



Expungement: Removing the Lifelong Stigma Caused By Marijuana 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.
 - Twenty-six states and D.C. no longer treat marijuana 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 marijuana laws has had a racially discriminatory impact.
 - Despite similar usage rates, African 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 marijuana that are legal or decriminalized. However, it may not be clear from the records

- how much marijuana the person had or even whether the drug they had was marijuana.
 - 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.
-

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/