

HOUSE No. 3721

The Commonwealth of Massachusetts

PRESENTED BY:

Chynah Tyler

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>Chynah Tyler</i>	<i>7th Suffolk</i>	<i>1/18/2019</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/28/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/28/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/26/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>4/8/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/1/2019</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/1/2019</i>

HOUSE No. 3721

By Ms. Tyler of Boston, a petition (accompanied by bill, House, No. 3721) of Chynah Tyler and others relative to the expungement of records of marijuana arrests. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 100O, the
2 following section:-

3 Section 100O½. (a) Any person having a record of criminal court appearances and
4 dispositions in the commonwealth on file with the office of the commissioner, or the department
5 for a marijuana offense as defined by chapter 94C or other provisions of law committed before
6 the enactment of chapter 334 of the acts of 2016, shall have all such records expunged forthwith
7 from all criminal record information systems collected or distributed by any state agency, court
8 or municipality. Any person with a criminal record eligible for expungement in the
9 commonwealth on file with the office of the commissioner, or the department for a marijuana
10 offense as defined by c. 94C or other provisions of law committed before the enactment of
11 chapter 334 of the acts of 2016, shall have all such records expunged forthwith from all criminal
12 record information systems collected or distributed by any state agency, court or municipality.

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

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

26 (d) An application for employment used by an employer which seeks information
27 concerning prior arrests or convictions of the applicant shall include the following statement:

28 “An applicant for employment with an expunged record on file with the commissioner
29 may answer ‘no record’ with respect to an inquiry herein relative to prior arrests, criminal court
30 appearances or convictions. An applicant for employment with an expunged record on file with
31 the commissioner may answer ‘no record’ to an inquiry herein relative to prior arrests or criminal
32 court appearances. In addition, any applicant for employment may answer ‘no record’ with
33 respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of

34 delinquency or as a child in need of services which did not result in a complaint transferred to the
35 superior court for criminal prosecution.”

36 The attorney general may enforce the provisions of this subsection by a suit in equity
37 commenced in the superior court.

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

41 (f) The commissioner of correction, and the sheriffs and masters of all county houses of
42 correction shall forthwith review the sentencing mittimus’ of all prisoners in their custody to
43 identify any prisoner held (i) pursuant to a conviction for a marijuana offense as defined by
44 chapter 94C, committed before the enactment of chapter 334 of the acts of 2016; or (ii) the
45 revocation of probation or parole regardless of the nature of the underlying offense, where the
46 only ground for revocation was the prisoner’s use of marijuana committed before the enactment
47 of chapter 334 of the acts of 2016. Any prisoner so identified shall be reported to the committee
48 for public counsel services, and the district attorney for the county of the sentencing court, along
49 with a copy of the sentencing mittimus. Any prisoner being held only for sentence under an
50 expunged marijuana offense, or held on a probation or parole surrender based only on drug
51 testing or other probation or parole violation regarding the parolee or probationer’s use of
52 marijuana, may apply to the sentencing court for an order of discharge and release. An initial
53 hearing shall be held within ten days of court application, to determine whether any basis other
54 than a marijuana law violation exists for the prisoner’s continued detention. If no other basis
55 exists the prisoner shall be released forthwith at the initial hearing; if other non-marijuana related

56 cause for custody appears to exist, the prisoner may seek a continuance of the initial hearing to
57 further investigate and present evidence regarding a claim that the only basis for the prisoner's
58 custody is a conviction or probation or parole surrender for the violation of an expunged or other
59 marijuana offense or the prisoner's use of marijuana while on probation or parole.