SENATE DOCKET, NO. 1927 FILED ON: 1/20/2017

SENATE . . . . . No. 1063

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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An Act relative to expungement for repealed crimes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Patricia D. Jehlen	*Second Middlesex*	
Mike Connolly	*26th Middlesex*	*1/26/2017*
Jack Lewis	*7th Middlesex*	*2/1/2017*
James B. Eldridge	*Middlesex and Worcester*	*2/2/2017*
Jay D. Livingstone	*8th Suffolk*	*2/2/2017*
Kenneth I. Gordon	*21st Middlesex*	*2/2/2017*
Paul R. Heroux	*2nd Bristol*	*2/3/2017*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/3/2017*

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By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1063) of Patricia D. Jehlen, Mike Connolly, Jack Lewis, James B. Eldridge and other members of the General Court for legislation to expunge repealed crimes. Marijuana Policy.

The Commonwealth of Massachusetts

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

An Act relative to expungement for repealed crimes.

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

SECTION 1. Chapter 276 of the General Laws is hereby amended by inserting, after section 100D, the following new section:-

Section 100D. Expungement of records of marihuana arrest, detention, conviction and incarceration.

(a) Expungement of marihuana records. Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation, or the Department of Criminal Justice Information Services established by c. 6, sec. 167A et seq., for a marihuana offense as defined by c. 94C or other provisions of law repealed by Cannabis Regulation and Taxation Act, shall have all such records expunged forthwith from all criminal record information systems collected or distributed by any state agency, court or municipality. Any person with a criminal record eligible for expungement hereunder may apply to the commissioner, the department or the clerk of the court where an expunged record exists,

for expedited expungement in compliance with the provisions hereunder, and have the application acted on forthwith.

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

(c) Effect of expungement. Such expunged records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such expunged records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions.

(d) Employment applications. An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: “An applicant for employment with an expunged record on file with the commissioner of probation may answer ‘no record’ with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with an expunged record on file with the commissioner of probation may answer ‘no record’ to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer ‘no record’ with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services

which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court.

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

(f) Prisoners serving sentences for expunged offenses. The commissioner of correction, and the sheriffs and masters of all county Houses of Correction shall forthwith review the sentencing mittimus of all prisoners in their custody to identify any prisoner held pursuant to a conviction for a marihuana offense as defined by c. 94C or other provisions of law repealed by the Cannabis Regulation and Taxation Act. Any prisoner so identified shall be reported to the committee for public counsel services, and the district attorney for the county of the sentencing court, along with a copy of the sentencing mittimus. Any prisoner being held only for sentence under an expunged or repealed marihuana offense, or held on a probation surrender based only on drug testing or other probation violation regarding the probationer's use of marihuana, may apply to the sentencing court for an order of discharge and release. An initial hearing shall be held within ten days of court application, to determine whether any basis other than a marihuana or marihuana law violation exists for the prisoner's continued detention. If no other basis exists the prisoner shall be released forthwith at the initial hearing; if other non-marihuana related cause for custody appears to exist, the prisoner may seek a continuance of the initial hearing to further investigate and present evidence regarding a claim that the only basis for the prisoner's

custody is a conviction or probation surrender for the violation of an expunged or other marihuana offense or the prisoner's use of marihuana while on probation.

SECTION 2. Not later than July 1, 2017, the governor in consultation with the department of correction, the parole board, the office of probation and the executive office of the trial court, shall compile and submit to the advisory board on pardons a list identifying any person convicted of an offense repealed by Chapter 334 of the Acts of 2016 within 5 years of the effective date of repeal, the details of that person's conviction, and the sentence or sanction imposed. Within 60 days of receipt of said list, the advisory board on pardons shall issue notice to every person on said list of his or her right to apply for a pardon with the advisory board on pardons for a repealed offense. The list shall contain people currently serving a sentence in a house of correction or department of correction facility, a probation sentence or on release as a result of the issuance of a parole warrant.

SECTION 3. Within 10 weeks of the original receipt of any petition filed under this act, the advisory board shall transmit the original petition to the governor, together with its conclusions and recommendations and together with such recommendations as have been received from the above officials; except that if the board shall determine that adequate consideration of the case requires a hearing on its merits by the board, said board shall not be required to submit its recommendations at the end of ten weeks but shall notify the governor of its intention to hold a hearing; but such a hearing shall be held and a report made to the governor within six months of the original receipt of the petition by the board. If the board shall determine that such a hearing shall be held, in the case of a petitioner who is confined under sentence for a felony, the attorney general and the district attorney shall be notified of the hearing and they or

their representatives given the opportunity to appear, examine the petitioner's witnesses and be heard.

In determining whether a petition for pardon shall come before a hearing, the board shall only hold a hearing in cases when there is a question of fact regarding whether the conviction in question was substantially related in time or circumstance to another conviction. In all other cases, where the exclusive question is whether the conviction is for a crime repealed by this act, the board shall issue a decision on whether the crime is a repealed crime and if the crime is a crime repealed by the act, the board shall within 10 weeks of the filing of a petition issue a positive recommendation for the pardon to the governor. In all other cases where a conviction is subject to a question of fact or law, the board shall convene a hearing to make a determination.

The governor, within 10 days after any recommendation from the board shall have been laid before him, may disapprove of the recommendation. In case he shall fail so to transmit such disapproval with reasons 10 days after the recommendation shall have been presented to him, such recommendation shall have the force of law.