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H.251

Introduced by Representatives Grad of Moretown, Colburn of Burlington,
Rachelson of Burlington, and Young of Greensboro

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; expungement; marijuana

Statement of purpose of bill as introduced: This bill proposes to expunge
misdemeanor marijuana possession convictions obtained prior to July 1, 2019
and decriminalize possession of more than one ounce, but less than two
ounces, of marijuana.

An act relating to expungement of misdemeanor marijuana possession
convictions

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

Sec. 1. EXPUNGEMENT OF MARIJUANA CRIMINAL HISTORY

RECORDS

(a) As used in this section:

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

(2) "Criminal history record" means all information documenting an
individual's contact with the criminal justice system, including data regarding

1 identification, arrest or citation, arraignment, judicial disposition, custody, and
2 supervision.

3 (b) The court shall order the expungement of all criminal history records
4 relating to a person who was convicted of possession of marijuana in violation
5 of 18 V.S.A. § 4230(a)(1) prior to July 1, 2019. The process for expunging
6 these records shall be completed no later than July 1, 2020.

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

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

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

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

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

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

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

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

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

7 Sec. 2. 18 V.S.A. § 4230 is amended to read:

8 § 4230. MARIJUANA

9 (a) Possession and cultivation.

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

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

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

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

17 (2)(A) No person shall knowingly and unlawfully possess more than
18 two ounces of marijuana or more than ten grams of hashish or more than
19 four mature marijuana plants or eight immature marijuana plants. For a first
20 offense under this subdivision ~~(A)~~(2), a person shall be provided the
21 opportunity to participate in the Court Diversion Program unless the prosecutor

1 states on the record why a referral to the Court Diversion Program would not
2 serve the ends of justice. A person convicted of a first offense under this
3 subdivision shall be imprisoned not more than six months or fined not more
4 than \$500.00, or both.

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

12 (C) Upon an adjudication of guilt for a first or second offense under
13 this subdivision, the court may defer sentencing as provided in 13 V.S.A.
14 § 7041, except that the court may in its discretion defer sentence without the
15 filing of a presentence investigation report and except that sentence may be
16 imposed at any time within two years from and after the date of entry of
17 deferment. The court may, prior to sentencing, order that the defendant submit
18 to a drug assessment screening, which may be considered at sentencing in the
19 same manner as a presentence report.

20 (3) A person knowingly and unlawfully possessing ~~two~~ eight ounces of
21 marijuana or ~~40~~ 1.4 grams of hashish or knowingly and unlawfully cultivating

1 more than four mature marijuana plants or eight immature marijuana plants
2 shall be imprisoned not more than three years or fined not more than
3 \$10,000.00, or both.

4 (4) A person knowingly and unlawfully possessing more than one pound
5 of marijuana or more than 2.8 ounces of hashish or knowingly and unlawfully
6 cultivating more than six mature marijuana plants or 12 immature marijuana
7 plants shall be imprisoned not more than five years or fined not more than
8 \$10,000.00, or both.

9 (5) A person knowingly and unlawfully possessing more than 10 pounds
10 of marijuana or more than one pound of hashish or knowingly and unlawfully
11 cultivating more than 12 mature marijuana plants or 24 immature marijuana
12 plants shall be imprisoned not more than 15 years or fined not more than
13 \$500,000.00, or both.

14 (6) If a court fails to provide the defendant with notice of collateral
15 consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later
16 at any time shows that the plea and conviction for a violation of this subsection
17 may have or has had a negative consequence, the court, upon the defendant's
18 motion, shall vacate the judgment and permit the defendant to withdraw the
19 plea or admission and enter a plea of not guilty. Failure of the court to advise
20 the defendant of a particular collateral consequence shall not support a motion
21 to vacate.

