

SENATE No. 1048

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gomez

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 ensuring equitable access to cannabis related expungement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Adam Gomez</i>	<i>Hampden</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>4/5/2021</i>

SENATE No. 1048

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 1048) of Adam Gomez and Joanne M. Comerford for legislation to ensure equitable access to cannabis related expungement. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act ensuring equitable access to cannabis related expungement.

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

1 SECTION 1. Section 100K of chapter 276 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking subsection (b) in its entirety and inserting in
3 place thereof the following:-

4 (b) Any decriminalized offense that is eligible for expungement as provided by this
5 section, shall be expunged forthwith on request of the petitioner without the necessity of further
6 action by the petitioner or a hearing. If the offense was for possession or cultivation of an amount
7 of marijuana decriminalized under section 32L of chapter 94C, section 13 of chapter 94G, or any
8 other law of the commonwealth, any offense for distribution or other offenses arising out of the
9 same incident related to possession or cultivation of said marijuana shall be treated as a single
10 offense for the purposes of this section and shall be expunged along with the decriminalized
11 offense involving possession of marijuana. The court shall have the discretion to order an
12 expungement for other grounds pursuant to this section based on what is in the best interests of

justice. Prior to entering an order of expungement pursuant to this section, the court shall hold a hearing if requested by the petitioner or the district attorney. Upon an order of expungement, the court shall enter written findings of fact.

SECTION 2. Section 34 of chapter 94C of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding at the end thereof the following paragraph:-

The commissioner of the department of correction, and the sheriffs of all county houses of correction shall forthwith review the sentencing mittimus' of all prisoners in their custody to identify any prisoner held for: (i) a now decriminalized marijuana offense committed before the enactment of chapter 334 of the acts of 2016; or (ii) after the revocation of probation or parole regardless of the nature of the underlying offense, where the only ground for revocation was the prisoner's possession or use of marijuana and said marijuana offense is no longer a criminal offense. 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 a marijuana offense that is no longer a criminal offense, or held on a probation or parole surrender based only on drug testing or other probation or parole violation regarding the parolee or probationer's possession or use of marijuana, which is no longer a crime, 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 marijuana 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-marijuana 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 or parole surrender for

36 the violation of an expunged or other marijuana offense or the prisoner's use of marijuana while
37 on probation or parole before such use was decriminalized.

38 SECTION 3. This act shall take effect upon its passage.