

Section-By-Section Summary of S.12 As Passed By the Senate,
An Act Relating to Sealing Criminal History Records,

Sec. 1. CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

This section amends the chapter adopted by the General Assembly in 2012 that sets forth the process for a person to petition to have a criminal history record sealed or expunged. In general, this section moves from a system of sealing and expungement to one of sealing in most instances, with an expanded list of qualifying crimes, and limited access to sealed records for certain entities that require such records. (Expungement will still be available as part of a deferred sentence, diversion, and, upon petition, for offenses that are no longer crimes.)

§ 7601. DEFINITIONS

(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) “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) all misdemeanor offenses EXCEPT...

(B) ONLY the following felonies...

(Note: You can find the offenses that are designated as a listed crime [here](#).)

§ 7602. SEALING OF RECORD, POSTCONVICTION; PROCEDURE

Sets forth the process for a person to petition for expungement of a criminal history record if the offense is no longer a crime or sealing of a criminal history record if it is a “qualifying offense.”

Whichever office prosecuted the offense resulting in the conviction, the State’s Attorney or Attorney General, will be the respondent in the matter unless the prosecuting office authorizes the other to act as the respondent.

The court shall grant the order without a hearing if the petitioner and the respondent stipulate.

The process is not available to an individual who is the holder of a commercial driver's license or commercial driver's permit seeking to seal a record of a conviction for an offense committed in a motor vehicle.

Offenses that are no longer prohibited by law. (No waiting period) (Subsection b)

- (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.

Qualifying misdemeanors. (Subsection c)

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

Qualifying felony offenses. (Subsection d)

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

Qualifying DUI misdemeanor. (Subsection e)

- (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.
- (3) The person is not the holder of a commercial driver's license or commercial driver's permit.

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

Sealing a criminal history record related to a **fish and wildlife offense** does 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. **(Subsection f)**

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

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 if the petitioner and respondent stipulate to the sealing or 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;

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

(C) the defendant is acquitted of the charges.

(Note: "With prejudice" means the State can't refile the charges; "without prejudice" means the State can refile the charges.)

If a party objects to sealing the record, the court will schedule a hearing to determine if sealing the record serves the interests of justice.

A person may file a petition with the court requesting sealing 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 the record if it finds that sealing the record serves the interests of justice, or if the parties stipulate to sealing of the record.

§ 7604. NEW CHARGE

A court must wait to act on a petition for sealing or expungement if the person has another criminal offense pending.

§ 7605. DENIAL OF PETITION

If a petition for sealing or expungement is denied, the petitioner must wait two years before filing again unless authorized by the court.

§ 7606. EFFECT OF EXPUNGEMENT

Retains the current law regarding the effect of expungement.

§ 7607. EFFECT OF SEALING

Except for certain circumstances where persons or entities are granted access to sealed records, a sealing order is legally effective immediately and the person whose record is sealed is to be treated in all respects as if the person had never been arrested, convicted, or sentenced for the offense.

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.

The person who is the subject of the record and their attorney have access to and use the records indefinitely.

Other entities will be able to access sealed records for specific purposes, including:

1. An entity or person may use in any litigation or claim arising out of the same incidence related to the record.
2. (A) A criminal justice agency or the AG may apply to access a sealed criminal history record by filing a petition, supported by a written affidavit, with the court. The court shall grant access to the record upon a finding that reasonable suspicion exists that a sealed record contains information that will aid in criminal justice purposes.

(B) A defense attorney may apply to access a sealed criminal history record by filing a petition, supported by a written affidavit, with the court. The court may grant access to the sealed record upon a finding that the sealed record may be of assistance to the attorney in representing the defendant.
3. A law enforcement officer may access a sealed record under exigent circumstances. “Exigent circumstances” means a compelling need to act swiftly to prevent imminent danger to life or serious damage to property, to prevent the imminent destruction of evidence, or to prevent a suspect from fleeing. For an alleged violation, a complaint may be filed with the Vermont Criminal Justice Council. A violation also shall be subject to the civil penalty provided in section 7611 of this title.
4. Use of a conviction for DUI I may be used as a predicate offense for a penalty enhancement for any subsequent offense.
5. May be cited in a court order or decision.
6. Can be used for firearms background checks.

7. Prosecutors may use to meet discovery requirements.
8. The person who is the subject of the record and the person's attorney may have access in perpetuity.
9. Law enforcement agency may use when considering an applicant for a LEO position or an investigation into a current employee.
10. Persons or entities conducting research shall have access to a sealed criminal history record to carry out research in accordance with State law.
11. Information and materials gathered by the Department for Children and Families during a joint investigation with law enforcement are considered Department records that shall be maintained and may be utilized as prescribed by law and produced in response to a court order.
12. Information and materials gathered by Adult Protective Services during a joint investigation with law enforcement are considered Department records that shall be maintained and may be utilized as prescribed by law and produced in response to a court order.

A party seeking to use a sealed criminal history record in a court proceeding must, prior to any use of the record in open court or in a public filing, notify the court of the party's intent to do so. The court will determine whether the record may be used prior its disclosure in the proceeding.

Use of a sealed document pursuant to an exception does not change the effect of sealing.

The court is required to bar viewing of the sealed offense in any accessible database that it maintains. The case file remains publicly accessible until all charges on a docket have been sealed. When all charges on a docket have been sealed, the case file becomes exempt from public access.

When a sealing order is issued by the court, any person or entity, except the court, that possesses criminal history records must 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 clearly label the criminal history record as "SEALED."

As currently happens, the court will keep an index of sealed cases.

§ 7608. VICTIMS

Current law requires the respondent to notify any known victim if a petition has been filed. The amendment adds e-mail as a method for contacting the victim.

§ 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN INDIVIDUAL 18–21 YEARS OF AGE

Allows a person who was 18–21 years of age at the time the person committed a qualifying crime to petition to seal the record after 30 days from the date the person completed the terms and conditions of the sentence for the conviction. The court shall seal the record if the following conditions are met:

- (1) 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.
- (2) The respondent has failed to show that sealing would be contrary to the interest of justice.

(Note: Current law allows this process, but the records are expunged.)

§ 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

No changes.

§ 7611. UNAUTHORIZED DISCLOSURE

This section includes law enforcement officers in the list of people who are subject to a civil penalty for knowingly accessing or disclosing sealed criminal history record information without authorization. A violation is subject to a maximum civil penalty of \$1,000.00.

Sec. 2. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

Expunges municipal violations two years after satisfaction of the judgment provided the person has not received any additional municipal violations.

This section is modeled after a similar provision enacted in 2021 regarding traffic violations and will apply to municipal violations that occur on and after July 1, 2024.

Sec. 3. EXPUNGEMENT OF TRAFFIC VIOLATION RECORDS

Amends the previously adopted statute requiring expungement of traffic violations to clarify the implementation date.

Sec. 4. EFFECTIVE DATE - July 1, 2025.