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H.566

Introduced by Representative Dolan of Essex Junction

Referred to Committee on

Date:

Subject: Court diversion; sealing post-charge diversion records

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

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

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

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

§ 163. JUVENILE COURT DIVERSION PROGRAM

* * *

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

* * *

(5) Post-charge diversion records ~~expungement~~ sealing. Within 30 days after the two-year anniversary of a successful completion of post-charge 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~~
7 ~~contest the expungement sealing of the records. The court shall expunge seal~~
8 ~~the 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 [Repealed.]~~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
4 that no record exists with respect to such participant inquiry in any matter.
5 Copies of the order shall be sent to each agency, entity, or official named
6 therein.

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

13 * * *

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

15 § 164. ADULT COURT DIVERSION PROGRAM

16 (a) Purpose.

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

20 (2) The program shall be designed to provide a restorative option for
21 ~~persons alleged to have caused harm in violation of a criminal statute or~~

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

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

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

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

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

~~* * *~~

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

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

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

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

1 ~~(6) Expungement Sealing of sealed records. The court may expunge~~
2 ~~seal~~ any records that were sealed pursuant to this subsection prior to July 1,
3 2018, unless the State's Attorney's office that prosecuted the case objects.
4 Thirty days prior to ~~expunging~~ sealing a record pursuant to this subdivision,
5 the court shall provide written notice of its intent to ~~expunge~~ seal the record to
6 the State's Attorney's office that prosecuted the case.

7 (7) Post-charge diversion case index.

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

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

19 (C) Inspection of the ~~expungement~~ sealing order and the certificate
20 may be permitted only upon petition by the person who is the subject of the
21 ~~case. The Chief Superior Judge may permit special access to the index and the~~

1 ~~documents for research purposes pursuant to the rules for public access to~~
2 court records.

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

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

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

20 * * *

21 ~~Sec. 5. EFFECTIVE DATE~~

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

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

§ 163. JUVENILE COURT DIVERSION PROGRAM

** * **

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

** * **

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

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

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

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

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

(7) Post-charge diversion case index.

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

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

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

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

(8) Effect of ~~expungement~~ sealing. ~~Except as otherwise provided in this section, upon the entry of an order expunging files and records under this section, the proceedings in the matter shall be considered never to have occurred; all index references thereto shall be deleted; and the participant, the court, law enforcement officers and departments, prosecutors, the referring entity, and the diversion program shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency, entity, or official named therein~~ Procedures for sealing, the effect of sealing, and access to sealed records shall be as provided in 13 V.S.A. § 7607.

(9) ~~Expungement~~ Sealing applicability. The process of automatically ~~expunging~~ sealing records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002 2026. ~~Any person who completed diversion prior to July 1, 2002 must apply to the court to have~~

~~the person's records expunged. Expungement~~ Sealing shall occur if the requirements of subdivisions (5)–(8) of this subsection (f) are met.

* * *

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

§ 164. ADULT COURT DIVERSION PROGRAM

(a) Purpose.

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

(2) The program shall be designed to provide a restorative option for persons alleged to have caused harm in violation of a criminal statute or who have been charged with violating a criminal statute as well as for victims or those acting on a victim's behalf who have been allegedly harmed by the person referred to the program. The diversion program can accept referrals to the program as follows:

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

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

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

** * **

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

** * **

(5) Post-charge diversion records ~~expungement~~ sealing. Within 30 days after the two-year anniversary of a successful completion of adult post-charge diversion, the court shall provide notice to all parties of record of the court's intention to order the ~~expungement~~ sealing of all court files and records, law enforcement records, fingerprints, and photographs other than entries in the adult court diversion program's centralized filing system applicable to the proceeding. However, the court shall not order ~~expungement~~ sealing if the participant does not satisfy each of subdivisions (A)–(C) of this subdivision.

The court shall give the State's Attorney an opportunity for a hearing to contest the ~~expungement~~ sealing of the records. The court shall ~~expunge~~ seal the records if it finds:

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

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

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

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

(7) Post-charge diversion case index.

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

programming, and the criminal offense that was the subject of the expungement sealing.

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

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

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

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

~~therein~~ Procedures for sealing, the effect of sealing, and access to sealed records shall be as provided in 13 V.S.A. § 7607.

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

* * *

Sec. 3. BURLINGTON COMMUNITY JUSTICE CENTER; ADULT
DIVERSION PILOT; CRIMINAL MUNICIPAL ORDINANCE
VIOLATIONS

Notwithstanding the limitation in 3 V.S.A. § 164(a)(2) relating to restorative options for persons alleged to have caused harm in violation of a criminal statute or who have been charged with violating a criminal statute, the referral of criminal municipal ordinance violations to the Burlington Community Justice Center is authorized under 3 V.S.A. § 164 from January 1, 2026, until July 1, 2027.

Sec. 4. EFFECTIVE DATES

(a) This section and Sec. 3 shall take effect on passage.

(b) Secs. 1 and 2 shall take effect on July 1, 2026.