

1 Introduced by Representative Grad of Moretown
2 Referred to Committee on
3 Date:
4 Subject: Court procedure; criminal history records; expungement
5 Statement of purpose of bill as introduced: This bill proposes to amend
6 generally the statutes relating to expungement and sealing of criminal history
7 records.

8 An act relating to sealing and expungement of criminal history records

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

10 Sec. 1. 13 V.S.A. § 7601 is amended to read:

11 § 7601. DEFINITIONS

12 As used in this chapter:

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

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

18 (3) “Predicate offense” means a criminal offense that can be used to
19 enhance a sentence levied for a later conviction, and includes operating a
20 vehicle under the influence of alcohol or other substance in violation of 23

1 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and
2 stalking in violation of section 1062 of this title. “Predicate offense” shall not
3 include misdemeanor possession of marijuana or a disorderly conduct offense
4 under section 1026 of this title.

5 (4) ~~“Qualifying crime” means:~~

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

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

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

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

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

14 ~~(v) a predicate offense;~~

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

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

18 ~~(D) a violation of section 1201 of this title related to burglary,~~
19 ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~
20 ~~1201(b)(2) of this title; or~~

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

2 “Qualifying low-level misdemeanor” means all misdemeanors that are not
3 predicate offenses and for which the maximum penalty is six months
4 imprisonment.

5 (5) “Qualifying misdemeanor” means all misdemeanors that are not
6 predicate offenses and for which the maximum penalty is greater than six
7 months imprisonment.

8 (6) “Qualifying predicate misdemeanor” means:

9 (A) XXX

10 (B) XXX

11 (7) “Qualifying low level felony” means:

12 (A) a violation of subsection 3701(a) of this title related to criminal
13 mischief;

14 (B) a violation of section 2501 of this title related to grand larceny;

15 (C) a violation of section 1201 of this title related to burglary;

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

17 (E) a violation of section 1404(c)(4) of this title related to conspiracy
18 to receive stolen property;

19 (F) a violation of section 1801 of this title related to forgery and
20 counterfeiting;

1 (G) a violation of section 1802 of this title related to uttering a forged
2 or counterfeited instrument;

3 (H) a violation of section 2001 of this title related to false
4 personation;

5 (I) a violation of section 2002 of this title related to false pretenses or
6 tokens;

7 (J) a violation of section 2561 of this title related to receiving stolen
8 property;

9 (K) a violation of section 2575 of this title related to retail theft;

10 (L) a violation of section 2582 of this title related to theft of services;
11 and

12 (M) a violation of section 2591 of this title related to theft of rented
13 property.

14 (8) “Qualifying felony” means all felony offenses other than low level
15 qualifying felonies, that are not offenses listed in section 5301(7) of this title,
16 and are not predicate offenses.

17 (9) “Qualifying predicate felony” means:

18 (A) XXX

19 (B) XXX

20 Sec. 2. 13 V.S.A. § 7602 is amended to read:

1 § 7602. EXPUNGEMENT AND SEALING OF RECORD,
2 POSTCONVICTION; PROCEDURE

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

5 (A) the person was convicted of a qualifying crime or qualifying
6 crimes as defined in subdivisions 7601(4)-(9) of this title arising out of the
7 same incident or occurrence; or

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

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

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

16 (b) Requirements for qualifying low-level misdemeanors.

17 (1) The court shall grant the petition and order that the criminal history
18 record be expunged or sealed pursuant to section 7606 or section 7607 of this
19 title if the following conditions are met:

20 (A) At least ~~five~~ two years have elapsed since the date on which the
21 person successfully completed the terms and conditions of the sentence for the

1 conviction, or before if the parties stipulate to the order ~~if the person has~~
2 ~~successfully completed the terms and conditions of an indeterminate term of~~
3 ~~probation that commenced at least five years previously.~~

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 for the qualifying~~
6 ~~crime.~~[Repealed.]

7 (C) ~~Any~~ All surcharges, and any restitution ordered by the court, ~~has~~
8 have been paid in full.

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

11 (2) The court shall grant the petition and order that all or part of the
12 criminal history record be ~~sealed~~ expunged pursuant to section ~~7607~~ 7606 of
13 this title if at least five years have elapsed since the date on which the person
14 successfully completed the terms and conditions of the sentence for the
15 conviction and the conditions of subdivisions (1)(A), ~~(B), and (C)~~ and (D) of
16 this subsection are met ~~and 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 years~~
20 ~~of age.~~

21 (c) Requirements for qualifying misdemeanors.

1 (1) The court shall grant the petition and order that the criminal history
2 record be ~~expunged~~ sealed pursuant to section ~~7606~~ 7607 of this title if the
3 following conditions are met:

4 (A) At least ~~10~~ five years have elapsed since the date on which the
5 person successfully completed the terms and conditions of the sentence for the
6 conviction or before if the parties stipulate to the order.

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.~~ [Repealed.]

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

11 (D) ~~Any~~ All surcharges, and any restitution ordered by the court for
12 any crime of which the person has been convicted, ~~has~~ have been paid in full.

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

16 (2) The court shall grant the petition and order that all or part of the
17 criminal history record be ~~sealed~~ expunged pursuant to section ~~7607~~ 7606 of
18 this title if at least 10 years have elapsed since the date on which the person
19 successfully completed the terms and conditions of the sentence for the
20 conviction and the conditions of subdivisions (1)(A), ~~(B), (C), and~~ (D), and (E)
21 of this subsection are met ~~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 years~~
4 ~~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~~ All surcharges, and any restitution ordered by the court, ~~has~~
13 have been paid in full.

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

18 (1) The petitioner shall bear the burden of establishing that his or her
19 conviction was based on possessing an amount of regulated drug that is no
20 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.~~[Repealed.]

10 (g) Requirements for qualifying predicate misdemeanors:

11 (1) The court shall grant the petition and order that the criminal history
12 record be sealed pursuant to section 7607 of this title if the following
13 conditions are met:

14 (A) At least 10 years have elapsed since the date on which the person
15 successfully completed the terms and conditions of the sentence for the
16 conviction or before if the parties stipulate to the order.

17 (B) All surcharges, and any restitution ordered by the court for any
18 crime of which the person has been convicted, have been paid in full.

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

1 (2) The court shall grant the petition and order that all or part of the
2 criminal history record be expunged pursuant to section 7606 of this title if at
3 least 20 years have elapsed since the date on which the person successfully
4 completed the terms and conditions of the sentence for the conviction and the
5 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.

6 (h) Requirements for qualifying low-level felonies:

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

10 (A) At least five years have elapsed since the date on which the
11 person successfully completed the terms and conditions of the sentence for the
12 conviction, or before if the parties stipulate to the order.

13 (B) All surcharges, and any restitution ordered by the court, have been
14 paid in full.

15 (C) The court finds that expungement of the criminal history record
16 serves the interests of justice.

17 (2) The court shall grant the petition and order that all or part of the
18 criminal history record be expunged pursuant to section 7606 of this title if at
19 least 10 years have elapsed since the date on which the person successfully
20 completed the terms and conditions of the sentence for the conviction and the
21 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.

1 (i) Requirements for qualifying felonies:

2 (1) The court shall grant the petition and order that the criminal history
3 record be sealed pursuant to section 7607 of this title if the following
4 conditions are met:

5 (A) At least 10 years have elapsed since the date on which the person
6 successfully completed the terms and conditions of the sentence for the
7 conviction, or before if the parties stipulate to the order.

8 (B) All surcharges, and any restitution ordered by the court, have been
9 paid in full.

10 (C) The court finds that expungement of the criminal history record
11 serves the interests of justice.

12 (2) The court shall grant the petition and order that all or part of the
13 criminal history record be expunged pursuant to section 7606 of this title if at
14 least 15 years have elapsed since the date on which the person successfully
15 completed the terms and conditions of the sentence for the conviction and the
16 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.

17 (j) Requirements for qualifying predicate felonies:

18 (1) The court shall grant the petition and order that the criminal history
19 record be sealed pursuant to section 7607 of this title if the following
20 conditions are met:

1 (A) At least 20 years have elapsed since the date on which the person
2 successfully completed the terms and conditions of the sentence for the
3 conviction.

4 (B) All surcharges, and any restitution ordered by the court, have been
5 paid in full.

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

9 (2) The court shall grant the petition and order that all or part of the
10 criminal history record be expunged pursuant to section 7606 of this title if at
11 least 30 years have elapsed since the date on which the person successfully
12 completed the terms and conditions of the sentence for the conviction and the
13 conditions of subdivisions (1)(A), (B), and (C) of this subsection are met.

14 Sec. 3. 13 V.S.A. § 7609 is amended to read:

15 § 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN
16 INDIVIDUAL 18-21 YEARS OF AGE

17 (a) Procedure. Except as provided in subsection (b) of this section, the
18 record of the criminal proceedings for an individual who was 18-21 years of
19 age at the time the individual committed a qualifying crime shall be expunged
20 within 30 days after the date on which the individual successfully completed
21 the terms and conditions of the sentence for the conviction of the qualifying

1 crime, absent a finding of good cause by the court. The court shall issue an
2 order to expunge all records and files related to the arrest, citation,
3 investigation, charge, adjudication of guilt, criminal proceedings, and
4 probation related to the sentence. A copy of the order shall be sent to each
5 agency, department, or official named in the order. Thereafter, the court, law
6 enforcement officers, agencies, and departments shall reply to any request for
7 information that no record exists with respect to such individual.
8 Notwithstanding this subsection, the record shall not be expunged until
9 restitution ~~has~~ and surcharges have been paid in full.

10 * * *

11 Sec. 4. 32 V.S.A. § 1431 is amended to read:

12 § 1431. FEES IN SUPREME AND SUPERIOR COURTS

13 * * *

14 (e) Prior to the filing of any postjudgment motion in the Civil, Criminal, or
15 Environmental Division of the Superior Court, including motions to reopen
16 civil suspensions and motions for sealing or expungement in the Criminal
17 Division pursuant to 13 V.S.A. § 7602, or motions to reopen existing cases in
18 the Probate Division of the Superior Court, there shall be paid to the clerk of
19 the court for the benefit of the State a fee of \$90.00 except for small claims
20 actions and estates. A filing fee of \$90.00 shall be paid to the clerk of the court
21 for a civil petition for minor settlements. For motions to seal or expunge a

1 criminal history record pursuant to 13 V.S.A. § 7602, the filing fee shall apply
2 per petition, and each petition may contain multiple requests to seal or expunge
3 the records of one individual. If the State’s Attorney’s Office is filing the
4 motion to seal or expunge the record of an individual pursuant to 13 V.S.A.
5 § 7609, the filing fee shall not apply.

6 * * *

7 Sec. 5. EFFECTIVE DATE

8 This act shall take effect on passage.