

1 S.114

2 Introduced by Senators Pearson, Benning, Rodgers and White

3 Referred to Committee on

4 Date:

5 Subject: Crimes and criminal procedure; expungement; marijuana

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

10 An act relating to expungement of misdemeanor marijuana possession  
11 convictions

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

13 Sec. 1. EXPUNGEMENT OF MARIJUANA CRIMINAL HISTORY

14 RECORDS

15 (a) As used in this section:

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

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

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

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

19       (d) In any application for employment, license, or civil right or privilege or  
20       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 expunged.

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

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

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

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

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

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

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

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

6           § 4230. MARIJUANA

7           (a) Possession and cultivation.

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

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

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

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

15           (2)(A) No person shall knowingly and unlawfully possess more than  
16           two ounces of marijuana or more than ten grams of hashish or more than  
17           four mature marijuana plants or eight immature marijuana plants. For a first  
18           offense under this subdivision ~~(A)~~(2), a person shall be provided the  
19           opportunity to participate in the Court Diversion Program unless the prosecutor  
20           states on the record why a referral to the Court Diversion Program would not  
21           serve the ends of justice. A person convicted of a first offense under this

1 subdivision shall be imprisoned not more than six months or fined not more  
2 than \$500.00, or both.

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

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

18 (3) A person knowingly and unlawfully possessing ~~two~~ eight ounces of  
19 marijuana or ~~10~~ 1.4 grams of hashish or knowingly and unlawfully cultivating  
20 more than four mature marijuana plants or eight immature marijuana plants

1 shall be imprisoned not more than three years or fined not more than  
2 \$10,000.00, or both.

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

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

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

