

1 S.114

2 Introduced by Senators Pearson, Benning, Rodgers and White

3 Referred to Committee on Judiciary

4 Date: February 20, 2019

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.~~

*An act relating to the emergency judicial response to the COVID-19 public
health emergency*

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

2 with 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
7 expunged together with the expungement order and the certificate issued
8 pursuant to this chapter. The index shall list only the name of the person
9 convicted of the offense, his or her date of birth, the docket number, and the
10 criminal offense 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
11 person who violates this subdivision shall be assessed a civil penalty as
12 follows:

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

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

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

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

1 ~~would not serve the ends of justice. A person convicted of a first offense~~
2 under this subdivision shall be imprisoned not more than six months or fined
3 not more than \$500.00, or both.

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

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

19 (3) A person knowingly and unlawfully possessing ~~two~~ eight ounces of
20 marijuana or ~~40~~ 1.4 grams of hashish or knowingly and unlawfully cultivating
21 ~~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
4 pound of marijuana or more than 2.8 ounces of hashish or knowingly and
5 unlawfully cultivating more than six mature marijuana plants or 12 immature
6 marijuana plants shall be imprisoned not more than five years or fined not
7 more than \$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.

present with the principal or the notary. A power of attorney executed pursuant to this subsection may be recorded in the land records.

(2) A power of attorney executed in compliance with the Emergency Rules shall be presumed to be valid if the notarial certificate attached to the power of attorney contains an affirmative statement of compliance with the Emergency Rules.

Sec. 3. 27 V.S.A. § 341 is amended to read:

§ 341. REQUIREMENTS GENERALLY; RECORDING

(a) Deeds and other conveyances of lands, or of an estate or interest therein, shall be signed by the party granting the same and acknowledged by the grantor before a notary public and recorded at length in the clerk's office of the town in which such lands lie. Such acknowledgment before a notary public shall be valid without an official stamp being affixed to his or her signature.

* * *

(d)(1) A deed or other instrument may be recorded in the land records pursuant to this section for the purposes provided in this chapter and shall be deemed to impart notice of its contents if it is signed and acknowledged in accordance with the procedures specified in the Emergency Administrative Rules for Remote Notarial Acts adopted by the Vermont Secretary of State (the Emergency Rules) during the period that the Emergency Rules are in effect.

(2) A deed or other instrument executed in compliance with the Emergency Rules shall be presumed to be valid if the notarial certificate attached to the deed or other instrument contains an affirmative statement of compliance with the Emergency Rules.

Sec. 4. Vermont Rule of Criminal Procedure 43 is amended to read:

RULE 43. PRESENCE OF THE DEFENDANT

(a) Presence Required. The defendant shall be present at the arraignment, at any subsequent time at which a plea is offered, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

* * *

(d)(1) For purposes of this rule, a defendant shall be deemed to be present in court if:

(A) after having the opportunity to consult with counsel in person, telephonically, or via audio or video conference, the defendant makes an on-

the-record waiver of the right to be physically present in court at the time of the proceeding; and

(B) the defendant's appearance at the proceeding is made by means of contemporaneous video or audio conference transmission.

(2) For purposes of this rule, the terms "audio conference" and "video conference" shall be defined as set forth in V.R.C.P. 43.1, Participation of Testimony by Video or Audio Conference.

Sec. 5. ADMINISTRATIVE ORDER NO. 49; JUDICIAL EMERGENCY RESPONSE; SUSPENSION AND EXTENSION OF STATUTORY TIME FRAMES FOR COURT PROCEEDINGS; STAY OF CIVIL SUSPENSIONS

Due to the COVID-19 public health emergency, Administrative Order No. 49, Declaration of Judicial Emergency and Changes to Court Procedures, was issued to postpone all nonemergency Superior Court and Judicial Bureau hearings. As a result, the General Assembly intends this section to temporarily suspend the time frames by which certain court proceedings are statutorily required to take place.

(1) Notwithstanding any provision of law to the contrary, for the duration of the time A.O. No. 49 is in effect, the statutory time frames for certain hearings or court proceedings shall be extended as follows:

(A) conditions of release review pursuant to 13 V.S.A. § 7554(d)(1) shall be held within seven days following application; and

(B) conditions of release review pursuant to 13 V.S.A. § 7554(d)(2) shall be held within 14 days following application.

(2) Notwithstanding any provision of law to the contrary, for the duration of the time A.O. No. 49 is in effect and 120 days after A.O. No. 49 is terminated, all statutory time frames for issuing orders to seal or expunge criminal history records or processing petitions to seal or expunge criminal history records pursuant to 13 V.S.A. chapter 230 are suspended.

(3) Notwithstanding any provision of law to the contrary, for the duration of time A.O. No. 49 is in effect, the statutory time frames for preliminary and merits hearings on civil suspension pursuant to 23 V.S.A. § 1205(g) and (h) are suspended, and the Superior Court shall not suspend or disqualify a person's driver's license or privilege to operate pursuant to 23 V.S.A. § 1205 until the civil suspension hearing on the merits is held.

Sec. 6. SUSPENSION OF STATUTES OF LIMITATIONS

Notwithstanding any provision of law to the contrary, all statutes of limitations or statutes of repose for commencing a civil action in Vermont that would otherwise expire during the duration of any state of emergency declared by the Governor arising from the spread of COVID-19 are tolled until 60 days after the Governor terminates the state of emergency by declaration.

Sec. 7. NOTARIZATION; ALTERNATIVE FILING REQUIREMENT

(a) As used in this section, "emergency period" means the period beginning with the Governor's declaration of a state of emergency on March 13, 2020 arising from COVID-19 and ending 30 days after the Governor terminates the state of emergency by declaration.

(b) During the emergency period, notwithstanding 4 V.S.A. § 27b:

(1) A party may file any document that would otherwise require the approval or verification of a notary by filing the document with the following language inserted above the signature and date:

"I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or other sanctions in the discretion of the court."

(2) A document filed pursuant to this subsection shall not require the approval or verification of a notary.

(c) This section shall not apply to an affidavit in support of a search warrant application or to an application for a nontestimonial identification order.

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.