



Expungement: Removing the Lifelong Stigma Caused by Cannabis Prohibition

What is expungement?¹

- Expungement is a legal process where the record of a person's arrest and/or conviction is destroyed or made inaccessible.
- If a person's record has been expunged, they can usually answer "no" when asked if they were convicted or arrested — as if it never happened.
- A similar process called "sealing" may simply make the records unavailable to the public (and sometimes other entities like law enforcement) in most circumstances (as if they were in a sealed envelope).

Why is expungement an important component of decriminalization and legalization?

- A criminal record — and often an arrest record — carries many collateral consequences, making it more difficult to get a job, housing, and a college education.
- Thirty-one states and D.C. no longer treat cannabis possession as a criminal offense.² It is unjust for individuals to suffer the collateral consequences of something that is no longer a crime.
- Expungement is also part of a larger move toward criminal justice reform.
 - States are increasingly attempting to broaden their expungement laws and restore rights and opportunities for people with criminal records.
- The enforcement of cannabis laws has had a racially discriminatory impact.
 - Despite similar usage rates, Black Americans are 3.73 times more likely to be arrested for marijuana possession nationwide than whites.
 - Scientific studies comparing equally qualified white and Black job seekers show that the impact of a criminal record is much greater for Blacks than whites.

What should policymakers consider in implementing expungement provisions?

- Can expungement be included as part of a decriminalization or legalization bill or initiative?
- Is expungement accessible to the low-income people who need it most?
 - If the fees are expensive, can they be waived?
 - Is free legal help available from the public defender or legal aid? Hiring a lawyer can cost anywhere from hundreds to over \$2,000 depending on the state.
- Record keeping issues:
 - Paper records may have been destroyed. Expungement often applies only to amounts of cannabis that are legal or decriminalized. However, it may not be clear from the records how much cannabis the person had or even whether the drug they had was cannabis.

- If available records are unclear on the amount, the expungement provision should err on the side of allowing people to move on with their lives.
 - Automatic expungement may not be practicable due to the burden on the court system.
 - Expunged convictions can still have immigration consequences (because federal immigration law doesn't recognize expungement).
 - The state must be willing to provide subject of the record with a clear written statement that no record exists.
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¹ Expungement laws vary by jurisdiction, and nothing in this document constitutes legal advice or a substitute for consulting an attorney in your state.

² See:

www.mpp.org/issues/decriminalization/state-laws-with-alternatives-to-incarceration-for-marijuana-possession/