



# Administrative Office of the Courts

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## **Judicial Branch testimony neither for nor against LD 2269, An Act to Automatically Seal Criminal Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation:**

Senator Carney, Representative Moonen, and members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide some comments regarding this bill.

In general, the Judicial Branch takes no position on the sealing of criminal records. Please note that we did not testify on the other bills pertaining to record sealing that are being heard this morning. We also do not plan to put a fiscal note on LD 2218 or LD 2236 because those proposals expand our existing petition process which has been in place for several years.

However, LD 2269 outlines a procedure that creates many problems for the Judicial Branch, a chronology of which are listed below:

1. The criminal history record information from the State Bureau of Identification ("SBI") must meet requirements of new § 2402. However, once received, the Judicial Branch would have to check our current case management system, MEJIS, for subsequent and recent charges. Because many drug crimes are titled using the "schedule" of the drug, rather than the specific drug, paper files containing the original criminal complaint will have to be examined to see if marijuana was involved in any relevant drug charge reference a Schedule Z drug (which is the schedule under which marijuana falls).
2. The proposed process has SBI send its criminal history record information that meets § 2402 requirements to the Administrative Office of the Court ("AOC"). The AOC is an administrative office and does not use MEJIS or maintain court files. If cases were to come to a central Judicial Branch location, we would need a new position created and funded to do this work.
3. After the AOC receives this information, under the proposed process, the courts of jurisdiction have to be identified, and the regional lists of cases sent to each court.
4. When the individual court receives the list of cases, the paper files would need to be pulled. These files might be in various locations, such as an onsite file room, an offsite storage facility, state archives.

5. Once the files are located and transferred to the court of jurisdiction, a court clerk or law clerk would have to review the file to see if the requirements of new § 2402 are met.
6. After clerk review, a judge would have to review the file and issue an order sealing, or not sealing, the records.
7. After an order is issued, the clerk would docket the order and send a copy to the former defendant at their last known address; put one in the file; and, if sealing is ordered, so label the file.
8. While the bill requires the Judicial Branch to send the court's order to SBI *whether or not the order is granted*, we do not have a data transfer set up to electronically transmit orders that do not seal records. That would require additional programming.
9. This process would have to be repeated for thousands of cases.

Fiscal impact. It is difficult to assess the fiscal impact of the bill as drafted due to the issues described above. It is clear that extensive sealing of records cannot be done without significant additional resources in order to avoid transferring court clerks from their existing duties processing existing pending cases. Doing so would, of course, worsen the backlog.

If a workable process is at some point created, accurately assessing the fiscal impact of LD 2269 would involve forming a committee within the Judicial Branch and with representatives of SBI. Court operations and information technology staff would have to be involved. While it is unclear how many positions would be needed, we could look to other New England states for guidance.

Vermont experience. The State of Vermont judiciary recently undertook a sealing project of low-level marijuana convictions similar to the process proposed in LD 2269. I was able to speak to them and obtained the following numbers. The project was mostly completed in 20 months from 2022-2023, although some aspects of the sealing task continue. Five limited period judicial assistants were hired and two Active Retired Judges (or the Vermont equivalent) issued 12,947 orders.

Short time frame. It is concerning that LD 2269 was only released at 3pm on Wednesday and was set for public hearing 42 hours later. The Criminal Law Advisory Committee (CLAC) and other criminal law experts have not had an opportunity to meet or weigh in on this bill. The Judiciary Committee may want to examine the list of marijuana convictions that would be sealed under this law. Some of them are still listed as crimes under current law.

#### Drafting issues.

1. In new § 2403(4), the bill states that “notice of the court’s order” shall be transferred to the bureau. Perhaps the actual order is intended to be transferred, rather than “notice.”
2. In new § 2405(1), is the intent of this section to say that appellate review is discretionary in accordance with rules promulgated by the SJC?
3. New § 2405(2) is confusing and seems to contain internal contradictions. Can the State appeal without involving the Attorney General or not?

Thank you for your consideration.