

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 234
3 entitled “An act relating to miscellaneous judiciary procedures” respectfully
4 reports that it has considered the same and recommends that the House propose
5 to the Senate that the bill be amended by adding Secs. A–D to read as follows:

6 Sec. A. EXPUNGEMENT OF MARIJUANA CRIMINAL HISTORY
7 RECORDS

8 (a) As used in this section:

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

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

14 (b) The court shall order the expungement of criminal history records of
15 violations of 18 V.S.A. § 4230(a)(1) that occurred prior to January 1, 2021.

16 The process for expunging these records shall be completed by the court and
17 all entities subject to the order not later than January 1, 2022.

18 (c) Upon entry of an expungement order, the order shall be legally effective
19 immediately and the person whose record is expunged shall be treated in all
20 respects as if he or she had never been arrested, convicted, or sentenced for the
21 offense. The court shall issue an order to expunge all records and files related

1 to the arrest, citation, investigation, charge, adjudication of guilt, criminal
2 proceedings, and probation related to the sentence. The court shall issue the
3 person a certificate stating that the offense for which the person was convicted
4 has been decriminalized and therefore warrants issuance of the order and that
5 its effect is to annul the record of arrest, conviction, and sentence. The court
6 shall provide notice of the expungement to the person who is the subject of the
7 record, the Vermont Crime Information Center (VCIC), the arresting agency,
8 and any other entity that may have a record related to the order to expunge.
9 The VCIC shall provide notice of the expungement to the Federal Bureau of
10 Investigation's National Crime Information Center.

11 (d) On and after January 1, 2021, a person who was arrested or convicted
12 of a violation of 18 V.S.A. § 4230(a)(1) prior to such date:

13 (1) shall not be required to acknowledge the existence of such a criminal
14 history record or answer questions about the record in any application for
15 employment, license, or civil right or privilege or in an appearance as a witness
16 in any proceeding or hearing:

17 (2) may deny the existence of the record regardless of whether the
18 person has received notice from the court that an expungement order has been
19 issued on the person's behalf; and

1 (3) may utilize the procedures in chapter 230 of Title 13 to seek
2 expungement or sealing of the record prior to the court taking steps to issue an
3 expungement order pursuant to this section.

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

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

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

16 (3) Inspection of the expungement order and the certificate may be
17 permitted only upon petition by the person who is the subject of the case. The
18 Chief Superior Judge may permit special access to the index and the
19 documents for research purposes pursuant to the rules for public access to
20 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. B. 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 two ounces or
18 more of marijuana or ten grams or more of hashish or more than three mature
19 marijuana plants or six immature marijuana plants. For a first offense under
20 this subdivision ~~(A)~~(2), a person shall be provided the opportunity to
21 participate in the Court Diversion Program unless the prosecutor states on the

1 record why a referral to the Court Diversion Program would not serve the ends
2 of justice. A person convicted of a first offense under this subdivision shall be
3 imprisoned not more than six months or fined 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 marijuana~~
7 ~~plants or four immature marijuana plants~~ **violating subdivision (a)(2)(A) of this**
8 **section** shall be imprisoned not more than two years or fined not more than
9 \$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 ~~(2)(3)~~ A person knowingly and unlawfully possessing ~~two~~ eight ounces
19 of marijuana or ~~10 grams~~ 1.4 ounces of hashish or knowingly and unlawfully
20 cultivating more than four mature marijuana plants or eight immature

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

3 ~~(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 ~~(4)~~(5) A person knowingly and unlawfully possessing more than 10
9 pounds of marijuana or more than one pound of hashish or knowingly and
10 unlawfully cultivating more than 12 mature marijuana plants or 24 immature
11 marijuana plants shall be imprisoned not more than 15 years or fined not more
12 than \$500,000.00, or both.

13 ~~(5)~~(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.

1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE