

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 [Repealed.]~~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 5409 of this title related to failure to
13 comply with sex offender registry requirements;

14 (viii) a violation of section 2802, 2802a, 2803, 2804, or 2804b of
15 this title related to obscenity;

16 (ix) a violation of section 1455 of this title related to hate
17 motivated crimes; and

18 (x) a violation of section 1456 of this title related to burning of a
19 religious symbol; and

20 (B) the following felonies:

1 (i) a violation of section 1201 of this title related to burglary,
2 excluding any burglary into an occupied dwelling, unless the person was
3 25 years of age or younger at the time of the offense and did not carry a
4 dangerous or deadly weapon during the commission of the offense;

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

7 (iii) offenses relating to possessing, cultivating, selling,
8 dispensing, or transporting regulated drugs, including violations of 18 V.S.A.
9 § 4230(a) and (b), 4231(a) and (b), 4232(a) and (b), 4233(a) and (b), 4233a(a),
10 4234(a) and (b), 4234a(a) and (b), 4234b(a) and (b), 4235(b) and (c), or
11 4235a(a) and (b); and

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

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

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

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

18 (C) section 1802 of this title related to uttering a forged or
19 counterfeited instrument;

20 (D) section 1804 of this title related to counterfeiting paper money;

- 1 (E) section 1816 of this title related to possession or use of credit
2 card skimming devices;
- 3 (F) section 2001 of this title related to false personation;
- 4 (G) section 2002 of this title related to false pretenses or tokens;
- 5 (H) section 2029 of this title related to home improvement fraud;
- 6 (I) section 2030 of this title related to identity theft;
- 7 (J) section 2501 of this title related to grand larceny;
- 8 (K) section 2531 of this title related to embezzlement;
- 9 (L) section 2532 of this title related to embezzlement by officers or
10 servants of an incorporated bank;
- 11 (M) section 2533 of this title related to embezzlement by a receiver
12 or trustee;
- 13 (N) section 2561 of this title related to receiving stolen property;
- 14 (O) section 2575 of this title related to retail theft;
- 15 (P) section 2582 of this title related to theft of services;
- 16 (Q) section 2591 of this title related to theft of rented property;
- 17 (R) section 2592 of this title related to failure to return a rented or
18 leased motor vehicle;
- 19 (S) section 3016 of this title related to false claims;
- 20 (T) section 3701 of this title related to unlawful mischief;
- 21 (U) section 3705 of this title related to unlawful trespass;

1 (V) section 3733 of this title related to mills, dams, or bridges;

2 (W) section 3761 of this title related to unauthorized removal of
3 human remains;

4 (X) section 3767 of this title related to grave markers and ornaments;

5 (Y) chapter 87 of this title related to computer crimes; and

6 (Z) 18 V.S.A. § 4223 related to fraud or deceit in obtaining a
7 regulated drug.

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

12 Sec. 2. 13 V.S.A. § 7606 is amended to read:

13 § 7606. EFFECT OF EXPUNGEMENT

14 (a) Order and notice. Upon finding that the requirements for expungement
15 have been met, the court shall issue an order that shall include provisions that
16 its effect is to annul the record of the arrest, conviction, and sentence and that
17 such person shall be treated in all respects as if ~~he or she~~ the person had never
18 been arrested, convicted, or sentenced for the offense. The court shall provide
19 notice of the expungement to the respondent, Vermont Crime Information
20 Center (VCIC), the arresting agency, the Restitution Unit of the Vermont
21 Center for Crime Victim Services, and any other entity that may have a record

1 related to the order to expunge. The VCIC shall provide notice of the
2 expungement to the Federal Bureau of Investigation’s National Crime
3 Information Center.

4 * * *

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

6 § 7607. EFFECT OF SEALING

7 (a) Order and notice. Upon entry of an order to seal, the order shall be
8 legally effective immediately and the person whose record is sealed shall be
9 treated in all respects as if ~~he or she~~ the person had never been arrested,
10 convicted, or sentenced for the offense and that its effect is to annul the record
11 of arrest, conviction, and sentence. The court shall provide notice of the
12 sealing to the respondent, Vermont Crime Information Center (VCIC), the
13 arresting agency, the Restitution Unit of the Vermont Center for Crime Victim
14 Services, and any other entity that may have a record related to the order to
15 seal. The VCIC shall provide notice of the sealing to the Federal Bureau of
16 Investigation’s National Crime Information Center.

17 * * *

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1 Sec. 4. 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
5 knowingly accesses or discloses sealed criminal history record information
6 obtained within the scope of their official duties without authorization shall be
7 assessed a civil penalty of not more than \$1,000.00. Each unauthorized
8 disclosure shall constitute a separate civil violation.

9 Sec. 5. 24 V.S.A. § 2002 is added to read:

10 § 2002. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

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

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 the individual had never been adjudicated of the
2 violation.

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

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

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

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

