

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1646

H.P. 1056

House of Representatives, April 12, 2023

**An Act to Vacate or Adjust Sentences and Expunge Arrests,
Convictions and Adjudications for Cannabis-related Offenses**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BOYER of Poland.
Cosponsored by Representative RISEMAN of Harrison,
Senator BRAKEY of Androscoggin and
Representatives: DANA of the Passamaquoddy Tribe, FAULKINGHAM of Winter Harbor,
MILLIKEN of Blue Hill, O'NEIL of Saco, Speaker TALBOT ROSS of Portland, WHITE of
Guilford, WILLIAMS of Bar Harbor, Senator: HICKMAN of Kennebec.

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

2 **Sec. 1. 15 MRSA c. 313** is enacted to read:

3 **CHAPTER 313**

4 **EXPUNGEMENT OF RECORDS AND ADJUSTMENT OF SENTENCES FOR**
5 **CANNABIS-RELATED OFFENSES**

6 **§2331. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Cannabis.** "Cannabis" has the same meaning as in Title 28-B, section 102,
10 subsection 27 and includes "marijuana" as defined in Title 17-A, section 1101, subsection
11 1.

12 **2. Cannabis-related offense.** "Cannabis-related offense" means a conviction or
13 adjudication for a crime or civil violation:

14 A. Involving the sale, use or possession of cannabis or paraphernalia related to
15 cannabis; and

16 B. Other than a crime or civil violation described in paragraph A that, but for the
17 presence of cannabis or paraphernalia, would not have been a crime or civil violation.

18 **3. Department.** "Department" means the Department of Public Safety.

19 **4. Expunge.** "Expunge" means to permanently delete or to physically destroy or
20 obliterate.

21 **5. Paraphernalia.** "Paraphernalia" has the same meaning as "drug paraphernalia" as
22 defined in Title 17-A, section 1111-A, subsection 1, except that it is limited to
23 paraphernalia used for cannabis-related activities, including, but not limited to, cultivation,
24 transportation and use of cannabis.

25 **§2332. Vacating of arrests, convictions and adjudications and expungement of**
26 **records for offenses for possession of cannabis**

27 **1. Vacating offenses for possession of cannabis.** All arrests, convictions and
28 adjudications for possession of cannabis are deemed vacated and the records of those
29 arrests, convictions and adjudications must be expunged pursuant to subsection 2.

30 **2. Expungement of records for offenses for possession of cannabis.** The
31 expungement of records of arrests, convictions and adjudications for crimes or civil
32 violations for possession of cannabis is governed by this subsection.

33 A. The department shall review all records possessed by any state criminal justice or
34 law enforcement agency, the department's Bureau of State Police, State Bureau of
35 Identification or the Federal Bureau of Investigation that contain criminal history
36 record information pursuant to Title 16, section 703, subsection 3 and, no later than
37 January 1, 2025, shall expunge all records that relate to arrests, convictions and
38 adjudications for crimes or civil violations for possession of cannabis.

1 B. Upon a request made pursuant to subsection 4 by an individual who has been
2 arrested, convicted or adjudicated of a crime or civil violation for possession of
3 cannabis, the department, within 30 days of receipt of the request, shall review the
4 request, make a determination as to the eligibility of the individual for action under this
5 section and notify the individual of the department's decision. If the department
6 determines the individual eligible, the department shall expunge that individual's
7 relevant records within 30 days of the determination.

8 C. Following the actions taken pursuant to paragraph A or B, the department shall
9 notify each court in which a conviction or adjudication of a crime or civil violation for
10 possession of cannabis was made of the actions taken by the department pursuant to
11 this subsection.

12 **3. Court action regarding convictions or adjudications for possession of cannabis.**
13 Within 3 months of notification pursuant to subsection 2, paragraph C by the department
14 of the expungement of records related to arrests, convictions or adjudications of crimes or
15 civil violations for possession of cannabis, the court receiving the notification shall vacate
16 all convictions and adjudications for crimes or civil violations for possession of cannabis.

17 **4. Requests for expungement and vacation.** An individual who has been convicted
18 or adjudicated of a crime or civil violation for possession of cannabis may request the
19 department review and expunge that individual's record as described in subsection 2. If the
20 department fails to notify the individual within 30 days of the decision of the department
21 or fails to expunge the individual's record as required by subsection 2, the individual may
22 petition the court for review of the individual's eligibility under this section. The court may
23 not charge a fee for the filing of this petition.

24 **5. Outstanding fees, fines or costs.** The department shall expunge the records of an
25 individual who is eligible pursuant to subsection 2, and the court shall vacate the
26 convictions and adjudications of an eligible individual pursuant to subsection 3
27 notwithstanding any outstanding court-imposed or court-related fees, fines, costs,
28 assessments or other charges.

29 **6. Costs to department and courts.** The department and the Administrative Office
30 of the Courts shall annually determine the costs to the department and courts, respectively,
31 of complying with this section and shall request payment of those costs from the State
32 Controller. Upon receipt of a request for payment, the State Controller shall reimburse the
33 department and the courts for those costs using funds in the Adult Use Cannabis Public
34 Health and Safety and Municipal Opt-in Fund established in Title 28-B, section 1101.

35 **§2333. Resentencing for conviction of cannabis-related offense**

36 **1. Determination of individuals serving sentences for cannabis-related offense.**
37 By January 1, 2024, the chief administrative officer of a correctional facility and the jail
38 administrator shall create a list of all individuals serving a sentence of imprisonment in a
39 correctional facility or jail in this State, respectively, for a cannabis-related offense and
40 those individuals on supervised release, probation or administrative release as part of a
41 sentence for a cannabis-related offense. The chief administrative officer and the jail
42 administrator shall provide the list to the court at which the individual was sentenced and
43 shall notify each individual on the list of that individual's right to petition the sentencing
44 court for resentencing pursuant to this section.

1 **2. Petition for resentencing.** An individual who has been convicted of a cannabis-
2 related offense and who has not completed the sentence imposed by the court for that
3 conviction may petition that sentencing court, either before or after receipt of notification
4 pursuant to subsection 1, for resentencing.

5 **3. Action on petition.** Action on a petition for resentencing for conviction of a
6 cannabis-related offense pursuant to subsection 2, referred to in this subsection as "the
7 petition," is governed by this subsection.

8 A. A court receiving a petition shall provide a copy of the petition to the office of the
9 prosecutor that prosecuted the cannabis-related offense that is the subject of the
10 petition.

11 B. A prosecutor receiving a petition pursuant to paragraph A has 14 days from receipt
12 of the petition to object to the petition and request a hearing pursuant to paragraph D.

13 C. If a prosecutor fails to object within 14 days of receipt of the petition, the court shall
14 grant the petition and resentence the individual who is the subject of the petition to the
15 portion of the sentence the individual has already served.

16 D. If the prosecutor objects to the petition within 14 days of receipt of the petition, the
17 court shall schedule a hearing on the petition. At that hearing, the prosecutor is required
18 to prove, by clear and convincing evidence, that:

19 (1) The crime that is the subject of the petition is not a cannabis-related offense;

20 (2) Resentencing would not be in the interests of justice; or

21 (3) If resentencing is appropriate, the appropriate sentence is something other than
22 the portion of the sentence the individual who is the subject of the petition has
23 already served.

24 E. There is a rebuttable presumption that resentencing is in the interests of justice due
25 to the legalization of the cultivation, manufacture, distribution, sale, use and possession
26 of cannabis for adult use pursuant to Title 28-B. This presumption is rebutted if:

27 (1) Additional, more serious charges unrelated to activities permitted pursuant to
28 Title 28-B were dismissed as part of a plea deal; or

29 (2) The cannabis-related offense involved distribution of cannabis to a minor or
30 using a minor to distribute cannabis.

31 F. Unless the prosecutor proves by clear and convincing evidence the requirements of
32 paragraph D, subparagraph (1) or (2), the court shall resentence the individual as
33 specified in this paragraph.

34 (1) Unless the prosecutor proves by clear and convincing evidence that a different
35 sentence is required pursuant to paragraph D, subparagraph (3), the court shall
36 sentence the individual to the portion of the sentence the individual has already
37 served.

38 (2) If the prosecutor proves by clear and convincing evidence that resentencing to
39 a sentence other than the portion of the sentence already served is appropriate, the
40 court shall resentence the individual to the most minimum sentence that is in the
41 interests of justice.

1 A court may not increase a sentence or impose an additional sentence in response to a
2 petition.

3 G. An individual who files a petition that is objected to by a prosecutor is entitled to
4 court-appointed legal representation at no cost to the individual and without being
5 required to prove indigency.

6 H. A fee may not be imposed for the filing of a petition.

7 **4. Costs to Department of Corrections, county jails, courts and prosecutors.** The
8 Department of Corrections, the jail administrator, the Administrative Office of the Courts
9 and the district attorneys for the prosecutorial districts in this State shall annually determine
10 the costs to the department, the jails, the courts, including the cost of providing legal
11 representation to individuals filing a petition pursuant to this section, and the district
12 attorneys, respectively, of complying with this section and shall request payment of those
13 costs from the State Controller. Upon receipt of a request for payment, the State Controller
14 shall reimburse the requesting entity for those costs using funds in the Adult Use Cannabis
15 Public Health and Safety and Municipal Opt-in Fund established in Title 28-B, section
16 1101.

17 **Sec. 2. 28-B MRSA §1101, sub-§4** is enacted to read:

18 **4. Use of fund for vacating certain sentences, expungement of records and**
19 **resentencing for crimes and civil violations related to cannabis.** Money credited to the
20 fund must be used to pay the costs of implementing the vacating of a conviction or
21 adjudication of a crime or civil violation for possession of cannabis and the expungement
22 of records of arrest, conviction or adjudication for a crime or civil violation for possession
23 of cannabis pursuant to Title 15, section 2332 and the costs incurred for determining
24 individuals eligible for resentencing and implementing the petition and resentencing
25 process pursuant to Title 15, section 2333.

26 **SUMMARY**

27 This bill provides that all arrests, convictions and adjudications for crimes or civil
28 violations for possession of cannabis are vacated and requires the records of those arrests,
29 convictions and adjudications to be expunged in accordance with a process established in
30 the bill. This bill also allows for an individual who has been convicted of a cannabis-related
31 offense and who is still serving a sentence, including incarceration or supervised release,
32 probation or administrative release, for that crime to petition the original sentencing court
33 to resentence that individual. The bill defines "cannabis-related offense" as a conviction
34 or adjudication for a crime or civil violation involving the sale, use or possession of
35 cannabis or paraphernalia related to cannabis or that, but for the presence of cannabis,
36 would not have been a crime or civil violation.

37 Under the bill, the sentencing court must notify the prosecutor who prosecuted the
38 cannabis-related offense of the petition, who must object to the petition within 14 days or
39 the court is required to grant the petition and resentence the individual to time served. If
40 the prosecutor objects, the prosecutor must prove, by clear and convincing evidence, that
41 the crime for which the individual was sentenced is not a cannabis-related offense, that
42 resentencing is not in the interests of justice or that if resentencing is appropriate,
43 resentencing to something other than the portion of the sentence the individual has already
44 served is appropriate. The bill establishes a rebuttable presumption that resentencing is in

1 the interests of justice due to the legalization of the cultivation, manufacture, distribution,
2 sale, use and possession of cannabis for adult use pursuant to the Maine Revised Statutes,
3 Title 28-B.

4 The bill provides that a court may resentence the individual who is the subject of a
5 petition to time served or longer but may not resentence the individual to a longer sentence
6 than the original sentence.

7 The bill also provides that an individual who files a petition for resentencing is entitled
8 to court-appointed legal representation, without having to prove indigency.

9 Under the bill, all costs of all the entities involved in the vacating of arrests, convictions
10 and adjudications and expunging of records related to crimes or civil violations for
11 possession of cannabis and all entities involved in resentencing of convictions for cannabis-
12 related offenses are entitled to reimbursement of costs incurred to carry out those actions.
13 Reimbursement must be paid from the Adult Use Cannabis Public Health and Safety and
14 Municipal Opt-in Fund.