

HOUSE No. 2785

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Vega and Byron Rushing

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the expungement of records of marijuana arrests.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|--|------------------|
| <i>Aaron Vega</i> | <i>5th Hampden</i> | <i>1/24/2017</i> |
| <i>Byron Rushing</i> | <i>9th Suffolk</i> | <i>2/1/2017</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | <i>1/31/2017</i> |
| <i>Gailanne M. Cariddi</i> | <i>1st Berkshire</i> | <i>2/3/2017</i> |
| <i>Evandro C. Carvalho</i> | <i>5th Suffolk</i> | |
| <i>Sonia Chang-Diaz</i> | <i>Second Suffolk</i> | <i>2/3/2017</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>2/3/2017</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/3/2017</i> |
| <i>Geoff Diehl</i> | <i>7th Plymouth</i> | <i>2/3/2017</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> | <i>1/31/2017</i> |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> | <i>1/31/2017</i> |
| <i>Dylan Fernandes</i> | <i>Barnstable, Dukes and Nantucket</i> | <i>2/3/2017</i> |
| <i>Linda Dorcena Forry</i> | <i>First Suffolk</i> | <i>2/3/2017</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> | <i>2/3/2017</i> |
| <i>Solomon Goldstein-Rose</i> | <i>3rd Hampshire</i> | <i>1/31/2017</i> |
| <i>Carlos González</i> | <i>10th Hampden</i> | <i>1/31/2017</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> | <i>1/30/2017</i> |
| <i>Russell E. Holmes</i> | <i>6th Suffolk</i> | <i>2/3/2017</i> |

| | | |
|---------------------------|-----------------------|------------------|
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>2/3/2017</i> |
| <i>Jack Lewis</i> | <i>7th Middlesex</i> | <i>1/31/2017</i> |
| <i>Jay D. Livingstone</i> | <i>8th Suffolk</i> | <i>2/3/2017</i> |
| <i>Leonard Mirra</i> | <i>2nd Essex</i> | <i>2/3/2017</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> | <i>2/3/2017</i> |
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> | <i>2/3/2017</i> |
| <i>Chynah Tyler</i> | <i>7th Suffolk</i> | |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> | <i>2/3/2017</i> |

HOUSE No. 2785

By Messrs. Vega of Holyoke and Rushing of Boston, a petition (subject to Joint Rule 12) of Aaron Vega, Byron Rushing and others relative to the expungement of records of marijuana arrests, detention, convictions and incarceration. Marijuana Policy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the expungement of records of marijuana arrests.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 276 of the general laws is hereby amended by adding, after section 100D, the
2 following new section:

3 Section 100E: Expungement of records of marijuana arrest, detention, conviction and
4 incarceration.

5 (a) Expungement of marijuana records. Any person having a record of criminal court
6 appearances and dispositions in the commonwealth on file with the office of the commissioner of
7 probation, or the Department of Criminal Justice Information Services established by c. 6, sec.
8 167A et seq., for a marijuana offense as defined by c. 94C or other provisions of law committed
9 before the enactment of c. 334 of the Acts of 2016, shall have all such records expunged
10 forthwith from all criminal record information systems collected or distributed by any state
11 agency, court or municipality. Any person with a criminal record eligible for expungement
12 hereunder may apply to the commissioner, the department or the clerk of court where an

13 expunged record exists, for expedited expungement in compliance with the provisions hereunder,
14 and have the application acted on forthwith.

15 (b) Notice of expungement. When records of criminal appearances and criminal
16 dispositions are expunged by the commissioner or department in their files, the commissioner or
17 department shall notify forthwith the clerk and the probation officer of the courts in which the
18 convictions or dispositions have occurred, or other entries have been made, of such
19 expungement, and said clerks and probation officers likewise shall expunge records of the same
20 proceedings in their files.

21 (c) Effect of expungement. Such expunged records shall not operate to disqualify a
22 person in any examination, appointment or application for public service in the service of the
23 commonwealth or of any political subdivision thereof; nor shall such expunged records be
24 admissible in evidence or used in any way in any court proceedings or hearings before any
25 boards or commissions. Anyone with an expunged marijuana record whose license to operate a
26 motor vehicle remains under suspension pursuant to G.L. c. 90, sec. 22 or other provision of law,
27 due to a marijuana infraction unrelated to a conviction for operation under the influence, is
28 entitled to have the suspension terminated forthwith, and to have their license to operate restored
29 forthwith.

30 (d) Employment applications. An application for employment used by an employer which
31 seeks information concerning prior arrests or convictions of the applicant shall include the
32 following statement:

33 “An applicant for employment with an expunged record on file with the commissioner of
34 probation may answer ‘no record’ with respect to an inquiry herein relative to prior arrests,

35 criminal court appearances or convictions. An applicant for employment with an expunged
36 record on file with the commissioner of probation may answer ‘no record’ to an inquiry herein
37 relative to prior arrests or criminal court appearances. In addition, any applicant for employment
38 may answer ‘no record’ with respect to any inquiry relative to prior arrests, court appearances
39 and adjudications in all cases of delinquency or as a child in need of services which did not result
40 in a complaint transferred to the superior court for criminal prosecution.”

41 The attorney general may enforce the provisions of this paragraph by a suit in equity
42 commenced in the superior court.

43 (e) “No record” report of expunged records. The commissioner or the department, in
44 response to inquiries by authorized persons, shall in the case of an expunged record or in the case
45 of court appearances and adjudications in a case of delinquency or the case of a child in need of
46 services, report that no record exists.

47 (f) Prisoners serving sentences for expunged offenses. The commissioner of correction,
48 and the sheriffs and masters of all county Houses of Correction shall forthwith review the
49 sentencing mittimus’ of all prisoners in their custody to identify any prisoner held (i) pursuant to
50 a conviction for a marijuana offense as defined by c. 94C, committed before the enactment of c.
51 334 of the Acts of 2016; or (ii) the revocation of probation or parole regardless of the nature of
52 the underlying offense, where the only ground for revocation was the prisoner’s use of marijuana
53 committed before the enactment of c. 334 of the Acts of 2016. Any prisoner so identified shall be
54 reported to the committee for public counsel services, and the district attorney for the county of
55 the sentencing court, along with a copy of the sentencing mittimus. Any prisoner being held only
56 for sentence under an expunged marijuana offense, or held on a probation or parole surrender

57 based only on drug testing or other probation or parole violation regarding the parolee or
58 probationer's use of marijuana, may apply to the sentencing court for an order of discharge and
59 release. An initial hearing shall be held within ten days of court application, to determine
60 whether any basis other than a marijuana law violation exists for the prisoner's continued
61 detention. If no other basis exists the prisoner shall be released forthwith at the initial hearing; if
62 other non-marijuana related cause for custody appears to exist, the prisoner may seek a
63 continuance of the initial hearing to further investigate and present evidence regarding a claim
64 that the only basis for the prisoner's custody is a conviction or probation or parole surrender for
65 the violation of an expunged or other marijuana offense or the prisoner's use of marijuana while
66 on probation or parole.