

## House Proposal of Amendment

### S. 12

An act relating to sealing criminal history records

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. chapter 230 is amended to read:

#### CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

##### § 7601. DEFINITIONS

As used in this chapter:

(1) “Court” means the Criminal Division of the Superior Court.

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

~~(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction and includes operating a vehicle under the influence of alcohol or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. “Predicate offense” shall not include misdemeanor possession of cannabis, a disorderly conduct offense under section 1026 of this title, or possession of a controlled substance in violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a). “Criminal justice purposes” means the investigation, apprehension, detention, adjudication, or correction of persons suspected, charged, or convicted of criminal offenses. “Criminal justice purposes” also includes criminal identification activities; the collection, storage, and dissemination of criminal history records; and screening for criminal justice employment.~~

(4) “Qualifying crime” means:

~~(A) a misdemeanor offense that is not:~~

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

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

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

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

~~(v) a predicate offense;~~

~~(B) a violation of subsection 3701(a) of this title related to criminal mischief;~~

~~(C) a violation of section 2501 of this title related to grand larceny;~~

~~(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title;~~

~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~

~~(F) a violation of section 1802 of this title related to uttering a forged or counterfeited instrument;~~

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

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

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

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

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

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

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

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

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

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

(A) all misdemeanor offenses except:

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

(ii) a violation of chapter 64 of this title relating to sexual exploitation of children;

(iii) a violation of section 1030 of this title relating to a violation of an abuse prevention order, an order against stalking or sexual assault, or a protective order concerning contact with a child;

(iv) a violation of chapter 28 of this title related to abuse, neglect, and exploitation of a vulnerable adult;

(v) a violation of subsection 2605(b) or (c) of this title related to voyeurism;

(vi) a violation of subdivisions 352(1)–(10) of this title related to cruelty to animals;

(vii) a violation of section 5409 of this title related to failure to comply with sex offender registry requirements;

(viii) a violation of section 1455 of this title related to hate motivated crimes;

(ix) a violation of subsection 1304(a) of this title related to cruelty to a child;

(x) a violation of section 1305 of this title related to cruelty by person having custody of another;

(xi) a violation of section 1306 of this title related to mistreatment of persons with impaired cognitive function;

(xii) a violation of section 3151 of this title related to female genital mutilation;

(xiii) a violation of subsection 3258(b) of this title related to sexual exploitation of a minor;

(xiv) a violation of subdivision 4058(b)(1) of this title related to violation of an extreme risk protection order;

(xv) an offense committed in a motor vehicle as defined in 23 V.S.A. § 4 by a person who is the holder of a commercial driver's license or commercial driver's permit pursuant to 23 V.S.A. chapter 39; and

(xvi) any offense that would require registration as a sex offender pursuant to chapter 167, subchapter 3 of this title; and

(B) the following felonies:

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

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

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

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

(5) “Designated felony property offense” means:

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

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

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

(D) section 1816 of this title related to possession or use of credit card skimming devices;

(E) section 2001 of this title related to false personation;

(F) section 2002 of this title related to false pretenses or tokens;

(G) section 2029 of this title related to home improvement fraud;

(H) section 2030 of this title related to identity theft;

(I) section 2501 of this title related to grand larceny;

(J) section 2531 of this title related to embezzlement;

(K) section 2532 of this title related to embezzlement by officers or servants of an incorporated bank;

(L) section 2533 of this title related to embezzlement by a receiver or trustee;

(M) section 2561 of this title related to receiving stolen property;

(N) section 2575 of this title related to retail theft;

(O) section 2582 of this title related to theft of services;

(P) section 2591 of this title related to theft of rented property;

(Q) section 2592 of this title related to failure to return a rented or leased motor vehicle;

(R) section 3016 of this title related to false claims;

(S) section 3701 of this title related to unlawful mischief;

(T) section 3705 of this title related to unlawful trespass;

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

(V) section 3761 of this title related to unauthorized removal of human remains;

(W) section 3766 of this title related to grave markers and ornaments;

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

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

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

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

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

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

~~(C) pursuant to the conditions set forth in subsection (g) of this section, the person was convicted of a violation of 23 V.S.A. § 1201(a) or § 1091 related to operating under the influence of alcohol or other substance, excluding a violation of those sections resulting in serious bodily injury or death to any person other than the operator, or related to operating a school bus with a blood alcohol concentration of 0.02 or more or operating a commercial vehicle with a blood alcohol concentration of 0.04 or more; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only petitions to seal may be considered or granted by the court. This subsection~~

~~shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be sealed in accordance with section 7607 of this title if the following conditions are met:~~

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

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

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

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

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

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

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

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

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

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

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

(a) Petition.

(1) A person may file a petition with the court requesting expungement of a criminal history record related to a conviction if the person was convicted



of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense.

(2) A person may file a petition with the court requesting sealing of a criminal history record related to a conviction if the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence.

(3) Whichever office prosecuted the offense resulting in the conviction, the State's Attorney or Attorney General, shall be the respondent in the matter unless the prosecuting office authorizes the other to act as the respondent.

(4) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner an order of sealing and provide notice of the order to all Vermont State entities provided by the petitioner and all entities required to receive notice pursuant to subsection 7607(a) of this title.

(5) This section shall not apply to an individual who is the holder of a commercial driver's license or commercial driver's permit pursuant to 23 V.S.A. chapter 39 seeking to seal a record of a conviction for a misdemeanor or felony offense committed in a motor vehicle as defined in 23 V.S.A. § 4.

(b) Offenses that are no longer prohibited by law. For petitions filed pursuant to subdivision (a)(1) of this section, the court shall grant the petition and order that the criminal history record be expunged if the following conditions are met:

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

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

(c) Qualifying misdemeanors. For petitions filed to seal a qualifying misdemeanor pursuant to subdivision (a)(2) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(1) At least three years have elapsed since the date on which the person completed the terms and conditions of the sentence.

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

(3) The respondent has failed to show that sealing would be contrary to the interests of justice.

(d) Qualifying felony offenses. For petitions filed to seal a qualifying felony pursuant to subdivision (a)(2) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(1) At least seven years have elapsed since the date on which the person completed the terms and conditions of the sentence.

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

(3) The respondent has failed to show that sealing would be contrary to the interests of justice.

(e) Qualifying DUI misdemeanor. For petitions filed to seal a qualifying DUI misdemeanor pursuant to subdivision (a)(2) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(1) At least 10 years have elapsed since the date on which the person completed the terms and conditions of the sentence.

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

(3) The person is not the holder of a commercial driver's license or commercial driver's permit pursuant to 23 V.S.A. chapter 39.

(4) The respondent has failed to show that sealing would be contrary to the interests of justice.

(f) Fish and Wildlife Offenses. Sealing a criminal history record related to a fish and wildlife offense shall not void any fish and wildlife license suspension or revocation imposed pursuant to the accumulation of points related to the sealed offense. Points accumulated by a person shall remain on the person's license and, if applicable, completion of the remedial course shall be required as set forth in 10 V.S.A. § 4502.

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

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

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

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

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

(C) the defendant is acquitted of the charges; or

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

(b) If a party objects to sealing ~~or expunging~~ a record pursuant to this section, the court shall schedule a hearing to determine if sealing ~~or expunging~~ the record serves the interests of justice. The defendant and the prosecuting attorney shall be the only parties in the matter.

(c), (d) [Repealed.]

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

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

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

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

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

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

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

~~(h) The court may expunge any records that were sealed pursuant to this section 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 subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record. [Repealed.]~~

#### § 7604. NEW CHARGE

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

#### § 7605. DENIAL OF PETITION

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

#### § 7606. EFFECT OF EXPUNGEMENT

(a) Order and notice. Upon finding that the requirements for expungement have been met, the court shall issue an order that shall include provisions that its effect is to annul the record of the arrest, conviction, and sentence and that such person shall be treated in all respects as if the person had never been arrested, convicted, or sentenced for the offense. The court shall provide notice of the expungement to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, the Restitution Unit of the Vermont Center for Crime Victim Services, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

##### (b) Effect.

(1) Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if ~~he or she~~ the person had never been arrested, convicted, or sentenced for the offense.

(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged. A State entity that inquires about a person's criminal history record shall advise the person of the person's right not to disclose expunged records pursuant to this subdivision.

(3) The response to an inquiry from any person regarding an expunged record shall be that “NO CRIMINAL RECORD EXISTS.”

(4) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

(c) Process.

(1) The court shall remove the expunged offense from any accessible database that it maintains.

(2) Until all charges on a docket are expunged, the case file shall remain publicly accessible.

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

(d) Special index.

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

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

(3) Inspection of the expungement order 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.

(4) ~~[Repealed].~~ [Repealed.]

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

§ 7607. EFFECT OF SEALING

(a) Order and notice. ~~Upon entry of an order to seal, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if the person had never been arrested, convicted, or sentenced for the offense and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, the Restitution Unit of the Vermont Center for Crime Victim Services, and any other entity that may have a record related to the order to seal. The VCIC~~

~~shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center send a copy of any order sealing a criminal history record to all of the parties and attorneys representing the parties, including to the prosecuting agency that prosecuted the offense, the Vermont Crime Information Center (VCIC), the arresting agency, and any other Vermont State entity identified by the petitioner that may have a record subject to the sealing order. VCIC shall provide notice of the sealing order to the Federal Bureau of Investigation's National Crime Information Center.~~

(b) Effect.

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

(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed. A State entity that inquires about a person's criminal history record shall advise the person of the person's right not to disclose sealed records pursuant to this subdivision.

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

(4) Nothing in this section shall affect any right of the person whose record has been sealed to rely on it as a bar to any subsequent proceeding for the same offense.

(c) Exceptions. A party seeking to use a sealed criminal history record, pursuant to the exceptions established in this subsection, in a court proceeding shall, prior to any use of or reference to the record in open court or in a public filing, notify the court of the party's intent to do so. The court shall thereafter determine whether the record may be used prior to its disclosure in the proceeding. If a party submits a filing that contains a sealed record or a reference to a sealed record, that filing shall be filed under seal and remain under seal unless the court permits the use of the sealed record. This shall not apply to the use of a sealed record pursuant to subdivision (8) of this subsection. Use of a sealed record pursuant to an exception shall not change the effect of sealing under subsection (b) of this section. Notwithstanding any other provision of law or a sealing order:

(1) An entity or person that possesses a sealed record, or an attorney for such entity or person, may continue to use it the record for any litigation or claim arising out of the same incident or occurrence or involving the same defendant, including use of the record in reasonable anticipation of litigation.

(2) A criminal justice agency as defined in 20 V.S.A. § 2056a and the Attorney General may use the criminal history record sealed in accordance with section 7602 or 7603 of this title without limitation for criminal justice purposes as defined in 20 V.S.A. § 2056a section 7601 of this title.

(3) A defendant may use a sealed criminal history record in the defendant's criminal proceeding.

(4) A sealed record of a prior violation of 23 V.S.A. § 1201(a) shall be admissible as a predicate offense for the purpose of imposing an enhanced penalty for a subsequent violation of that section, in accordance with the provisions of 23 V.S.A. § 1210.

(5) A person or a court in possession of an order issued by a court regarding a matter that was subsequently sealed may file or cite to that decision in any subsequent proceeding. The party or court filing or citing to that decision shall ensure that information regarding the identity of the defendant in the sealed record is redacted.

(6) The Vermont Crime Information Center and Criminal Justice Information Services Division of the Federal Bureau of Investigation shall have access to sealed criminal history records without limitation for the purpose of responding to queries to the National Instant Criminal Background Check System regarding firearms transfers and attempted transfers.

(7) The State's Attorney, the Attorney General, the person who is the subject of a sealed record, and the attorney for the person who is the subject of the record shall disclose information contained in a sealed criminal history record when required to meet discovery obligations.

(8) The person whose criminal history records have been sealed pursuant to this chapter and the person's attorney may access and use the sealed records.

(9) A law enforcement agency may inspect and receive copies of the sealed criminal history records of any applicant who applies to the agency to be a law enforcement officer or a current employee for the purpose of internal investigation.

(10) Persons or entities conducting research shall have access to a sealed criminal history record to carry out research pursuant to 20 V.S.A. § 2056b.

(11) Information and materials gathered by the Department for Children and Families during a joint investigation with law enforcement, including law enforcement affidavits and related references to such information and materials, are not criminal history records as defined in subdivision 7601(2) of this title and are considered Department records that shall be maintained and may be utilized as statutorily prescribed by 33 V.S.A. chapter 49 and produced in response to a court order.

(12) Information and materials gathered by Adult Protective Services during a joint investigation with law enforcement, including law enforcement affidavits and other investigative materials, are not criminal history records as defined in subdivision 7601(2) of this title and are considered records of the Department of Disabilities, Aging, and Independent Living, which shall be maintained and may be utilized as authorized by 33 V.S.A. chapter 69 and produced in response to a court order.

(d) Process.

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

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

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

(4) When a sealing order is issued by the court, any person or entity, except the court, that possesses criminal history records and has been provided notice of the order shall:

(A) bar viewing of the sealed offense in any accessible database that it maintains or remove information pertaining to the sealed records from any publicly accessible database that the person or entity maintains; and

(B) clearly label the criminal history record as "SEALED" to ensure compliance with this section.

(e) Special index.

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

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

(3) Except as provided in subsection (c) of this section, inspection of the sealing order 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.

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



(f) Victims Compensation Program. Upon request, the ~~Victim's~~ Victims Compensation Program shall be provided with a copy, redacted of all information identifying the offender, of the affidavit for the sole purpose of verifying the expenses in a victim's compensation application submitted pursuant to section 5353 of this title.

(g) Restitution. The sealing of a criminal record shall not affect the authority of the Restitution Unit to enforce a restitution order in the same manner as a civil judgment pursuant to subdivision 5362(c)(2) of this title.

#### § 7608. VICTIMS

(a) At the time a petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

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

#### § 7609. ~~EXPUNGEMENT OF SEALING~~ CRIMINAL HISTORY RECORDS OF AN INDIVIDUAL A PERSON 18-21 YEARS OF AGE

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

(1) Notwithstanding any other provision of law, a person who was 18-21 years of age at the time the person committed a qualifying crime may file a

petition with the court requesting sealing of the criminal history record related to the qualifying crime after 30 days have elapsed since the person completed the terms and conditions for the sentence for the qualifying crime. The court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

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

(B) The respondent has failed to show that sealing would be contrary to the interests of justice.

(2) Order, notice, and effect of sealing shall comply with the provisions of subsections 7607(a) and (b) of this title.

(b) Exceptions.

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

~~(2) The Vermont Crime Information Center shall retain a special index of sentences for sex offenses that require registration pursuant to chapter 167, subchapter 3 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding that was the subject of the expungement. The special index shall be confidential and shall be accessed only by the Director of the Vermont Crime Information Center and an individual designated for the purpose of providing information to the Department of Corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. §§ 204 and 204a. [Repealed.]~~

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

## § 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

There is established the Criminal History Record Sealing Special Fund, which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5. Fees collected pursuant to 32 V.S.A. § 1431(e) for the filing of a petition to seal a criminal history record of a violation of 23 V.S.A. § 1201(a) shall be deposited into and credited to this Fund. This Fund shall be available to the

Office of the Court Administrator, the Department of State's Attorneys and Sheriffs, the Department of Motor Vehicles, and the Vermont Crime Information Center to offset the administrative costs of sealing such records. Balances in the Fund at the end of the fiscal year shall be carried forward and remain in the Fund.

#### § 7611. UNAUTHORIZED DISCLOSURE

A State or municipal employee or contractor or any agent of the court, including an attorney and an employee or contractor of the attorney, or a law enforcement officer as defined in 20 V.S.A. § 2351a who knowingly accesses or discloses sealed criminal history record information without authorization shall be assessed a civil penalty of not more than \$1,000.00. Each unauthorized disclosure shall constitute a separate civil violation.

#### Sec. 2. RIGHT TO NOT DISCLOSE EXPUNGED OR SEALED

##### CRIMINAL HISTORY RECORDS

(a) The Secretary of Administration shall notify all State administrative entities of the obligation to notify persons of the right not to disclose an expunged record pursuant to 13 V.S.A. § 7606(b)(2) or a sealed record pursuant to 13 V.S.A. § 7607(b)(2).

(b) The Court Administrator shall notify the Judicial Branch of the obligation to notify persons of the right not to disclose an expunged record pursuant to 13 V.S.A. § 7606(b)(2) or a sealed record pursuant to 13 V.S.A. § 7607(b)(2).

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

#### § 7041. DEFERRED SENTENCE

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

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

(1) [Repealed.]

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

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

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

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

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

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 3253a (aggravated sexual assault of a child), section 2602 (lewd and lascivious conduct with a child unless the victim and the defendant were within five years of age and the act was consensual), 3252(c) (sexual assault of a child under 16 unless the victim and the defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

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

(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. Except as provided in subsection (h) of this section, the record of the criminal proceedings shall be ~~expunged~~ sealed upon the discharge of the respondent from probation, absent a finding of good cause by the court. The court shall issue an order to ~~expunge~~ seal all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence. Copies of the order shall be sent to each agency, department, or official named therein. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in the matter. Notwithstanding this subsection, the record shall not be ~~expunged~~ sealed until restitution has been paid in full.

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

(g) [Repealed.]

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

#### Sec. 4. APPLICATION TO DEFERRED SENTENCES

Sec. 3 of this act shall apply prospectively to sentences issued on or after July 1, 2025.

Sec. 5. 24 V.S.A. § 2296b is added to read:

#### § 2296b. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

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

(b) Effect of expungement.

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

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

maintained outside the Judicial Bureau's case management system shall be destroyed.

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

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

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

(e) Application. This section shall apply to municipal violations that occur on and after July 1, 2025.

Sec. 6. 23 V.S.A. § 2303 is amended to read:

§ 2303. EXPUNGEMENT OF VIOLATION RECORDS

\* \* \*

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

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2025.