

# Expungement Now:

## A Post-Conviction Toolkit for Attorneys and Advocates



LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS  
U N D E R L A W

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## Acknowledgements

The Lawyers' Committee's Expungement Toolkit was prepared by Tianna Mays, Senior Counsel in the Criminal Justice Project with contributions from Erinn Martin, Policy Counsel, Arthur Ago, Director of the Criminal Justice Project, and John Fowler, Counsel for the Criminal Justice Project. We gratefully acknowledge the terrific work of our colleagues Stanley Augustin and Jazmine Johnson for creating a compelling visual design and layout, and working closely with us on several rounds of edits. We are grateful to our Legal Interns Samantha McCarthy, Madison Miller, Trevor Stime, and Kimberly Saltz for their excellent assistance with editing and cite-checking. We gratefully acknowledge our coalition partners Maritza Perez, Director Office of National Affairs, at the Drug Policy Alliance and Akua Amaning, Associate Director for Criminal Justice Reform, at the Center for American Progress.

## About the Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee has been a leader in the battle for equal rights since it was created in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 50 years, the Lawyers' Committee has worked across the nation to protect and defend the civil rights of African Americans and other people of color in the areas of voting rights, economic justice, education, criminal justice, and fair housing.

## Executive Summary

As states across the country decriminalize and legalize the use of cannabis, the rapid growth of the cannabis industry is largely enjoyed solely by white Americans. Though cannabis use is similar across race, Black Americans are 3.7 times more likely than white people to be arrested for possession. It is crucial that people who have previously been convicted of a cannabis-related offense also enjoy the benefits afforded by decriminalization.

This toolkit provides three plausible legal routes — expungement, sealing, and vacating — one can take to begin repairing the consequences of marijuana-related records on vulnerable communities. Varying state laws, immigration consequences, and the expense of record expungement are all things that must be considered when determining the best strategy for either expunging, sealing, or vacating records.

Over the past few years, significant progress has been made to address the expungement of certain cannabis-related convictions. States like Delaware, Hawaii, Illinois, and Washington, among others, have voted to authorize record relief for cannabis offenses. New Jersey, Illinois, and New York have authorized automatic processes. We encourage everyone to explore creative options within your own jurisdictions. We also encourage advocates to help uplift the importance of automatic expungement within states. The Expungement Now: A Post-Conviction Toolkit for Attorneys and Advocates, provides messaging tools, facts, sample tweets, and tips for writing and placing an op-ed in a local newspaper to assist local advocates who seek reform.

## Introduction: Cannabis Convictions and Racial Justice

As Adult Use Cannabis (hereinafter “cannabis”) becomes decriminalized and profitable across the United States, a new movement to remedy the effects of cannabis prohibition has taken root. Those who have previously been convicted for cannabis possession often struggle to get jobs, find housing, obtain student loans, become licensed for professional vocations<sup>1</sup> and even receive government benefits.<sup>2</sup> Ironically, those with cannabis convictions may even have trouble or be prohibited from finding employment in the now legal Adult Use Cannabis industry (hereinafter “the industry”).<sup>3</sup>

The industry across North America is expected to reach investment numbers near \$37 billion by the end of 2024.<sup>4</sup> The rapid growth and evolution of the industry presents an undeniable racial disparity; a product that caused incarceration, punishment, and lost opportunity for people of color is being recast as lucrative business opportunities for corporations and those without previous marijuana convictions.

Marijuana arrests account for half of all drug arrests nationwide. Of the 8.2 million individuals who were arrested for marijuana between 2001 and 2010 in the United States, 88% of those individuals were arrested for possession.

Though cannabis use is similar across race, Black Americans have been 3.7 times more likely than white people to be arrested for possession.<sup>5</sup>

Even as cannabis has become decriminalized, Black Americans have still been disparately arrested for cannabis-related crimes.<sup>6</sup> Thus, while arrest rates have gone down overall, the racial disparities have not budged.<sup>7</sup>

This means that despite the fact that there are less arrests overall, the Black community is still taking the brunt of what remains. This is also partly because some states that have decriminalized cannabis have smaller Black populations, meaning whatever benefits have been afforded by decriminalization have largely been enjoyed by white Americans.<sup>8</sup>

We may not be able to erase all of the damage that the war on drugs unleashed on marginalized communities, but it is critical that all individuals with these convictions be given the chance to start anew. Prosecutors and Public Defenders are uniquely positioned to help rectify this damage by providing and advocating for post-conviction relief for cannabis-related crimes. This Working Tool explores the best available options.



## Expungement, Sealing, or Vacating: How to Address Cannabis Convictions

There are a variety of options available to those looking to try to clear their record of convictions, the most helpful of which this section will seek to overview: **expungement, sealing, and vacating**. One difficulty is that each state has its own laws regarding these various tools, particularly expungement and sealing. It is important to note that the possession of cannabis remains illegal federally and this toolkit solely addresses state level recourse.

Generally, it seems where expungement is possible, it is the best option because it most comprehensively eliminates the conviction, deleting it as if it never happened.<sup>9</sup> However, in special circumstances or in states that have narrow expungement laws, case sealing or vacating might be the best available course of action. Some states use the term “record restriction” to refer to a form of sealing that may partially seal the record, while keeping it accessible to certain institutions, employers, or other entities. Some states have recently enacted “clean slate” laws which automatically expunge or seal certain records to the public without the individual filing. Because the definitions of each tool and their capabilities and limitations vary greatly from state to state, this Working Tool provides a general overview. We encourage you to conduct additional, state-specific research when developing strategies best-suited to your particular jurisdiction.

## For Practicing Attorneys

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### EXPUNGING RECORDS

When a record is expunged, it results in the deletion of any and all records that the arrest or criminal charge ever occurred.<sup>10</sup> Therefore, expungement removes the criminal file in question from the public record entirely.<sup>11</sup> Because of this permanence, state laws regarding expungement typically enumerate the types of offenses that may be expunged, as well as the procedure for doing so.<sup>12</sup> These laws vary greatly from state to state.<sup>13</sup> Accordingly, the exact definition of “expungement” will also depend on the specific state law. For example, in Kansas certain employers and licensing agencies will still have access to the records even after they’ve been expunged, whereas in Indiana expungement entails no limit to public access whatsoever.<sup>14</sup> Expungements are usually only available for cases that were dismissed or that resulted in some form of deferred disposition.<sup>15</sup> Typically, a person must file a petition for expungement, and one petition must be filed for each criminal case.<sup>16</sup> This is usually done in the same court in which the

case was initially adjudicated.<sup>17</sup> The judge will then review the petitioner's case to see if he or she meets both the state law requirements, and in some cases, that court's procedural rules for expungement cases.<sup>18</sup> The benefit of expungement is that it usually involves the complete wiping of the conviction, as if it never happened. One of the downsides is that it can be difficult to actually get rid of all the physical records that various agencies may have. Additionally, for those who need to obtain their records after an expungement, they may no longer be accessible because they've been erased.

### **Automatic Expungement vs. Non-Automatic Expungement:**

An obstacle to post-conviction relief such as expungement is that much of the public is not aware of their options. A response to the slow process of waiting for individuals to petition for expungement has involved the government identifying eligible individuals and automatically expunging their records of misdemeanor cannabis-related convictions.

The benefit of automatic expungement, as opposed to waiting for individuals to file petitions, is that it is much less expensive and can help many more people much more quickly. The process of petitioning for expungement can be difficult to navigate and is often overwhelming.<sup>19</sup> Additionally, petitioning can be expensive since it can require a lawyer, fees, and appearing in court, which many Americans are unable to afford.<sup>20</sup> This is especially true because those who have been punished for cannabis-related offenses are often those who cannot afford to handle legal matters.<sup>21</sup> The District Attorney in Los Angeles County found, perhaps because of this, that few people were petitioning for expungements.<sup>22</sup> Similarly, San Francisco, which had only received 23 petitions for expungement, found that over 9,362 cases were eligible.<sup>23</sup> In response, Los Angeles and San Joaquin County moved to automatically carry out expungement of approximately 54,000 low-level cannabis-related convictions.<sup>24</sup>

### **SPOTLIGHT: CALIFORNIA**

California has been a pioneer in automatic expungements. In Los Angeles County, the District Attorney partnered with Code for America, a tech organization.<sup>25</sup> They developed an algorithm that allowed for a quick analysis of data to determine who was eligible under California's law legalizing cannabis, Proposition 64.<sup>26</sup> For comparison, it took the algorithm 12 seconds to go through data that would otherwise have taken years, and saved the county an estimated \$1 million in both time and resources.<sup>27</sup> They also have a program called "Clear My Record," which is an online application to connect clients with lawyers in California who can assist them with expungement.<sup>28</sup> Prosecutors in San Francisco have worked with the same nonprofit.<sup>29</sup> As of July 2020, Clear My Record technology is now available to help all counties in California streamline and automate the record clearance process.<sup>30</sup> The technology has allowed California to automatically dismiss and seal more than 85,000 cannabis-related convictions across the state.<sup>31</sup>





## WARNING

*As discussed in more detail on page 5, automatic expungements may carry immigration consequences.*

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## SEALING RECORDS

In jurisdictions where expungement is not available, sealing is another option for individuals looking to limit public access to prior convictions. When a court seals a record, it is shielding that record from public inspection. Although there are certain records that are automatically sealed by a court (ex: juvenile records), generally an individual must make a request to seal a court record. Depending on your jurisdiction, this request may be made by a petition, motion, or form. It is important to review the information in your state to find out your state's process for record sealing. For example, Massachusetts requires a form and permits requests to seal by mail,<sup>32</sup> whereas Washington, D.C. requires a motion in court.<sup>33</sup>

Sealing differs from expungement. Expungement deletes the record; sealed records still exist.<sup>34</sup> The process to seal a court record varies by state. The benefit of record sealing is that it restricts access to the criminal conviction often preventing prospective employers and creditors from seeing the file.<sup>35</sup> Additionally, an open criminal record can be used against an individual for educational assistance or loans.<sup>36</sup> In the alternative, a disadvantage to sealing is that even when a court seals the record, the case may be reopened under certain circumstances.

*In most states, juvenile records will be automatically sealed or expunged upon reaching age 18, except for in special circumstances. Some states, in their efforts to address cannabis sentencing disparities, have addressed juvenile records specifically.*

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## VACATING CONVICTIONS

Vacating a conviction involves the withdrawal of a guilty verdict and dismissal of a case.<sup>37</sup> When the court vacates a conviction, it has determined that the person convicted of a crime has met certain conditions that allow the removal of this conviction.<sup>38</sup> The specifics of what vacating a conviction actually is and what qualifies an individual for vacation of a conviction will vary from state to state, but it can be an option where the individual does not meet the necessary specifications to have their record expunged or sealed. In some states, vacating a conviction will also involve the sealing of a record, such as in Michigan or Washington, but in other states, that is a separate process, such as in California.<sup>39</sup> The benefit of this process is that it is legally undoing the conviction. Thus, unlike sealing and expungement, which acknowledge the conviction as valid but are erasing or obscuring the record of that conviction, vacating is a better option for those who will have been harmed by a conviction regardless of its erasure, namely immigrants. The downside of vacating convictions is that there are often narrow specifications for when it can be utilized, and it will likely involve more time, as well as a lawyer, which is not necessarily the case with some of the other tools, like automatic expungement.

## Special Concerns for Vulnerable Populations

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### IMMIGRATION CONSEQUENCES

Expungement, sealing, or vacating may not solve the problem of a conviction for immigrants and undocumented people. For immigrants, the impact of drug convictions is especially dangerous because in addition to criminal consequences, there can also be immigration consequences. Therefore, it is important to consider potential immigration consequences when choosing a course of action. These consequences “are some of the most punitive, unforgiving penalties under federal law, often with no recourse.”<sup>40</sup> They include: detention by federal authorities, often for months or years; loss of lawful status; ineligibility to apply for lawful status; and deportation.<sup>41</sup>

What counts as a conviction for immigration law and criminal law is not necessarily the same thing. Federal immigration courts have a more expansive definition of what constitutes a criminal conviction.<sup>42</sup> Within the immigration context, a “conviction” occurs where there is “a formal judgment of guilt of the alien entered by a court” or “if adjudication of guilt has been withheld, where... a judge or jury has found the alien guilty, or the alien has entered a plea of guilty or nolo contendere, or has admitted sufficient facts to warrant a finding of guilt, and... the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.”<sup>43</sup> Because immigration law does not differentiate between a cannabis conviction and another controlled substance, a cannabis conviction is potentially as damaging as any other drug conviction for immigrants.

With this definition of “conviction” in mind, it is important that attorneys understand that some instances that would avoid a conviction in criminal court do not necessarily allow an immigrant to avoid deportation. For example, the vast majority of rehabilitative relief that would avoid a conviction in criminal court is still considered a conviction in immigration court. In California, individuals who satisfy all terms and have pleas withdrawn or charges dismissed under “expungements” still have a “conviction” for immigration purposes.<sup>44</sup> The result is that thousands of immigrants have been advised that certain alternative programs would not be a conviction for any purpose, when actually the dispositions are convictions for immigration proceedings.<sup>45</sup>

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### SOCIOECONOMIC CONSTRAINTS

People of color are more likely to live in poverty and more likely to need legal assistance, creating a gap between need and access to justice.<sup>46</sup> Specifically, flawed policing strategies such as “broken window policing” have led to a disproportionate number of cannabis-related convictions afflicting these vulnerable groups.<sup>47</sup> Those who are poor are more likely to be arrested in part because there is a disproportionate amount of law



enforcement presence in poor neighborhoods, and due to the fact that poor people are often forced to use and sell drugs outside, where their wealthier counterparts may stay indoors.<sup>48</sup>

Because the poor have been so affected by the criminalization of cannabis, they will often be the ones in need of post-conviction relief. This is especially true within the context of cannabis-related convictions, which can make it difficult to obtain a loan or a job, obstacles that may particularly impair those with low incomes.<sup>49</sup> For those who are stretched thin financially, appearing in court, hiring an attorney, or paying court fees can be unrealistic and might deter individuals from seeking to clear their record. Post-conviction relief can be expensive.

While many states offer a waiver on expungement fees for those who cannot afford it, other states look at expungement fees as a revenue opportunity.<sup>50</sup> For example, the filing fee for expungement in Louisiana is \$550.<sup>51</sup> This is a fee that many individuals simply cannot afford. Even in states that have waivers or lower fees, appearance in court is often difficult because of jobs or other obligations. As the San Francisco District Attorney, George Gascón put it, “You have to hire an attorney. You have to petition the court. You have to come for a hearing. It’s a very expensive and very cumbersome process. And the reality is that the majority of the people that were punished and were the ones that suffered in this war on marijuana, war on drugs nationally, were people that can ill afford to pay an attorney.”<sup>52</sup> Although many states do not require you to have an attorney to petition for expungement, it is a process that is potentially confusing, especially for those with complicated criminal records whose expungements might not be as simple; these are the people that have not traditionally benefitted from the expungement process.<sup>53</sup>

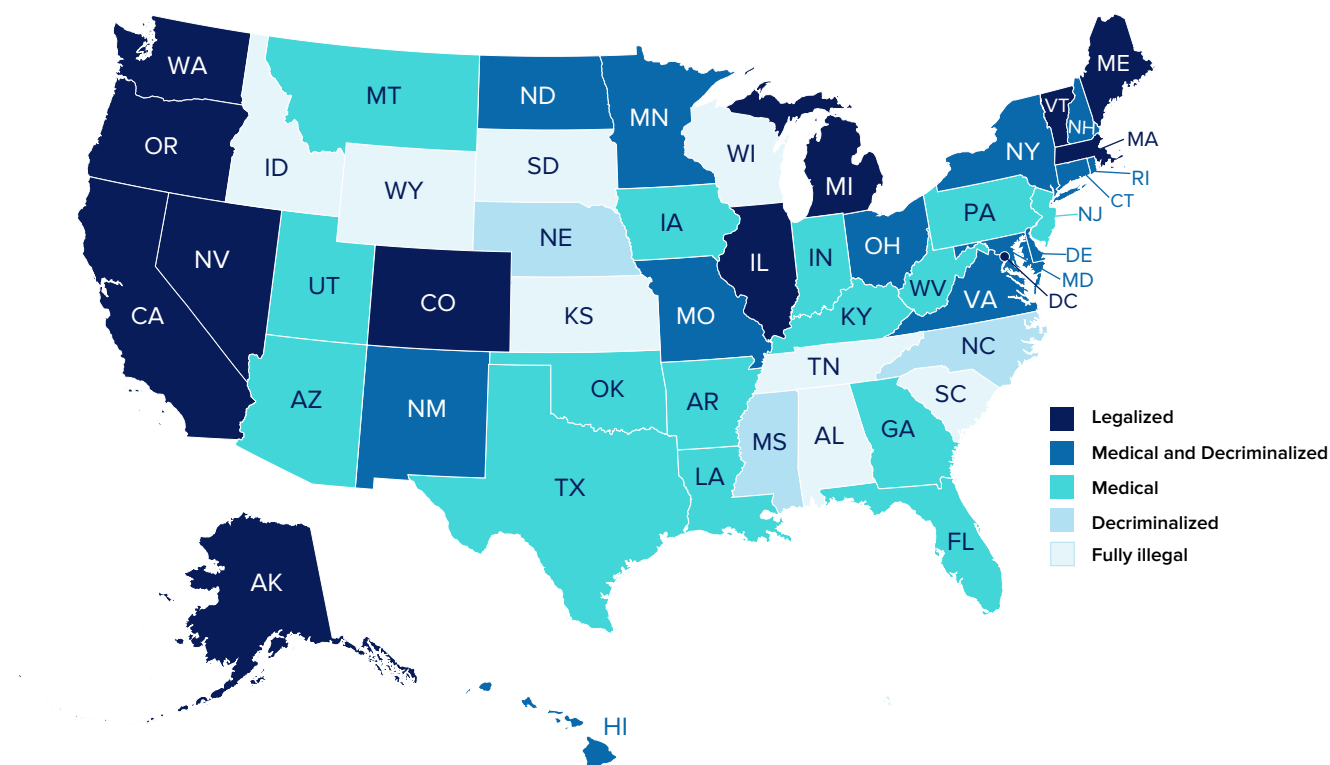
**There are about 46,000 collateral consequences that a person can face at the federal or state level after they are convicted of a crime, leading to problems nearly 70% of the time for these people trying to get jobs.**

## For Policy Advocates

This section is focused on options available to those in states at different levels of decriminalization of cannabis and with varying expungement and sealing laws. Eleven states and the District of Columbia have legalized cannabis for adult recreational use.<sup>54</sup> Within this group, however, there is variation regarding the willingness to help provide relief to those who have already been convicted.

Below, we have provided a brief overview of each state's expungement laws and where they stand when it comes to decriminalizing cannabis, in order to determine the options available to individuals seeking relief across various jurisdictions. However, it is important to note that even in states that have decriminalized cannabis possession, one cannot possess any amount of cannabis without issue. It is important to look at the decriminalization laws specific to your state, because depending on the amount in your possession, you may be charged a variation of fines, you may be charged with varying classes of misdemeanors, or you may be charged with a felony. Therefore, we must reiterate that decriminalization has its limits.

## UNDERSTANDING THE NATIONAL LANDSCAPE: CLICK STATE FOR MORE INFORMATION



Over the last few years, states have begun to pass legislation to address the expungement of certain cannabis-related convictions. In 2018, Alaska, California, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Virginia and Washington all proposed legislation that would expand the capability to expunge certain cannabis-related convictions. California's measure was the only one that passed. However, in 2019, eight states (Delaware, Hawaii, Illinois, New Hampshire, New Jersey, New York, Oregon, and Washington) voted to authorize record relief for past marijuana offenses specifically, three of which (New Jersey, Illinois, and New York) authorized automatic processes.<sup>55</sup> There may be other legislation in certain states that, while not related specifically to cannabis reform, could be used for the movement. For example, Indiana passed a "Second Chance" law in 2013 that allows individuals to petition for removal of misdemeanor convictions and arrests from public view. Practitioners in all states should be encouraged to explore creative options in their jurisdictions.

STRONG	MODERATE	LIMITED	
California	Delaware	Alaska	Ohio
Colorado	Indiana	Arkansas	Oklahoma
Connecticut	Maryland	Hawaii	Pennsylvania
District of Columbia	Missouri	Iowa	South Carolina
Illinois	New Mexico	Kansas	South Dakota
Massachusetts	Rhode Island	Kentucky	Texas
Minnesota	Virginia	Louisiana	Tennessee
Nevada	Washington	Michigan	Utah
New Hampshire		Mississippi	West Virginia
New Jersey		Montana	Wyoming
New York		North Dakota	
Oregon			
Vermont			

## Laws By State

### **Alabama:** [ALA. CODE § 15-27-1 - § 15-27-12 \(2019\)](#)

In Alabama, where cannabis is still illegal in all forms, “There is no general authority to expunge or seal adult convictions, including pardoned convictions.”<sup>56</sup> Expungement may be an available option for “non-convictions,” where a non-violent felony or misdemeanor charge did not result in a conviction, as well as for charges dismissed following “successful completion of various diversion programs,” including drugs charges.<sup>57</sup> Eligible candidates may file a petition for expungement following a waiting period and must pay a fee of \$300.<sup>58</sup> While expunged proceedings are deemed to have never occurred, they must still be disclosed to “any government regulatory or licensing agency, any utility and its agents and affiliates, or any bank or other financial institution.”<sup>59</sup> [\(BACK TO MAP\)](#)

### **Alaska:** [ALASKA STAT. § 12.55.085 \(2019\)](#)

Alaska has legalized cannabis,<sup>60</sup> but there is not much post-conviction relief available for those with previous convictions. Alaskan courts possess no general authority to expunge or seal adult convictions.<sup>61</sup> However, the court may set aside a conviction after successful completion of probation for certain offenses.<sup>62</sup> [\(BACK TO MAP\)](#)

### **Arizona:** [ARIZ. REV. STAT. ANN. § 13-907 \(2018\)](#)

Arizona has legalized cannabis for medicinal use, but “there is no general authority to seal or expunge adult conviction or non-conviction records.”<sup>63</sup> [\(BACK TO MAP\)](#)

### **Arkansas:** [ARK. CODE ANN. § 16-90-1401 - § 16-90-1419 \(2019\)](#)

Arkansas has legalized cannabis for medicinal use but still has some of the harshest laws in the nation when it comes to possession charges.<sup>64</sup> The Arkansas Marijuana Expungement Initiative was intended to appear on the 2020 ballot, but it did not qualify because “sponsors did not publish the initiative in a newspaper of general statewide circulation before the June 3, 2020 deadline.”<sup>65</sup> If convicted of possession of a controlled substance in Arkansas, you may petition for sealing of your record if you were placed on probation, under the conditions that you complete a court-approved drug treatment program, remain drug-free until the completion of your probation, and have successfully completed all terms and conditions of your probation.<sup>66</sup> Additionally, your records may be sealed if you are a first time offender, “plead guilty or no contest to the charges against you,” and have completed all terms and conditions of your probation.<sup>67</sup> [\(BACK TO MAP\)](#)

**California: CAL. PENAL CODE § 1203.4 - § 1203.425 (2019)**

California has legalized cannabis and stands alone in that it has done more than any other state to attempt to undo past convictions for cannabis-related crimes. Generally, courts may issue certificates of rehabilitation for state law offenses, which affect consideration for employment.<sup>68</sup> Proposition 64, the ballot measure that legalized cannabis, also contained language for the “resentencing and destruction of records for prior marijuana convictions.”<sup>69</sup> In this way, relief was made systemic by the mandatory sealing of records for decriminalized cannabis offenses in 2018.<sup>70</sup> Another measure mandated automatic purging of possession offenses after two years.<sup>71</sup> A process for the expungement of records was not specified in the ballot measure but a subsequent bill, AB 1793, established such a process.<sup>72</sup> The California Department of Justice must now search its state criminal history for eligible cases from 1975 to 2016 and subsequently notify prosecutors of all eligible cases in their jurisdiction; prosecutors across the state have one year to challenge any case they do not agree is eligible for resentencing, dismissal, or expungement.<sup>73</sup> Accordingly, California counties across the state have begun the process of initiating automatic expungements.<sup>74</sup> ([BACK TO MAP](#))

**Colorado: COLO. REV. STAT. § 24-72-710 (2019)**

Colorado was one of the first states to legalize cannabis; however, it has been slow to pass laws to address past cannabis convictions. Currently, Colorado allows individuals convicted of misdemeanor offense for use or possession of cannabis to petition to seal criminal records if the offense would not have been a crime if committed on or after December 10, 2012.<sup>75</sup> A 2019 law authorized sealing for misdemeanors and all but serious felonies, subject to a variable waiting period from one to five years.<sup>76</sup> This includes misdemeanor offenses for cannabis possession or use.<sup>77</sup> However, records remain available to law enforcement and entities required to conduct background checks, even after sealing.<sup>78</sup> A bill signed into law in 2020 allows the governor to “pardon a class of defendants convicted of possession of up to two ounces of marijuana; applicants must identify themselves but no formal application is required.”<sup>79</sup> ([BACK TO MAP](#))

**Connecticut: CONN. GEN. STAT. § 52-142A - § 54-142E (2019)**

Connecticut has legalized cannabis for medicinal use and decriminalized possession of one-half ounce of cannabis or less for a person’s first two offenses.<sup>80</sup> If a person is found to possess more than one-half ounce or has had more than two offenses for cannabis possession, he or she can be charged with up to one year in jail and a fine of up to \$2,000.<sup>81</sup> Upon petition, courts are required to “order destruction of convictions and other criminal records in cases where the charges resulting in conviction have been decriminalized.”<sup>82</sup> ([BACK TO MAP](#))

**Delaware: DEL. CODE ANN. § 16-4764, DEL. CODE ANN. § 11-4371 - § 11-4377 (2019)**

Delaware has legalized cannabis for medicinal use and decriminalized possession of small quantities of cannabis. For a person’s first two offenses, law enforcement will issue a civil charge for possession of a personal-use quantity of cannabis, but a person may be charged with an unclassified misdemeanor after a third offense.<sup>83</sup> Any person who was convicted of a single cannabis-possession offense prior to December 18, 2015, is eligible for “mandatory expungement of the records” and of all indication of arrest, provided that the individual is otherwise eligible for mandatory expungement.<sup>84</sup> In 2019, Delaware passed the “Adult Expungement Reform Act,” stating that a prior conviction for cannabis possession does not bar a person from “eligibility for discretionary or mandatory expungement.”<sup>85</sup> ([BACK TO MAP](#))

**District of Columbia: D.C. CODE § 16-803.02 (2019)**

The District of Columbia has legalized cannabis.<sup>86</sup> At any time, a person may file a motion to seal the record of his or her arrest, charge, or conviction for any criminal offense that was decriminalized or legalized after the date of the arrest.<sup>87</sup> ([BACK TO MAP](#))

**Florida: FLA. CONST. ART. X § 29**

Florida has legalized cannabis for medicinal use, but there remains no good path to expunging, sealing, or vacating cannabis-related convictions at this time. While some non-conviction records or records of “withheld” cases may be eligible to be sealed, “there is no statutory authority to seal or expunge adult convictions, including pardoned convictions.”<sup>88</sup> ([BACK TO MAP](#))

**Georgia: GA. SENATE BILL 288 (2020)**

Georgia has legalized cannabis for medicinal use but still criminalizes possession without a medical prescription. While the city of Atlanta has passed legislation to decriminalize possession, ultimately, the discretion of the arresting-officer will determine whether or not to issue a fine or to arrest the individual.<sup>89</sup> A proposal to expand an existing law<sup>90</sup> was sent to the Governor for his signature on June 28, 2020.<sup>91</sup> If signed, the legislation will make certain pardoned felony convictions eligible for record restriction, provided that there have been no convictions since the pardon and no charges are pending.<sup>92</sup> The legislation would also allow adults convicted of drug possession, who were not previously convicted of a drug offense, and who successfully completed the terms of their probation, to petition the court for record restriction and sealing of most misdemeanor convictions.<sup>93</sup> ([BACK TO MAP](#))

**Hawaii: HI. REV. STAT. § 706-622.5, § 706-622.8 (2019)**

Hawaii has legalized cannabis for medicinal use and decriminalized the possession of small amounts of cannabis. A law that went into effect in 2020 provides that “individuals who possess three grams or less of marijuana will face a \$130 fine, without the possibility of incarceration.”<sup>94</sup> Additionally, upon motion from the person convicted, courts are required to grant expungement to a person previously convicted of possessing three grams or less of cannabis, provided that there were no other criminal charges arising from the particular set of facts and circumstances related to the conviction.<sup>95</sup> ([BACK TO MAP](#))

**Idaho: ID. CODE ANN. § 19-2601, ID. CODE ANN. § 19-2604 (2019)**

Cannabis remains illegal in Idaho. Idaho courts have no statutory authority to seal or expunge adult convictions.<sup>96</sup> However, “the court has broad authority to defer judgment and set-aside a guilty plea and dismiss the charges upon completion of probation,” and the dismissal effectively restores the defendant’s civil rights, but “there is no authority to expunge or seal the record.”<sup>97</sup> ([BACK TO MAP](#))

**Illinois: ILL. COMP. STAT. ANN. § 2630/5.2 (2019)**

Illinois is the most recent state in the union to legalize cannabis.<sup>98</sup> In the last year, Illinois has taken a number of steps to try to alleviate past cannabis-related convictions. “In 2019, Illinois authorized the automatic

expungement of arrests and convictions for ‘minor cannabis offenses,’ defined as involving not more than 30 grams, no enhancements, and no violence.”<sup>99</sup> The automatic expungement process for minor cannabis offenses “includes sending eligible convictions to the governor through the Prisoner Review Board for a pardon authorizing expungement.”<sup>100</sup> In one month alone, the Governor issued over 11,000 pardons to people with eligible convictions.<sup>101</sup> Additionally, expungement was authorized for “misdemeanors and Level 4 felonies involving a greater amount of marijuana,” upon petition by the affected individual”<sup>102</sup> ([BACK TO MAP](#))

**Indiana: IND. CODE ANN. § 35-38-9 (2019)**

Indiana has legalized cannabis for medicinal use and offers a number of options when it comes to restricting past criminal records. Upon petition to the court, judicial expungement is mandatory in Indiana for “non-conviction records, misdemeanors, and less-serious felonies; expungement is discretionary for more serious felonies.”<sup>103</sup> Following expungement, “non-conviction records, and records of misdemeanors and minor felonies are sealed; more serious felonies remain public but are ‘marked as expunged.’”<sup>104</sup> Finally, “administrative sealing of convictions is also available from the state police after 15 years.”<sup>105</sup> ([BACK TO MAP](#))

**Iowa: IOWA CODE ANN. § 901C.3 (2019)**

Iowa has legalized cannabis for medicinal use and offers some post-conviction record restriction options. A person convicted of a misdemeanor offense in Iowa is entitled to record expungement after a waiting period if they have no pending criminal charges, have not already had more than two deferred judgments granted, and have paid in full any financial obligations imposed by the court.<sup>106</sup> However, a person may only have his or her record expunged once in their lifetime, but the one allowed time may involve multiple misdemeanors arising from the same occurrence.<sup>107</sup> In Iowa, “there is no statutory authority to seal or expunge felony convictions or pardoned convictions.”<sup>108</sup> ([BACK TO MAP](#))

**Kansas: KAN. STAT. ANN § 21-6614 (2019)**

Cannabis is still illegal in Kansas. Kansas allows for expungement of a misdemeanor, and certain felonies, under specific circumstances with payment of a \$195 filing fee.<sup>109</sup> ([BACK TO MAP](#))



**Kentucky: KY. REV. STAT. ANN. § 431.078 (2019)**

Kentucky has legalized cannabis for medicinal use. A person who has been convicted of a misdemeanor may petition the court for expungement of the record no sooner than five years after successful completion of probation or five years after completion of the imposed sentence, whichever is later.<sup>110</sup> The court will set a hearing date and “shall order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records,” provided that the person has not been convicted of a crime in the five years preceding the filing of the petition for expungement, there are no pending charges against them, and “the offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.”<sup>111</sup> [\(BACK TO MAP\)](#)

**Louisiana: La. Code Crim. Proc. Ann. art. 977, ART. 978, L.A. CODE CRIM. PROC. ANN. ART. 983 (2019)**

Louisiana has legalized cannabis for medicinal use and has passed new laws that went into effect August 1, 2020, to address record restriction. Effective August 1, 2020, “a person may file a motion to expunge his record of arrest and conviction of a misdemeanor offense” provided that the conviction was set aside or more than five years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole.<sup>112</sup> The person must have no felony charge pending against him or her and must not have been convicted of any felony offense during the five-year period.<sup>113</sup> While the cost remains high, there have been some changes to the fees charged for expungement, and “the total cost to obtain a court order expunging a record shall not exceed five hundred and fifty dollars.”<sup>114</sup> [\(BACK TO MAP\)](#)

**Maine: ME. REV. STAT. ANN. TIT. 22, § 2383, ME. REV. STAT. ANN. TIT. 22, § 2423-A (2019)**

Although Maine has legalized cannabis, there is no legislation currently enacted that specifically targets cannabis-related convictions.<sup>115</sup> [\(BACK TO MAP\)](#)

**Maryland: MD. CODE ANN., CRIM. LAW § 5-601(c)(2) (2019)**

Maryland has legalized cannabis for medicinal use and has decriminalized possession offenses. Depending on the amount a person has in his or her possession and whether or not the person has previous possession charges, a person found in possession of cannabis will be issued a civil violation

and a fine ranging from \$100 to \$500.<sup>116</sup> Maryland has passed laws to both reduce the waiting period for expungement of a cannabis possession offense from 10 years to four years and allow expungement for crimes in which the underlying conduct is no longer considered a crime.<sup>117</sup> This could pave the way for broad expungement of cannabis-related convictions if and when it is finally legalized. [\(BACK TO MAP\)](#)

**Massachusetts: MASS. GEN. LAWS CH. 276, § 100A (2019)**

Massachusetts has legalized cannabis.<sup>118</sup> It has also enacted a law that allows the sealing of records for offenses that are no longer crimes, effectively allowing a past conviction for cannabis possession under two ounces to be sealed without a waiting period.<sup>119</sup> Additionally, under Massachusetts law, people may deny a conviction on an employment application, and employers cannot inquire into misdemeanor convictions if they are older than five years.<sup>120</sup> [\(BACK TO MAP\)](#)

**Michigan: MICH. COMP. LAWS § 780.621 (2019)**

Michigan has legalized cannabis.<sup>121</sup> Although there are no specific laws currently in place to remedy past convictions, Michigan does have a law that allows for judicial “set-aside” (for an eligibility period of five years) of two misdemeanors, if no felonies are committed. While law enforcement and courts may still have access to the information, this process makes the record unavailable to the public.<sup>122</sup> [\(BACK TO MAP\)](#)

**Minnesota: MINN. STAT. § 152.18 (2019)**

Minnesota has legalized cannabis for medicinal use, and cannabis possession is decriminalized.<sup>123</sup> Additionally, if a person was convicted of “an offense prior [to] the 1976 decriminalization of possession, or sale without remuneration, of 42.5 grams or less of marijuana, and the conviction would have been a petty misdemeanor under the 1976 law,” they may petition for expungement.”<sup>124</sup> [\(BACK TO MAP\)](#)

**Mississippi: MISS. CODE ANN. § 41-29-139, MISS. CODE ANN. § 99-19-71 (2019)**

Mississippi has allowed for decriminalization of a first offense of cannabis possession of thirty grams or less.<sup>125</sup> A person is eligible for expungement of a misdemeanor conviction from all public records if they are a first-time offender.<sup>126</sup> [\(BACK TO MAP\)](#)

**Missouri: Mo. SB 588 (2020)**

In addition to legalizing cannabis for medicinal use and passing decriminalization laws, Missouri has increased eligibility, reduced waiting periods, and created a presumption in favor of expungement for all misdemeanors and many felonies, including cannabis-related crimes, if certain criteria are met.<sup>127</sup> If a person wishes to expunge their record in Missouri, they may file a petition, after a minimum of three years following the completion of any punishment imposed for each offense, if the offense is a misdemeanor, and a minimum of seven years if the offense is a felony.<sup>128</sup> The person must not have been found guilty of any other misdemeanor or felony during the specified time period for the underlying offense, must have satisfied all obligations relating to the charge, and must not have any charges pending against them.<sup>129</sup> ([BACK TO MAP](#))

**Montana: MONT. CODE ANN. § 46-18-1102 - § 46-18-1110 (2019)**

Montana has legalized cannabis for medicinal use. For felony convictions, the courts have no statutory authority to seal or expunge records.<sup>130</sup> However, although only available once in a person's lifetime, "expungement is available for multiple misdemeanors," and "relief is presumed for all but certain serious misdemeanors after a 5-year waiting period."<sup>131</sup> For first felony offenses and misdemeanors, deferred sentencing is available, "after which charges are dismissed and access to records is limited."<sup>132</sup> ([BACK TO MAP](#))

**Nebraska: N.H. REV. STAT. ANN. § 318-B:2-C, N.H. REV. STAT. ANN. § 651:5-B (2019)**

Nebraska has passed laws decriminalizing cannabis possession up to one ounce.<sup>133</sup> Absent extraordinary circumstances (e.g. a case dismissal or pardon), there are not many options to expunge, seal, or vacate your criminal record in Nebraska.<sup>134</sup> ([BACK TO MAP](#))

**Nevada: NEV. REV. STAT. § 179.271 (2019)**

In Nevada, cannabis is legal.<sup>135</sup> After legalization and decriminalization were enacted, Nevada passed a law providing that any person convicted of an offense that is now decriminalized "before the date on which the offense was decriminalized, may submit a written request to any court in which the person was convicted of that offense for the sealing of any record of criminal history in its possession and in the possession of any agency of criminal justice relating to the conviction."<sup>136</sup> Unless the prosecutor objects

and presents "clear and convincing evidence" that there is good cause not to grant the request,<sup>137</sup> the request will be granted at no charge.<sup>138</sup> Additionally, a resolution was passed by the Nevada State Board of Pardons Commissioners in June 2020 to "summarily pardon those convicted of possession of one ounce or less" of cannabis.<sup>139</sup> ([BACK TO MAP](#))

**New Hampshire: N.H. REV. STAT. ANN. § 318-B:2-C, N.H. REV. STAT. ANN. § 651:5-B (2019)**

New Hampshire has legalized cannabis for medicinal use and passed laws decriminalizing possession up to 21 grams.<sup>140</sup> Additionally, any person who was arrested or convicted "before September 16, 2017 for obtaining, purchasing, transporting, or possessing" the decriminalized amount of cannabis or less, "may at any time petition the court to annul the arrest and court record."<sup>141</sup> ([BACK TO MAP](#))

**New Jersey: N.J. STAT. ANN. §§ 2C:52-2, N.J. STAT. ANN. §§ 2C:52-3 (2019)**

In 2014, New Jersey enacted a law that allows expungement of records for those who successfully complete special probation drug court.<sup>142</sup> A 2019 law expanded eligibility for expungement even further to "a broad range of marijuana and hashish convictions," and "directs for the development of an automatic 'sealing' system for such convictions where all terms of the sentence have been completed," authorizing courts to seal records, upon petition, immediately upon sentence completion.<sup>143</sup> ([BACK TO MAP](#))

**New Mexico: N.M. STAT. ANN. § 30-31-23(B), N.M. STAT. ANN. § 29-3A-5 (2019)**

New Mexico has legalized cannabis for medicinal use and passed decriminalization laws. For possession of up to 14 grams of cannabis, a person will be issued a penalty assessment and is subject to a \$50 fine.<sup>144</sup> A person with a past cannabis-related conviction may petition the court for expungement of all arrest records and public records related to the past conviction.<sup>145</sup> Following a hearing on the petition, the court will issue an order, within thirty days of the hearing, for the conviction to be expunged if the court makes specific findings.<sup>146</sup> ([BACK TO MAP](#))

**New York: N.Y. PENAL LAW § 221.05, N.Y. PENAL LAW § 221.10, N.Y. CRIM PROC. LAW § 160.50(3)(k)(ii) (2019)**

New York has legalized cannabis for medicinal use and decriminalized possession. Possession of up to two ounces of cannabis now qualifies for the issuance of a fine, which varies based on the

amount possessed.<sup>147</sup> Following the passage of these laws, New York passed a law requiring that prior convictions for possession of two ounces of cannabis or less be automatically vacated and expunged.<sup>148</sup> The law also “provides for an information campaign to inform the public of automatic marijuana vacatur and expungement,” and makes it so that the “expunged record is only available to the subject of the record and is destroyed upon written request.”<sup>149</sup>

[\(BACK TO MAP\)](#)

**North Carolina: N.C. GEN. STAT. § 15A-1340.17, N.C. GEN. STAT. § 15A-1340.23 (2019)**

North Carolina has passed decriminalization laws that impose a fine of up to \$200 for possession of up to 14 grams of cannabis, which is classified as a misdemeanor and carries no possibility of jail time.<sup>150</sup> Possession of up to 32 grams is still classified as a misdemeanor, but can result in up to 45 days in jail and a fine as high as \$1,000.<sup>151</sup> Possession of any more than 32 grams is classified as a felony.<sup>152</sup>

[\(BACK TO MAP\)](#)

**North Dakota: PARDON ADVISORY BOARD APPLICATION - MARIJUANA OFFENSES**

North Dakota has legalized cannabis for medicinal use and passed decriminalization laws. In 2019, a policy adopted by a Pardon Advisory Board authorized “people convicted of marijuana possession who have had no convictions in the past five years to ‘submit a Summary Pardon Application.’”<sup>153</sup> As a result, “in January 2020, the governor pardoned 16 people under this authority of 26 recommended by the board, and as of February 2020, the board was seeking more applicants.”<sup>154</sup> “The Office of the Governor estimates that as many as 175,000 people may be eligible for relief.”<sup>155</sup> [\(BACK TO MAP\)](#)

**Ohio: OHIO REV. CODE ANN. § 2953.32 (2019)**

Ohio has legalized cannabis for medicinal use and passed decriminalization laws. Ohio makes it possible for eligible persons to apply to have his or her criminal record sealed following either “the expiration of three years after the offender’s final discharge if convicted of one felony,” or “the expiration of one year after the offender’s final discharge if convicted of a misdemeanor.”<sup>156</sup> [\(BACK TO MAP\)](#)

**Oklahoma: OKLA. STAT. ANN. TIT. 22, § 18 - § 19 (2019)**

Oklahoma has legalized cannabis for medicinal use but has not passed any decriminalization laws. After at least five years have passed since the

completion of a sentence, a person convicted of a misdemeanor offense in Oklahoma, who has not been convicted of a felony and has no pending felony or misdemeanor charges against them, may have their records expunged (meaning sealed to the public, but not sealed to law enforcement).<sup>157</sup> If attempting to expunge a nonviolent felony conviction, “the person has not been convicted of any other felony, the person has not been convicted of a separate misdemeanor in the last seven years, no felony or misdemeanor charges are pending against the person, and at least five years have passed since the completion of the sentence for the felony conviction,” a person may be eligible for expungement.<sup>158</sup> Finally, a person with up to two cannabis-related felony charges may still be eligible for expungement as long as “no felony or misdemeanor charges are pending against the person, and at least ten years have passed since the completion of the sentence for the felony conviction.”<sup>159</sup> [\(BACK TO MAP\)](#)

**Oregon: OR. REV. STAT. ANN. § 475B.401 (2019)**

Oregon has legalized cannabis, and the state has passed subsequent legislation providing post-conviction relief for past cannabis-related offenses. “Oregon has enacted streamlined procedures and eligibility criteria for setting aside and reducing marijuana convictions.”<sup>160</sup> The Oregon legislature went a step further when, in 2019, they passed a law that allowed for a person with a qualifying cannabis conviction to file a motion at any time, free of charge, with no background check required, to seal the record of conviction and other official records in the case.<sup>161</sup> The person will be deemed, under the law, not to have been previously convicted.<sup>162</sup> [\(BACK TO MAP\)](#)

**Pennsylvania: EXPEDITED REVIEW PROGRAM, PA.STAT. AND CONS.STAT.ANN § 9122.2 (2019)**

Pennsylvania has legalized cannabis for medicinal use but has not passed decriminalization laws. However, the Pennsylvania Board of Pardons has issued an “Expedited Review Program” specific to non-violent cannabis convictions.<sup>163</sup> Eligible convictions include: “possession of a small amount of marijuana for personal use; possession of a small amount of marijuana with the intent to distribute; the distribution of a small amount of marijuana but not for sale; paraphernalia related offenses...; criminal conspiracy relating to an underlying marijuana-specific offense; marijuana-related DUI’s incurred by lawful medical marijuana cardholders in the Commonwealth of Pennsylvania; any felony conviction for possession

of marijuana with the intent to deliver; and any marijuana-specific conviction that the Secretary of the Board of Pardons deems appropriate.”<sup>164</sup> In addition, as of June 2019, the second piece of Pennsylvania’s Clean Slate Law has gone into effect. This law automatically sealed roughly 30 million records for individuals who have been found not guilty in court, have criminal charges that resulted in no convictions, commit misdemeanor crimes that included serving less than two years in prison, or commit nonviolent crimes more than 10 years ago. The charges will remain visible to law enforcement but will be hidden from public view and background checks used by a majority of employers. Individuals are required to have all their court fines paid before they are eligible for their records to be sealed. The automatic record sealing period ended June 2020, but the expansion of charges eligible for record sealing remains as per the first half of the Clean Slate Law.<sup>165</sup> ([BACK TO MAP](#))

**Rhode Island: R.I. Gen. Laws § 12-1.3-2, R.I. Gen. Laws § 12-1.3-3(e) (2019)**

Rhode Island has legalized cannabis for medicinal use and passed decriminalization laws. Rhode Island also passed a law dictating that records of cannabis-related offenses are not open to the public.<sup>166</sup> The decriminalization law provides that, “possession of up to one ounce of marijuana. . . is a non-arrestable civil offense, punishable by a maximum fine of \$150 but no jail time, and no criminal record.”<sup>167</sup> Additionally, following the decriminalization law, another law passed that allowed a person convicted of an offense that was subsequently decriminalized to file an immediate motion for expungement of records.<sup>168</sup> Once the court holds a hearing and “finds that all conditions of the original criminal sentence have been completed, and any and all fines, fees, and costs related to the conviction have been paid in full,” the court will order an expungement at no cost to the petitioner.<sup>169</sup> ([BACK TO MAP](#))

**South Carolina: S.C. CODE ANN. § 17-22-910 (2019)**

In South Carolina, cannabis is still illegal. South Carolina allows for “records of minor misdemeanor convictions” to be “expunged and destroyed after three years, if there are no subsequent convictions.”<sup>170</sup> A \$250 fee applies for all applications of expungement which “must be made through the Solicitor’s Office in the judicial circuit where the charge originated, which determines eligibility, coordinating with other agencies and with courts, and processes

applications as necessary.”<sup>171</sup> ([BACK TO MAP](#))

**South Dakota: S.D. CODIFIED LAWS § 23A-3-30 (2019)**

In South Dakota, cannabis is still illegal. While extremely vague, South Dakota’s law provides that “the court may enter an order of expungement upon a showing by the defendant or the arrested person by clear and convincing evidence that the ends of justice and the best interest of the public as well as the defendant or the arrested person will be served by the entry of the order.”<sup>172</sup> Otherwise, arrests and convictions for certain misdemeanors are automatically sealed after ten years if all court-ordered conditions are satisfied.<sup>173</sup> “The state repository may destroy misdemeanor records after ten years, and records of individuals over 75 who have been crime-free for ten years.”<sup>174</sup> ([BACK TO MAP](#))

**Tennessee: TENN. CODE ANN. § 40-32-101(F)(6) (2019)**

In Tennessee, cannabis is illegal. Additionally, Tennessee only allows for expungement of criminal convictions for cannabis offenses if the person “successfully completes a pretrial diversion program... or a judicial diversion program, and the charges against such person are dismissed.”<sup>175</sup> ([BACK TO MAP](#))

**Texas: TEX. GOV’T CODE ANN. § 411.075 (2019)**

Texas has legalized cannabis for medicinal use but has not passed any decriminalization laws. Texas does provide a chance for a person to petition the court for what they refer to as an “order of nondisclosure,” for a fee of \$28.<sup>176</sup> Then, “the court shall hold a hearing before determining whether to issue an order of nondisclosure of criminal history record information,” but a hearing may not be required.<sup>177</sup> ([BACK TO MAP](#))

**Utah: Utah Code Ann. § 77-40-107 (2019), UTAH CODE ANN. §77-40-114 (2020)**

In Utah, cannabis is legal for medicinal use. Utah does not have decriminalization laws, but they do provide for expungement of some criminal records. After following Utah’s protocol for filing for expungement, which includes (among other things) completing a certificate of eligibility, giving the state a chance to object to the expungement, and meeting statutory requirements, “the court shall issue an order of expungement if the court finds, by clear and convincing evidence, that if the petitioner seeks expungement of drug possession offenses... the petitioner is not illegally using controlled substances and is successfully managing

any substance addiction.”<sup>178</sup> The court will also issue an order of expungement for a conviction related to cannabis possession if the petitioner had, at the time of the relevant arrest leading to the conviction, a qualifying condition (as defined by UTAH CODE ANN. § 26-61a-104: Qualifying Condition), and the possession of cannabis in question was in a form and an amount to medicinally treat the condition described.”<sup>179</sup> In addition, Utah recently amended the Utah Expungement Act to allow for automatic expungement or deletion of charges for when the charges are dismissed with prejudice, the individual is acquitted, and in the case of certain misdemeanors. A person must be free of criminal activity for five years for a class C misdemeanor, six years for a class B misdemeanor, and seven years for drug possession. Drug possession is the only class A misdemeanor eligible for expungement.<sup>180</sup> ([BACK TO MAP](#))

**Vermont: VT. STAT. ANN. TIT. 13, § 7602 (2019)**

Vermont has legalized cannabis, and although the state hasn’t passed legislation that specifically targets cannabis-related convictions, it has come close.<sup>181</sup> Vermont law allows immediate expungement of an offense for which the underlying conduct is no longer a criminal offense upon completion of any imposed sentence and the satisfaction of any restitution.<sup>182</sup> Other laws that can be used include one that dictates that nonviolent misdemeanors are eligible for expungement after five years or for sealing if it “better serves the interest of justice.”<sup>183</sup> It is important to note that to use this law, there can be no convictions during the waiting period or the waiting period restarts. The difference here between sealing and expungement is that sealing still allows the conviction to be used as a predicate offense, but both will show “no record exists” for background checks.<sup>184</sup> However, it seems as though the new law negates the need for the older expungement options in the context of cannabis convictions, because it has been legalized for adults. ([BACK TO MAP](#))

**Virginia: VA. CODE ANN. § 18.2-250.1 (2019)**

While Virginia has legalized cannabis for medicinal use only, on July 1, 2020, a new law went into place decriminalizing cannabis possession.<sup>185</sup> Any person found with cannabis in his or her possession is subject only to a civil penalty and a fine of no more than \$25.<sup>186</sup> Additionally, “public access to records of decriminalized marijuana possession convictions in the central repository is automatically limited, and employers and educational institutions are prohibited

from inquiring about them.”<sup>187</sup> ([BACK TO MAP](#))

**Washington: WASH. REV. CODE ANN. § 9.96.06 (2019)**

Washington has legalized cannabis<sup>188</sup> and has made a concerted effort, following legalization, to remedy past convictions for cannabis-related offenses. First, “any person convicted of a misdemeanor marijuana offense, who was 21 years or older at the time of the offense, may immediately apply to the sentencing court to vacate the conviction, and if the person is eligible, the court ‘shall’ do so.”<sup>189</sup> Additionally, through his Marijuana Justice Initiative, Governor Jay Inslee “will exercise his constitutional clemency authority to pardon individuals who have a single conviction on their criminal record.”<sup>190</sup> The “sole conviction must be for adult (21+) misdemeanor marijuana possession, prosecuted under state law in Washington.”<sup>191</sup> Additionally, “the conviction must have occurred between January 1, 1998 and December 5, 2012,” when cannabis possession was still illegal.<sup>192</sup> According to records, around 3,500 individuals are eligible for pardon under this initiative.<sup>193</sup> ([BACK TO MAP](#))

**West Virginia: W.VA. CODE § 60A-4-407, W.VA. CODE § 61-11-26A (2019)**

West Virginia has legalized cannabis for medicinal use only. The court may place first-time offenders with possession charges on probation with terms and conditions, without entering a judgment of guilt and deferring further proceedings, unless the terms of probation are violated in any way, at which point the court may enter an adjudication of guilt.<sup>194</sup> “After a period of not less than six months, which shall begin to run immediately upon the expiration of a term of probation imposed,” a person may apply to the court for an order to expunge all official records of his or her arrest, trial, and conviction.<sup>195</sup> As long as, during the period of his or her probation and during the time prior to his or her application to the court, the person “has not been guilty of any serious or repeated violation of the conditions of his or her probation,” the court shall order the expungement.<sup>196</sup> Additionally, any person who has been convicted of one or more misdemeanor charges or a nonviolent felony offense remains eligible for expungement if the person satisfies the requirements of the law and successfully complies with an approved substance abuse treatment, recovery, and counseling program for 90 days or an approved job readiness adult training course (or both, if applicable), but after the completion of any sentence of incarceration or completion of any



period of supervision, whichever is later in time.”<sup>197</sup>  
 If a person has multiple misdemeanor charges, “there is a waiting period of at least one year after their last conviction, and a waiting period of at least three years after a non-violent felony conviction.”<sup>198</sup>

[\(BACK TO MAP\)](#)

#### **Wisconsin: [Wis. STAT. § 973.015 \(2019\)](#)**

Cannabis remains illegal in Wisconsin. Additionally, “there is no statutory authority to seal or expunge convictions, except in two specialized scenarios.”<sup>199</sup>  
 The only one of which is relevant to cannabis-related offenses is for a “youthful conviction (under 25 at the time of offense) for a misdemeanor or a minor, non-violent, first-time felony [which] may be expunged upon successful completion of the sentence, but only if the court orders this relief at the time of sentencing.”<sup>200</sup> [\(BACK TO MAP\)](#)

**Currently, only juveniles can benefit from Wisconsin’s laws for sealing or expunging records.**

#### **Wyoming: [WYO. STAT. ANN. § 7-13-1501 \(2019\)](#)**

Cannabis remains illegal in Wyoming. A person convicted of a misdemeanor in Wyoming, “may petition the convicting court for an expungement of the records of conviction, subject to the following limitations: at least five years have passed for non-status offenses and at last one year has passed for status offenses.”<sup>201</sup> “The misdemeanor(s) for which the person is seeking expungement shall not have involved the use or attempted use of a firearm.”<sup>202</sup>  
 The petitioner will pay a \$100 fee,<sup>203</sup> and “if the court finds that the petitioner is eligible for relief under this section” and “does not represent a substantial danger to himself, any identifiable victim, or society, it shall issue an order granting expungement of the applicable records.”<sup>204</sup> [\(BACK TO MAP\)](#)





## Advocacy Tools

This section includes messaging tools for advocates to help uplift the importance of automatic expungement for cannabis convictions and influence the conversation in their state or locality. Through the use of social media and op-eds in traditional news outlets, advocates can ensure the narrative around decriminalization focuses on remedying the racial disparities and negative impact the criminalization of cannabis has had on Black Americans.

The respective Sample Tweets and Writing an Op-Ed subsections below include sample messaging for Twitter and tips for writing and placing an op-ed in a local newspaper to be used as a guide for advocates.



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## SAMPLE TWEETS

- » People use cannabis at roughly the same rate, yet a Black person is almost 4x more likely than a white person to be arrested for possession of cannabis. This is why automatic expungement for those with cannabis-related charges is so important for communities of color. #mjexpungementnow
- » Automatic expungement laws have the power to right some of the wrongs caused by the failed “War on Drugs” on communities of color. #mjexpungementnow
- » With a clean record, individuals have more access to housing, employment, education and other benefits to build and sustain a stable life. #mjexpungementnow
- » The negative ripple effects of a marijuana charge are insurmountable. A criminal record can hold someone back from housing, jobs, benefits, and more. That’s why automatic expungement must be included in all marijuana legalization efforts, to put communities ravaged by the War on Drugs first. #mjexpungementnow
- » Automatic marijuana expungement laws shift the burden from individuals to the state to determine who is eligible for expungement. Decriminalization is not enough; we must aim higher. #mjexpungementnow

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## WRITING AN OP-ED

### Why write an Op-Ed?

Op-eds present a great opportunity to influence the conversation among policymakers, advocates, attorneys, and other target audiences on various topics. News outlets run op-eds from an array of sources ranging from experts and community advocates to those directly impacted by an issue. Writing an op-ed on the importance of automatic expungement for low-level cannabis possession can be a key tool towards your state or locality making it a reality.

### Before You Start

Check your local news outlet’s guidelines for op-eds on their website. This will include information about how to submit your op-ed and the desired length (typically 500-600 words, but restrictions vary by outlet). To avoid the risk of rejection, be sure to follow the guidelines closely.

### Tips for Writing Your Op-Ed

- » Make the case for why your voice matters. Be sure to provide biographical information, relevant credentials and/or how the issue impacts you or your community.
- » Be timely. For state and local newspapers, be sure to tie the op-ed to local information about cannabis expungement, including current laws and any efforts to change these laws.
- » Include some of the talking points below.
- » Structuring your op-ed:
  - Frame the problem
  - Clearly state your thesis (main point)
  - Try to use three pieces of supporting evidence; these can be anecdotes, statistics, and/or examples that resonate to best support the thesis
  - Acknowledge the main opposing arguments to ensure that you address any questions the reader may have
  - Provide the solution
  - Succinctly close the op-ed by reiterating your main point

## Talking Points

- » The criminalization of cannabis from the “War on Drugs” has devastated the Black American community and other communities of color resulting in lost economic, employment, housing and educational opportunities. The disproportionate arrests of Black people for cannabis possession, despite studies showing people of all racial backgrounds use drugs at the same rate, highlight the discriminatory impact cannabis criminalization has had on the Black community.
  - Black people are nearly four times more likely to be arrested for unlawful cannabis possession than whites.<sup>205</sup>
  - Cannabis arrests account for half of all drug arrests nationwide.
  - Eighty-eight percent of those arrested on cannabis-related charges were arrested for possession.
- » Automatic expungement is more beneficial than non-automatic expungement to those with prior cannabis convictions as it expedites the expungement process, is less expensive, and alleviates the burden of hiring a lawyer, appearing in court, and paying the court fees associated with non-automatic expungement.
- » Automatic expungement is especially important to lower income people of color, who have been the most impacted by the criminalization of cannabis, as they are often unable to take time off from work to appear in court and are financially prohibited from paying the burdensome filing fees for expungement, which can be as high as \$550 in some states, like Louisiana.
  - Automatic expungement is a better option than sealing records, which only acts to shield the record from public inspection and prospective employers, and does not actually delete the record as expungement does. There is a risk of sealed records being reopened under certain circumstances.
- » Automatic expungement and the need for additional resources to educate the public about the expungement process.
- » The need for and benefits of automatic expungement as compared to vacating and sealing records.
- » While there are many benefits to automatic expungement, it is important to protect against unintended immigration consequences—such as detention by federal authorities, loss of lawful status, ineligibility to apply for lawful status, and in some instances, even deportation—due to the expansive federal definition of “conviction.”<sup>206</sup> Individuals who have their records expunged at the state level may still have those convictions count for federal immigration purposes if they have:
  - a formal judgment of guilt entered against them in a court of law, or
  - a formal judgment of guilt withheld but a judge or jury found them guilty, they entered a plea of guilty or nolo contendere, or admitted to sufficient facts that warrant a guilty finding, and the judge ordered a punishment, penalty or restraint for the person.<sup>207</sup>

## Endnotes

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