



## Legalization States' Approaches to Expungement and Release

Every state that legalizes cannabis should also expunge the scarlet letter of prior cannabis arrests and convictions. This should be done automatically, without requiring the individual to take any action or pay a fee. Legalization states should also release individuals from cannabis sentences, including incarceration, parole or probation, or outstanding fines. Cannabis prohibition was borne of racism and continues to be enforced in a staggeringly unequal manner, with a 2020 ACLU review of the data finding Black individuals more than 3.6 times as likely to be arrested for possession as white individuals, despite similar use rates.

Conviction records make it difficult to get jobs, professional licensing, housing, and an education and trigger hundreds of collateral consequences. In addition to the need to stop stigmatizing individuals for conduct that is becoming legal, there is a moral imperative to wipe out convictions that reflect biased enforcement.

Although the earlier legalization states did not initially have expungement in their laws, several have passed expungement laws since. Many of the states limit relief to conduct that was legalized (typically possession and cultivation of a modest amount of cannabis), but some include sales and larger quantities.

Here is a round-up of what cannabis-specific measures legalization states have taken to expunge and seal past convictions and to release individuals from sentences.

State	Year Enacted	Expungement, Sealing, or Release?*
Alaska	2014	No. Alaska has not enacted any cannabis-specific expungement. The House passed a cannabis expungement bill in 2018, but it died in the Senate.
Arizona	2020	Allows expungement for possession or transportation of up to 2.5 ounces of cannabis and for cultivation of up to six plants. Prosecutors and the attorney general can file for expungement on behalf of individuals.
California	2016	Prop. 64 included expungement and/or resentencing for penalties that were reduced or eliminated by the law. Early release is available if it would not pose an unreasonable risk. In 2018, then-Gov. Brown signed a bill making expungement automatic.

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\* Additional details, along with information on expungement in states that have not legalized, *available at*: <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-marijuana-legalization-expungement/>

<b>State</b>	<b>Year Enacted</b>	<b>Expungement, Sealing, or Release?</b>
<b>Colorado</b>	2012	In 2017, lawmakers enacted a law for expungement of prior misdemeanor convictions. In 2020, lawmakers passed a bill allowing for mass pardons for low-level cannabis convictions. Gov. Polis pardoned all individuals convicted of possession of up to an ounce of cannabis on October 1, 2020. The law also allows for by-petition expungement for class 3 felony cultivation.
<b>Connecticut</b>	2021	Beginning July 1, 2022, individuals can petition for erasure of prior convictions for possession, drug paraphernalia, and sale and manufacture of four or fewer ounces or six or fewer plants. If the petition is in order, it must be granted. No fee may be charged. Beginning January 1, 2023, the law provides for automatic erasures of convictions from January 1, 2000 through September 15, 2015 for possession of fewer than four ounces.
<b>D.C.</b>	2014	Individuals with records for legalized and decriminalized conduct can file to have them sealed.
<b>Illinois</b>	2019	Automatic expungement for up to 30 grams, via the governor's clemency process. For amounts of 30-500 grams, the state's attorney or the individual can petition the court to vacate the conviction. Gov. Pritzker issued pardons for more than 20,000 convictions, and almost 500,000 non-conviction records have been expunged.
<b>Maine</b>	2016	No. Bills to expunge low-level cannabis convictions have been proposed but not enacted.
<b>Massachusetts</b>	2016	Upon request, individuals may have records sealed for conduct that is no longer a crime.
<b>Michigan</b>	2018	In 2020, Michigan's governor signed a bill to "set aside" convictions. They will not be public records, but state police will keep a non-public record. Individuals can petition to expunge past marijuana misdemeanors. In addition, after seven years, up to four misdemeanor convictions can be set aside (marijuana or not), along with up to two non-violent felonies (excluding certain offenses).
<b>Montana</b>	2020	Conduct that is no longer criminal can be expunged or be eligible for resentencing. A special administrative judge will be appointed to process petitions to expunge prior criminal records for cannabis-related activities that are permitted or decriminalized under the legalization law.

<b>State</b>	<b>Year Enacted</b>	<b>Expungement, Sealing, or Release?</b>
<b>Nevada</b>	2016	A person with a conviction for conduct that is no longer a crime can submit a request for sealing, which shall be granted. Also, at the recommendation of the governor, the Nevada State Board of Pardons Commissioners passed a resolution to summarily pardon 15,000+ individuals with convictions for up to an ounce of cannabis, from 1986 until legalization took effect.
<b>New Jersey</b>	2020	A 2019 law directed the creation of an automatic system to seal records for several cannabis offenses, including manufacture, possession, and sale of up to an ounce. A 2021 law (A.21) also provided for automatic expungement, along with dismissal of pending charges for possession and distribution. Convictions for unlawful distribution, possession, being under the influence, and possession of drug paraphernalia are eligible for no-cost, post-conviction relief. Prior sentences, convictions, or court order settlements imposed for possession and distribution are deemed to not have occurred. Persons incarcerated, on probation, parole, or other forms of community supervision may move to have their sentences reviewed by the court at no charge.
<b>New Mexico</b>	2021	A companion law to legalization (SB 2) sets up a system for reviewing and expunging cannabis convictions for conduct that was legalized or downgraded. The process must be completed within two years. It also allows for post-conviction relief for those currently serving sentences for conduct that was legalized or downgraded.
<b>New York</b>	2021	A 2019 law, before legalization, provided for automatic vacating of convictions for possession of up to two ounces. The legalization law expanded the list to include misdemeanor sales and possession of greater amounts.
<b>Oregon</b>	2014	In 2015, Oregon lawmakers expanded when expungement is available for marijuana convictions and included even some past felony convictions. To qualify, three years must have passed post-conviction, among other limits.

<b>State</b>	<b>Year Enacted</b>	<b>Expungement, Sealing, or Release?</b>
<b>South Dakota</b>	2020	Not included in the constitutional amendment. The legislature could add it if it implements the measure, which is not currently in effect. <sup>†</sup>
<b>Vermont</b>	2018/2020	A companion law to legalization included automatic expungement for criminal records for two ounces of cannabis, 10 grams of hashish, four mature plants, and eight immature plants.
<b>Virginia</b>	2021	Automatically shields from public inspection records of misdemeanor cannabis convictions.
<b>Washington</b>	2012	Gov. Inslee signed a bill in 2019 that allows any person who was convicted of a misdemeanor marijuana offense when they were 21 or older to apply for and be granted expungement.

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<sup>†</sup> South Dakota's legalization initiative has been enjoined by an appellate court due to a single subject challenge. The state Supreme Court heard arguments on the case in April 2021 but has still not issued a decision as of September 8, 2021. The law was supposed to take effect on July 1, 2021.