

1 S.12

2 Introduced by Senator Hashim

3 Referred to Committee on

4 Date:

5 Subject: Crimes and criminal procedure; criminal history records; sealing

6 Statement of purpose of bill as introduced: This bill proposes to transition
7 from a complex system of sealing and expungement of certain criminal history
8 records for which sentences have been completed to one of sealing in most
9 instances, with an expanded list of qualifying crimes, and limited access to
10 sealed records for certain entities that require such records for criminal justice
11 purposes and licensing.

12 An act relating to sealing criminal history records

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

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

15 CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL
16 HISTORY RECORDS

17 § 7601. DEFINITIONS

18 As used in this chapter:

19 (1) "Court" means the Criminal Division of the Superior Court.

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

5 (3) ~~“Predicate offense” means a criminal offense that can be used to~~
6 ~~enhance a sentence levied for a later conviction and includes operating a~~
7 ~~vehicle under the influence of alcohol or other substance in violation of~~
8 ~~23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title,~~
9 ~~and stalking in violation of section 1062 of this title. “Predicate offense” shall~~
10 ~~not include misdemeanor possession of cannabis, a disorderly conduct offense~~
11 ~~under section 1026 of this title, or possession of a controlled substance in~~
12 ~~violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a),~~
13 ~~4234b(a), 4235(b), or 4235a(a). [Repealed.]~~

14 (4) “Qualifying crime” means:

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

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

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

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

- 1 ~~(iv) prostitution as defined in section 2632 of this title, or~~
2 ~~prohibited conduct under section 2601a of this title; or~~
- 3 ~~(v) a predicate offense;~~
- 4 ~~(B) a violation of subsection 3701(a) of this title related to criminal~~
5 ~~mischief;~~
- 6 ~~(C) a violation of section 2501 of this title related to grand larceny;~~
- 7 ~~(D) a violation of section 1201 of this title related to burglary,~~
8 ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~
9 ~~1201(b)(2) of this title;~~
- 10 ~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~
- 11 ~~(F) a violation of section 1802 of this title related to uttering a forged~~
12 ~~or counterfeited instrument;~~
- 13 ~~(G) a violation of 18 V.S.A. § 4230(a) related to possession and~~
14 ~~cultivation of cannabis;~~
- 15 ~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of~~
16 ~~cocaine;~~
- 17 ~~(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~
- 18 ~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~
- 19 ~~(K) a violation of 18 V.S.A. § 4234(a) related to possession of~~
20 ~~depressant, stimulant, and narcotic drugs;~~

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

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

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

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

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

11 (A) all misdemeanor offenses except:

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

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

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

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

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

- 1 (vi) a violation of subdivisions 352(1)–(10) of this title related to
2 cruelty to animals;
- 3 (vii) a violation of section 5409 of this title related to failure to
4 comply with sex offender registry requirements;
- 5 (viii) a violation of section 1455 of this title related to hate
6 motivated crimes;
- 7 (ix) a violation of subsection 1304(a) of this title related to cruelty
8 to a child;
- 9 (x) a violation of section 1305 of this title related to cruelty by
10 person having custody of another;
- 11 (xi) a violation of section 1306 of this title related to mistreatment
12 of persons with impaired cognitive function;
- 13 (xii) a violation of section 3151 of this title related to female
14 genital mutilation;
- 15 (xiii) a violation of subsection 3258(b) of this title related to
16 sexual exploitation of a minor;
- 17 (xiv) a violation of subdivision 4058(b)(1) of this title related to
18 violation of an extreme risk protection order; and
- 19 (xv) an offense committed in a motor vehicle as defined in 23
20 V.S.A. § 4 by a person who is the holder of a commercial driver’s license or
21 commercial driver’s permit pursuant to 23 V.S.A. chapter 39;

1 (B) the following felonies:

2 (i) a violation of section 1201 of this title related to burglary,
3 excluding any burglary into an occupied dwelling, unless the person was
4 25 years of age or younger at the time of the offense and did not carry a
5 dangerous or deadly weapon during the commission of the offense;

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

8 (iii) offenses relating to possessing, cultivating, selling,
9 dispensing, or transporting regulated drugs, including violations of 18 V.S.A.
10 § 4230(a) and (b), 4231(a) and (b), 4232(a) and (b), 4233(a) and (b), 4233a(a),
11 4234(a) and (b), 4234a(a) and (b), 4234b(a) and (b), 4235(b) and (c), or
12 4235a(a) and (b); and

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

15 (5) “Designated felony property offense” means:

16 (A) a felony violation of 9 V.S.A. § 4043 related to fraudulent use of
17 a credit card;

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

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

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

- 1 (E) section 1816 of this title related to possession or use of credit
2 card skimming devices;
- 3 (F) section 2001 of this title related to false personation;
- 4 (G) section 2002 of this title related to false pretenses or tokens;
- 5 (H) section 2029 of this title related to home improvement fraud;
- 6 (I) section 2030 of this title related to identity theft;
- 7 (J) section 2501 of this title related to grand larceny;
- 8 (K) section 2531 of this title related to embezzlement;
- 9 (L) section 2532 of this title related to embezzlement by officers or
10 servants of an incorporated bank;
- 11 (M) section 2533 of this title related to embezzlement by a receiver
12 or trustee;
- 13 (N) section 2561 of this title related to receiving stolen property;
- 14 (O) section 2575 of this title related to retail theft;
- 15 (P) section 2582 of this title related to theft of services;
- 16 (Q) section 2591 of this title related to theft of rented property;
- 17 (R) section 2592 of this title related to failure to return a rented or
18 leased motor vehicle;
- 19 (S) section 3016 of this title related to false claims;
- 20 (T) section 3701 of this title related to unlawful mischief;
- 21 (U) section 3705 of this title related to unlawful trespass;

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

2 (W) section 3761 of this title related to unauthorized removal of
3 human remains;

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

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

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

8 § 7602. ~~EXPUNGEMENT AND SEALING OF RECORD,~~

9 ~~POSTCONVICTION; PROCEDURE~~

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

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

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

16 ~~(C) pursuant to the conditions set forth in subsection (g) of this~~
17 ~~section, the person was convicted of a violation of 23 V.S.A. § 1201(a) or~~
18 ~~§ 1091 related to operating under the influence of alcohol or other substance,~~
19 ~~excluding a violation of those sections resulting in serious bodily injury or~~
20 ~~death to any person other than the operator, or related to operating a school bus~~

1 ~~with a blood alcohol concentration of 0.02 or more or operating a commercial~~
2 ~~vehicle with a blood alcohol concentration of 0.04 or more; or~~

3 ~~(D) pursuant to the conditions set forth in subsection (h) of this~~
4 ~~section, the person was convicted under 1201(c)(3)(A) of a violation of~~
5 ~~subdivision 1201(a) of this title related to burglary when the person was~~
6 ~~25 years of age or younger, and the person did not carry a dangerous or deadly~~
7 ~~weapon during commission of the offense.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only~~
11 ~~petitions to seal may be considered or granted by the court. This subsection~~
12 ~~shall not apply to an individual licensed as a commercial driver pursuant to~~
13 ~~23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the~~
14 ~~interests of justice, the court shall grant the petition and order that the criminal~~
15 ~~history record be sealed in accordance with section 7607 of this title if the~~
16 ~~following conditions are met:~~

17 ~~(1) At least 10 years have elapsed since the date on which the person~~
18 ~~successfully completed the terms and conditions of the sentence for the~~
19 ~~conviction, or if the person has successfully completed the terms and~~
20 ~~conditions of an indeterminate term of probation that commenced at least~~
21 ~~10 years previously.~~

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

2 ~~(A) the person has only one conviction of a violation of 23 V.S.A.~~
3 ~~§ 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and~~

4 ~~(B) the person has not been convicted of a crime arising out of a new~~
5 ~~incident or occurrence since the person was convicted of a violation of~~
6 ~~23 V.S.A. § 1201(a).~~

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

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

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

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

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

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

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

7 (a) Petition.

8 (1) A person may file a petition with the court requesting sealing of a
9 criminal history record related to a conviction under the following
10 circumstances:

11 (A) The person was convicted of an offense for which the underlying
12 conduct is no longer prohibited by law or designated as a criminal offense.

13 (B) The person was convicted of a qualifying crime or qualifying
14 crimes arising out of the same incident or occurrence.

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

18 (3) The court shall grant the petition without hearing if the petitioner
19 and the respondent stipulate to the granting of the petition. The respondent
20 shall file the stipulation with the court, and the court shall issue the petitioner

1 an order of sealing and provide notice of the order in accordance with this
2 section.

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

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

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

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

16 (c) Qualifying misdemeanors. For petitions filed to seal a qualifying
17 misdemeanor pursuant to subdivision (a)(1)(B) of this section, the court shall
18 grant the petition and order that the criminal history record be sealed if the
19 following conditions are met:

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

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

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

7 (d) Qualifying felony offenses. For petitions filed to seal a qualifying
8 felony pursuant to subdivision (a)(1)(B) of this section, the court shall grant the
9 petition and order that the criminal history record be sealed if the following
10 conditions are met:

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

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

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

19 (e) Qualifying DUI misdemeanor. For petitions filed to seal a qualifying
20 DUI misdemeanor pursuant to subdivision (a)(1)(B) of this section, the court

1 shall grant the petition and order that the criminal history record be sealed if
2 the following conditions are met:

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

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

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

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

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

1 § 7603. EXPUNGEMENT AND SEALING OF RECORD, NO
2 CONVICTION; PROCEDURE

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

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

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

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

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

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

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

17 (c), (d) [Repealed.]

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

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

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

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

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

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

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

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

19 ~~[Repealed.]~~

1 § 7604. NEW CHARGE

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

6 § 7605. DENIAL OF PETITION

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

10 § 7606. EFFECT OF EXPUNGEMENT

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

1 (b) Effect.

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

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

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

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

15 (c) Process.

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

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

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

1 (d) Special index.

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

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

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

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

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

18 § 7607. EFFECT OF SEALING

19 (a) Order and notice. Upon entry of an order to seal, the ~~order shall be~~
20 ~~legally effective immediately and the person whose record is sealed shall be~~
21 ~~treated in all respects as if the person had never been arrested, convicted, or~~

1 ~~sentenced for the offense and that its effect is to annul the record of arrest,~~
2 ~~conviction, and sentence. The court shall provide notice of the sealing to the~~
3 ~~respondent, Vermont Crime Information Center (VCIC), the arresting agency,~~
4 ~~the Restitution Unit of the Vermont Center for Crime Victim Services, and any~~
5 ~~other entity that may have a record related to the order to seal~~ send a copy of
6 any order sealing a criminal history record to all of the parties and attorneys
7 representing the parties, including to the prosecuting agency that prosecuted
8 the offense, the Vermont Crime Information Center (VCIC), the arresting
9 agency, and any other entity that may have a record subject to the sealing
10 order. VCIC shall provide notice of the sealing order to the Federal Bureau of
11 Investigation's National Crime Information Center. The VCIC shall provide
12 ~~notice of the sealing to the Federal Bureau of Investigation's National Crime~~
13 ~~Information Center.~~

14 (b) Effect.

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

19 (2) In any application for employment, license, or civil right or privilege
20 or in an appearance as a witness in any proceeding or hearing, a person may be

1 required to answer questions about a previous criminal history record only with
2 respect to arrests or convictions that have not been sealed.

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

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

8 (c) Exceptions. A party seeking to use a sealed criminal history record in a
9 court proceeding shall, prior to any use of the record in open court or in a
10 public filing, notify the court of the party’s intent to do so. The court shall
11 thereafter determine whether the record may be used prior its disclosure in the
12 proceeding. This shall not apply to the use of a sealed record pursuant to
13 subdivision (2), (3), (4), or (7) of this subsection. Use of a sealed document
14 pursuant to an exception shall not change the effect of sealing under subsection
15 (b) of this section. Notwithstanding any other provision of law or a sealing
16 order, entities may access and use sealed records for a period of 10 years only
17 in the following circumstances, and the sealed record shall remain otherwise
18 confidential:

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

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

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

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

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

19 (6) The State's Attorney and Attorney General may disclose information
20 contained in a sealed criminal history record when required to meet their
21 otherwise legally required discovery obligations.

1 (7) The person whose criminal history records have been sealed
2 pursuant to this chapter and the person’s attorney may access and use the
3 sealed records in perpetuity and shall not be subject to the 10-year limitation.

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

8 (9) Persons or entities conducting research shall have access to a sealed
9 criminal history record to carry out research pursuant to 20 V.S.A. § 2056b in
10 perpetuity and shall not be subject to the 10-year limitation.

11 (10) Upon adopting rules outlining a process for handling sealed records
12 and maintaining confidentiality and the standards for determining when
13 information contained in a sealed record may be used for the purpose of
14 licensing decisions, the Vermont Criminal Justice Council may inspect and
15 receive copies of sealed criminal history records. Access to such records shall
16 not be permitted if the Legislative Committee on Administrative Rules objects
17 to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files the objection
18 or objections in certified form pursuant to 3 V.S.A. § 842(c). Sealed records
19 shall remain confidential and not be available for inspection and copying
20 unless and until the Council relies on such records in a public licensing
21 decision.

1 (11) Upon adopting rules outlining a process for handling sealed records
2 and maintaining confidentiality and the standards for determining when
3 information contained in a sealed record may be used for the purpose of
4 licensing decisions, the Vermont Office of Professional Regulation may
5 inspect and receive copies of sealed criminal history records. Access to such
6 records shall not be permitted if the Legislative Committee on Administrative
7 Rules objects to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files
8 the objection or objections in certified form pursuant to 3 V.S.A. § 842(c).
9 Sealed records shall remain confidential and not be available for inspection and
10 copying unless and until the Office relies on such records in a public licensing
11 decision.

12 (12) Upon adopting rules outlining a process for handling sealed records
13 and maintaining confidentiality and the standards for determining when
14 information contained in a sealed record may be used for the purpose of
15 licensing decisions, the Vermont Board of Medical Practice may inspect and
16 receive copies of sealed criminal history records. Access to such records shall
17 not be permitted if the Legislative Committee on Administrative Rules objects
18 to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files the objection
19 or objections in certified form pursuant to 3 V.S.A. § 842(c). Sealed records
20 shall remain confidential and not be available for inspection and copying
21 unless and until the Board relies on such records in a public licensing decision.

1 (d) Process.

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

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

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

8 (4) When a sealing order is issued by the court, any person or entity,
9 except the court, that possesses criminal history records shall:

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

13 (B) clearly label the criminal history record as “SEALED” to ensure
14 compliance with this section.

15 (e) Special index.

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

20 (2) The special index and related documents specified in subdivision (1)
21 of this subsection shall be confidential and shall be physically and

1 electronically segregated in a manner that ensures confidentiality and that
2 limits access to authorized persons.

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

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

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

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

18 § 7608. VICTIMS

19 (a) At the time a petition is filed pursuant to this chapter, the respondent
20 shall give notice of the petition to any victim of the offense who is known to
21 the respondent. The victim shall have the right to offer the respondent a

1 statement prior to any stipulation or to offer the court a statement. The
2 disposition of the petition shall not be unnecessarily delayed pending receipt of
3 a victim's statement. The respondent's inability to locate a victim after a
4 reasonable effort has been made shall not be a bar to granting a petition.

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

9 § 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN
10 INDIVIDUAL 18–21 YEARS OF AGE

11 (a) Procedure. Except as provided in subsection (b) of this section, the
12 record of the criminal proceedings for an individual who was 18–21 years of
13 age at the time the individual committed a qualifying crime shall be expunged
14 within 30 days after the date on which the individual successfully completed
15 the terms and conditions of the sentence for the conviction of the qualifying
16 crime, absent a finding of good cause by the court. The court shall issue an
17 order to expunge all records and files related to the arrest, citation,
18 investigation, charge, adjudication of guilt, criminal proceedings, and
19 probation related to the sentence. A copy of the order shall be sent to each
20 agency, department, or official named in the order. Thereafter, the court, law
21 enforcement officers, agencies, and departments shall reply to any request for

1 information that no record exists with respect to such individual.

2 Notwithstanding this subsection, the record shall not be expunged until
3 restitution and surcharges have been paid in full, provided that payment of
4 surcharges shall not be required if the surcharges have been waived by the
5 court pursuant to section 7282 of this title.

6 (b) Exceptions.

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

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

19 (c) Petitions. An individual who was 18–21 years of age at the time the
20 individual committed a qualifying crime may file a petition with the court
21 requesting expungement of the criminal history record related to the qualifying

1 crime after 30 days have elapsed since the individual completed the terms and
2 conditions for the sentence for the qualifying crime. The court shall grant the
3 petition and issue an order sealing or expunging the record if it finds that
4 sealing or expunging the record serves the interests of justice.

5 § 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

6 There is established the Criminal History Record Sealing Special Fund,
7 which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.
8 Fees collected pursuant to 32 V.S.A. § 1431(e) for the filing of a petition to
9 seal a criminal history record of a violation of 23 V.S.A. § 1201(a) shall be
10 deposited into and credited to this Fund. This Fund shall be available to the
11 Office of the Court Administrator, the Department of State's Attorneys and
12 Sheriffs, the Department of Motor Vehicles, and the Vermont Crime
13 Information Center to offset the administrative costs of sealing such records.
14 Balances in the Fund at the end of the fiscal year shall be carried forward and
15 remain in the Fund.

16 § 7611. UNAUTHORIZED DISCLOSURE

17 A State or municipal employee or contractor or any agent of the court,
18 including an attorney and an employee or contractor of the attorney, who
19 knowingly accesses or discloses sealed criminal history record information
20 without authorization shall be assessed a civil penalty of not more than

1 \$1,000.00. Each unauthorized disclosure shall constitute a separate civil
2 violation.

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

4 § 7041. DEFERRED SENTENCE

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

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

14 (1) [Repealed.]

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

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

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

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

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

5 (c) Notwithstanding subsections (a) and (b) of this section, the court may
6 not defer a sentence for a violation of section 3253a (aggravated sexual assault
7 of a child), section 2602 (lewd and lascivious conduct with a child unless the
8 victim and the defendant were within five years of age and the act was
9 consensual), 3252(c) (sexual assault of a child under 16 unless the victim and
10 the defendant were within five years of age and the act was consensual),
11 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual
12 assault), or 3253a (aggravated sexual assault of a child) of this title.

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

20 (e) Upon violation of the terms of probation or of the deferred sentence
21 agreement, the court shall impose sentence. Upon fulfillment of the terms of

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

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

18 (g) [Repealed.]

19 (h) The Vermont Crime Information Center shall retain a special index of
20 deferred sentences for sex offenses that require registration pursuant to
21 subchapter 3 of chapter 167 of this title. This index shall only list the name

1 and date of birth of the subject of the ~~expunged~~ sealed files and records, the
2 offense for which the subject was convicted, and the docket number of the
3 proceeding that was the subject of the ~~expungement~~ sealing. The special index
4 shall be confidential and may be accessed only by the director of the Vermont
5 Crime Information Center and a designated clerical staffperson for the purpose
6 of providing information to the Department of Corrections in the preparation of
7 a presentence investigation in accordance with 28 V.S.A. §§ 204 and 204a.

8 Sec. 3. 24 V.S.A. § 2002 is added to read:

9 § 2002. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

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

18 (b) Effect of expungement.

19 (1) Upon entry of an expungement order, the order shall be legally
20 effective immediately and the individual whose record is expunged shall be

1 treated in all respects as if the individual had never been adjudicated of the
2 violation.

3 (2) Upon an entry of expunged, the case will be accessible only by the
4 Clerk of the Court for the Judicial Bureau or the Clerk's designee.
5 Adjudications that have been expunged shall not appear in the results of any
6 Judicial Bureau database search by name, date of birth, or any other data
7 identifying the defendant. Except as provided in subsection (c) of this section,
8 any documents or other records related to an expunged adjudication that are
9 maintained outside the Judicial Bureau's case management system shall be
10 destroyed.

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

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

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

