

LD 846

MEMO

TO: Committee on Judiciary

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D.'s 846 & 991

Date: May 5, 2019

---

Both LD 846 and LD 991 seek to limit dissemination of records of marijuana convictions in the possession of the State Bureau of Identification (SBI). LD 991 also addresses civil violation records.

CLAC has no specific positions on these bills, but points out that any process for sealing these records is complicated, likely beyond the capability of SBI, and requires further study.

First, SBI is not in possession of records of civil marijuana adjudications. Moreover, identifying existing convictions for conduct involving marijuana that is now legal is a daunting task. The statutory citation and charging instrument language for most marijuana convictions do not refer to marijuana itself, but instead, refer to conduct involving a Schedule Z drug. Because there are other Schedule Z drugs, there is no simple way for SBI to determine which convictions actually involve marijuana. Such a determination may even require the examination of individual court or District Attorney files.

CLAC suggests that if the Legislature is interested in sealing records of marijuana convictions for conduct that is now legal, it should study the issue to determine what is the most feasible and practical way of doing so. Such a study should include SBI, the Judicial Branch, District Attorneys, and other interested parties.

On the merits of wholesale sealing of marijuana convictions, CLAC members hold divergent views. Some agree with the suggestion that people should be relieved of the negative consequences of conviction for having engaged in conduct that society now recognizes as acceptable. Others believe that, despite changing views on marijuana, people have an obligation to follow the law as it exists and should not be relieved of the consequences of having violated existing laws.