

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 618

H. P. 470

House of Representatives, February 1, 1973

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Dunleavy of Presque Isle.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

**AN ACT Relating to Probation and Expungement of Records
for First-time Possession of Marijuana Offenders.**

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 22, § 2383-A, additional. Title 22 of the Revised Statutes is amended by adding a new section 2383-A to read as follows:

§ 2383-A. Probation and expungement of records

For the purposes of this section, expunge shall mean a physical destruction or annihilation, provided that in those situations where expungement would destroy information regarding any other criminal activity other than that for which expungement is being ordered, expunge shall mean a rendering totally illegible and unintelligible of defendant's name, address, age, physical characteristics and other identifying information.

This section shall be applicable in any criminal proceeding under section 2383 in which there is a finding of guilt against a defendant who has not previously been found guilty of any offense pursuant to this chapter, chapter 557 and subchapter II of chapter 551, or any provision of prior law of this State relative to any substance, except wood alcohol, which is presently subject to this chapter, chapter 557 and subchapter II of chapter 551. Upon such finding of guilt and upon defendant's declaration under oath before the court that he has not been convicted of a felony under any state or federal law relating to such drugs, the judge shall, unless said defendant objects thereto or unless said judge files a written memorandum stating the reasons for not so doing; continue the case for sentence pursuant to Title 34, section 1631 or, impose sentence, suspend its execution and place defendant on probation pursuant to Title 34, section 1631.

If, during the period of said probation, defendant does not violate any of the conditions of said probation, the judge shall order the clerk of courts to serve notice of termination of probation upon all law enforcement, probation and judicial agencies, including the State Bureau of Identification, who possess records stemming from defendant's arrest, indictment, information, conviction, probation, or continuance or discharge. Upon receipt of such notice, each agency shall expunge any records stemming from defendant's arrest, indictment, information, conviction, probation, continuance or discharge, provided that police investigative records, fingerprints, photographs, records kept solely for statistical purposes and presentence investigations conducted by the Division of Probation and Parole shall not be subject to such expungement.

A separate record shall be maintained in a confidential file in the central office of the Division of Probation and Parole. Such record shall be maintained solely to indicate that there has been a finding of guilt under this section and such record shall not be made available to any person or agency, provided such confidential information may be released to police agencies for investigative purposes or to other public and private individuals, agencies and organizations upon court order. On the first subsequent offense under this section, a person whose records have been expunged shall be subject to the penalties of a first offender, but records regarding said subsequent offense shall not be subject to the expungement provisions of this section.

If any person is found not guilty of any violation of section 2383 or if a complaint, information or indictment against defendant is dismissed or nolle prossed for a violation of said section, the judge shall, unless defendant objects thereto or unless said judge files a written memorandum stating the reasons for not so doing, order the clerk of courts to serve notice of such finding of not guilty, dismissal or nolle prosequi upon all law enforcement and judicial agencies including the State Bureau of Identification, who possess records stemming from defendant's arrest, indictment, information or trial. Upon receipt of such notice, each agency shall expunge any records stemming from defendant's arrest, indictment, information or trial, provided that police investigative records, fingerprints, photographs and records kept solely for statistical purposes shall not be subject to such expungement.

The effect of an expiration of or discharge from probation and an expungement of official records shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest. No person who has been discharged and whose records have been expunged shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge with respect to such expunged records such arrest, indictment, information, dismissal, conviction, probation, finding of not guilty or other related court proceeding. Such expunged records of any person shall not operate to disqualify him from any examination, appointment or employment, nor shall such expunged records be admissible in evidence or used in any way in any hearing before any board or commission or in any court proceeding, provided that wherever said person has been found guilty of a subsequent offense, the court probation officer shall present to the judge prior to sentencing such information as he has received from the central office of the Division of Probation and Parole pursuant to this section.

No agent, representative or employee of any law enforcement agency, nor any person who has been given access to any records of any law enforcement agency shall willfully release to any person, agency or organization any information relating to the arrest, indictment, information, conviction, probation, continuance or finding of not guilty of any person whose records have been expunged, provided such confidential information may be released to police agencies for investigative purposes or to other public and private individuals, agencies and organizations upon court order.

STATEMENT OF FACT

The purpose of this bill is to insure that most persons convicted for the first time for possession of marijuana or being knowingly in the presence of marijuana will be offered probation. This bill also attempts to insure that the stigma of arrest and trial proceedings will not preclude a defendant's pursuit of any profession or employment.