

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 294
3 entitled “An act relating to expanding access to expungement and sealing of
4 criminal history records” respectfully reports that it has considered the same
5 and recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 5301 is amended to read:

8 § 5301. DEFINITIONS

9 As used in this chapter:

10 * * *

11 (7) “Listed crime” means any of the following offenses:

12 (A) stalking as defined in section 1062 of this title;

13 (B) aggravated stalking as defined in subdivision 1063~~(a)(3)~~ or ~~(4)~~(b)
14 of this title;

15 (C) domestic assault as defined in section 1042 of this title;

16 (D) first degree aggravated domestic assault as defined in section
17 1043 of this title;

18 (E) second degree aggravated domestic assault as defined in section
19 1044 of this title;

20 (F) sexual assault as defined in section 3252 of this title or its
21 predecessor as it was defined in section 3201 or 3202 of this title;

- 1 (G) aggravated sexual assault as defined in section 3253 of this title;
- 2 (H) lewd or lascivious conduct as defined in section 2601 of this title;
- 3 (I) lewd or lascivious conduct with a child as defined in section 2602
- 4 of this title;
- 5 (J) murder as defined in section 2301 of this title;
- 6 (K) aggravated murder as defined in section 2311 of this title;
- 7 (L) manslaughter as defined in section 2304 of this title;
- 8 (M) aggravated assault as defined in section 1024 of this title;
- 9 (N) assault and robbery with a dangerous weapon as defined in
- 10 subsection 608(b) of this title;
- 11 (O) arson causing death as defined in section 501 of this title;
- 12 (P) assault and robbery causing bodily injury as defined in subsection
- 13 608(c) of this title;
- 14 (Q) maiming as defined in section 2701 of this title;
- 15 (R) kidnapping as defined in section 2405 of this title or its
- 16 predecessor as it was defined in section 2401 of this title;
- 17 (S) unlawful restraint in the second degree as defined in section 2406
- 18 of this title;
- 19 (T) unlawful restraint in the first degree as defined in section 2407 of
- 20 this title;

1 (U) recklessly endangering another person as defined in section 1025
2 of this title;

3 (V) violation of abuse prevention order as defined in section 1030 of
4 this title, excluding violation of an abuse prevention order issued pursuant to
5 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

6 (W) operating vehicle under the influence of alcohol or other
7 substance with either death or serious bodily injury resulting as defined in
8 23 V.S.A. § 1210(f) and (g);

9 (X) ~~careless or~~ negligent or grossly negligent operation resulting in
10 serious bodily injury or death as defined in 23 V.S.A. § 1091(~~b~~);

11 (Y) leaving the scene of an accident with serious bodily injury or
12 death as defined in 23 V.S.A. § 1128(b) or (c);

13 (Z) burglary into an occupied dwelling as defined in subsection
14 1201(c) of this title;

15 (AA) the attempt to commit any of the offenses listed in this section;

16 (BB) abuse (section 1376 of this title), abuse by restraint (section
17 1377 of this title), neglect (section 1378 of this title), sexual abuse (section
18 1379 of this title), financial exploitation (section 1380 of this title), and
19 exploitation of services (section 1381 of this title);

20 (CC) aggravated sexual assault of a child in violation of section
21 3253a of this title;

1 (DD) human trafficking in violation of section 2652 of this title; and
2 (EE) aggravated human trafficking in violation of section 2653 of
3 this title.

4 Sec. 2. 13 V.S.A. § 7601 is amended to read:

5 § 7601. DEFINITIONS

6 As used in this chapter:

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

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

12 (3) “Predicate offense” means a criminal offense that can be used to
13 enhance a sentence levied for a later conviction, and includes operating a
14 vehicle under the influence of alcohol or other substance in violation of
15 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title,
16 and stalking in violation of section 1062 of this title. “Predicate offense” shall
17 not include misdemeanor possession of marijuana, a disorderly conduct
18 offense under section 1026 of this title, or possession of a controlled substance
19 in violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a),
20 4234a(a), 4234b(a), 4235(b), or 4235a(a).

1 (4) “Qualifying crime” means: any criminal offense that is not an
2 offense listed in subdivision 5301(7) of this title or a violation of 18 V.S.A.
3 § 4231(c), 4233(c), 4233a(b), 4234a(c), or 4230(c), or any offense for which a
4 person has been granted an unconditional pardon from the Governor.

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

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

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

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

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

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

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

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

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

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

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

3 ~~(G) a violation of 18 V.S.A. § 4230(a) related to possession of~~
4 ~~marijuana;~~

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

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

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

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

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

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

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

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

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

1 (5) “Qualifying felony property offense” means a felony level violation
2 of 9 V.S.A. § 4043 related to fraudulent use, 13 V.S.A. § 1801 related to
3 forgery and counterfeiting, 13 V.S.A. § 1802 related to uttering forged or
4 counterfeited instrument, 13 V.S.A. § 1804 related to counterfeiting paper
5 money, 13 V.S.A. § 1816 related to possession or use of credit card skimming
6 devices, 13 V.S.A. § 2001 related to false personation, 13 V.S.A. § 2002
7 related to false pretenses or tokens, 13 V.S.A. § 2029 related to home
8 improvement fraud, 13 V.S.A. § 2030 related to identity theft, 13 V.S.A.
9 § 2501 related to grand larceny, 13 V.S.A. § 2502 related to petit larceny, 13
10 V.S.A. § 2503 related to larceny from the person, 13 V.S.A. § 2531 related to
11 embezzlement, 13 V.S.A. § 2532 related to officers or servants of incorporated
12 bank, 13 V.S.A. § 2533 related to receiver or trustee, 13 V.S.A. § 2537 related
13 to holding property in official capacity or belonging to the State or a
14 municipality, 13 V.S.A. § 2561 related to receiving stolen property, 13 V.S.A.
15 § 2575a related to organized retail theft, 13 V.S.A. § 2577 related to retail
16 theft, 13 V.S.A. § 2582 related to theft of services, 13 V.S.A. § 2591 related to
17 theft of rented property, 13 V.S.A. § 2592 related to failure to return a rented
18 or leased motor vehicle, 13 V.S.A. § 3016 related to false claims, 13 V.S.A.
19 § 3701 related to unlawful mischief, 13 V.S.A. § 3705 related to unlawful
20 trespass, 13 V.S.A. § 3733 related to mills, dams or bridges, 13 V.S.A. § 3761
21 related to unauthorized removal of human remains, 13 V.S.A. § 3767 related to

1 grave markers and ornaments, 13 V.S.A. § 4103 related to access to computer
2 for fraudulent purposes, 13 V.S.A. § 4104 related to alteration, damage, or
3 interference, or 13 V.S.A. § 4105 related to theft or destruction.

4 (6) “Subsequent offense” means a crime committed by the person who
5 is the subject of a petition to expunge or seal a criminal history record that
6 arose out of a new incident or occurrence after the person was convicted of the
7 crime to be expunged or sealed.

8 Sec. 3. 13 V.S.A. § 7602 is amended to read:

9 § 7602. EXPUNGEMENT AND SEALING OF RECORD,

10 POSTCONVICTION; PROCEDURE

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

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

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

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

1 alcohol concentration of 0.02 or more or operating a commercial vehicle with a
2 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 25
6 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) Qualifying nonpredicate misdemeanors and possession of a controlled
20 substance offenses. For petitions filed to expunge or seal a criminal history
21 record of a nonpredicate misdemeanor offense or a violation of 18 V.S.A.

1 § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or
2 4235a(a):

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

6 (A) At least **five** years have elapsed since:

7 (i) the date on which the person ~~successfully completed the terms~~
8 ~~and conditions of the sentence for the conviction~~ **satisfied the judgement**, or if
9 the person has ~~successfully completed the terms and conditions of an~~
10 indeterminate term of probation that commenced at least five years previously;
11 or

12 (ii) if the person committed a subsequent offense, the date on
13 which the person satisfied the judgment for the subsequent offense, whichever
14 is later.

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

18 (C) **Any restitution ordered by the court has been paid in full.**

19 (D) The court finds that expungement of the criminal history record
20 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 sealed pursuant to section 7607 of this title if the
3 conditions of subdivisions (1)(A), ~~(B)~~, and (C) of this subsection are met and
4 the court finds that:

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

7 (B)(i) the person committed the qualifying crime after reaching 19
8 years of age; or

9 (ii) the petitioner owes restitution at the time of filing the petition
10 to expunge.

11 (3) If the respondent stipulates to a petition filed prior to, on, or after the
12 date the offense is eligible for expungement or sealing as set forth in this
13 subsection, the court may grant the petition without a hearing.

14 (c) Qualifying predicate misdemeanors. For petitions filed to expunge or
15 seal a criminal history record of a qualifying predicate misdemeanor offense:

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

19 (A) At least ~~40~~ five years have elapsed since:

20 (i) the date on which the person ~~successfully completed the terms~~
21 ~~and conditions of the sentence for the conviction~~ satisfied the judgement; or

1 (ii) if the person committed a subsequent offense, the date on
2 which the person satisfied the judgement for the subsequent offense, whichever
3 is later.

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

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

8 (D) Any restitution ordered by the court for any crime of which the
9 person has been convicted has been paid in full.

10 (E) After considering the particular nature of any subsequent offense,
11 the court finds that expungement of the criminal history record for the
12 qualifying crime 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), (C), and (D) of this subsection are met~~
16 ~~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. A criminal history record sealed pursuant to this subsection (c) shall be~~
21 eligible for expungement pursuant to section 7606 of this title five [six] years

1 after the date on which sealing order is issued if the person does not commit
2 any criminal offense subsequent to the sealed. [If the person commits a
3 qualifying nonpredicate misdemeanor or possession of a controlled substance
4 offense subsequent to the sealed offense, the sealed record shall be eligible for
5 expungement two years after the date on which the person satisfied the
6 judgment for the subsequent offense. If the person commits any other offense
7 subsequent to the sealed offense, the sealed record shall be eligible for
8 expungement five years after the date on which the person satisfied the
9 judgment for the subsequent offense.]

10 [(3) If the respondent stipulates to a petition filed prior to, on, or after
11 the date the offense is eligible for expungement or sealing as set forth in this
12 subsection, the court may grant the petition without a hearing.]

13 * * *

14 (g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only
15 petitions to seal may be considered or granted by the court. This subsection
16 shall not apply to an individual licensed as a commercial driver pursuant to
17 23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the
18 interests of justice, the court shall grant the petition and order that the criminal
19 history record be sealed in accordance with section 7607 of this title if the
20 following conditions are met:

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

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

7 (A) the person has only one conviction of a violation of 23 V.S.A.
8 § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

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

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

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

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

20 (1) At least 15 years have elapsed since the date on which the person
21 ~~successfully completed the terms and conditions of the sentence~~ satisfied the

1 judgment for the conviction, or the person has ~~successfully~~ completed the
2 ~~terms and conditions of~~ an indeterminate term of probation that commenced at
3 least 15 years previously.

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

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

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

10 (i) Qualifying felony property offenses and selling, dispensing, or
11 transporting regulated substances offenses. For petitions filed to expunge or
12 seal a criminal history record of a qualifying felony property offense or a
13 violation of 18 V.S.A. § 4230(b), 4231(b), 4232(b), 4233(b), 4234(b),
14 4234a(b), 4234b(b), 4235(c), or 4235a(b):

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

18 (A) At least 10 [five] years have elapsed since:

19 (i) the date on which the person satisfied the judgment for the
20 conviction; or

1 (ii) if the person committed a subsequent offense, the date on
2 which the person satisfied the judgment for the subsequent offense, whichever
3 is later.

4 (B) Any restitution ordered by the court for any crime of which the
5 person has been convicted has been 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) A criminal history record sealed pursuant to this subsection (i) shall
10 be eligible for expungement pursuant to section 7606 of this title 10 [six] years
11 after the date on which sealing order is issued if the person does not commit
12 any criminal offense subsequent to the sealed offense. [If the person commits
13 a qualifying nonpredicate misdemeanor or possession of a controlled substance
14 offense subsequent to the sealed offense, the sealed record shall be eligible for
15 expungement two years after the date on which the person satisfied the
16 judgment for the subsequent offense. If the person commits any other offense
17 subsequent to the sealed offense, the sealed record shall be eligible for
18 expungement five years after the date on which the person satisfied the
19 judgment for the subsequent offense.]

1 (3) If the respondent stipulates to a petition filed prior to, on, or after the
2 date the offense is eligible for sealing as provided in this subsection, the court
3 may grant the petition to seal without a hearing.

4 (j) Qualifying felonies. For petitions filed to expunge or seal a criminal
5 history record of any other qualifying felony offense not specified in
6 subsection (f), (h), or (i) of this section:

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

10 (A) At least 15 [seven] years have elapsed since the date on which
11 the person satisfied the judgment for the conviction or, if the person committed
12 a subsequent offense, 10 years from the date on which the person satisfied the
13 judgment for the subsequent offense, whichever is later.

14 (B) Any restitution ordered by the court for any crime of which the
15 person has been convicted has been paid in full.

16 (2) A criminal history record sealed pursuant to this subsection (j) shall
17 not be eligible for expungement pursuant to section 7606 of this title [unless
18 the respondent stipulates to the expungement].

19 [(3) If the respondent stipulates to a petition to seal filed prior to, on, or
20 after the date the offense is eligible for sealing as provided in this subsection,
21 the court may grant the petition to seal without a hearing.]

1 Sec. 4. 33 V.S.A. § 5119 is amended to read:

2 § 5119. SEALING OF RECORDS

3 * * *

4 (g) On application of a person who has pleaded guilty to or has been
5 convicted of the commission of a crime under the laws of this State which the
6 person committed prior to attaining the age of 21 25, or on the motion of the
7 court having jurisdiction over such a person, after notice to all parties of record
8 and hearing, the court shall order the sealing of all files and records related to
9 the proceeding if it finds:

10 (1) two years have elapsed since the final discharge of the person;

11 (2) the person has not been convicted of a listed crime as defined in
12 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial
13 conviction for 10 years prior to the application or motion, and no new
14 proceeding is pending seeking such conviction or adjudication; and

15 (3) the person's rehabilitation has been attained to the satisfaction of the
16 court.

17 * * *

1 Sec. 5. 23 V.S.A. § 2303 is added to read:

2 § 2303. EXPUNGEMENT OF VIOLATION RECORDS

3 (a) Automatic expungement. The Judicial Bureau shall automatically enter
4 an expungement order for convictions or adjudications of the following
5 violations on the two-year anniversary of the satisfaction of the judgment:

6 (1) section 301 of this title (operating an unregistered vehicle);

7 (2) subsection 307(a) of this title (failing to possess registration);

8 (3) section 611 of this title (failing to possess license);

9 (4) subsection 676(a) of this title (operating after suspension);

10 (5) section 601 of this title (operating without a license);

11 (6) section 800 of this title (operating without insurance); and

12 (7) subsection 1222(c) of this title (operating an uninspected vehicle).

13 (b) Effect of expungement.

14 (1) Upon entry of an expungement order, the order shall be legally
15 effective immediately and the individual whose record is expunged shall be
16 treated in all respects as if he or she had never been convicted or adjudicated of
17 the violation. This includes the expungement of any points accumulated
18 pursuant to chapter 25 of this title.

19 (2) The Judicial Bureau shall report the expungement to the Department
20 of Motor Vehicles within 14 days.

1 (3) The Judicial Bureau shall keep a special index of cases that have
2 been expunged together with the expungement order. The index shall list only
3 the name of the individual convicted or adjudicated of the violation, his or her
4 date of birth, the docket number, and the violation that was the subject of the
5 expungement. All other court documents and records that are subject to an
6 expungement order, whether held by the Judicial Bureau or the Department of
7 Motor Vehicles, shall be destroyed.

8 (4) Upon receiving an inquiry from any person regarding an expunged
9 record, the Judicial Bureau and Department of Motor Vehicles shall respond
10 that “NO RECORD EXISTS.”

11 (c) Policies for implementation. The Court Administrator shall establish
12 policies for implementing this section.

13 Sec. 6. 18 V.S.A. § 4230 is amended to read:

14 § 4230. MARIJUANA

15 (a) Possession and cultivation.

16 (1)~~(A)~~ No person shall knowingly and unlawfully possess more than
17 one ounce of marijuana or more than five grams of hashish or cultivate more
18 than two mature marijuana plants or four immature marijuana plants. A person
19 who violates this subdivision shall be assessed a civil penalty as follows:

20 (A) not more than \$100.00 for a first offense;

21 (B) not more than \$200.00 for a second offense; and

1 (C) not more than \$500.00 for a third or subsequent offense.

2 (2)(A) No person shall knowingly and unlawfully possess more than
3 two ounces of marijuana or more than ten grams of hashish or more than
4 four mature marijuana plants or eight immature marijuana plants. For a first
5 offense under this subdivision ~~(A)(2)~~, a person shall be provided the
6 opportunity to participate in the Court Diversion Program unless the prosecutor
7 states on the record why a referral to the Court Diversion Program would not
8 serve the ends of justice. A person convicted of a first offense under this
9 subdivision shall be imprisoned not more than six months or fined not more
10 than \$500.00, or both.

11 (B) A person convicted of a second or subsequent offense of
12 knowingly and unlawfully possessing more than ~~one ounce of marijuana or~~
13 ~~more than five grams of hashish or cultivating more than two mature marijuana~~
14 ~~plants or four immature marijuana plants~~ two ounces of marijuana or more
15 than ten grams of hashish or more than four mature marijuana plants or eight
16 immature marijuana plants shall be imprisoned not more than two years or
17 fined not more than \$2,000.00, or both.

18 (C) Upon an adjudication of guilt for a first or second offense under
19 this subdivision, the court may defer sentencing as provided in 13 V.S.A.
20 § 7041, except that the court may in its discretion defer sentence without the
21 filing of a presentence investigation report and except that sentence may be

1 imposed at any time within two years from and after the date of entry of
2 deferment. The court may, prior to sentencing, order that the defendant submit
3 to a drug assessment screening, which may be considered at sentencing in the
4 same manner as a presentence report.

5 (3) A person knowingly and unlawfully possessing ~~two~~ eight ounces of
6 marijuana or ~~10 grams~~ 1.4 ounces of hashish or knowingly and unlawfully
7 cultivating more than four mature marijuana plants or eight immature
8 marijuana plants shall be imprisoned not more than three years or fined not
9 more than \$10,000.00, or both.

10 (4) A person knowingly and unlawfully possessing more than one pound
11 of marijuana or more than 2.8 ounces of hashish or knowingly and unlawfully
12 cultivating more than six mature marijuana plants or 12 immature marijuana
13 plants shall be imprisoned not more than five years or fined not more than
14 \$10,000.00, or both.

15 (5) A person knowingly and unlawfully possessing more than 10 pounds
16 of marijuana or more than one pound of hashish or knowingly and unlawfully
17 cultivating more than 12 mature marijuana plants or 24 immature marijuana
18 plants shall be imprisoned not more than 15 years or fined not more than
19 \$500,000.00, or both.

20 (6) If a court fails to provide the defendant with notice of collateral
21 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later

1 at any time shows that the plea and conviction for a violation of this subsection
2 may have or has had a negative consequence, the court, upon the defendant's
3 motion, shall vacate the judgment and permit the defendant to withdraw the
4 plea or admission and enter a plea of not guilty. Failure of the court to advise
5 the defendant of a particular collateral consequence shall not support a motion
6 to vacate.

7 (7) The amounts of marijuana in this subsection shall not include
8 marijuana cultivated, harvested, and stored in accordance with section 4230e
9 of this title.

10 * * *

11 Sec. 7. EXPUNGEMENT OF MARIJUANA CRIMINAL HISTORY

12 RECORDS

13 (a) As used in this section:

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

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

19 (b) The court shall order the expungement of criminal history records of
20 violations of 18 V.S.A. § 4230(a)(1) that occurred prior to July 1, 2020. The

1 process for expunging these records shall be completed no later than July 1,
2 2021.

3 (c) Upon entry of an expungement order, the order shall be legally effective
4 immediately and the person whose record is expunged shall be treated in all
5 respects as if he or she had never been arrested, convicted, or sentenced for the
6 offense. The court shall issue an order to expunge all records and files related
7 to the arrest, citation, investigation, charge, adjudication of guilt, criminal
8 proceedings, and probation related to the sentence. The court shall issue the
9 person a certificate stating that the offense for which the person was convicted
10 has been decriminalized and therefore warrants issuance of the order and that
11 its effect is to annul the record of arrest, conviction, and sentence. The court
12 shall provide notice of the expungement to the respondent, Vermont Crime
13 Information Center (VCIC), the arresting agency, and any other entity that may
14 have a record related to the order to expunge. The VCIC shall provide notice
15 of the expungement to the Federal Bureau of Investigation's National Crime
16 Information Center.

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

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

4 (f)(1) The court shall keep a special index of cases that have been expunged
5 together with the expungement order and the certificate issued pursuant to this
6 chapter. The index shall list only the name of the person convicted of the
7 offense, his or her date of birth, the docket number, and the criminal offense
8 that was the subject of the expungement.

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

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

18 (4) All other court documents in a case that are subject to an
19 expungement order shall be destroyed.

20 (5) The court shall follow policies adopted pursuant to 13 V.S.A. § 7606
21 in implementing this section.

1 (g) Upon receiving an inquiry from any person regarding an expunged
2 record, an entity shall respond that “NO RECORD EXISTS.”

3 Sec. 8. VERMONT SENTENCING COMMISSION; EXPUNGEMENT OR
4 SEALING OF LISTED CRIMES REPORT

5 During the 2020 legislative interim, the Vermont Sentencing Commission
6 shall consider whether a comprehensive policy that provides an avenue for
7 expungement or sealing of all offenses will serve the interests of justice. On or
8 before October 15, 2020, the Commission shall report to the Joint Legislative
9 Justice Oversight Committee regarding any policy recommendations regarding
10 the expungement and sealing of criminal history records, including a
11 recommendation for whether and how to provide an avenue to seal or expunge
12 all offenses, including the crimes listed in 13 V.S.A. § 5301(7) and Title 18
13 chapter 84 drug trafficking offenses.

14 Sec. 7. EFFECTIVE DATES

15 (a) Sec. 7 (expungement of marijuana criminal history records) and this
16 section shall take effect on passage.

17 (b) The rest of this act shall take effect on July 1, [2020] [2021].

18 (Committee vote: _____)

19 _____
20 Senator _____

21 FOR THE COMMITTEE