

1

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. ~~Expungement and~~ 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) ~~a misdemeanor offense that is not~~ all offenses except for:

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

6 (ii) ~~an offense involving sexual exploitation of children in violation of chapter 64 of~~
7 ~~this title;~~

8 (iii) ~~an offense involving violation of a protection order in violation of section 1030~~
9 ~~of this title;~~

10 (iv) ~~prostitution as defined in section 2632 of this title, or prohibited conduct under~~
11 ~~section 2601a of this title; or;~~

12 (v) ~~a predicate offenses;~~

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

14 (iii) abuse, neglect, and exploitation of a vulnerable adult in violation of 13 V.S.A. §§
15 1376, 1377, 1378, 1379, 1380, or 1381;

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

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

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

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

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

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

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

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

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 (xii) arson causing death in violation of 13 V.S.A. § 501;
- 2 (xiii) assault of a correctional officer in violation of 13 V.S.A. § 1028a;
- 3 (xiv) assault of a protected professional in violation of 13 V.S.A. § 1028;
- 4 (xv) assault and robbery in violation of 13 V.S.A. §§ 608(b) and (c);
- 5 (xvi) bribery in violation of 13 V.S.A. §§ 1101-1104;
- 6 (xvii) burglary into an occupied dwelling in violation of 13 V.S.A. § 1201(c)(3);
- 7 (xvii) burning forests in violation of 13 V.S.A. § 507;
- 8 (xix) confinement of animals in vehicles in violation of 13 V.S.A. § 386;
- 9 (xx) criminal use of anesthetics in violation of 13 V.S.A. § 12;
- 10 (xxi) cruelty to animals in violation of 13 V.S.A. § 352;
- 11 (xxii) cruelty to a child in violation of 13 V.S.A. 1304;
- 12 (xxiii) cruelty by a person having custody of another in violation of 13 V.S.A. § 1305;
- 13 (xxiv) disarming a law enforcement officer in violation of 13 V.S.A. § 3019;
- 14 (xxv) disseminating indecent material to a minor in violation of 13 V.S.A. §§ 2802 or
- 15 282a.
- 16 (xxvi) domestic assault in violation of 13 V.S.A. § 1042;
- 17 (xxvii) domestic terrorism in violation of 13 V.S.A. § 1703;
- 18 (xxviii) eluding a police officer with serious bodily injury or death resulting in
- 19 violation of 13 V.S.A. §§ 1133(b)(3) or (4);
- 20 (xxix) embezzlement in violation of 13 V.S.A. § 2531 when committed by an
- 21 individual while acting as a state, municipal, or school employee;
- 22 (xxx) embezzlement in violation of 13 V.S.A. §§ 2532-2358;

- 1 (xxxix) employers without worker’s compensation insurance in violation of 13 V.S.A.
2 § 2025;
3 (xxxvii) extortion in violation of 13 V.S.A. § 1701;
4 (xxxviii) false alarms to agencies of public safety with bodily injury or death resulting
5 in violation of 13 V.S.A. § 1751(b);
6 (xxxix) false claims in violation of 13 V.S.A. § 3016;
7 (xl) false personation in violation of 13 V.S.A. § 2001;
8 (xli) female genital mutilation or cutting in violation of 13 V.S.A. § 3151;
9 (xlii) first degree aggravated domestic assault in violation of 13 V.S.A. § 1043;
10 (xliiii) first degree arson in violation of 13 V.S.A. § 502;
11 (xliv) furnishing information to an enemy in violation of 13 V.S.A. § 3482;
12 (xlv) grossly negligent operation with serious bodily injury or death results in violation
13 of 23 V.S.A. § 1091(b);
14 (xlvi) hate motivated crimes in violation of 13 V.S.A. § 1455;
15 (xlvii) hindering an officer responding to a riot in violation of 13 V.S.A. § 903;
16 (xlviii) human trafficking in violation of 13 V.S.A. § 2652;
17 (xlix) identity theft in violation of 13 V.S.A. § 2030;
18 (l) illegally practicing medicine in violation of 26 V.S.A. § 1314;
19 (li) impeding public officers in violation of 13 V.S.A. § 3001;
20 (lii) impersonation of an officer in violation of 13 V.S.A. § 3002;
21 (liiii) injuries caused by destructive devices in violation of 13 V.S.A. § 1605;
22 (liv) injuries caused by explosives in violation of 13 V.S.A. § 1608;
23 (lv) installation of object in lieu of air bag in violation of 13 V.S.A. § 2026;

- 1 (li) interference with access to emergency services in violation of 13 V.S.A. § 1031;
2 (lii) interference with or cruelty to a guide dog in violation of 13 V.S.A. § 355;
3 (liii) kidnapping in violation of 13 V.S.A. § 2405 or its predecessor as formerly
4 defined in 13 V.S.A. § 2401;
5 (liv) law enforcement use of chokeholds in violation of 13 V.S.A. § 1032;
6 (lv) leaving the scene of an accident with serious bodily injury or death resulting in
7 violation of 23 V.S.A. §§ 1128(b) or (c);
8 (lvi) lewd or lascivious conduct in violation of 13 V.S.A. § 2601;
9 (lvii) lewd or lascivious conduct with a child in violation of 13 V.S.A. § 2602;
10 (lviii) maiming in violation of 13 V.S.A. § 2701;
11 (lix) manslaughter in violation of 13 V.S.A. § 2304;
12 (lx) mistreatment of a person with impaired cognitive function in violation of 13
13 V.S.A. § 1306;
14 (lxi) murder in violation of 13 V.S.A. § 2301;
15 (lxii) neglect of duty by a public officer in violation of 13 V.S.A. § 3006;
16 (lxiii) obstruction of justice in violation of 13 V.S.A. § 3015;
17 (lxiv) officer aiding or voluntarily allowing escape in violation of 13 V.S.A. § 1506;
18 (lxv) operating a vehicle under the influence of alcohol or other substance with death
19 or serious bodily injury resulting in violation of 23 V.S.A. §§ 1210(f) and (g);
20 (lxvi) perjury, perjury by inconsistent statements, subornation of perjury, attempt to
21 suborn perjury, and false swearing in violation of 13 V.S.A. §§ 2901-2904 when
22 committed by an individual while acting as a law enforcement officer;
23 (lxvii) placing a hoax device in violation of 13 V.S.A. § 1612;

- 1 (lviii) poisoning food, drink, medicine, or water in violation of 13 V.S.A. § 2306;
- 2 (lix) possession and use of weapons of mass destruction in violation of 13 V.S.A. §
- 3 3502;
- 4 (lxx) promotion of anarchy in violation of 13 V.S.A. § 3405;
- 5 (lxxi) recklessly endangering another person as defined in 13 V.S.A. § 1025;
- 6 (lxxii) refusing or delaying to execute criminal process in violation of 13 V.S.A. §
- 7 3009;
- 8 (lxxiii) sale or trade of motor vehicle with an inoperable air bag in violation of 13
- 9 V.S.A. § 2027;
- 10 (lxxiv) second degree aggravated domestic assault in violation of 13 V.S.A. § 1044;
- 11 (lxxv) second degree arson in violation of 13 V.S.A. § 503;
- 12 (lxxvi) selling or dispensing of a regulated drug with death resulting in violation of 18
- 13 V.S.A. § 4250;
- 14 (lxxvii) sexual assault in violation of 13 V.S.A. § 3252 or its predecessor as formerly
- 15 defined in 13 V.S.A. §§ 3201 or 3202;
- 16 (lxxviii) sexual exploitation of children in violation of 13 V.S.A. Ch. 64;
- 17 (lxxix) sexual exploitation of an inmate in violation of 13 V.S.A. § 3257;
- 18 (lxxx) sexual exploitation of a minor in violation of 13 V.S.A. § 3258;
- 19 (lxxxi) sexual exploitation of a person in the custody of a law enforcement officer in
- 20 violation of 13 V.S.A. § 3259;
- 21 (lxxxii) simple assault in violation of 13 V.S.A. § 1023 when committed by an
- 22 individual while acting as a law enforcement officer;
- 23 (lxxxiii) slave traffic as defined in 13 V.S.A. § 2635;

- 1 (lxxxiv) stalking as defined in 13 V.S.A. § 1062;
- 2 (lxxxv) taking illegal fees in violation of 13 V.S.A. § 3010;
- 3 (lxxxvi) treason in violation of 13 V.S.A. § 3401;
- 4 (lxxxvii) unlawfully aiding prisoners in violation of 13 V.S.A. § 1502 when
5 committed by an individual while acting as a correctional officer or other employee
6 of the Department of Corrections;
- 7 (lxxxviii) unlawful restraint in the second degree in violation of 13 V.S.A. § 2406;
- 8 (lxxxix) unlawful restraint in the first degree in violation of 13 V.S.A. § 2407;
- 9 (xc) unlawful sheltering of or aiding a runaway child in violation of 13 V.S.A. §
10 1311;
- 11 (xci) unlawful transportation of animals in violation of 13 V.S.A. §§ 381 and 382;
- 12 (xcii) violation of an abuse prevention order in violation of 13 V.S.A. § 1030 except
13 for a violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 or 33
14 V.S.A. § 6936;
- 15 (xciii) violation of an extreme risk protection order in violation of 13 V.S.A. §
16 4058(b)(1);
- 17 (xciv) a violation of the Sabotage Prevention Act in violation of 13 V.S.A. §§ 3431-
18 3445;
- 19 (xcv) voyeurism in violation of 13 V.S.A. § 2605 when committed by an individual
20 while acting as a employee of the Department of Corrections, a school, or business
21 having the care or custody of other individuals;
- 22 (xcvi) willful and malicious injuries caused by explosives in violation of 13 V.S.A. §
23 1601;

- 1 (xcvii) an attempt to commit any of the offenses listed in this subsection;
- 2 (xcviii) conspiracy to commit any of the offenses listed in this subsection in violation
- 3 of 13 V.S.A. § 1404;
- 4 (xcix) being an accessory to any of the offenses listed in this subsection in violation
- 5 of 13 V.S.A. §§ 3-5;
- 6 ~~(B) a violation of subsection 3701(a) of this title related to criminal mischief;~~
- 7 ~~(C) a violation of section 2501 of this title related to grand larceny;~~
- 8 ~~(D) a violation of section 1201 of this title related to burglary, excluding any burglary~~
- 9 ~~into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title;~~
- 10 ~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~
- 11 ~~(F) a violation of section 1802 of this title related to uttering a forged or counterfeited~~
- 12 ~~instrument;~~
- 13 ~~(G) a violation of 18 V.S.A. § 4230(a) related to possession and cultivation of cannabis;~~
- 14 ~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of cocaine;~~
- 15 ~~(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~
- 16 ~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~
- 17 ~~(K) a violation of 18 V.S.A. § 4234(a) related to possession of depressant, stimulant, and~~
- 18 ~~narcotic drugs;~~
- 19 ~~(L) a violation of 18 V.S.A. § 4234a(a) related to possession of methamphetamine;~~
- 20 ~~(M) a violation of 18 V.S.A. § 4234b(a) related to possession of ephedrine and~~
- 21 ~~pseudoephedrine;~~
- 22 ~~(N) a violation of 18 V.S.A. § 4235(b) related to possession of hallucinogenic drugs;~~
- 23 ~~(O) a violation of 18 V.S.A. § 4235a(a) related to possession of ecstasy; or~~

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

3 § 7602. ~~EXPUNGEMENT AND SEALING OF RECORD, POSTCONVICTION;~~
4 PROCEDURE PETITION TO SEAL RECORD

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

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

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

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

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

21 (2) The State's Attorney, ~~2~~ or Attorney General if it prosecuted the case resulting in the
22 conviction, shall be the respondent in the matter. The State's Attorney and Attorney General

1 may authorize each other to act as a respondent in matters where the other prosecuted the
2 case resulting in the conviction.

3 (3) Prior to filing a petition with the court the petitioner shall contact the respondent to
4 determine whether the respondent stipulates that the conditions in subsection (b) of this
5 section have been met or that granting the petition otherwise serves the interests of justice. If
6 the respondent stipulates to the petition, it shall file the petition with the court. If the
7 respondent does not stipulate to the petition, the petitioner shall disclose that fact in the
8 petition. If no stipulation is filed with the petition, the court shall hold a hearing on the
9 petition. If a stipulation is filed with the petition, the court may but is not required to hold a
10 hearing on the petition.~~The court shall grant the petition without hearing if the petitioner and~~
11 ~~the respondent stipulate to the granting of the petition. The respondent shall file the~~
12 ~~stipulation with the court, and the court shall issue the petitioner an order of expungement~~
13 ~~and provide notice of the order in accordance with this section.~~

14 (4) This section shall not apply to an individual licensed as a commercial driver pursuant to
15 23 V.S.A. chapter 39 seeking to seal or expunge a record of a conviction for a felony offense
16 committed in a motor vehicle as defined in 23 V.S.A. § 4.

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

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

21 (1A) At least **five** years have elapsed since the date on which the person successfully
22 completed the terms and conditions of the sentence for the conviction, or if the person has

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

1 successfully completed the terms and conditions of an indeterminate term of probation that
2 commenced at least five years previously;

3 ~~(2B) The person has not been convicted of a crime arising out of a new incident or~~
4 ~~occurrence since the person was convicted for the qualifying crime in the INSERT years~~
5 ~~preceding the filing of the petition;~~

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

8 ~~(4C) Any restitution and surcharges ordered by the court have been paid in full, provided that~~
9 ~~payment of surcharges shall not be required if the surcharges have been waived by the court~~
10 ~~pursuant to section 7282 of this title; and~~

11 ~~(5D) The court finds that expungement sealing of the criminal history record serves the~~
12 ~~interests of justice.~~

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

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

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

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

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

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

- 1 ~~(B) The person has not been convicted of a felony arising out of a new incident or~~
2 ~~occurrence in the last seven years.~~
- 3 ~~(C) The person has not been convicted of a misdemeanor during the past five years.~~
- 4 ~~(D) Any restitution and surcharges ordered by the court for any crime of which the~~
5 ~~person has been convicted has been paid in full, provided that payment of surcharges~~
6 ~~shall not be required if the surcharges have been waived by the court pursuant to section~~
7 ~~7282 of this title.~~
- 8 ~~(E) After considering the particular nature of any subsequent offense, the court finds that~~
9 ~~expungement of the criminal history record for the qualifying crime serves the interests~~
10 ~~of justice.~~
- 11 ~~(2) The court shall grant the petition and order that all or part of the criminal history record~~
12 ~~be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B),~~
13 ~~(C), and (D) of this subsection are met and the court finds that:~~
- 14 ~~(A) sealing the criminal history record better serves the interests of justice than~~
15 ~~expungement; and~~
- 16 ~~(B) the person committed the qualifying crime after reaching 19 years of age.~~
- 17 ~~(d) For petitions filed pursuant to subdivision (a)(1)(B) of this section, unless the court finds that~~
18 ~~expungement would not be in the interests of justice, the court shall grant the petition and order~~
19 ~~that the criminal history record be expunged in accordance with section 7606 of this title if the~~
20 ~~following conditions are met:~~
- 21 ~~(1) The petitioner has completed any sentence or supervision for the offense.~~

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

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

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

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

13 ~~(fd) Prior to granting a petition seeking to seal criminal history records related to a conviction for~~
14 ~~violating section 1202 of this title, an expungement or sealing under this section for petitions filed~~
15 ~~pursuant to subdivision 7601(4)(D) of this title, the court shall make a finding that the conduct~~
16 ~~underlying the conviction under section 1201 of this title did not constitute a burglary into an~~
17 ~~occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the~~
18 ~~burden of establishing this fact.~~

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

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

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

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

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

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

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

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

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

22 ~~(1) At least 15 years have elapsed since the date on which the person successfully completed~~
23 ~~the terms and conditions of the sentence for the conviction, or the person has successfully~~

1 ~~completed the terms and conditions of an indeterminate term of probation that commenced at~~
2 ~~least 15 years previously.~~

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

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

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

8 § 7603. ~~EXPUNGEMENT AND~~ AUTOMATIC SEALING OF RECORD, NO CONVICTION;
9 PROCEDURE

10 ~~(a) Unless either party objects in the interests of justice, the court shall issue an order sealing the~~
11 ~~criminal history record related to the citation or arrest of a person:~~

12 ~~(1) within 60 days after the final disposition of the case if:~~

13 ~~(A) the court does not make a determination of probable cause at the time of arraignment;~~

14 ~~or~~

15 ~~(B) the charge is dismissed before trial without prejudice; or~~

16 ~~(2) at any time if the prosecuting attorney and the defendant stipulate that the court may grant~~
17 ~~the petition to seal the record.~~

18 ~~(b) If a party objects to sealing or expunging a record pursuant to this section, the court shall~~
19 ~~schedule a hearing to determine if sealing or expunging the record serves the interests of justice.~~

20 ~~The defendant and the prosecuting attorney shall be the only parties in the matter.~~

21 ~~(c) Repealed by 2017, Adj., Sess., No. 178, § 2, eff. July 1, 2018.~~

22 ~~(d) Repealed by 2017, Adj., Sess., No. 178, § 2, eff. July 1, 2018.~~

1 ~~(e) Unless either party objects in the interests of justice, the court shall issue an order expunging~~
2 ~~a criminal history record related to the citation or arrest of a person:~~

3 ~~(1) within 60 days after the final disposition of the case if:~~

4 ~~(A) the defendant is acquitted of the charges; or~~

5 ~~(B) the charge is dismissed with prejudice;~~

6 ~~(2) at any time if the prosecuting attorney and the defendant stipulate that the court may grant~~
7 ~~the petition to expunge the record.~~

8 ~~(f) Unless either party objects in the interests of justice, the court shall issue an order to expunge~~
9 ~~a record sealed pursuant to subsection (a) or (g) of this section eight years after the date on which~~
10 ~~the record was sealed.~~

11 ~~(g) A person may file a petition with the court requesting sealing or expungement of a criminal~~
12 ~~history record related to the citation or arrest of the person at any time. The court shall grant the~~
13 ~~petition and issue an order sealing or expunging the record if it finds that sealing or expunging~~
14 ~~the record serves the interests of justice, or if the parties stipulate to sealing or expungement of~~
15 ~~the record.~~

16 ~~(h) The court may expunge any records that were sealed pursuant to this section prior to July 1,~~
17 ~~2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to~~
18 ~~expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's~~
19 ~~office that prosecuted the case written notice of its intent to expunge the record.~~

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

- 1 (1) criminal history records of an arrest or citation when no criminal charges have been filed
2 and the applicable statute of limitations has expired;
- 3 (2) criminal history records pertaining to a charge that has been dismissed without prejudice
4 and the applicable statute of limitations has expired;
- 5 (3) criminal history records pertaining to a charge that has been dismissed with prejudice;
- 6 (4) criminal history records pertaining to a charge for which the defendant has been
7 acquitted;
- 8 (5) criminal history records pertaining to a conviction that has been vacated without the
9 possibility of further legal proceedings; and
- 10 (6) criminal history records pertaining to a conviction for which the defendant has received
11 from the Governor an unconditional pardon.
- 12 (b) Absent a stipulation from respondent, when criminal history records eligible for sealing under
13 this section pertain to one charge in a docket containing multiple charges, the criminal history
14 records shall not be eligible for sealing until all of the charges in the docket are eligible for
15 sealing either pursuant to this section or section 7602 of this title.
- 16 (c) The defendant and any custodian of criminal history records eligible for sealing pursuant to
17 this section may file with the court no later than thirty (30) days from the date the criminal
18 history records become eligible for sealing a motion with the court requesting permission not to
19 seal the criminal history records. Upon receipt of such a motion, the court shall schedule a
20 hearing to determine whether sealing serves the interests of justice. The defendant, prosecuting
21 attorney, and custodian of the relevant criminal history records shall be the only parties in the
22 matter.
- 23 § 7604. NEW CHARGE

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

3 § 7605. DENIAL OF PETITION

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

6 § 7606. EFFECT OF SEALING EXPUNGEMENT

7 (a) Order and notice. ~~Upon finding that the requirements for sealing expungement have been met,~~
8 ~~the court shall issue an order that shall include provisions that its effect is to annul the record of~~
9 ~~the arrest, conviction, and sentence and that such person shall be treated in all respects as if he or~~
10 ~~she had never been arrested, convicted, or sentenced for the offense.~~ The court shall send a copy
11 of any order granting a petition to seal a criminal history record to all of the parties to the
12 petition provide notice of the expungement to the respondent, all other parties to and attorneys
13 representing the parties to the prosecution leading to the conviction subject to the granted
14 petition, the Vermont Crime Information Center (VCIC), the arresting agency, and any other
15 entity that the court determines has criminal history records related to the conviction which in the
16 interests of justice should be sealed ~~may have a record related to the order to expunge.~~ The VCIC
17 shall provide notice of the ~~expungement~~ sealing to the Federal Bureau of Investigation's National
18 Crime Information Center.

19 (b) Effect.

20 (1) ~~Upon entry of an expungement order, the order~~ Any order granting a petition to seal a
21 criminal history record shall be legally effective immediately and shall include provisions
22 explaining the effects of sealing as set forth in this section.

- 1 (2) When an order to seal a criminal history record has been granted or when a criminal
2 history record is automatically sealed, ~~and~~ the effect shall be that the record of arrest,
3 conviction, and sentence is annulled while the record remains sealed and the person whose
4 record is ~~expunged~~ sealed shall be treated in all respects as if he or she had never been
5 arrested, convicted, or sentenced for the offense.
- 6 (2) In any application for employment, license, or civil right or privilege or in an appearance
7 as a witness in any proceeding or hearing, a person may be required to answer questions
8 about a previous criminal history record only with respect to arrests or convictions that have
9 not been ~~expunged~~ sealed. Notwithstanding the foregoing, when information contained in a
10 sealed criminal history record would otherwise be admissible to impeach the person's
11 testimony, the court may at the request of either party or on its own motion inform the jury
12 about the information, explain to the jury that the information has been sealed, and explain to
13 the jury the effect of sealing under this chapter.
- 14 (3) Any entity or individual who receives an order granting a petition to seal a criminal
15 history record or who possesses criminal history records that have been automatically sealed
16 shall respond to any ~~The response to an~~ inquiry from any person regarding ~~an expunged~~ the
17 sealed record shall be that "NO CRIMINAL RECORD EXISTS."
- 18 (4) Nothing in this section shall affect any right of the person whose record has been
19 ~~expunged~~ sealed to rely on it as a bar to any subsequent proceedings for the same offense.
- 20 (c) Exceptions. Notwithstanding any other provision of law or a sealing order:
- 21 (1) the individual whose criminal history records have been sealed may inspect and receive
22 copies of the sealed records.

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

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

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

13 (5) a law enforcement agency as defined in 20 V.S.A. § 2351a may use information
14 contained in a sealed criminal history record for criminal justice purposes as defined in 20
15 V.S.A. § 2056a.

16 (6) the court may consider any sealed criminal history information at sentencing for a
17 subsequent conviction.

18 (7) the court may issue an order permitting information from a sealed criminal history record
19 to be disclosed to an employer or an individual or entity that issues licenses, professional
20 licenses, or professional certifications upon a showing by the employer, individual, or entity
21 that the sealed information is relevant to the employment, license, or certification and that
22 there is a substantial risk that the employer, individual, entity, or public may suffer physical
23 or financial harm if the disclosure is not permitted. An employer, individual, or entity

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.

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 seeking disclosure pursuant to this subsection shall serve a copy of any motion seeking the
2 disclosure upon the individual whose criminal history records have been sealed and upon the
3 holder of the criminal history record from whom disclosure is sought.

4 (d) Process. When a petition to seal a criminal history record is granted or when criminal history
5 records are automatically sealed, any entity or individual who receives the order granting the
6 petition and any entity or individual who possesses records that are automatically sealed shall:

7 (1) ~~The court shall~~ remove information pertaining to the expunged sealed offense from any
8 publicly accessible database that it maintains.

9 (2) clearly label the criminal history record as "SEALED" to ensure it provides the response
10 required by subsection (b)(3) of this section. ~~Until all charges on a docket are expunged, the~~
11 ~~case file shall remain publicly accessible.~~

12 ~~(3) When all charges on a docket have been expunged, the case file shall be destroyed~~
13 ~~pursuant to policies established by the Court Administrator.~~

14 (d) Special index.

15 (1) The court shall keep and each custodian of sealed criminal history records may keep a
16 special index of cases that have been sealed ~~expunged together with the expungement order.~~
17 The index shall list only the name of the person convicted of the offense, his or her date of
18 birth, the docket number, and the criminal offense that was the subject of the sealing
19 ~~expungement.~~

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

1 (3) ~~Inspection of the expungement order may be permitted only upon petition by the person~~
2 ~~who is the subject of the case.~~ The Chief Superior Judge may permit special access to the
3 index maintained by the court and the documents for research purposes pursuant to the rules
4 for public access to court records. The Court Administrator shall establish policies for
5 implementing this subsection.

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

7 ~~(5) The Court Administrator shall establish policies for implementing this subsection.~~

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

9 § 7607. ~~EFFECT OF SEALING~~ PETITION TO UNSEAL

10 (a) When an individual who has had a criminal history record sealed pursuant to section 7602 of
11 this title is convicted of committing a subsequent criminal offense within INSERT years of
12 having the criminal history record sealed, the court shall upon request of the respondent unseal
13 the criminal history record. ~~Order and notice. Upon entry of an order to seal, the order shall be~~
14 ~~legally effective immediately and the person whose record is sealed shall be treated in all~~
15 ~~respects as if he or she had never been arrested, convicted, or sentenced for the offense and that~~
16 ~~its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice~~
17 ~~of the sealing to the respondent, Vermont Crime Information Center (VCIC), the arresting~~
18 ~~agency, and any other entity that may have a record related to the order to seal. The VCIC shall~~
19 ~~provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information~~
20 ~~Center.~~

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

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

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

9 ~~(3) The response to an inquiry from any member of the public regarding a sealed record shall~~
10 ~~be that "NO CRIMINAL RECORD EXISTS."~~

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

12 ~~(1) An entity that possesses a sealed record may continue to use it for any litigation or claim~~
13 ~~arising out of the same incident or occurrence or involving the same defendant.~~

14 ~~(2) A criminal justice agency as defined in 20 V.S.A. § 2056a may use the criminal history~~
15 ~~record sealed in accordance with section 7602 or 7603 of this title without limitation for~~
16 ~~criminal justice purposes as defined in 20 V.S.A. § 2056a. A sealed record of a prior~~
17 ~~violation of 23 V.S.A. § 1201(a) shall be admissible as a predicate offense for the purpose of~~
18 ~~imposing an enhanced penalty for a subsequent violation of that section, in accordance with~~
19 ~~the provisions of 23 V.S.A. § 1210.~~

20 ~~(d) Process:~~

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

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

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

5 (e) Special index.

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

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

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

17 ~~(4) The Court Administrator shall establish policies for implementing this subsection.~~

18 § 7608. VICTIMS

19 (a) At the earlier of the time the respondent is asked to stipulate to a petition or the time a
20 petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any
21 victim of the offense who is known to the respondent. The victim shall have the right to offer the
22 respondent a statement prior to any stipulation or to offer the court a statement. The disposition
23 of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The

1 respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar
2 to granting a petition.

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

6 ~~§ 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN INDIVIDUAL 18-21~~
7 ~~YEARS OF AGE~~

8 ~~(a) Procedure. Except as provided in subsection (b) of this section, the record of the criminal~~
9 ~~proceedings for an individual who was 18-21 years of age at the time the individual committed a~~
10 ~~qualifying crime shall be expunged within 30 days after the date on which the individual~~
11 ~~successfully completed the terms and conditions of the sentence for the conviction of the~~
12 ~~qualifying crime, absent a finding of good cause by the court. The court shall issue an order to~~
13 ~~expunge all records and files related to the arrest, citation, investigation, charge, adjudication of~~
14 ~~guilt, criminal proceedings, and probation related to the sentence. A copy of the order shall be~~
15 ~~sent to each agency, department, or official named in the order. Thereafter, the court, law~~
16 ~~enforcement officers, agencies, and departments shall reply to any request for information that~~
17 ~~no record exists with respect to such individual. Notwithstanding this subsection, the record shall~~
18 ~~not be expunged until restitution and surcharges have been paid in full, provided that payment of~~
19 ~~surcharges shall not be required if the surcharges have been waived by the court pursuant to~~
20 ~~section 7282 of this title.~~

21 ~~(b) Exceptions:~~

22 ~~(1) A criminal record that includes both qualifying and nonqualifying offenses shall not be~~
23 ~~eligible for expungement pursuant to this section.~~

Commented [ME10]: This provision may no longer be necessary or desirable given the confidentiality of juvenile proceedings and the streamlined process outlined in the revised Section 7602 above.

Since this law should apply prospectively only, existing eligibility under this section should not be negatively impacted.

1 ~~(2) The Vermont Crime Information Center shall retain a special index of sentences for sex~~
2 ~~offenses that require registration pursuant to chapter 167, subchapter 3 of this title. This~~
3 ~~index shall only list the name and date of birth of the subject of the 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 expungement. The special index shall be confidential~~
6 ~~and shall be accessed only by the Director of the Vermont Crime Information Center and an~~
7 ~~individual designated for the purpose of providing information to the Department of~~
8 ~~Corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. §§~~
9 ~~204 and 204a.~~

10 ~~(e) Petitions. An individual who was 18-21 years of age at the time the individual committed a~~
11 ~~qualifying crime may file a petition with the court requesting expungement of the criminal~~
12 ~~history record related to the qualifying crime after 30 days have elapsed since the individual~~
13 ~~completed the terms and conditions for the sentence for the qualifying crime. The court shall~~
14 ~~grant the petition and issue an order sealing or expunging the record if it finds that sealing or~~
15 ~~expunging the record serves the interests of justice.~~

16 § 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

17 There is established the Criminal History Record Sealing Special Fund, which shall be managed
18 in accordance with 32 V.S.A. chapter 7, subchapter 5. Fees collected pursuant to 32 V.S.A. §
19 1431(e) for the filing of a petition to seal a criminal history record of a violation of 23 V.S.A. §
20 1201(a) shall be deposited into and credited to this Fund. This Fund shall be available to the
21 Office of the Court Administrator, the Department of State's Attorneys and Sheriffs, the
22 Department of Motor Vehicles, and the Vermont Crime Information Center to offset the

1 administrative costs of sealing such records. Balances in the Fund at the end of the fiscal year
2 shall be carried forward and remain in the Fund.

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

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

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

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

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

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

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

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

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

21 (c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for
22 a violation of section 3253a (aggravated sexual assault of a child, section 2602 (lewd and
23 lascivious conduct with a child unless the victim and the defendant were within five years of age

1 and the act was consensual), 3252(c) (sexual assault of a child under 16 unless the victim and the
2 defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual
3 assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of
4 a child) of this title.

5 (d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal
6 in accordance with 12 V.S.A. § 2383 and V.R.A.P. Rule 3. Except as otherwise provided, entry
7 of deferment of sentence shall constitute imposition of sentence solely for the purpose of
8 sentence review in accordance with section 7042 of this title. The court may impose sentence at
9 any time if the respondent violates the conditions of the deferred sentence during the period of
10 deferment.

11 (e) Upon violation of the terms of probation or of the deferred sentence agreement, the court
12 shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence
13 agreement, the court shall strike the adjudication of guilt and discharge the respondent. Except as
14 provided in subsection (h) of this section, the record of the criminal proceedings shall be
15 ~~expunged~~ sealed upon the discharge of the respondent from probation, absent a finding of good
16 cause by the court. The court shall issue an order to ~~seal~~ expunge all records and files related to
17 the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and
18 probation related to the deferred sentence. Copies of the order shall be sent to ~~each agency,~~
19 ~~department, or official named therein.~~ all parties to and attorneys representing the parties to the
20 prosecution leading to the conviction subject to the granted petition, the Vermont Crime
21 Information Center (VCIC), the arresting agency, and any other entity that the court determines
22 has criminal history records related to the conviction which in the interests of justice should be
23 sealed. Thereafter, ~~the court, law enforcement officers, agencies, and departments~~ all individuals

1 and entities receiving the order, with the exception of the subject of the sealed records, shall
2 reply to any request for information that no record exists with respect to such person upon
3 inquiry in the matter. Notwithstanding this subsection, the record shall not be ~~expunged~~ sealed
4 until restitution has been paid in full.

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

8 (g) Deleted.

9 (h) The Vermont Crime Information Center shall retain a special index of deferred sentences for
10 sex offenses that require registration pursuant to subchapter 3 of chapter 167 of this title. This
11 index shall only list the name and date of birth of the subject of the sealed ~~expunged~~ files and
12 records, the offense for which the subject was convicted, and the docket number of the
13 proceeding that was the subject of the sealing ~~expungement~~. The special index shall be
14 confidential and may be accessed only by the director of the Vermont Crime Information Center
15 and a designated clerical staff person for the purpose of providing information to the Department
16 of Corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. §§
17 204 and 204a.

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

19 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

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

Commented [ME11]: 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 (b) In determining whether a youth has successfully completed the terms of probation, the court
2 shall consider:

3 (1) the degree to which the youth fulfilled the terms of the case plan and the probation order;

4 (2) the youth's performance during treatment;

5 (3) reports of treatment personnel; and

6 (4) any other relevant facts associated with the youth's behavior.

7 (c) If the court finds that the youth has successfully completed the terms of the probation order, it
8 shall terminate youthful offender status, discharge the youth from probation, and file a written
9 order dismissing the Family Division case. The Family Division shall provide notice of the
10 dismissal to the Criminal Division, which shall dismiss the criminal case.

11 (d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the
12 case in the Criminal Division shall be sealed ~~expunged~~, and all records relating to the case in the
13 Family Court shall be sealed pursuant to section 5119 of this title.

14 (e) If the court denies the motion to discharge the youth from probation, the court may extend or
15 amend the probation order as it deems necessary.

16 (f) Upon the termination of the period of probation, the youth shall be discharged from
17 probation.

18 Sec. 4. EFFECTIVE DATE

19 This act shall take effect upon passage.