

Coming clean

With legalized marijuana on the books, Oregon lawmakers now consider a landmark bill that would help people with records expunge some past convictions

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When Scott Mulgrew was 18 and attending high school in Spokane, he got pulled over for speeding in a school zone. Cops searched his car and found two small bags of marijuana – less than an ounce total – and a scale.

Cops said he confessed to selling drugs to school children, though Mulgrew told Street Roots he never made that confession; that he actually told the cops he took the scale with him to buy marijuana and make sure he was getting the right amount.

“From then on, it was my word versus the cops,” Mulgrew said. His parents hired an attorney and spent about \$5,000 and two or three years actively fighting the charge – conspiracy to sell marijuana in a school zone – and conviction.

But the conviction still haunts him 10 years later. Earlier this year, Mulgrew was forced to vacate an apartment where he’d been living for two months after his background check came back and the landlord evicted him due to the felony on his record. He can legally vote in Oregon, but can’t purchase firearms or travel outside the United States, and has struggled to find consistent employment. He supports himself by working as a freelance graphic designer and by washing dishes – freelancing in part because he’s struggled to find regular employment, and has been told after interviewing for jobs that he didn’t get the position due to his criminal record.

All of this continues despite the fact that the state Mulgrew lives in – Oregon – and the state where he was arrested – Washington – have both voted to legalize the drug he was caught with as a young man.

Oregon voted to legalize marijuana last November, and while the Multnomah County District Attorney office announced it would throw out pending cases involving marijuana offenses, the status of people statewide with prior marijuana offenses on their records – and those still incarcerated – is still in flux.

Earlier this month, Rep. Lew Frederick (D-N/NE Portland) introduced House Bill 3372 – which would provide for reduction of sentences for people currently serving time for nonviolent marijuana offenses, and make it easier to expunge marijuana-related offenses from their criminal records. And Senate Bill 364 – which passed out of the Senate last week – requires the court to use the current classification of marijuana offenses when determining if a person is eligible for an order for setting aside conviction.

“This affects whole communities of people,” Frederick said. “When you have a number of people, especially young black men, who are not eligible to get jobs – young black men, young black women – that affects everyone. If we can address that then we can begin to address a lot of other social issues.”

According to Frederick, when the news broke about HB 3372 at the end of February, the public response was almost immediate: he was approached by four different people at a memorial service the following Saturday who thanked him for the bill, and by another when he went grocery shopping shortly after.

It’s hard to say just how many people would be affected by the passage of the proposed bills: According to data released by the Oregon Department of Corrections, as of 2014 just over 200 people were incarcerated statewide for nonviolent marijuana offenses only (including several for offenses that will still be illegal when Measure 91 takes effect, such as selling to minors).

The bill would also only affect those

convicted under Oregon statute, so Mulgrew would not be affected by the passage of this legislation. Although Washington, where Mulgrew was arrested, was quicker to legalize pot, it has yet to advance legislation addressing those with past convictions. Mulgrew was under the impression he would be eligible to have his conviction expunged after eight years, but when he looked into it a year ago, he was told he’d neglected to file some paperwork, and may have to wait another seven years to be eligible.

“The [Oregon] expungement statute is very confusing in terms of eligibility,” said Alex Bassos, director of training and outreach for the Metropolitan Public Defender in Portland. Bassos’ organization conducts a weekly expungement clinic. There’s no attorney fee for the service and no income guidelines or restrictions on who can use it, but they can help clients determine if they’re eligible to have the \$252 court filing fee waived.

In Oregon, criminal records can be sealed for certain types of marijuana offenses, but the specifics vary depending on the charge and the amount of time that’s lapsed. For instance, someone convicted of delivery of marijuana can usually have that expunged, where someone convicted of manufacture can’t, Bassos said. The base charge to seal

records is \$80, with another \$252 court filing fee tacked on. The latter can be waived in cases of economic hardship, but the former can’t – and in some counties in Oregon, district attorneys charge an additional fee to get records sealed.

Bassos said Oregon law doesn’t provide for a true expungement, because the Oregon Constitution’s free speech clause doesn’t allow officials to say a particular crime never happened. Instead, eligible crimes are sealed from the public record – including court records and databases maintained by law enforcement.

“The Oregon statute says that all official records are sealed. It does a pretty good job regulating those official records. The person talking to you probably doesn’t have access,” Bassos said.

It can take up to several months from the initial filing before records are officially sealed – and currently, the law doesn’t regulate private, third-party background check companies, which purchase information from judicial departments around the country but don’t necessarily update their databases when people petition to seal their records. People are within their rights to write the company asking them to correct errors in their database and to sue if they lose housing or employment as a result, Bassos said.

“There’s a truck-sized hole in our expungement statute, and that’s bad,”

