

1 H.566
2 Introduced by Representative Dolan of Essex Junction

3 Referred to Committee on

4 Date:

5 Subject: Court diversion; sealing post-charge diversion records

6 Statement of purpose of bill as introduced: This bill proposes to switch from
7 expunging post-charge diversion records in adult and juvenile diversion
8 programs to sealing such records upon successful completion and to expand
9 the Adult Diversion Program to municipal violations.

10 An act relating to sealing post-charge court diversion records upon
11 successful completion

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

13 Sec. 1. 3 V.S.A. § 163 is amended to read:

14 § 163. JUVENILE COURT DIVERSION PROGRAM

15 * * *

16 (f) Records; deletion and ~~expungement~~ sealing.

17 * * *

18 (5) Post-charge diversion records ~~expungement~~ sealing. Within 30 days
19 after the two-year anniversary of a successful completion of post-charge
20 diversion, the court shall provide notice to all parties of record of the court's

1 intention to order the ~~expungement~~ sealing of all court files and records, law
2 enforcement records, fingerprints, and photographs other than entries in the
3 court diversion program's centralized filing system applicable to the
4 proceeding. However, the court shall not order ~~expungement~~ sealing if the
5 participant does not satisfy each of subdivisions (A)–(C) of this subdivision.
6 The court shall give the State's Attorney an opportunity for a hearing to contest
7 the ~~expungement~~ sealing of the records. The court shall ~~expunge~~ seal the
8 records if it finds:

9 (A) two years have elapsed since the successful completion of the
10 juvenile post-charge diversion program by the participant;

11 (B) the participant has not been convicted of a subsequent felony or
12 misdemeanor during the two-year period, and no proceedings are pending
13 seeking such conviction; and

14 (C) the participant does not owe restitution related to the case.

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 [Repealed.]~~

1 (7) Post-charge diversion case index.

2 (A) The court and the Office of the Attorney General shall keep a
3 special index of post-charge diversion cases that have been ~~expunged~~ sealed
4 pursuant to this section together with the ~~expungement~~ sealing order. The
5 index shall list only the name of the person convicted of the offense, the
6 person's date of birth, the docket number, date of case closure, the court of
7 jurisdiction, and the offense that was the subject of the ~~expungement~~ sealing.

8 (B) The special index and related documents specified in subdivision
9 (A) of this subdivision (7) shall be confidential and shall be physically and
10 electronically segregated in a manner that ensures confidentiality and that
11 limits access to authorized persons.

12 (C) Inspection of the ~~expungement~~ sealing order and the certificate
13 may be permitted only upon petition by the person who is the subject of the
14 case. The Chief Superior Judge may permit special access to the index and the
15 documents for research purposes pursuant to the rules for public access to
16 court records.

17 (D) The Court Administrator shall establish policies for
18 implementing subdivisions (5)–(9) of this subsection (f).

19 (8) Effect of ~~expungement~~ sealing. Except as otherwise provided in this
20 section, upon the entry of an order ~~expunging~~ sealing files and records under
21 this section, the proceedings in the matter shall be considered never to have

1 occurred; all index references thereto shall be deleted; and the participant, the
2 court, law enforcement officers and departments, prosecutors, the referring
3 entity, and the diversion program shall reply to any request for information that
4 no record exists with respect to such participant inquiry in any matter. Copies
5 of the order shall be sent to each agency, entity, or official named therein.

6 (9) ~~Expungement~~ Sealing applicability. The process of automatically
7 ~~expunging~~ sealing records as provided in this section shall only apply to those
8 persons who completed diversion on or after July 1, ~~2002~~ 2026. ~~Any person~~
9 ~~who completed diversion prior to July 1, 2002 must apply to the court to have~~
10 ~~the person's records expunged.~~ Expungement Sealing shall occur if the
11 requirements of subdivisions (5)–(8) of this subsection (f) are met.

12 * * *

13 Sec. 2. 3 V.S.A. § 164 is amended to read:

14 § 164. ADULT COURT DIVERSION PROGRAM

15 (a) Purpose.

16 (1) The Attorney General shall develop and administer an adult court
17 diversion program, for both pre-charge and post-charge referrals, available in
18 all counties.

19 (2) The program shall be designed to provide a restorative option for
20 persons alleged to have caused harm in violation of a criminal statute or
21 municipal ordinance or who have been charged with violating a criminal

1 statute or municipal ordinance, as well as for victims or those acting on a
2 victim's behalf who have been allegedly harmed by the person referred to the
3 program. The diversion program can accept referrals to the program as
4 follows:

5 (A) Pre-charge by law enforcement or prosecutors pursuant to a
6 policy adopted in accordance with subdivisions ~~(e)(1)-(2)~~ (c)(1) and (2) of this
7 section.

8 (B) Post-charge by prosecutors for persons charged with a first or a
9 second misdemeanor or a first nonviolent felony, or other offenses as the
10 prosecutor deems appropriate, pursuant to subdivision (c)(3) of this section.

11 (C) Post-charge by prosecutors of persons who have been charged
12 with an offense and who have substance abuse or mental health treatment
13 needs regardless of the person's prior criminal history record, except a person
14 charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall
15 not be eligible under this section. Persons who have attained 18 years of age
16 who are subject to a petition in the Family Division pursuant to 33 V.S.A.
17 chapter 52 or 52A shall also be eligible under this section. Programming for
18 these persons is intended to support access to appropriate treatment or other
19 resources with the aim of improving the person's health and reducing future
20 adverse involvement in the justice system.

21 * * *

1 (f) Records; deletion and ~~expungement~~ sealing.

2 * * *

3 (5) Post-charge diversion records ~~expungement~~ sealing. Within 30 days
4 after the two-year anniversary of a successful completion of adult post-charge
5 diversion, the court shall provide notice to all parties of record of the court's
6 intention to order the ~~expungement~~ sealing of all court files and records, law
7 enforcement records, fingerprints, and photographs other than entries in the
8 adult court diversion program's centralized filing system applicable to the
9 proceeding. However, the court shall not order ~~expungement~~ sealing if the
10 participant does not satisfy each of subdivisions (A)–(C) of this subdivision.
11 The court shall give the State's Attorney an opportunity for a hearing to contest
12 the ~~expungement~~ sealing of the records. The court shall ~~expunge~~ seal the
13 records if it finds:

14 (A) two years have elapsed since the successful completion of the
15 adult post-charge diversion program by the participant;

16 (B) the participant has not been convicted of a subsequent felony or
17 misdemeanor during the two-year period, and no proceedings are pending
18 seeking such conviction; and

19 (C) the participant does not owe restitution related to the case.

20 (6) ~~Expungement~~ Sealing of sealed records. The court may ~~expunge~~
21 seal any records that were sealed pursuant to this subsection prior to July 1,

1 2018, unless the State's Attorney's office that prosecuted the case objects.

2 Thirty days prior to ~~expunging~~ sealing a record pursuant to this subdivision,
3 the court shall provide written notice of its intent to ~~expunge~~ seal the record to
4 the State's Attorney's office that prosecuted the case.

5 (7) Post-charge diversion case index.

6 (A) The court and the Office of the Attorney General shall keep a
7 special index of post-charge diversion cases that have been ~~expunged~~ sealed
8 pursuant to this section together with the ~~expungement~~ sealing order. The
9 index shall list only the name of the person convicted of the offense, the
10 person's date of birth, the docket number, date of case closure, location of
11 programming, and the criminal offense that was the subject of the
12 ~~expungement~~ sealing.

13 (B) The special index and related documents specified in subdivision
14 (A) of this subdivision (7) shall be confidential and shall be physically and
15 electronically segregated in a manner that ensures confidentiality and that
16 limits access to authorized persons.

17 (C) Inspection of the ~~expungement~~ sealing order and the certificate
18 may be permitted only upon petition by the person who is the subject of the
19 case. The Chief Superior Judge may permit special access to the index and the
20 documents for research purposes pursuant to the rules for public access to
21 court records.

1 (D) The Court Administrator shall establish policies for
2 implementing subdivisions (5)–(9) of this subsection (f).

3 (8) Effect of ~~expungement~~ sealing. Except as otherwise provided in this
4 section, upon the entry of an order ~~expunging~~ sealing files and records under
5 this section, the proceedings in the matter shall be considered never to have
6 occurred; all index references thereto shall be deleted; and the participant, the
7 court, law enforcement officers and departments, prosecutors, the referring
8 entity, and the diversion program shall reply to any request for information that
9 no record exists with respect to such participant inquiry in any matter. Copies
10 of the order shall be sent to each agency, entity, or official named therein.

11 (9) ~~Expungement~~ Sealing applicability. The process of automatically
12 ~~expunging~~ sealing records as provided in this section shall only apply to those
13 persons who completed diversion on or after July 1, ~~2002~~ 2026. ~~Any person~~
14 ~~who completed diversion prior to July 1, 2002 must apply to the court to have~~
15 ~~the person's records expunged.~~ Expungement Sealing shall occur if the
16 requirements of this subsection are met.

17 * * *

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on July 1, 2026.