

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 534
3 entitled “An act relating to sealing criminal history records” respectfully
4 reports that it has considered the same and recommends that the Senate
5 propose to the House that the bill be amended by striking out all after the
6 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 cannabis, a disorderly conduct offense~~
21 ~~under section 1026 of this title, or possession of a controlled substance in~~

1 ~~violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a),~~
2 ~~4234b(a), 4235(b), or 4235a(a). [Repealed.]~~

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;~~

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

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

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

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

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

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

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

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

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

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

19 (A) all misdemeanor offenses except:

20 (i) a listed crime as defined in subdivision 5301(7) of this title;

- 1 (ii) a violation of chapter 64 of this title relating to sexual
2 exploitation of children;
- 3 (iii) a violation of section 1030 of this title relating to a violation
4 of an abuse prevention order, an order against stalking or sexual assault, or a
5 protective order concerning contact with a child;
- 6 (iv) a violation of chapter 28 of this title related to abuse, neglect,
7 and exploitation of a vulnerable adult;
- 8 (v) a violation of subsection 2605(b) or (c) of this title related to
9 voyeurism;
- 10 (vi) a violation of subdivisions 352(1)–(10) of this title related to
11 cruelty to animals;
- 12 (vii) a violation of section 1026a of this title related to aggravated
13 disorderly conduct;
- 14 (vii) a violation of section 3006 of this title related to neglect of
15 duty by a public officer;
- 16 (viii) a violation of section 5409 of this title related to failure to
17 comply with sex offender registry requirements;
- 18 (ix) a violation of section 2802, 2802a, 2803, 2804, or 2804b of
19 this title related to obscenity;
- 20 (x) a violation of section 1455 of this title related to hate
21 motivated crimes; and

1 (xi) a violation of section 1456 of this title related to burning of a
2 religious symbol; and

3 (B) the following felonies:

4 (i) a violation of section 1201 of this title related to burglary,
5 excluding any burglary into an occupied dwelling, unless the person was
6 25 years of age or younger at the time of the offense and did not carry a
7 dangerous or deadly weapon during the commission of the offense;

8 (ii) designated felony property offenses as defined in subdivision
9 (5) of this section;

10 (iii) offenses relating to possessing, cultivating, selling,
11 dispensing, or transporting regulated drugs, including violations of 18 V.S.A.
12 § 4230(a) and (b), 4231(a) and (b), 4232(a) and (b), 4233(a) and (b), 4233a(a),
13 4234(a) and (b), 4234a(a) and (b), 4234b(a) and (b), 4235(b) and (c), or
14 4235a(a) and (b); and

15 (iv) any offense for which a person has been granted an
16 unconditional pardon from the Governor.

17 (5) “Designated felony property offense” means:

18 (A) a felony violation of 9 V.S.A. § 4043 related to fraudulent use of
19 a credit card;

20 (B) section 1801 of this title related to forgery and counterfeiting;

- 1 (C) section 1802 of this title related to uttering a forged or
2 counterfeited instrument;
- 3 (D) section 1804 of this title related to counterfeiting paper money;
- 4 (E) section 1816 of this title related to possession or use of credit
5 card skimming devices;
- 6 (F) section 2001 of this title related to false personation;
- 7 (G) section 2002 of this title related to false pretenses or tokens;
- 8 (H) section 2029 of this title related to home improvement fraud;
- 9 (I) section 2030 of this title related to identity theft;
- 10 (J) section 2501 of this title related to grand larceny;
- 11 (K) section 2531 of this title related to embezzlement;
- 12 (L) section 2532 of this title related to embezzlement by officers or
13 servants of an incorporated bank;
- 14 (M) section 2533 of this title related to embezzlement by a receiver
15 or trustee;
- 16 (N) section 2561 of this title related to receiving stolen property;
- 17 (O) section 2575 of this title related to retail theft;
- 18 (P) section 2582 of this title related to theft of services;
- 19 (Q) section 2591 of this title related to theft of rented property;
- 20 (R) section 2592 of this title related to failure to return a rented or
21 leased motor vehicle;

1 (S) section 3016 of this title related to false claims;
2 (T) section 3701 of this title related to unlawful mischief;
3 (U) section 3705 of this title related to unlawful trespass;
4 (V) section 3733 of this title related to mills, dams, or bridges;
5 (W) section 3761 of this title related to unauthorized removal of
6 human remains;

7 (X) section 3767 of this title related to grave markers and ornaments;
8 (Y) chapter 87 of this title related to computer crimes; and
9 (Z) 18 V.S.A. § 4223 related to fraud or deceit in obtaining a
10 regulated drug.

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

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

16 § 7602. ~~EXPUNGEMENT AND SEALING OF RECORD,~~
17 POSTCONVICTION; PROCEDURE

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

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

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

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

10 ~~(D) pursuant to the conditions set forth in subsection (h) of this~~
11 ~~section, the person was convicted under 1201(c)(3)(A) of a violation of~~
12 ~~subdivision 1201(a) of this title related to burglary when the person was~~
13 ~~25 years of age or younger, and the person did not carry a dangerous or deadly~~
14 ~~weapon during commission of the offense.~~

15 ~~(2) The State's Attorney or Attorney General shall be the respondent in~~
16 ~~the matter.~~

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

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

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

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

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

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

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

20 ~~(2) The court shall grant the petition and order that all or part of the~~
21 ~~criminal history record be sealed pursuant to section 7607 of this title if the~~

1 ~~conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and~~
2 ~~the court finds that:~~

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

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

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

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

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

15 ~~(C) The person has not been convicted of a misdemeanor during the~~
16 ~~past five years.~~

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

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

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

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

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

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

17 ~~(1) The petitioner has completed any sentence or supervision for the~~
18 ~~offense.~~

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

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

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

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

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

17 ~~(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only~~
18 ~~petitions to seal may be considered or granted by the court. This subsection~~
19 ~~shall not apply to an individual licensed as a commercial driver pursuant to~~
20 ~~23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the~~
21 ~~interests of justice, the court shall grant the petition and order that the criminal~~

1 ~~history record be sealed in accordance with section 7607 of this title if the~~
2 ~~following conditions are met:~~

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

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

9 ~~(A) the person has only one conviction of a violation of 23 V.S.A.~~
10 ~~§ 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and~~

11 ~~(B) the person has not been convicted of a crime arising out of a new~~
12 ~~incident or occurrence since the person was convicted of a violation of~~
13 ~~23 V.S.A. § 1201(a).~~

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

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

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

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

6 ~~(2) 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~~
8 ~~subdivision 1201(c)(3)(A) of this title.~~

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

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

12 (a) Petition.

13 (1) A person may file a petition with the court requesting sealing of a
14 criminal history record related to a conviction under the following
15 circumstances:

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

18 (A) The person was convicted of a qualifying crime or qualifying
19 crimes arising out of the same incident or occurrence.

1 **(B)** The person was convicted of a violation of 23 V.S.A. § 1201(a)
2 related to operating under the influence of alcohol or other substance, provided
3 that:

4 (i) the violation did not:

5 (I) result in serious bodily injury or death to any person other
6 than the operator;

7 (II) involve operating a school bus with a blood alcohol
8 concentration of 0.02 or more; or

9 (III) involve operating a commercial vehicle with a blood
10 alcohol concentration of 0.04 or more; and

11 (ii) the person is not licensed as a commercial driver pursuant to
12 23 V.S.A. chapter 39.

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

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

20 ~~(4) This section shall not apply to an individual licensed as a~~
21 ~~commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal a record of~~

1 ~~a conviction for a felony offense committed in a motor vehicle as defined in~~
2 ~~23 V.S.A. § 4.~~

3 (b) Qualifying misdemeanors. For petitions filed to seal a qualifying
4 misdemeanor, the court shall grant the petition and order that the criminal
5 history record be sealed if the following conditions are met:

6 (1) At least three years have elapsed since the date on which the person
7 satisfied the judgement.

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

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

14 (c) Qualifying felony offenses. For petitions filed to seal a qualifying
15 felony, the court shall grant the petition and order that the criminal history
16 record be sealed if the following conditions are met:

17 (1) At least seven years have elapsed since the date on which the person
18 satisfied the judgement.

19 (2) Any restitution and surcharges ordered by the court for any crime of
20 which the person has been convicted has been paid in full, provided that

1 payment of surcharges shall not be required if the surcharges have been waived
2 by the court pursuant to section 7282 of this title.

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

5 (d) Qualifying DUI misdemeanor. For petitions filed to seal a qualifying
6 DUI misdemeanor, the court shall grant the petition and order that the criminal
7 history record be sealed if the following conditions are met:

8 (1) At least ten years have elapsed since the date on which the person
9 satisfied the judgment for the conviction.

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

11 (A) the person has only one conviction of a violation of 23 V.S.A.
12 § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

13 (B) the person has not been convicted of a subsequent offense since
14 the person was convicted of a violation of 23 V.S.A. § 1201(a).

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

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

1 Sec. 3. 13 V.S.A. § 7603a is added to read:

2 § 7603a. EXPUNGEMENT OF AN OFFENSE NO LONGER PROHIBITED

3 BY LAW OR DESIGNATED AS A CRIMINAL OFFENSE

4 (a) A person convicted of an offense for which the underlying conduct is
5 no longer prohibited by law or designated as a criminal offense may file a
6 petition with the court requesting expungement of the criminal history record,
7 and the court shall grant the petition and order that the criminal history record
8 be expunged if the following conditions are met:

9 (1) The petitioner has completed any sentence or supervision for the
10 offense.

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

14 (b) For petitions filed for a conviction for possession of a regulated drug
15 under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer
16 prohibited by law or for which criminal sanctions have been removed:

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

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

4 Sec. 4. 13 V.S.A. § 7604 is amended to read:

5 § 7604. NEW CHARGE

6 If a person is charged with a criminal offense after ~~he or she~~ the person has
7 filed a petition for ~~expungement~~ sealing pursuant to this chapter, the court shall
8 not act on the petition until disposition of the new charge.

9 Sec. 5. 13 V.S.A. § 7605 is amended to read:

10 § 7605. DENIAL OF PETITION

11 If a petition for ~~expungement~~ sealing is denied by the court pursuant to this
12 chapter, no further petition shall be brought for at least two years, unless a
13 shorter duration is authorized by the court.

14 Sec. 6. 13 V.S.A. § 7607 is amended to read:

15 § 7607. EFFECT OF SEALING

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

1 arresting agency, the Restitution Unit of the Vermont Center for Crime Victim
2 Services, and any other entity that may have a record related to the order to
3 seal. The VCIC shall provide notice of the sealing to the Federal Bureau of
4 Investigation’s National Crime Information Center.

5 (b) Effect.

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

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

14 (3) The response to an inquiry from any member of the public regarding
15 a sealed record shall be that “NO CRIMINAL RECORD EXISTS.”

16 (c) ~~Exceptions; convictions. Notwithstanding any other provision of law or~~
17 ~~a sealing order:~~

18 (1) ~~An entity that possesses a sealed record may continue to use it for~~
19 ~~any litigation or claim arising out of the same incident or occurrence or~~
20 ~~involving the same defendant~~ Except as provided in subdivisions (2), (3), (4),
21 and (5) of this subsection, inspection of the files and records included in a

1 sealing order may thereafter be permitted by the court only upon petition by
2 the person who is the subject of such records, and only to those persons named
3 in the record.

4 (2) A criminal justice agency as defined in 20 V.S.A. § 2056a may use
5 the criminal history record sealed in accordance with section 7602 or 7603 of
6 this title without limitation for criminal justice purposes as defined in 20
7 V.S.A. § 2056a. A sealed record of a prior violation of 23 V.S.A. § 1201(a)
8 shall be admissible as a predicate offense for the purpose of imposing an
9 enhanced penalty for a subsequent violation of that section, in accordance with
10 the provisions of 23 V.S.A. § 1210 Upon a confidential motion of any
11 department or agency that was required to seal files and records, the court may
12 permit the department or agency to inspect its own files and records if it finds
13 circumstances in which the department or agency requires access to such files
14 and records to respond to a legal action, a legal claim, or an administrative
15 action filed against the department or agency in relation to incidents or persons
16 that are the subject of such files and records. The files and records shall be
17 unsealed only for the minimum time necessary to address the circumstances
18 enumerated in this subdivision, at which time the records and files shall be
19 resealed.

20 (3) Upon a confidential motion of the Department for Children and
21 Families, the court may permit the Department to inspect its own files and

1 records if the court finds extraordinary circumstances in which the State's
2 interest in the protection of a child clearly outweighs the purposes of the
3 sealing law and the privacy rights of the person or persons who are the subjects
4 of the record and the sealed record is necessary to accomplish the State's
5 interest. The motion may be heard ex parte if the court, based upon an
6 affidavit, finds a compelling purpose exists to deny notice to the subject of the
7 files and records when considering whether to grant the order. If the order to
8 unseal is issued ex parte, the court shall send notice of the unsealing to the
9 subject of the files and records within 20 days unless the Department provides
10 a compelling reason why the subject of the files and records should not receive
11 notice. The files and records shall be unsealed only for the minimum time
12 necessary to address the extraordinary circumstances, at which time the files
13 and records shall be resealed.

14 (4) Upon a confidential motion of a law enforcement officer or
15 prosecuting attorney, the court may permit the department or agency to inspect
16 its own files and records if the court finds extraordinary circumstances in
17 which the State's interest in public safety clearly outweighs the purposes of the
18 sealing law and the privacy rights of the person or persons who are the subjects
19 of the record and the sealed record is necessary to accomplish the State's
20 interest. The motion may be heard ex parte if the court, based upon an
21 affidavit, finds a compelling public safety purpose exists to deny notice to the

1 subject of the files and records when considering whether to grant the order. If
2 the order to unseal is issued ex parte, the court shall send notice of the
3 unsealing to the subject of the files and records within 20 days unless the law
4 enforcement officer or prosecuting attorney provides a compelling public
5 safety reason why the subject of the files and records should not receive notice.
6 The files and records shall be unsealed only for the minimum time necessary to
7 address the extraordinary circumstances, at which time the files and records
8 shall be resealed.

9 (5) The order unsealing a record pursuant to subdivisions (2), (3),
10 and (4) of this subsection must state whether the record is unsealed entirely or
11 in part and the duration of the unsealing. If the court's order unseals only part
12 of the record or unseals the record only as to certain persons, the order must
13 specify the particular records that are unsealed or the particular persons who
14 may have access to the record, or both.

15 (d) Exceptions; dismissed charges. The prosecution shall have access to
16 cases dismissed without prejudice for three years. The prosecution may object
17 to the loss of access at three years by proving that the loss of access would
18 pose a "significant risk to public safety."

19 (e) Process.

20 (1) The court shall bar viewing of the sealed offense in any accessible
21 database that it maintains.

1 (2) Until all charges on a docket have been sealed, the case file shall
2 remain publicly accessible.

3 (3) When all charges on a docket have been sealed, the case file shall
4 become exempt from public access.

5 ~~(e)~~(f) Special index.

6 (1) The court shall keep a special index of cases that have been sealed
7 together with the sealing order. The index shall list only the name of the
8 person convicted of the offense, ~~his or her~~ the person's date of birth, the docket
9 number, and the criminal offense that was the subject of the sealing.

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

14 (3) Except as provided in ~~subsection~~ subsections (c) and (d) of this
15 section, inspection of the sealing order may be permitted only upon petition by
16 the person who is the subject of the case. The Chief Superior Judge may
17 permit special access to the index and the documents for research purposes
18 pursuant to the rules for public access to court records.

19 (4) The Court Administrator shall establish policies for implementing
20 this subsection.

1 Sec. 7. 13 V.S.A. § 7611 is added to read:

2 § 7611. UNAUTHORIZED ACCESS OR DISCLOSURE

3 A state or municipal employee or contractor or any agent of the court,
4 including an attorney and an employee or contractor of the attorney, who in the
5 course of their official duties knowingly accesses or discloses sealed criminal
6 history record information obtained within the scope of their official duties
7 without authorization shall be assessed a civil penalty of not more than
8 \$1,000.00. Each unauthorized disclosure shall constitute a separate civil
9 violation.

10 Sec. 8. 24 V.S.A. § 2002 is added to read:

11 § 2002. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

12 (a) Expungement. Three years following the satisfaction of a judgment
13 resulting from an adjudication of a municipal violation, the Judicial Bureau
14 shall make an entry of “expunged” and notify the municipality of such action,
15 provided the person has not been adjudicated for any subsequent municipal
16 violations during that time. The data transfer to the municipality shall include
17 the name, date of birth, ticket number, and offense. Violations of offenses
18 adopted pursuant to chapter 117 of this title shall not be eligible for
19 expungement under this section.

1 (b) Effect of expungement.

2 (1) Upon entry of an expungement order, the order shall be legally
3 effective immediately and the individual whose record is expunged shall be
4 treated in all respects as if the individual had never been adjudicated of the
5 violation.

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

14 (3) Upon receiving an inquiry from any person regarding an expunged
15 record, the Judicial Bureau and the municipality shall respond that “NO
16 RECORD EXISTS.”

17 (c) Exception for research entities. Research entities that maintain
18 adjudication records for purposes of collecting, analyzing, and disseminating
19 criminal justice data shall not be subject to the expungement requirements
20 established in this section. Research entities shall abide by the policies

1 established by the Court Administrator and shall not disclose any identifying
2 information from the records they maintain.

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

5 (e) Application. This section shall apply to municipal violations that occur
6 on and after July 1, 2022.

7 Sec. 9. 23 V.S.A. § 2303 is amended to read:

8 § 2303. EXPUNGEMENT OF VIOLATION RECORDS

9 * * *

10 (e) Application. This section shall apply to municipal violations that occur
11 on and after July 1, 2021.

12 Sec. 10. EFFECTIVE DATE

13 This act shall take effect on July 1, 2022.

14

15

16

17

18 (Committee vote: _____)

19

20

21

Senator _____

FOR THE COMMITTEE