

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

## EXPUNGEMENT OF CONVICTIONS ACT 2020

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SCHEDULE  
Relevant offences

WHEREAS it is expedient to provide a process for the expungement of criminal convictions for decriminalised or repealed offences and for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### *Preliminary*

Citation

- 1 This Act may be cited as the Expungement of Convictions Act 2020.

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### Interpretation

2 (1) In this Act—

“conviction” means any finding in criminal proceedings that an offence has been committed in Bermuda;

“expunged person” means a person who was convicted of a relevant offence that is the subject of an expungement order made under section 7;

“expungement order” means an order to expunge the criminal record of a person convicted of a relevant offence;

“Minister” means the Minister responsible for legal affairs;

“official record” means a record kept for the purposes of its functions by any court, police force, Government department or other public authority in Bermuda being a record containing information about persons convicted of a relevant offence;

“relevant offence” means a decriminalised or repealed offence provided in the Schedule.

(2) The Minister may by Order amend the Schedule.

(3) An Order made under subsection (2) shall be subject to the negative resolution procedure.

### Saving of Royal Prerogative

3 Nothing in this Act shall affect Her Majesty’s Prerogative of mercy or any power vested in the Governor acting as the representative of Her Majesty, to exercise such Royal Prerogative on behalf of Her Majesty, or to grant a pardon either free or subject to conditions or any remission of sentence, or any respite of the execution of any sentence.

### Expungement: limitations

4 An expungement order does not—

(a) affect the validity of a conviction for a relevant offence or of any sentence imposed following such conviction;

(b) give rise to any right, entitlement or liability.

### *Expungement*

### Eligibility for an expungement order

5 A person convicted of a relevant offence is eligible to have his conviction expunged by order of the Minister (“an expungement order”).

### Application

6 (1) A person who has been convicted of a relevant offence may apply to the Minister for the conviction to be expunged.

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- (2) An application under subsection (1) shall be in writing and shall include—
- (a) the applicant's name and address and date of birth;
  - (b) the applicant's name and address at the time of the conviction;
  - (c) details of the conviction; and
  - (d) any other information the Minister requires.

(3) An application made under subsection (1) may also include any information which the applicant wishes the Minister to consider when determining the application.

(4) If a person referred to in subsection (1) has died or has a physical or mental disability, an application under this section may be made in respect of that person by a person who, in the Minister's opinion, is an appropriate person to act on his behalf.

### Determination of application

7 (1) Where a person has made an application for an expungement order, the Minister shall decide to make or refuse to make an expungement order.

(2) For the purposes of deciding whether to make or refuse to make an expungement order, the Minister shall have regard to the information and representations provided by the applicant.

- (3) The Minister may—
- (a) approve the application for the expungement order and send a copy of the expungement order to the applicant; or
  - (b) refuse the application.

(4) Where the Minister refuses the application to make an expungement order, he shall notify the applicant in writing within seven days from the date of refusal, giving the reasons for the refusal, and of the applicant's right of appeal under subsection (5).

(5) Any person who is aggrieved by a decision of the Minister to refuse to make an expungement order, may within 21 days after being notified in writing of the decision, appeal to the Supreme Court against that decision setting out the grounds of appeal, and the Supreme Court shall make such order in the appeal as seems just.

### Effect of expungement order

8 (1) This section applies where an expungement order has been made.

(2) From the date of an expungement order, the person to whom the order relates shall be treated for all purposes as not having—

- (a) committed the offence;
- (b) been charged with, or prosecuted for, the offence;
- (c) been convicted of the offence; or
- (d) been sentenced for the offence.

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(3) In particular—

- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Bermuda to prove that any such person has committed or been charged with or prosecuted for, or convicted or sentenced for an expunged offence; and
- (b) a person shall not in any such proceedings be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to an expunged conviction or expunged convictions or any circumstances ancillary thereto.

(4) Where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—

- (a) the question shall be treated as not relating to an expunged conviction or to any circumstances ancillary to an expunged conviction, and the answer thereto may be framed accordingly; and
- (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose an expunged conviction or any circumstances ancillary to an expunged conviction in his answer to the question.

(5) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose the expunged conviction or any circumstances ancillary to the expunged conviction (whether the conviction is his own or another's).

(6) A conviction that has been expunged or any circumstances ancillary thereto or any failure to disclose an expunged conviction or any such circumstances shall not be a ground for dismissing or excluding a person from any office, profession, occupation or employment or prejudicing him in any way in any occupation or employment.

(7) In this section, "proceedings before a judicial authority" includes in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power—

- (a) by virtue of any provision of law, custom or practice;
- (b) under the rules governing any association, institution, profession, occupation or employment; or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder,

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

(8) For the purposes of this section, circumstances ancillary to a conviction are any circumstances of—

- (a) the offence which was the subject of the conviction;

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- (b) the conduct constituting the offence;
- (c) any process or proceedings preliminary to the conviction;
- (d) any sentence imposed in respect of the conviction;
- (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or sentence;
- (f) anything done in pursuance of, or undergone in compliance with, any such sentence.

### Unauthorized disclosure of expunged convictions; offence

9 (1) Any person who, in the course of his official duties, has or at any time has had custody or control of or access to any official record or the information contained therein, commits an offence if, knowing or having reasonable cause to suspect that any specified information he has obtained in the course of those duties is specified information, he discloses it otherwise than in the course of those duties to any other person.

(2) In any proceedings for an offence under subsection (1) it shall be a defence for the accused person to show that the disclosure was made—

- (a) to the expunged person, or to another person at his expressed request; or
- (b) to a person whom he reasonably believed to be the expunged person or to another person at the express request of such first-named person.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$500.

(4) Any person who obtains any specified information from any official record by means of any fraud or dishonesty commits an offence and is liable on summary conviction to a fine of \$1,000 or a term of imprisonment of six months, or both such fine and imprisonment.

(5) Proceedings for an offence under this section shall not be instituted except with the consent of the Director of Public Prosecutions.

(6) In this section—

“specified information” means information imputing that a named or otherwise identifiable expunged person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a expungement order.

### *General*

### Regulations

10 (1) The Minister may by regulations make any supplementary, consequential, transitional or saving provision that he considers appropriate for the purposes of and in connection with giving full effect to this Act.

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- (2) Regulations made under subsection (1)—
- (a) may modify any enactment, including this Act;
  - (b) may make different provisions for different purposes;
  - (c) shall be subject to the negative resolution procedure.

### Commencement

11 This Act comes into operation on a day to be appointed by the Minister by notice published in the Gazette.

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SCHEDULE

(Section 2)

RELEVANT OFFENCES

1. An offence of simple possession of cannabis committed before 20 December 2017; *which was decriminalised by the Misuse of Drugs (Decriminalisation of Cannabis) Act 2017*

## EXPUNGEMENT OF CONVICTIONS BILL 2020

### EXPLANATORY MEMORANDUM

This Bill seeks to provide a process for the expungement of criminal convictions for decriminalised or repealed offences and for related matters

Clause 1 is the title of the Bill.

Clause 2 provides the definitions of terms used in the Act.

Clause 3 provides that nothing in the Act will have effect on the power of Her Majesty or the Governor as Her Majesty's representative to grant a pardon for a conviction.

Clause 4 provides that an expungement order does not affect the validity of a conviction for a relevant offence or of any sentence imposed following such conviction or give rise to any right, entitlement or liability.

Clause 5 provides that a person who was convicted of a relevant offence is eligible to apply for an expungement order.

Clause 6 provides that a person who was convicted of a relevant offence may apply to the Minister for an expungement order. It also provides that an appropriate person is able apply on behalf of a person convicted of a relevant offence, in the event of that person's death or physical or mental disability.

Clause 7 provides that the Minister will determine an application for an expungement order and may make or refuse to make an expungement order. It also provides that (a) on making the order, the Minister will send a copy of the expungement order to the applicant and (b) on refusing to make the order, the Minister will notify the applicant, in writing, of the refusal and his right to appeal (the procedure as provided in subsection (4)).

Clause 8 provides the effects of an expungement order including: (a) how the recipient of an expungement order will be considered from the date of the order; and (b) how evidence is not able to be used in any proceedings of a conviction that is the subject of the expungement order.

Clause 9 creates an offence for unauthorized disclosure of an expunged conviction.

Clause 10 gives the Minister regulation making power.

Clause 11 provides for the commencement by notice in the Gazette.