2 the violation. This includes the expungement of any points accumulated
3 pursuant to chapter 25 of this title.

4 (2) Upon an entry of expunged, the case will be accessible only by the
5 Clerk of the Court for the Judicial Bureau or the Clerk's designee. Convictions
6 or adjudications that have been expunged shall not appear in the results of any
7 Judicial Bureau database search by name, date of birth, driver's license
8 number, or any other data identifying the defendant. Except as provided in
9 subsection (c) of this section, any documents or other records related to an
10 expunged conviction or adjudication that are maintained outside the Judicial
11 Bureau's case management system shall be destroyed.

12 (3) Upon receiving an inquiry from any person regarding an expunged
13 record, the Judicial Bureau and Department of Motor Vehicles shall respond
14 that "NO RECORD EXISTS."

15 (c) Exception for research entities. Research entities that maintain
16 conviction or adjudication records for purposes of collecting, analyzing and
17 disseminating criminal justice data shall not be subject to the expungement
18 requirements established in this section. Research entities shall abide by the
19 policies established by the Court Administrator and shall not disclose any
20 identifying information from the records they maintain.

1 (d) Policies for implementation. The Court Administrator shall establish
2 policies for implementing this section.

3 Sec. 6. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;

4 EXPUNGEMENT AND SEALING STUDY

5 During the 2021 legislative interim, the Joint Legislative Justice
6 Oversight Committee shall consider how to simplify and automate the process
7 of expungement and sealing of criminal history records and consider a
8 comprehensive policy that provides an avenue for expungement or sealing of
9 records for all or most offenses except those listed in 33 V.S.A. § 5204(a). In
10 its analysis of what offenses should be eligible, the Committee shall consider
11 whether to exclude from eligibility those offenses associated with and resulting
12 from domestic and sexual violence. The Committee shall propose legislation
13 for the 2022 legislative session on its recommendations regarding:

14 (1) a policy to make all or most criminal history records eligible for
15 sealing or expungement, except for conviction records of offenses listed in 33
16 V.S.A. § 5204(a) and any other offenses the Committee deems appropriate for
17 exclusion;

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

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

1 nature of the offense, or whether Vermont should employ a one-track system
2 that provides for either sealing or expungement for all eligible offenses;
3 (4) implementing an automated process, not requiring a petition, to seal
4 and expunge criminal conviction records that provides for notice to the
5 prosecuting office and an opportunity for the prosecutor to oppose the sealing
6 or expungement.

7 Sec. 7. EFFECTIVE DATE

8 This act shall take effect on July 1, 2021.

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13 (Committee vote: _____)

14

15

Representative _____

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FOR THE COMMITTEE