

The Intersection of Cannabis Legalization, Criminal Record Relief, and Emerging Adulthood

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ABSTRACT

State-level efforts to legalize cannabis for recreational use involve a multitude of considerations, such as market creation and regulation, criminal code enforcement, and relief from records of prior enforcement of laws criminalizing marijuana. When record clearance measures are adopted, procedures can include both automatic (in which the state carries the burden of initiating the expungement petition) and automated (in which algorithmic means are used to expunge large volumes of data) mechanisms. In some states, marijuana record expungement has served as a catalyst for expanding other forms of record relief, driven in part by the state's new responsibility to update the systems required to expunge large volumes of criminal records under these new relief provisions. However,

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within the broader context of recreational cannabis legalization, little is understood about which mechanisms predominate and whether they are positioned to provide expeditious relief on a meaningful scale, despite the centrality of such reparations in some states' approaches to legalization.

This Article analyzes one component of recreational cannabis legalization: novel provisions for criminal record relief enacted in states where cannabis has been legalized for adult recreational use. We focus on record relief because it is the component of a social equity paradigm of cannabis legalization poised to generate the greatest impact for individuals with records. The analysis proceeded in two phases. First, we provide comparative analyses of the statutory construction of laws aimed at removing the presence of criminal records of drug arrests and/or convictions. These records are disproportionately concentrated within disadvantaged communities in accordance with historical practices of law enforcement and prosecution of laws criminalizing marijuana. We situate our coding scheme and results within the complex literature on criminal record reform to appraise the potential benefits of these laws for relief recipients. Secondly, we describe the potential benefits of these reforms for emerging adults in their teens and twenties—a transitional life phase in which records carry elevated risks for long-term disadvantage. We contextualize our results with considerations of how these laws are implemented on the ground, attending to the multiple and overlapping data systems, agencies, and actors that must be coordinated if expungement efforts are to be fruitful. We also detail limitations to current approaches, including “dirty data” problems, lack of compliance by private sector background screeners, gaps and holes in legislation (such as partial expungements), and lack of notice to people who have received an expungement. Taking stock of our results and implementation literatures, we conclude with assessments of the current state of legalization-induced record reforms across three important dimensions: (1) how trends signal state-level commitments to social equity in legalization; (2) whether laws have the potential to reduce these mechanisms of inequity and marginalization; and (3) the pronounced significance of these reforms for young adults during this transitional period in which records can be a barrier to taking on adult roles.

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INTRODUCTION

Over the past decade, the legal landscape surrounding the recreational use of cannabis¹ has been rapidly and significantly transformed. Beginning in the Western part of the United States (i.e., Colorado, Washington), jurisdictions across the country have reconsidered the legality of using and possessing a controlled substance that was once uniformly illegal and the subject of more than one moral panic.² Recently, in addition to decriminalizing or legalizing cannabis use, state-level efforts have also sought to undo or ameliorate the harms of decades of pervasive enforcement of marijuana laws, particularly for the most impacted communities. Some states have used the legalization referenda and policymaking process to focus on addressing the harms of pervasive criminal records for drug offenses.³

Broadly defined, a criminal record is an administrative documentation of an individual's engagement with the criminal legal system.⁴ Criminal records can indicate various types of formal system contact, such as arrests or convictions.⁵ They are recorded in databases and files maintained by police departments, court administrators, and a myriad of other agencies.⁶ Records can be disseminated for numerous purposes within (and outside of) the legal system, such as calculating criminal history scores in sentencing decisions. These records are also used outside of the system in background checks and other character assessments at the point of

¹ This article adopts a purposeful and context-dependent approach when using “cannabis” or “marijuana” to refer to the substance of focus that intends to be reflective of its legal characterization and connotation. We use the phrase “cannabis legalization” in keep with the relevant statutory language used in and outcome achieved by the laws included in our comparative statutory analysis. We use the phrase “marijuana decriminalization” to align with the language used in laws for which criminal penalties have been revoked through cannabis legalization. This language choice further intends to purposefully preserve imbued connotations of race, punitiveness and stigma associated with the term ‘marijuana’ and the disproportionality at which these laws were enforced within minoritized communities relative to predominately white communities. We acknowledge that these terms and their connected connotations are not fully interchangeable.

² Michael Vitiello, *The War on Drugs: Moral Panic and Excessive Sentences*, 69 *CLEV. ST. L. REV.* 441, 479–81 (2020).

³ See generally SARAH ESTHER LAGESON, *DIGITAL PUNISHMENT: PRIVACY, STIGMA, AND THE HARMS OF DATA-DRIVEN CRIMINAL JUSTICE* (2020) (reviewing digital punishment and efforts made to remedy the issue).

⁴ Sarah Lageson & Robert Stewart, *The Problem with Criminal Records: Discrepancies Between State Reports and Private Sector Background Checks*, 62 *CRIMINOLOGY* 5, 8 (2024) (defining and describing various types of criminal records).

⁵ Eisha Jain, *Arrests as Regulation*, 67 *STAN. L. REV.* 809, 823–825 (2015) (analyzing the use of arrest records as criminal records).

⁶ JAMES B. JACOBS, *THE ETERNAL CRIMINAL RECORD* 36–38 (2015).

formal entry to various roles and opportunities, including (but not limited to) employment, housing, higher education, voting, and banking.⁷

One area that has received reform attention is the extent to which these criminal records should continue to be accessible and usable to draw inferences about individuals, especially when substantial time has elapsed between the event on the record and the present moment.⁸ Contrary to the adult system, the juvenile legal system has historically permitted record sealing and expungement.⁹ The logic of this practice is to mitigate the stigma that could be generated when documentation of lawbreaking behavior at a young age continues to adversely affect individuals as they mature into adulthood.¹⁰ Parallel conversations to shield records of system involvement in adulthood have more recently emerged, animating discussions and policy reforms that increase access to record relief for those meeting certain criteria. These typically involve a mix of offense severity, repeated system contact, and a (often lengthy) waiting period perhaps best exemplified in the increasing adoption of “Clean Slate” initiatives that were adopted across several states.¹¹

In current times, questions about relief from prior records have arisen in a new policy context: the legalization of recreational cannabis at the state level.¹² This change has been adopted by an increasing number of states over the past twenty-five years.¹³ Generally, legalizing adult-use cannabis involves revising legal codes to remove criminal penalties for actions falling within now-permitted personal use thresholds, and establishing regulatory frameworks for new, state-contained markets of production and distribution. These law and policy decisions unfold at the state-level, granting legislators and executives broad autonomy to determine their approach to legalization. While assessing a host of concerns pertinent to this process,

⁷ *Id.* at 275, 277; DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 58 (2007); Christopher Uggen et al., The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment, 52 CRIMINOLOGY 627, 642 (2014); David McElhattan, The Proliferation of Criminal Background Check Laws in the United States, 127 AM. J. SOCIO. 1037, 1054–55 (2022).

⁸ Alfred Blumstein & Kiminori Nakamura, Redemption in the Presence of Widespread Criminal Background Checks, 47 CRIMINOLOGY 327, 347–48 (2009).

⁹ James M. Jacobs, Juvenile Criminal Record Confidentiality., in CHOOSING THE FUTURE FOR AMERICAN JUVENILE JUSTICE 149, 149–51 (Franklin E. Zimring & David S. Tanenhaus eds., 2014).

¹⁰ *Id.* at 150.

¹¹ See Clean Slate in the States, CLEAN SLATE INITIATIVE, <https://www.cleanslateinitiative.org/states> [<https://perma.cc/P9KQ-9LPL>] (last visited Oct. 1, 2024).

¹² Tanner Wakefield, Stella Bialous & Dorie E. Apollonio, Clearing Cannabis Criminal Records: A Survey of Criminal Record Expungement Availability and Accessibility among US States and Washington DC That Decriminalized or Legalized Cannabis, INT. J. DRUG POL'Y, Apr. 2023, at 1, 2.

¹³ KATE BRYAN, NAT'L CONF. OF STATE LEGISLATURES, CANNABIS OVERVIEW (2024), <https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview> [<https://perma.cc/9TZM-TUDH>].

some states may opt to focus on developing strong, regulated markets poised to increase revenue. Others may prioritize equity goals that help redress the unequal enforcement of drug laws throughout recent American history. The frameworks that are ultimately adopted will likely be influenced by public opinion, local political will, and partisan ideological motivations.

In this moment of state-level change, there is thus a systematic shift in both drug laws and criminal record relief. Especially in places emphasizing what we will describe as a “social equity” approach, policymakers may consider whether cannabis legalization requires alleviating records for marijuana-related offenses generated when these actions were criminalized. If included, relief measures can take many forms, varying in the scope and process of granted record relief and practical capacity to comply with newly enacted laws. These considerations have immense impacts on the individuals who would receive record relief: the contours of expungement policies will influence their uptake by eligible persons and the amount of (actual) generated relief. Conversely, the absence of such relief may yield continued stigmatization and criminal record-based discrimination.

At this juncture, there is a need to examine these specific avenues for criminal record relief generated by recreational cannabis legalization. This article analyzes the intersection between marijuana decriminalization and existing criminal records in this moment of change at the state level. Specifically, we analyze state efforts to remove marijuana offense records enacted as one component of recreational cannabis legalization. We systematically investigate whether and how states are leveraging this moment of drug reform to expand criminal record relief measures—and if so, the potential reach of this relief to remove barriers for recipients. We consider the impacts of these laws for people of all ages but emphasize young adults for whom legal system involvement carries heightened risks of collateral harms over the life span, including hindered entry into labor markets, educational institutions, and independent living.

In synthesizing the numerous record relief measures enacted in this moment of drug law reform, we describe the potential for these simultaneous reforms to reduce the stigma dispensed by the criminal legal system and entrenched by labyrinthine record relief procedures. In addition to potential benefits for individuals, we discuss practical considerations surrounding record expungements that can stymie efforts to redress the racialized history of marijuana criminalization and enforcement.

I. APPROACHES TO RECREATIONAL CANNABIS LEGALIZATION

As of early 2024,¹⁴ Federal law delineates “marijuana (cannabis)” as an illicit substance classified as a Schedule 1 drug that has a “high potential for abuse” and

¹⁴ The Department of Justice proposed to reschedule marijuana from Schedule I to Schedule III on May 16, 2024. Press Release, U.S. Dep’t of Just., Justice Department Submits Proposed Regulation to Reschedule Marijuana (May 16, 2024), <https://www.justice.gov/opa/pr/justice-department-submits-proposed-regulation-reschedule-marijuana> [<https://perma.cc/A9S4-YM5V>].

“no currently accepted medical use.”¹⁵ Despite this status, cannabis is a widely used substance: nearly one-quarter (22%) of Americans 12 years of age and older self-reported using cannabis in 2022.¹⁶ Public opinion now falls squarely in support of legalization, with the vast majority of American adults (88%) favoring the legalization of marijuana, either only for medical purposes (30%) or for both medical and recreational purposes (59%).¹⁷

A set of contemporaneous intersecting factors can create the “policy windows” required to enact legal changes to drug laws.¹⁸ The window for marijuana decriminalization and cannabis legalization was likely opened at the confluence of these trends in self-reported use, public approval for rescinding criminalization, support for medical use, opportunities for increased industry operations and tax revenue, and broader reform efforts to undo harms associated with the War on Drugs initiated in the early 1970s.¹⁹ Rolling back prohibitions on cannabis for medical purposes paved the way for garnering support for rolling back prohibitions on cannabis for recreational purposes,²⁰ the focus of our work. As of March 3, 2025, twenty-four states, the District of Columbia, and two territories have legalized cannabis for adult recreational use,²¹ while thirty-eight states, the District of Columbia, and three territories permit adult use for medical purposes.²²

¹⁵ Drug Scheduling, U.S. DRUG ENFT ADMIN., <https://www.dea.gov/drug-information/drug-scheduling> (last visited Dec. 15, 2024) [<https://perma.cc/JC89-P6LU>].

¹⁶ SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ASS'N, U.S. DEP'T OF HEALTH & HUM. SERVICES, PUB. NO. PEP23-07-01-006, KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2022 NATIONAL SURVEY ON DRUG USE AND HEALTH 15 (2023), <https://www.samhsa.gov/data/report/2022-nsduh-annual-national-report> [<https://perma.cc/CQ7J-NZXX>].

¹⁷ Ted Van Green, Americans Overwhelmingly Say Marijuana Should Be Legal for Medical or Recreational Use, PEW RESEARCH CTR. (Nov. 22, 2022), <https://www.pewresearch.org/short-reads/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use/> [<https://perma.cc/W7JG-6BBK>].

¹⁸ Albert DiChiara & John F. Galliher, Dissonance and Contradictions in the Origins of Marihuana Decriminalization, 28 L. & SOC'Y REV. 41, 43–44 (1994).

¹⁹ Brian Mann, After 50 Years Of The War On Drugs, “What Good Is It Doing For Us?,” NPR (Jun. 17, 2021) <https://www.npr.org/2021/06/17/1006495476/after-50-years-of-the-war-on-drugs-what-good-is-it-doing-for-us> (last visited Mar 6, 2025). [<https://perma.cc/4QUG-RLBM>].

²⁰ Beau Kilmer & Robert J. MacCoun, How Medical Marijuana Smoothed the Transition to Marijuana Legalization in the United States, 13 ANN. REV. L. & SOC. SCI. 181, 192 (2017).

²¹ BRYAN, *supra* note 13.

²² NAT'L CONF. OF STATE LEGISLATURES, STATE MEDICAL CANNABIS LAWS (2024), <https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview> [<https://perma.cc/XPZ3-2WR7>]. See Table 1A for list of states included in our analysis.

A. *Social Equity in Cannabis Legalization*

There is a persistent gap between cannabis use and enforcement patterns. According to administrative and self-report data, over half (about 52%) of Americans have tried cannabis,²³ making it the most commonly used substance that is illegal under Federal law.²⁴ Recent self-report survey data indicates similar self-reported cannabis use across racial and ethnic groups: 23.1% of white adults, 24.5% of Black adults, and 18.2% of Hispanic adults report cannabis usage within the past year.²⁵ These rates are not mirrored in data on arrests for marijuana-related offenses: according to a recent report,²⁶ “[o]n average, a Black person is 3.64 times more likely to be arrested for marijuana possession than a white person.” Research from New York reveals a “racial imbalance” in which police stops and arrests for marijuana-related violations are concentrated within Black communities.²⁷ It follows that these disparities in enforcement experiences and arrest records likely translate to conviction records, as is the case for aggregate conviction rates in the criminal legal system.²⁸ This unequal distribution of conviction records may be magnified for criminalized marijuana offenses. While problematic for numerous reasons, this concentration disproportionately exposes Black people to the countless collateral consequences attached to criminal records. These include substantial barriers to

²³ Taylor Orth, *Half of Americans Have Tried Marijuana and Most Say Their Experiences Were Positive*, YOU GOV, <https://today.yougov.com/society/articles/42033-half-of-americans-have-tried-marijuana> (last visited Jan. 22, 2025) [<https://perma.cc/U4KG-XFUY>].

²⁴ *Cannabis and Public Health*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/cannabis/data-research/facts-stats/index.html> (last visited Jan. 22, 2025) [<https://perma.cc/6W3W-Y2KQ>].

²⁵ *SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2023 NATIONAL SURVEY ON DRUG USE AND HEALTH 13* (2024), <https://www.samhsa.gov/data/report/2023-nsduh-annual-national-report> [<https://perma.cc/88FA-YM4W>].

²⁶ *AM. CIV. LIBERTIES UNION, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 5* (2020), https://assets.aclu.org/live/uploads/publications/marijuanareport_03232021.pdf [<https://perma.cc/BN9E-MA59>].

²⁷ Amanda Geller & Jeffrey Fagan, *Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing*, 7 J. EMPIR. LEG. STUD. 591, 593 (2010).

²⁸ Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010*, 54 DEMOGRAPHY 1795, 1814 (2017).

employment, housing, and other forms of prosocial civic participation,²⁹ many of which were exacerbated during the COVID-19 pandemic.³⁰

Some advocates for cannabis legalization explicitly cite these disparities in marijuana law enforcement in their rationale for supporting legalization³¹; others urge lawmakers to leverage legalization as a means to explicitly address and repair enduring consequences of the War on Drugs and drug law enforcement for the communities most affected by these policies.³² Legal scholars, in particular, have highlighted the rollback of the criminalization of marijuana for medical or recreational purposes as an opportunity for the acknowledgment and remedy of past harms generated by the disparate enforcement of these laws.³³ While such measures may manifest differently across states, all share a goal of creating pathways to increase equity in an area historically lacking in equity.³⁴ We next describe the central tenets and components of such approaches to legalization. Each potentially serves as part of the foundation for legalization to achieve meaningful reform and to reduce prior harms of enforcement associated with criminal records.

1. Describing a Social Equity Approach to Legalization and its Translation to State-Level Frameworks of Legalization

The process of legalization entails numerous considerations that may follow different rationales and motivations, depending on the political and social context of the state, its elected leaders, and the method of legalization.³⁵ To varying degrees, many states have chosen to employ an equity-focused orientation to guide their legalization process. Importantly, because this reform is at the state level, state lawmakers have the autonomy to shape the implementation of the legal cannabis

²⁹ David S. Kirk & Sara Wakefield, *Collateral Consequences of Punishment: A Critical Review and Path Forward*, 1 ANN. REV. CRIMINOLOGY 171, 175–176 (2018).

³⁰ Eric Reinhart & Daniel L. Chen, *Carceral-Community Epidemiology, Structural Racism, and COVID-19 Disparities*, 118 PROC. NATL. ACAD. SCI. U.S. AM., May 10, 2021, at 1–2.

³¹ Top 10 Reasons to Legalize and Regulate Cannabis, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/issues/legalization/top-ten-reasons-to-end-marijuana-prohibition/> (last visited July 2, 2024) [<https://perma.cc/EQW7-69SL>].

³² Sagiv Galai, *Equity Must Be at the Heart of Marijuana Legalization*, AM. CIV. LIBERTIES UNION (June 26, 2019), <https://www.aclu.org/news/criminal-law-reform/equity-must-be-heart-marijuana-legalization> [<https://perma.cc/J493-2J4L>].

³³ Douglas A. Berman, *Leveraging Marijuana Reform to Enhance Expungement Practices*, 30 FED. SENT'G REP. 305, 310 (2017).

³⁴ JANA HRDINOVÁ & DEXTER RIDGWAY, *DRUG ENF'T & POL'Y CTR., MAPPING CANNABIS SOCIAL EQUITY: UNDERSTANDING HOW OHIO COMPARES TO OTHER STATES' POST-LEGALIZATION POLICIES TO REDRESS PAST HARMS 1*, 1–2 (OHIO STATE LEGAL STUD. RSCH. PAPER NO. 822, 2024).

³⁵ Beau Kilmer, *Policy Designs for Cannabis Legalization: Starting with the Eight Ps*, 40 AM. J. DRUG & ALCOHOL ABUSE 259, 259 (2014).

industry within their state as they see fit. These considerations have evolved in concept and form as more states enact legal recreational cannabis, sometimes described as a temporal progression: attention started with reducing disparities in enforcement, expanded to addressing criminal records for marijuana-related offenses, and most recently has broadened towards embedding equity measures in legal markets and tax revenue investment.³⁶

While no standard definition exists, one description of the “social equity paradigm” posits a comprehensive, three-pronged approach to legalization that emphasizes the following:

1. Increasing access to the [legal cannabis] industry for minoritized communities;
2. Sealing or expunging criminal records [of past marijuana-related offenses]; and
3. Using tax revenue generated by legal [cannabis] sales to reinvest in disproportionately impacted communities.”³⁷

State lawmakers can make several consequential determinations during legalization: whether to adopt a social equity framework, which component(s) to adopt, and how equity measures are implemented—law, policy, and/or practice.³⁸ While awaiting evidence that evaluates whether these policy goals are achieved in practice, we now describe the process of legalization in New Jersey. We focus on a single state to provide an illustrative example of the multitude of ideological considerations and policy reform options at stake during the creation of the new legal cannabis industry. Of note, and as our data will show, the complicated landscape defined by numerous political and economic tensions creates a set of highly divergent cannabis reforms across the states.

New Jersey followed a circuitous path to legalization, given the many stakeholders and their often-competing interests.³⁹ The development of a regulatory framework, taxation scheme, and program for social equity in licensing and distribution animated much of the protracted debate. Numerous policy

³⁶ Beau Kilmer et al., Cannabis Legalization and Social Equity: Some Opportunities, Puzzles, and Trade-Offs, 101 B.U. L. REV. 1003, 1006–07(2021).

³⁷ William Garriott & Jose Garcia-Fuerte, The Social Equity Paradigm: The Quest for Justice in Cannabis Legalization, 47 SETON HALL LEGIS. J. 128, 131 (2023).

³⁸ Kilmer et al., *supra* note 36, at 1007–08.

³⁹ Jan Hefler, Legalized Pot in New Jersey—Not so Fast, THE PHILADELPHIA INQUIRER (Mar. 9, 2018, 10:15 AM), https://www.inquirer.com/philly/news/new_jersey/marijuana-legalize-pot-new-jersey-legislature-20180309.html [<https://perma.cc/2K5T-QWJB>]; Jordan M. Hyatt et al., Into the Weeds: Considering Support for and the Intricacies of Cannabis Legalization in New Jersey, 21 OHIO STATE J. CRIM. LAW 205, 234 (2024).

considerations and options were at stake, including (but not limited to): the process of establishing markets and identifying criteria for distributing licenses; assembling an authority that would oversee implementation and compliance (in this case, the New Jersey Cannabis Regulatory Commission); distribution locations and processes; identifying age restrictions and possession limitations; alterations to the criminal code including decriminalization and legalization, but not for all age groups; taxation and revenue distribution; the creation of structures to minimize accessibility for those under age 21; and measures to redress the impact of prior enforcement, including record expungement for marijuana offenses, particularly in communities of color.⁴⁰

Considering these myriad and complicated concerns, it is unsurprising that the process of legalization was fraught with political and procedural challenges that delayed the initiative at several junctures.⁴¹ Among leaders in the legislature's influential Black Caucus, for example, concerns centered on whether the distribution of licenses to sell would be equitably distributed to people of color, whether punitive enforcement mechanisms would be scaled back, and whether the product would be taxed in a way that would further social equity. At the same time, leaders of this caucus including Senators Ronald Rice and Shirley Turner also voiced concerns that legalization would lead to increased substance abuse and corresponding health problems, especially among teenage populations within disadvantaged communities that could least afford it.⁴² Ultimately, the stakeholders in the New Jersey legislature compromised on such issues and passed three bills⁴³ that created a legal industry for the sale of cannabis, decriminalized possession (up to 6 ounces), reformed

⁴⁰ S. P. Sullivan, Here's N.J. Lawmaker's Plan to Legalize Recreational Marijuana After Christie Leaves, NJ.COM, https://www.nj.com/politics/2017/05/heres_one_nj_lawmakers_plan_to_legalize_recreation.html [<https://perma.cc/3Q95-UCS8>] (last updated May 15, 2017, 8:57 PM).

⁴¹ *Id.*; New Jersey Weed Legalization Timeline, THE CANNABIS PLACE, <https://thecannabisplace.org/new-jersey-weed-legalization-timeline/> [<https://perma.cc/5QNR-HBWU>] (last visited Feb. 11, 2025).

⁴² Nick Corasaniti & Jesse McKinley, Why the Plan to Legalize Marijuana in New Jersey Suddenly Unraveled, N.Y. TIMES (Mar. 27, 2019), <https://www.nytimes.com/2019/03/27/nyregion/marijuana-legalization-new-jersey.html> [<https://perma.cc/V7MT-LBDZ>].

⁴³ On February 22, 2021, Governor Phil Murphy signed three bills into law to enact this state constitutional amendment. Bill A21 ("The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act") legalized cannabis use and possession for adults ages 21 and older and established a regulated market for its sale and distribution. Bill A1897 achieved several criminal legal system reforms to decriminalize marijuana and hashish, referring to substances obtained outside of the state's regulated cannabis market. Bill S3454, distinguished cannabis and marijuana use and possession penalties for persons under the age threshold for legality (21 years of age). Press Release, Off. of N.J. Governor Phil Murphy, Governor Murphy Signs Historic Adult-Use Cannabis Reform Bills Into Law (Feb. 22, 2021), <https://www.nj.gov/governor/news/news/562021/20210222a.shtml> [<https://perma.cc/XCX8-A9AH>].

enforcement mechanisms, addressed taxation and revenue expenditures, and adopted measures for record clearance.⁴⁴

But one of the aspects that makes legalization in New Jersey particularly noteworthy is the extent to which revenue generation (i.e., taxes) and government spending parameters were driven by sentiments related to social and racial equity. Specifically, this part of the legislation was intended not only to address individuals who have been targeted by Drug War efforts, but to whole communities that have been harmed by those policies. To reach these impacted areas in a fundamental and long-term way, New Jersey's bill stipulated that at least 70% of the tax revenue from sales is to be invested within zip codes historically impacted by traditional approaches to the enforcement of drug laws, thereby creating a meaningful and permanent strategy for redressing historical harms related to policing and criminalization.⁴⁵ While promising, especially given residents' preferences for disbursement toward education, public health, and affordable housing,⁴⁶ the legislation was silent on the precise meaning of "investment," leading to some concerns that the revenue could be diverted toward law enforcement, courts, and other government agencies that may revert to punitive measures over time.

B. Criminal Record Relief: One Part of Social Equity in Legalization

1. Criminal Records as Enduring Barriers

While New Jersey's process illustrates comprehensive considerations of embedding equity-increasing measures in legalization, not all components of this framework have the same potential breadth of impact for individuals. According to estimates, record-clearing laws have a larger scope of potential impact than policies that create dedicated pathways for those with prior convictions to participate in the legal cannabis industry.⁴⁷ Removing records allows individuals to pursue careers across a broader set of industries, while pathways created within the legal cannabis industry generate a narrower set of specialized opportunities in a single industry. Our focus on criminal records, then, reflects our interest in assessing legalization as an opportunity to increase equity at the individual level. Prior research on the

⁴⁴ Cannabis Legalization: What it Means for You and Your Rights, ACLU N.J., <https://www.aclu-nj.org/en/know-your-rights/cannabis-legalization-what-it-means-you-and-your-rights#:~:text=In%202021%2C%20New%20Jersey%20legalized,disparate%20enforcement%20of%20cannabis%20prohibition> (last visited Feb. 11, 2025) [<https://perma.cc/9C6Y-L8RM>].

⁴⁵ B. A21, 219th Leg., Sess. 2020-2021 (N.J. 2021). https://legiscan.com/NJ/text/A21/id/2323220/New_Jersey-2020-A21-Chaptered.html [<https://perma.cc/JW55-E73M>]; see also Impact Zones, CANNABIS REGUL. COMM'N, <https://www.nj.gov/cannabis/businesses/priority-applications/impact-zones/> (last visited Feb. 11, 2025) [<https://perma.cc/4BMN-TLJ8>].

⁴⁶ Nathan W. Link, Jordan M. Hyatt & Kathleen Powell, Public Opinion on the Expenditure of Adult-Use Cannabis Tax Revenue: Evidence from New Jersey, *INT. J. DRUG POL'Y*, Mar. 2024, at 2.

⁴⁷ Kilmer et al., *supra* note 36, at 1012.

impacts of criminal records, reviewed below, guides our systematic assessment of the construction of these laws—a paramount consideration for identifying the potential for individuals to receive their benefits and, in turn, attain equity goals.

Within emerging social science research, it is largely undisputed that people with criminal records face myriad forms of discrimination and reduced opportunities across institutional and social domains, including education, housing, employment, community engagement, and families.⁴⁸ Encompassing information that ranges from arrests to convictions from recent times or long ago, today’s criminal record is digitally accessible and widely available for purchase by private background check companies that market their services to employers, landlords, and the curious public. Experimental audit research has established the impact of a criminal record on employment and housing outcomes.⁴⁹ The effects of a criminal record are further exacerbated by race, such that Black applicants experience a double penalty of racial discrimination and criminal record-based discrimination.⁵⁰

2. Challenges of Clearing Criminal Records and Associated Stigma

Because record relief offers the promise of removing such barriers for individuals, several policy initiatives have aimed to limit public access to criminal records as a method to limit such discrimination.⁵¹ Early reform movements focused on “banning the box” on employment, and later, housing applications.⁵² Removing the criminal record question on applications was thought to open opportunities for applicants to showcase their credentials and experience, rather than being dismissed immediately due to a criminal record. Subsequent research established mixed results for these initiatives, however, with some research pointing to a potential unintended consequence of increased racial discrimination against Black applicants without a criminal history.⁵³

⁴⁸ Kirk & Wakefield, *supra* note 29, at 172.

⁴⁹ Devah Pager, *The Mark of a Criminal Record*, 108 *AM. J. SOCIO.* 937, 960 (2003); Uggen et al., *supra* note 7, at 637–45.

⁵⁰ Pager, *supra* note 49, at 939.; Robert Stewart & Christopher Uggen, *Criminal Records and College Admissions: A Modified Experimental Audit*, 58 *CRIMINOLOGY* 156, 159 (2020); Sadé L. Lindsay, *Damned If You Do, Damned If You Don’t: How Formerly Incarcerated Men Navigate the Labor Market with Prison Credentials*, 60 *CRIMINOLOGY* 455, 457, 460–61 (2022).

⁵¹ See, e.g., Restoration of Rights Project, *COLLATERAL CONSEQUENCES RES. CTR.*, <https://ccresourcecenter.org/restoration-2-2/> (last visited Dec. 22, 2024) [perma.cc/CPZ6-PDS4].

⁵² Steven Raphael, *The Intended and Unintended Consequences of Ban the Box*, 4 *ANNU. REV. CRIMINOL.* 191, 197 (2021); see David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, 33 *LAW SOC. INQ.* 5, 11 (2008) (documenting the rise of criminal background screening in rental applications).

⁵³ Raphael, *supra* note 52, at 200–01, 205.

Perhaps in response, states across the country began to focus instead on criminal record expungement, the destruction or sealing of such records from public view.⁵⁴ The logic is similar—removing access to this information would decrease the lifelong stigmatization created by the mark of a criminal record. There are two general methods through which expungements are granted: petition-based, in which the burden is on the relief seeker with a record to initiate the process, or automatic/automated, in which the burden is on the state to initiate the process for eligible records. Expungement policy began to pick up in earnest with the advent of automation and algorithmic approaches.⁵⁵

Numerous voices call for the use of record-clearing processes that place the burden of delivering relief on the state, rather than those seeking relief, as one way to improve upon existing but inadequate or inaccessible relief measures.⁵⁶ Many envision automation as a salve for the well-documented delays and administrative burdens associated with traditional petition-based expungements. Prior scholarship makes clear that the method through which criminal records can be cleared is a powerful correlate of the rate at which eligible individuals pursue and attain record clearances. For instance, Prescott and Starr found extremely low uptake rates for petition-based expungement in Michigan.⁵⁷ As these researchers point out, very low uptake of traditional expungement processes worsens the “second chance gap.”⁵⁸ Moreover, incomplete or “dirty data” on criminal records in administrative databases has impeded automated efforts in many states.⁵⁹

Nevertheless, there is a potential upside for criminal record documentation because of cannabis legalization. It may not only encourage broader reforms but also have pragmatic spillover benefits for building capacity to implement automated criminal record clearance. As states race to implement cannabis-based expungements in line with new statutory guidance, disorganized and incomplete state criminal record data systems are being updated to meet the information technology demands necessitated by broad and sweeping mandates for record clearance. In this sense, cannabis legalization and expungement may be the driving force for better, cleaner, and more efficient expungement across offense types.

⁵⁴ COLLATERAL CONSEQUENCES RESEARCH CENTER., *supra* note 51.

⁵⁵ CLEAN SLATE INITIATIVE, *supra* note 11.

⁵⁶ Deborah M. Ahrens, *Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform*, 110 *J. CRIM. L. & CRIMINOLOGY* 379, 385 (2020).

⁵⁷ J. J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 *HARV. L. REV.* 2460, 2552 (2020).

⁵⁸ Colleen Chien, *America’s Paper Prisons: The Second Chance Gap*, 119 *MICH. L. REV.* 519, 541–42 (2020).

⁵⁹ *Id.* at 567–68, 576–83.

The theorized outcomes of criminal record clearance include increased rates of employment, housing, voting, and other measures of civic inclusion.⁶⁰ While existing research is sparse, there is some evidence that record clearance can indeed bring about socioeconomic benefits through direct and indirect paths. Directly, one study of relief-seekers found that those with cleared records experienced improvements in two key indicators—employment rates and reported earnings.⁶¹ Similar findings were observed in another more recent study,⁶² though emerging empirical research on automated criminal record reform has shown mixed effects.⁶³ Indirectly, the blockages to post-secondary education created by criminal records can impede occupational attainment and, in turn, career prospects.⁶⁴

C. The Special Case of Emerging Adults in the Legal System

Although record relief will potentially benefit all recipients, outcomes may differ across sociodemographic groups at varied life stages. Specifically, record relief from prior arrests or convictions for marijuana offenses may carry pronounced impacts for emerging adults—a developmental stage inclusive of individuals 18–25 years old who have reached the age of majority and are transitioning into adult roles.⁶⁵ Criminological research notes how legal system contact and punishment during adolescence and early adulthood can be especially damaging to later life circumstances by disrupting, delaying, or even blocking entry to these stabilizing adult roles.⁶⁶ Scholarship corroborates this premise by highlighting enhanced adverse consequences of punishment during adolescence for various outcomes, including those closely connected with criminal records, such as educational attainment, employment, and earnings.⁶⁷

⁶⁰ CLEAN SLATE INITIATIVE, *supra* note 11.

⁶¹ Jeffrey Selbin, Justin McCrary & Joshua Epstein, Unmarked? Criminal Record Clearing and Employment Outcomes, 108 J. CRIM. L. & CRIMINOLOGY 1, 46 (2017).

⁶² Prescott & Starr, *supra* note 57, at 2524–33.

⁶³ Amanda Y. Agan et al., Can You Erase the Mark of a Criminal Record? Labor Market Impacts of Criminal Record Remediation 21–23 (Nat'l Bureau of Econ. Rsch., Working Paper No. 32394, 2024), https://www.nber.org/system/files/working_papers/w32394/w32394.pdf [<https://perma.cc/4JPS-LSAR>].

⁶⁴ Stewart & Uggen, *supra* note 50, at 180.

⁶⁵ Jeffrey Jensen Arnett, Emerging Adulthood: A Theory of Development from the Late Teens through the Twenties, 55 AM. PSYCH. 469, 469 (2000).

⁶⁶ Megan C. Kurlychek & Brian D. Johnson, Cumulative Disadvantage in the American Criminal Justice System, 2 ANN. REV. CRIMINOLOGY 291, 311 (2019); JOHN H. LAUB & ROBERT J. SAMPSON, SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70 (2006).

⁶⁷ Anna Aizer & Joseph J. Doyle Jr, Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges, 130 Q. J. ECON. 759, 799 (2015); Robert Apel & Gary

In addition to these consequences of punishment, the marginalizing forces generated or exacerbated by a criminal record can be pronounced during this age phase. Emerging adulthood is a time of numerous life transitions,⁶⁸ which often require a cursory record check and/or record disclosure. For employment, emerging adults with records seeking entry-level positions may be systematically screened out by record checks, as discussed above. In a different but related context, a recent audit study of four-year institutions found compelling evidence that criminal records for low-level felony offenses are a barrier to university admission: among the colleges that request criminal history information, “applicants with criminal records were rejected at a rate approximately three times higher than applicants without records.”⁶⁹ This study focused specifically on applicants in emerging adulthood, demonstrating how the normative pursuit of postsecondary education during this period includes exposure and vulnerability to discrimination based on a criminal record.

The systematic embedding of record checks into activities typical of the transition to adulthood raises the risks for both immediate short-term damages and longer-term cumulative disadvantages that affect individuals throughout their life span. From a developmental view, the gatekeeping effects of record-induced discrimination in early adulthood are likely to redirect educational and occupational development pathways in later life phases. Punishment and inequality scholarship has long described how the legal system can reflect and exacerbate pre-existing levels of social disadvantage.⁷⁰ This potential is elevated for system involvement during young adulthood: the earlier experience creates extended time for initial and cascading disadvantages to proliferate.⁷¹ Accordingly, the discrimination based on criminal records at the key entry portals and transition points during this life phase (employment entry, college application) is particularly consequential. In the example of employment, denial of entry into primary sector jobs and, hence, career paths may force individuals with criminal records into secondary labor markets with comparatively lower job quality and earnings potential.⁷²

Sweeten, *The Impact of Incarceration on Employment during the Transition to Adulthood*, 57 *SOC. PROBS.* 448, 469 (2010); Randi Hjalmarsson, *Criminal Justice Involvement and High School Completion*, 63 *J. URBAN ECON.* 613, 628 (2008); David S. Kirk & Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 *SOCIO. EDUC.* 36, 47 (2013).

⁶⁸ Michael J. Shanahan, *Pathways to Adulthood in Changing Societies: Variability and Mechanisms in Life Course Perspective*, 26 *ANN. REV. SOCIO.* 667, 667 (2000).

⁶⁹ Stewart & Uggen, *supra* note 50, at 178.

⁷⁰ See, e.g., Sara Wakefield, *Incarceration, Families, and Communities: Recent Developments and Enduring Challenges*, 51 *CRIME & JUST.* 399, 410 (2022).

⁷¹ See Kurlychek & Johnson, *supra* note 66, at 304–06.

⁷² Naomi F. Sugie, *Work as Foraging: A Smartphone Study of Job Search and Employment after Prison*, 123 *AM. J. SOCIO.* 1453, 1455–56, (2018); Christopher Uggen, *Ex-Offenders and the Conformist Alternative: A Job Quality Model of Work and Crime*, 46 *SOC. PROBS.* 127, 144–45 (1999).

In this way, criminal records may have an outsized stratifying effect on young adults during a critical period of social growth and transition. Records of marijuana-related offenses are likely to be especially concentrated among young adults who self-report the highest rates of marijuana usage of all age groups,⁷³ increasing their risk of law enforcement contact for this behavior. But records for marijuana-related offenses may be of pronounced significance for young Black adults who are disproportionately arrested for marijuana-related offenses⁷⁴ and therefore at disproportionate risk of marijuana-related convictions. Considered together, record clearance may increase the likelihood of attaining the social equity goals of recreational marijuana legalization by directly reducing the barriers to entry into adult role behavior during the critical emerging adult period of the life course.

II. STATE-LEVEL ANALYSIS AND COMPARISON OF MARIJUANA EXPUNGEMENT: LAW COMPONENTS, IMPLEMENTATION PROCESSES, AND CHALLENGES

We empirically appraise the potential for record relief to reduce inequality by reconciling and synthesizing a set of laws created across autonomous legislative bodies at the state level. We examine their structure and assess the collective potential of various components to increase equity, such as the mechanism of relief and the process through which it is distributed. We accomplish this by analyzing components of state laws coded across various dimensions, measuring adherence to a social equity paradigm and accessibility of relief for individuals with prior records. Our methodology codes elements known to shape recipient-level benefits and population-level access to records facilitated by technology,⁷⁵ then synthesizes coded components to identify trends in breadth, scope, and accessibility.

After identifying trends across states, we compare results to literature on criminal records and social development to evaluate the potential benefits of these laws in action for redressing prior harms, particularly for emerging adults. We specifically assess three areas in this process: (1) how trends signal state-level commitments to social equity in legalization; (2) whether laws have the potential to reduce these mechanisms of inequality and marginalization; and (3) the pronounced significance for young adults during this transitional period. Our discussion section connects our analysis with known impediments to change, positioning these new laws (and drug law reform, more broadly) as a potential catalyst for broader criminal legal system changes and a potential lever for reducing historical inequalities. We now describe the data and methods used as the foundation of our analysis.

⁷³ Key Substance Use and Mental Health Indicators in the United States, SAMHSA 11 (July 2024), <https://www.samhsa.gov/data/sites/default/files/reports/rpt47095/National%20Report/National%20Report/2023-nsduh-annual-national.pdf> [<https://perma.cc/EZ2W-5XMX>].

⁷⁴ AM. CIV. LIBERTIES UNION, *supra* note 26, at 29–36.

⁷⁵ Chien, *supra* note 58.

A. Data: State Laws

This article focuses on avenues for criminal record relief concerning prior enforcement of marijuana offenses that are specifically dedicated to marijuana offenses: (1) newly decriminalized through recreational legalization and (2) newly enacted in direct connection with recreational legalization. Under these criteria, we include twenty-three states and their enacted laws that have legalized cannabis for recreational purposes as of October 1, 2023.

We used a two-step coding process to distill laws into a series of categorical variables that systematically describe enacted changes across various components. We emphasize components that directly influence the relief seekers' experience with the process and the ultimate benefit they will receive. This approach allows us to connect laws as written with scholarship on the collateral consequences of criminal records for social participation and on a social equity approach to drug law reform. Our final dataset, created from the following two-stage process, includes nine variables measuring six components of record relief laws enacted in twenty-three states.

First, prior to reviewing laws, the first two authors collaboratively compiled various components of record relief laws that are central to policy debates and related to the empirical evidence regarding criminal records and relief opportunities. After review and discussion, we finalized an initial list of components as the first step in our analysis that guided an initial review of all laws regarding record relief for prior marijuana offenses in all states where the substance has been made legal for recreational purposes. This review, completed in Fall 2023, started with compiled repositories of existing state laws⁷⁶ and was supplemented with an additional review of state law text and other third-party coverage (e.g., local newspaper reporting) to clarify the components of the enacted laws if repository information was unclear or needed more detail. On a state-by-state basis, the first author compiled an initial database detailing provisions enacted within each pre-identified component of the law.

In the second step, this database served as the foundation for translating components of each law into a series of categorical variables. Annotated provisions within components at the state level were preliminarily analyzed to identify conceptual similarities across enacted measures—for example, the mechanism(s) through which relief is available. These points of alignment became the foundational categories of each law component variable. Provisions were then classified in the second round of coding, with refinements made as necessary. This step effectively synthesized detailed outline information into aggregate categories within identified components, readily facilitating cross-state comparisons of enacted laws. As a result,

⁷⁶ NAT'L ORG. FOR THE REFORM OF MARIJUANA L., *Legalization*, NORML, <https://norml.org/laws/legalization/> (last visited Dec. 26, 2024) [<https://perma.cc/9QAN-98QU>]; COLLATERAL CONSEQUENCES RESEARCH CENTER, *supra* note 51.

we created nine categorical variables spanning six law components that synthesize and classify enacted provisions within each component in each state, described below.

1. Variables: Classifying Dimensions of Enacted Relief

The first category includes two variables that signal the breadth of record relief benefits made available through marijuana legalization and states' commitment to providing avenues for relief in close conjunction with enacting legalization.

Availability. One binary variable indicator indicates whether specific and dedicated mechanisms for relief of prior marijuana records were created and enacted (=1 if yes to both) in states where recreational marijuana has been legalized. It reveals the prevalence of dedicated relief mechanisms directly connected to legalization and codified into law across states, suggesting not just an acknowledgment of prior enforcement but also of commitment to making relief available through additional formal action.

Simultaneity. A second binary variable reflects the timing at which dedicated relief mechanisms were made available with respect to the enactment of legalization. It equals one if available relief measures were passed contemporaneously with laws establishing the legal and regulated marketplace for recreational cannabis sales within the state. We contend that the enactment of both measures simultaneously suggests places where the inclusion of relief was prioritized similarly to the creation of legal markets—including tax schemes that would generate new revenue in a politically simple way.

The second category includes three variables that collectively signal the scope of the record relief measures for recipients. Each variable indicates the narrowness of enacted relief measures within existing state law, contouring the level of relief encapsulated in measures of its availability.

Type. Two variables identify the legal mechanisms of criminal record relief. All enacted methods of record relief types were synthesized into two variables. The first is a binary indicator of whether a state law makes available a single type of relief (reference group: multiple types of relief). The second variable collapses these types into (non-mutually-exclusive) conceptual categories: expungement, sealing, executive action (pardon and/or clemency), and vacatur/other (including “set-asides” and offense redesignations).

Severity. One variable indicates the level of severity of offenses included as eligible in relief laws. All included offenses across all states were

condensed into a three-level categorical variable that progressively increases in included offenses: subfelony convictions;⁷⁷ subfelony and felony convictions; and non-convictions and convictions (felony and subfelony).⁷⁸ These categories are mutually exclusive.

Age Limitation. One variable measures whether age-graded penalties for individuals above the age of criminal responsibility (18) but beneath the age for adult recreational use (21) were also present in relief laws. In all states, recreational adult use is permitted for individuals 21 or older; a distinct set of laws and penalties exist for those under this legal age. This variable indicates whether state laws impose limitations on relief eligibility contingent on the potential recipients' age at the time of the offense. Specifically, we were interested in exploring whether relief was limited to now-legal offenses *and* now-legal age limits (21+) or only to now-legal offenses. This variable equals one if a state specifically and explicitly imposed restrictions or additional procedures for individuals ages 18 to 20 at the time of the offense (that are below the now-legal age threshold) to receive record relief.

The final category includes three variables that indicate the accessibility of record relief for relief-seekers. These measures collectively signal the ease with which individuals can receive benefits if eligible.

Method. Two variables were coded to capture the complexity of relief avenues of relief permitted within states. Research on criminal records and relief mechanisms pointedly illustrates the barriers to accessing available relief, which vary with the method through which relief is dispensed. The first variable is a binary indicator of whether states made relief available through a single method (reference group: multiple methods). The second variable is categorical, indicating the available methods within states: automatic/automated procedures or petition procedures. These categories

⁷⁷ We use “subfelony” to capture all records less serious than a felony—specifically, misdemeanors and lesser, state-specific categories (e.g., summary offenses). Our intentional use of this phrasing follows that used by Kohler-Hausmann’s (2018) description of the disruptive and consequential nature these charges and records have on individuals, which have proliferated following quality-of-life and related initiatives that prioritize zero-tolerance enforcement of ‘low-level’ offenses, including (but not limited to) marijuana possession. ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING 1–22 (2018).

⁷⁸ These classifications are intended to capture the relative severity of the offenses as set out in statutes and codes, while also recognizing and acknowledging the substantial variation in terminology and offense classifications that exist between jurisdictions.

are not mutually exclusive in accurately capturing and conveying the complexity of avenues of relief permitted within states.⁷⁹

Waiting Period. We coded whether state laws specifically mandated a waiting period prior to eligibility for relief. The resultant binary variable indicates whether state law did not include a waiting period (with reference to specifically articulated waiting periods⁸⁰).

B. Results

Table 1 tabulates the results of our coding and analysis across states. We now describe our findings across the three major categories that organized our statutory analysis: (1) breadth and commitment, (2) scope, and (3) accessibility.

1. Breadth and Commitment

Of the states with available record relief measures (N=21), fifteen (71.4%) passed record relief mechanisms *simultaneously* with laws establishing a regulated marketplace for legal recreational sales. This prevalence indicates that, in many states, legislators gave attention to constructing relief avenues against other pressing and perhaps more politically salient considerations, such as determining tax schemes that would generate new sources of revenue. We interpret these contemporaneous actions to signal some degree of prioritization of efforts to redress prior harms at some level during a time at which other, more lucrative priorities may have easily superseded these concerns.⁸¹

⁷⁹ The intentional absence of a mutually exclusive coding scheme conveys the variability in the construction of these laws; however, it limits more precise quantitative analyses in this study.

⁸⁰ Waiting periods varied substantially across states: some were as little as thirty days from the filing and payment of the expungement petition (COLO.), while others began eligibility upon sentence completion (ILL., MONT., and others). In more restrictive states, individuals must wait two to three years following the completion of their entire sentence (MD.). For simplicity, we group all states into a reference period that is agnostic about the duration, though the practical impact of the specific waiting periods within this group is likely quite distinct.

⁸¹ Sullivan, *supra* note 40 (New Jersey lawmaker's draft marijuana reform legislation included a provision for expungement in addition to a taxation scheme for legalized recreational sales).

Table 1: Dimensions of Enacted Record Relief

| Variable | N | Percent |
|---|----|---------|
| <i>I. Breadth and Commitment</i> | | |
| Availability * | 21 | 91.3% |
| Simultaneity | 15 | 71.4% |
| <i>II. Scope</i> | | |
| Type | | |
| Single Type of Relief Mechanism | 14 | 66.7% |
| Expungement ⁺ | 17 | 81.0% |
| Sealing ⁺ | 2 | 9.5% |
| Executive Action ⁺ | 2 | 9.5% |
| Vacatur, Redesignation, or Other ⁺ | 6 | 28.6% |
| Severity | | |
| Subfelony Convictions | 10 | 47.6% |
| Subfelony and Felony Convictions | 5 | 23.8% |
| Nonconvictions + Subfelony and Felony Convictions | 6 | 28.6% |
| Age Limitation | 2 | 9.5% |
| <i>III. Accessibility</i> | | |
| Method | | |
| Single Method of Relief | 11 | 52.4% |
| Automatic or Automated ⁺ | 11 | 52.4% |
| Petition ⁺ | 19 | 90.5% |
| No Waiting Period | 7 | 33.3% |

Note: * Denotes denominator of N=23; otherwise, denominator is N=21 (states with available relief). ^ = reference is multiple; + variable categories are not mutually exclusive.

Although not simultaneous, seven (N=7) states later enacted relief measures: five (N=5) of which passed measures for the first time. Many of these states were the first jurisdictions to legalize recreational marijuana use and sales. Conversely, simultaneity is nearly universal in more recent legalization actions. This divergence suggests a newly emergent focus on relief that took hold after the initial wave of legalization. Of note, the remaining two (N=2) states passed simultaneous relief laws and later laws expanding this initial simultaneous relief.

Considered together, record relief measures were almost universally implemented, often enacted in tandem with legalization legislation. These two variables describe the overarching landscape in which states are committed to creating opportunities for the relief of records of now-legal actions as a part of their legalization efforts. Next, we examine three variables that detail the scope of these

broadly available relief laws. In doing so, we begin to identify factors that shape the amount of potential harm reduction and the associated benefits for individuals with records.

2. Scope

The second set of components details the scope of enacted relief laws, the first of which is the *severity* of offense records permitted for relief. This mutually exclusive categorical variable groups all offense types permitted for relief into three classifications. The narrowest category is subfelony convictions, inclusive of conviction records for non-felony, less serious offenses. About half of states (N=10, 48%) limit relief to records of this specific severity level, often referenced as minor or misdemeanor marijuana convictions. Slightly broader, about one-quarter of states (N=5, 24%) make both felony and subfelony conviction records for marijuana-related offenses available for relief. The most-inclusive severity category, including non-conviction and conviction (subfelony and felony) records, is permitted in roughly 30% (N=6, 29%) of states. A promisingly large proportion of states are represented in the category featuring the broadest set of included records.

The second coded scope component, *type* of relief mechanism, illuminates the ways that individuals may subsequently receive relief from their criminal record. To primarily assess the complexity of laws, the first variable indicates whether states made a single type (with reference to multiple types) of relief available. Two-thirds of states (N=14; 67%) make relief possible through a single type of mechanism, with the remaining third (N=7) allowing relief through multiple mechanisms.

To understand types of relief in more detail, we grouped relief types into four distinct classifications.⁸² According to the frequencies shown in Table 1, the most common type of relief is record expungement, enacted in 17 (81%) states, followed by vacatur/redesignation/other (6 states, 29%). The least common types were sealing and executive action, each enacted in two states (10%). These data signal that a plurality of relief options are implemented across states—and for one-third, within states. This variation precludes universal characterizations of marijuana record relief actions, as such blanket descriptions would obscure the true level of complexity that characterizes this new landscape.

⁸² Our classifications are agnostic with respect to provisions for prosecutorial review and objections to eligible cases—such as whether the law establishes a presumption of expungement and/or includes specific provisions for prosecutorial objections.

Table 2: Cross Tabulation Comparing Record Severity and Record Types

| <i>Severity</i> | <i>Type</i> | | | | Total |
|--|---------------|----------------|-----------------|----------------|--------------|
| | Single | | Multiple | | |
| | N | Percent | N | Percent | |
| Subfelony Convictions | 8 | 57.1% | 2 | 28.6% | 10 |
| Subfelony and Felony Convictions | 2 | 14.3% | 3 | 42.9% | 5 |
| Nonconvictions + Subfelony and Felony Convictions | 4 | 28.6% | 2 | 28.6% | 6 |
| Total | 14 | 100% | 7 | 100% | 21 |

Distinctions between the number of relief types suggest a potential tradeoff for relief seeking: one available relief type makes for a more uniform and straightforward experience, but potentially at the cost of a constrained scope when considered jointly with severity. Data in Table 2 present a cross-tabulation of relief types with relief severity variables to assess whether such tradeoffs are apparent across state laws. Of the 14 states that offer a single relief type, eight (57%) limit the scope to subfelony conviction records, the narrowest category of eligible record severity. This co-occurrence (single relief type and subfelony conviction severity) is the most prevalent combination of type and severity in all states. Perhaps not accidentally, the most limited scope of relief possible occurs when combining those two dimensions of relief laws.

This pattern aligns with the proposed tradeoffs between uniformity and constrained scope. An example of a more uniform approach with a constrained scope is Massachusetts, where a single relief type (expungement) was enacted for subfelony conviction records only. In contrast, New Jersey made multiple relief types available for multiple record types: dismissals for pending non-conviction records, expungements for conviction records, and further appeal pathways for cases not captured in the scope of either pathway. The constrained scope of Massachusetts law likely correlates with a smaller pool of individuals eligible for relief. However, the relative simplicity of the enacted process may make it more straightforward for individuals to obtain the relief for which they are eligible. Conversely, the inclusion of multiple relief and record types in New Jersey likely captures a larger pool of persons for relief. However, this comparatively complex arrangement may impede the full realization of these benefits if it generates confusion about eligibility and relief receipt.

In all legalized states, marijuana use is permitted for adults 21 years of age or older. Like alcohol consumption, there is a three-year gap between the age of criminal responsibility (18) and the age of permitted marijuana usage (21). We investigated whether this gap was mirrored in relief laws by coding for included *age limitations* on relief eligibility that mirrored the ages of legal consumption. Only two states (9.5%) specifically imposed an age limitation that restricted record relief to those 21 or older at the time of their offense—as presented in Table 1. These states

precisely matched relief eligibility to now-legal behavior by excluding records generated for individuals at ages for which marijuana use remains subject to penalties for underage consumption (18–20) outside of the law’s purview. It is, therefore, uncommon for states to use age limitations to restrict benefits, possibly due to technological limitations that preclude efficient identification of eligible cases.

These three variables indicating the scope of relief laws jointly depict a narrowly constructed allowance of relief across offense severities and relief types, but not for age limitations. Our final area of inquiry, evaluating the relative accessibility of relief, adds additional context to breadth and scope assessments.

3. Accessibility

The degree of accessibility of expungements and other forms of record clearance is an essential indicator of whether reforms will deliver the intended benefits of reducing barriers to employment, housing, and other forms of social participation. Using two variables, we now evaluate the accessibility—or relative ease of access—to these new forms of relief for eligible individuals. The relief method indicates whether enacted laws feature automatic/automated or petition-based methods. Just over half of the 21 eligible states (N=11, 52.4%) allow one relief method, with the remainder (N=10, 47.6%) allowing multiple methods of relief—as presented in Table 1. To gain more detailed insight, we classified law components within states into the two main method groupings.⁸³ Over 90% of states (N=21) enacted relief through petition-based methods that require relief seekers to initiate the process by filing a petition, often with the court in the jurisdiction where their case was processed. About half of states (N=11, 52%) include automatic relief methods in their laws, which shift the burden from the relief seeker to the system actors working in record-keeping roles who are charged with complying with the new laws and directives.

Of note, automatic relief is nearly always a part of a multiple relief method law; automatic relief is the sole created method in only one state (NY). When paired, automatic relief applies to low-level conviction records, while petition-based relief is the method available for addressing more severe records. This arrangement suggests proportionality as a guiding principle in legislators’ approaches. Less serious records can be more readily cleared with less effort required from those with records, potentially increasing the distribution of relief to those eligible. More serious records require more effort-intensive methods, potentially raising barriers to obtaining this relief for records that may be more marginalizing to affected individuals.

The final dimension of accessibility is whether laws articulated a mandatory *waiting period* before eligibility for relief through any enacted method. Table 1

⁸³ Given that nearly half of the states permit multiple methods, these categorizations are not mutually exclusive.

shows that seven states (33%) did not specifically set a waiting period for the duration between record creation and relief eligibility, making relief immediately available in a third of the 21 states. Laws in the remaining two-thirds of states included a mandated duration to wait for relief, ranging from thirty days following conviction to three years following sentence completion, with various interim distinctions. The specific length associated with the waiting period prolongs the period a stigmatizing record is publicly available. Such lifetimes may now extend well past the time the offense behavior became legal and, hence, no longer subject to enforcement. In all, these dimensions of accessibility suggest nontrivial limitations on the accessibility of these benefits, as made evident through the modal method through which it can be pursued and the common imposition of waiting periods.

To summarize, our comparative statutory analysis yields several conclusions regarding states' passage of record relief laws, the component of an equity approach to legalization poised to have the greatest potential to increase equity.⁸⁴ Most states created new avenues for marijuana record relief, often at the same time they enacted legalization. This action signals a commitment to eliminating records of previously criminalized and now decriminalized behaviors. We interpret this commitment as evidence of a dedication to incorporating equity components in legalization. These laws closely mirror records of behavior that are now decriminalized, so their scope only includes a specific substantive set of offenses, unlike broader relief laws (e.g., Clean Slate).

However, our deeper analysis of the construction of these laws suggests their narrowness limits the magnitude of equity-increasing benefits they might bring; this includes the limited range of eligible records, complex graduated schemes of relief, and burdensome processes known to impede relief uptake, like petitions.⁸⁵ We argue that such accessibility challenges, generated by elements of statutory construction, will have the practical effect of undermining the purported goals of widespread relief dispensation and increased racial equity.

4. The (Practical) Effect of New Record Relief Laws

Our empirical analysis reviews the new landscape of record relief laws for now-decriminalized marijuana-related offenses. If received, such relief can increase individuals' access to social roles otherwise blocked by records.⁸⁶ However, these laws are often silent about the extent to which the underlying records are fully eliminated from future view in the legal system—what we consider to be their

⁸⁴ Kilmer et al., *supra* note 36, at 1026.

⁸⁵ See Chien, *supra* note 58, at 531.

⁸⁶ We leverage full consideration of the preservation of criminal records in private and/or third-party digital databases to other discussions, noting that seeking relief from these records involves a distinct set of extralegal efforts initiated by the record holder. LAGESON, *supra* note 3, at 170–71.

‘practical’ effect for individuals. The omission of explicit restrictions on their future use raises questions about the potential for expunged records to be considered by prosecutors and/or judges at varied decision points in the criminal legal process. Such possibilities raise questions about the actual effect of record relief within the legal system because continued access to “relieved” records undermines assumptions about the functional impact of relief, particularly when record histories are used to justify decision-making, such as sentencing enhancements.⁸⁷ This disadvantaging impact of prior records can be particularly detrimental for emerging adults for whom court processing and punishment carry a comparatively higher risk of long-term marginalizing consequences.⁸⁸

To expand upon this insight, we reviewed the broader context of state laws on record relief and future use to clarify the allowable use of these expungements for future decision-making in the legal system. Revisiting New Jersey as an example, state statutes and case law specify the circumstances under which an expunged record—which is maintained by some system agencies—can and cannot be used by system agencies to inform decision-making.⁸⁹ The overarching expungement statute in New Jersey allows for the maintenance of expunged records and specifies the instances in which expunged records may be used for decision-making in the legal system.⁹⁰ The law expressly excludes expunged records from consideration in sentencing determinations⁹¹ but allows for its consideration at the following other decision points:

⁸⁷ Rhys Hester et al., *Prior Record Enhancements at Sentencing: Unsettled Justifications and Unsettling Consequences*, 47 *CRIME & JUST.* 209, 215 (2018).

⁸⁸ See Kurlychek & Johnson, *supra* note 66, at 304–06.

⁸⁹ Expunged records are not destroyed, but “shall be placed in the control of a person who has been designated by the head of” the relevant “law enforcement and criminal justice agenc[y] which . . . possess[es] the records.” N.J. STAT. ANN. § 2C:52-15(a) (West 2020). In certain circumstances (such as a future conviction), expunged records can be fully restored, and future expungement barred. N.J. STAT. ANN. § 2C:35-14(m)(4) (West 2024).

⁹⁰ While this matter falls outside of the scope of legal decisions, we note that N.J. STAT. ANN. § 2C:52-5.2(c) (West 2021) specifies that expunged records may be considered for certain jobs within the legal system: a law enforcement agent is compelled to reveal information subject to a sealing order when a person “seek[s] employment within the judicial branch[,] or with a law enforcement or corrections agency, and the information shall continue to provide a disability to the extent provided by law.”

⁹¹ N.J. STAT. ANN. § 2C:52-5.2(d) (West 2021).

- To evaluate a subsequent expungement petition;⁹²
- By “the Violent Crimes Compensation Office, in conjunction with any claim which has been filed with said office”;⁹³
- “[U]pon motion for good cause shown and compelling need based on specific facts”;⁹⁴
- By the Parole Board when determining whether to grant parole;⁹⁵
- If a person seeks employment within the judicial branch, law enforcement, or a corrections agency;⁹⁶
- By the Department of Corrections solely for classification, evaluation, and assignment to correctional institutions of a person in its custody;⁹⁷ and
- To facilitate the State Treasurer’s collection of financial assessments that remain at the time of expungement or sealing.⁹⁸

Importantly, these regulations do not perfectly transfer to the interpretation of cannabis expungement laws. A recent ruling by the New Jersey Supreme Court clarified the applicability of broader expungement law to the specific instance of marijuana-related records in three distinct ways, holding: (1) it is not possible to reinstate past marijuana convictions and/or discharges; (2) discharged marijuana records cannot be considered in pretrial detention or bail release decisions; and (3) prior marijuana convictions and/or conditional discharges must be “ignored” by the prosecutor and the court during determinations of eligibility for treatment and/or diversion programs.⁹⁹ Collectively, New Jersey’s marijuana-record relief laws have been interpreted to have enhanced shielding from subsequent decision-making relative to non-marijuana-related expungements, rendering them comparatively more eliminated. The specific parameters under which they are eliminated seal off potentially disadvantaging usage in future cases. For example, research demonstrates that pretrial detention increases the likelihood of individuals being convicted, while initial pretrial release increases employment.¹⁰⁰ Similarly,

⁹² N.J. STAT. ANN. § 2C:52-17 (West 1979).

⁹³ N.J. STAT. ANN. § 2C:52-18 (West 2018).

⁹⁴ N.J. STAT. ANN. § 2C:52-19 (West 1979).

⁹⁵ N.J. STAT. ANN. § 2C:52-22 (West 1979).

⁹⁶ N.J. STAT. ANN. § 2C:52-27(c) (West 2016).

⁹⁷ N.J. STAT. ANN. § 2C:52-23 (West 1979).

⁹⁸ N.J. STAT. ANN. § 2C:52-23.1(a) (West 2020).

⁹⁹ *State v. Gomes*, 288 A.3d 825, 835, 837, 841–42 (N.J. 2023).

¹⁰⁰ Will Dobbie, Jacob Goldin & Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 AM. ECON. REV. 201, 204–05 (2018).

maintaining eligibility for diversion programs can reduce or eliminate the likelihood of future records and their correlated stigma.¹⁰¹ These advantages are especially salient for emerging adults who are at comparatively elevated risk of involvement with the legal system.¹⁰²

5. Connecting Relief across New and Existing Law Landscapes

To conclude, our statutory analysis suggests that cannabis record relief has often been made largely available in states with recently passed legalization reforms. However, questions remain about the accessibility of such relief and its broader benefits. The prevalence of petition-based methods and their narrow scope place additional limitations on the distribution of relief for records already narrowly defined by the substantive set of included offenses. To compound this narrowness, the example of New Jersey describes additional opportunities for cleared records to resurface in decision-making. Collectively, the narrow construction and permissible carveouts question the utility of these laws for fully dismantling the numerous mechanisms through which records can disadvantage individuals as purportedly intended by relief laws.

III. APPRAISING THE POTENTIAL FOR RECORD RELIEF LAWS TO REDUCE THE HARMS OF PRIOR ENFORCEMENT: IMPLEMENTATION CONTEXT AND EMERGING ADULTHOOD

We now consider two key avenues through which these laws may affect the social equity goals of cannabis legalization. First, we analyze documented barriers to implementation, drawing upon emerging accounts of compliance with mandated expungements. Second, we consider whether and how the totality of laws and implementation may have especially strong consequences for emerging adults for whom record checks are comparatively systemically embedded in activities and life transitions normatively included in this life stage relative to later life stages.

1. Contextualized Reform: The Promises and Pitfalls of these Laws in the Implementation Landscape

The potential scope of cannabis expungement reforms is sizable: since 2018, estimates compute that state and Federal action has relieved more than two million

¹⁰¹ Matthew W. Epperson et al., *Examining Case Dismissal Outcomes in Prosecutor-Led Diversion Programs*, 34 *CRIM. JUST. POL'Y REV.* 236, 256 (2023).

¹⁰² Lael E.H. Chester, Ruth T. Shefner & Vincent Schiraldi, *Emerging Adult Justice: America's Recent Attempts to Apply Research to Policies and Practices*, 38 *CRIM. JUST.* 17, 17–18.

records of marijuana-related offenses.¹⁰³ Estimates of impacted people across states include over 800,000 individuals in Illinois, over 200,000 in New York, over 100,000 in Missouri, and nearly 50,000 (43,000) in Connecticut.¹⁰⁴

Emerging accounts, however, have begun to capture some of the limits to these reforms as they play out on the ground. In Missouri, the expungement process has been incompletely implemented throughout the entirety of relevant government agency record-keeping databases. This incomplete process leaves individuals vulnerable to the possibility that their expunged record may surface in other databases that have not been updated at the point of job applications and interviews, presenting a particularly “humiliating” experience of confusion and frustration, as expressed by one woman with a record remained visible on some background searches even though it was technically expunged.¹⁰⁵

In New Jersey, the sheer volume of records to expunge—around 360,000—has overwhelmed the system, leading to a severe “bottleneck.”¹⁰⁶ California voters legalized recreational cannabis in 2016 under Proposition 64, which was followed by AB 1793 to automate expungement of marijuana-related criminal records. The rollout was uneven across counties, however,¹⁰⁷ and then further delayed by the COVID-19 pandemic.¹⁰⁸ As observers of the California rollout noted, “[i]t’s clear that legislation as ambitious as AB1793 required more instruction from the state, more communication between local jurisdictions, a public service campaign and

¹⁰³ NAT’L ORG. FOR THE REFORM OF MARIJUANA L., Updated NORML Report Highlights Over 2.3 Million Marijuana-Related Expungements, NORML (Jan. 9, 2024), <https://norml.org/blog/2024/01/09/updated-norml-report-highlights-over-2-3-million-marijuana-related-expungements/perma.cc/4A25-TCKJ>].

¹⁰⁴ NAT’L ORG. FOR THE REFORM OF MARIJUANA L., Marijuana Pardons and Expungements: By the Numbers, NORML, <https://norml.org/marijuana/fact-sheets/marijuana-pardons-and-expungements-by-the-numbers/> (last visited Dec. 27, 2024) [perma.cc/JQ8F-YYNB].

¹⁰⁵ Katie Shepherd et al., Maryland’s Marijuana Pardons Reflect Uneven Shift in U.S. Drug Policy, WASH. POST (June 19, 2024, 5:00 AM), <https://www.washingtonpost.com/national-security/2024/06/19/marijuana-pardons-expungements-legalization-us/> [https://perma.cc/JU2P-LW7P].

¹⁰⁶ Brenda Flanagan, Expungement of Marijuana Convictions Slowed by Bottlenecks, NJ SPOTLIGHT NEWS (Oct. 10, 2022), <https://www.njspotlightnews.org/video/expungement-of-marijuana-convictions-slowed-by-bottlenecks/> [https://perma.cc/27WQ-VWTB].

¹⁰⁷ Kiera Feldman, New Bill Takes Aim at California’s Slow Progress Clearing Pot Convictions, L.A. TIMES (Jan. 26, 2022, 6:06 PM), <https://www.latimes.com/california/story/2022-01-26/lawmaker-moves-to-fix-delays-in> [https://perma.cc/WVY7-CQLB].

¹⁰⁸ Sydney Johnson, Millions of Criminal Records Cleared After Landmark California Law Takes Effect | KQED, <https://www.kqed.org/news/11955206/millions-of-criminal-records-erased-after-landmark-california-law-takes-effect> (last updated July 10, 2023) [https://perma.cc/33HA-K6AR].

generally, more guidance on the most efficient way to clear records of cannabis convictions.”¹⁰⁹

Several on-the-ground issues have further complicated record relief provisions: differential and sometimes conflicting arms of government that maintain and disclose records independently, a lack of compliance from third-party vendors, and a general unawareness that records have been cleared, preventing people from leveraging the benefits of expungement.

First, criminal records are maintained by several agencies along the continuum of the criminal legal system. This results in many different versions of a marijuana criminal record that span the initial arrest record maintained by police, charging and disposition records maintained by courts, and sentencing and probation records maintained by correctional agencies. Some states centralize court and prior record information, while other states maintain these records primarily at the county level, creating unevenness within states. The siloed nature of criminal justice system agencies and their associated record databases may make compliance with record clearance laws a challenge, particularly for records maintained by diverse agencies in databases lacking the capacity for efficient clearing. To this point, maps of parties that must be involved with the implementation of Clean Slate laws—to affirm that eligibility criteria are met and to remove records from internal databases—reveal a large set of stakeholders involved across agencies.¹¹⁰ Qualitative studies suggest that the multi-agency coordination required for verification and clearance has created significant challenges for compliance with these laws, even in states with resources allocated for supporting implementation.¹¹¹

Journalistic accounts of the implementation of marijuana-record relief laws provide additional detail on the bureaucratic complexities involved in this implementation. For example, lawmakers in New Mexico passed legislation on March 30, 2023—after initial laws creating automatic expungement for low-level marijuana-related records—that clarified the scope of records for whom automatic expungement applies: automatic expungement after two years for “simple” cases involving a single, now-decriminalized action, with specification that more complex cases involving cannabis and non-cannabis offenses that resulted in arrest or conviction require petition for expungement of the relevant and eligible cannabis offenses only.¹¹² One observer of the unfolding of this process described the state’s

¹⁰⁹ Breanna Reeves, Part 3: Oversight, Consequences and the Promise of Automatic Clearance, BLACK VOICE NEWS (Sept. 7, 2023) <https://blackvoicenews.com/2023/09/07/part-3-oversight-consequences-and-the-promise-of-automatic-clearance/> [<https://perma.cc/BK4N-5N56>].

¹¹⁰ Beth Hustedt, Kristin Bechtel & Pamela K. Lattimore, *Understanding the Intent and Impact of Clean Slate Policies*, 22 OHIO ST. J. CRIM. L. 219, 227 (2025).

¹¹¹ *Id.*

¹¹² An Act Relating to Criminal Record Expungement; Applying Automatic Expungement to Records Involving Only Cannabis, ch. 74, 2023 N.M. Laws 1, 1–2 (codified as amended at N.M. STAT. ANN. § 29–3A–8).

implementation of this form of equity as follows: “It’s a reflection that these policies are sound and great until the rubber hits the road, and we have to deal with nuts and bolts.”¹¹³

Other work affirms the inclusion of additional criteria that must be met before legalization can be enacted—including the repayment of fines.¹¹⁴ While not a central focus of our coding scheme, we did observe that at least four states explicitly referenced outstanding monetary sanctions in the context of marijuana-related record relief laws. Some (Rhode Island) require full repayment of all monetary sanctions before accessing relief, which can be a challenging benchmark as these amounts are often “insurmountable” relative to people’s ability to pay.¹¹⁵ Other states do not delay relief for those with outstanding monetary sanctions, but do not eradicate the obligation. For example, some require the creation of new payment plans (Arizona) or the conversion of outstanding assessments from criminal to civil (New Jersey). Absent an explicit statement that owing outstanding monetary sanctions does not preclude record relief (Illinois), these contingencies thus narrow and restrict the benefit distribution and equity potential of these laws.

Second, third-party vendors are responsible for maintaining updated records and for not reporting expunged records on a background report ordered by an employer or landlord. Unfortunately, there is often a lack of compliance across the largely unregulated data brokerage industry that supplies bulk data to consumer reporting agencies. While the Consumer Financial Protection Bureau (CFPB) has recently updated its guidance regarding the disclosure of expunged records as a willful violation of the Fair Credit Reporting Act (FCRA) for failing to “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual”,¹¹⁶ many people may have their records inaccurately reported and be unaware of such improper disclosures, leaving them unable to take responsive action even when permitted by newly enacted laws.¹¹⁷

Finally, when expungement is automatic, there has been concern that people will not leverage the benefits of their newly cleaned criminal record, for instance, by applying to new jobs or apartments, because they are unaware of the expungement. As currently codified, automated expungement schemes do not include a mechanism for notifying people of the change or the nature of their updated record. Even in states with broad public awareness campaigns, the marginalized

¹¹³ Shepherd et al., *supra* note 106.

¹¹⁴ Wakefield, Bialous & Apollonio, *supra* note 12, at 2, 8.

¹¹⁵ ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* 2 (2016).

¹¹⁶ Fair Credit Reporting: Background Screening, 89 Fed. Reg. 4171 (Jan. 23, 2024).

¹¹⁷ Sarah Lageson, *Criminally Bad Data: Inaccurate Criminal Records, Data Brokers, and Algorithmic Injustice*, 2023 U. ILL. L. REV. 1771 (2023).

populations that the policies are intended to benefit, along with the public, may remain in the dark.¹¹⁸

2. Amplified Limitations of Relief Accessibility for Emerging Adults—the Potential for Long-Term Disadvantage

Thus far, joint consideration of these new laws with existing state law contexts and implementation landscapes suggests substantial limitations to their benefits: the confluence of these factors lowers the ceiling of benefits of record relief than that created by the laws alone. In this section, we describe how this ceiling is even lower for emerging adults due to their life circumstances. The “mark” of a criminal record—even for an offense that has been decriminalized—may bear more consequence for young adults who are applying for their first jobs and first apartments, delaying entry into crucial institutions for the transition to adulthood, as well as for the prevention of future legal system interactions. Further, this heightened disadvantage caused by the compounding of stigma and life stage may still be exacerbated across different racial groups.

Emerging adults are particularly vulnerable to the negative repercussions of delayed or inaccessible record relief. Petition-based methods of record expungement are time- and labor-intensive endeavors that require individuals to navigate complex bureaucratic systems to complete the required process with the required documentation.¹¹⁹ This lengthy process cannot even begin, however, until mandated waiting periods for eligibility have passed.¹²⁰ Procedures may still be protracted further in states that lack the technological infrastructure, staffing resources, and/or political will to expeditiously comply with automatic relief laws or process petitions for expungement.¹²¹

In practice, these delays prolong the duration that individuals actively possess a record. This outcome is especially detrimental for emerging adults because it is a life stage characterized by hypermobility and identity formation as individuals explore different roles en route to adulthood and entailed responsibility.¹²² Because activities in this developmental phase carry enduring significance across the life

¹¹⁸ Sarah Lageson et al., Automating Administrative Burden in Algorithmic Criminal Record Expungement 1 (2025) (unpublished manuscript) (on file with authors).

¹¹⁹ SARAH ESTHER LAGESON, DIGITAL PUNISHMENT: PRIVACY, STIGMA, AND THE HARMS OF DATA-DRIVEN CRIMINAL JUSTICE 166 (2020).

¹²⁰ MARGARET LOVE & DAVID SCHLUSSEL, COLLATERAL CONSEQUENCES RES. CTR., WAITING FOR RELIEF: A NATIONAL SURVEY OF WAITING PERIODS FOR RECORD CLEARING 7–20 (2022).

¹²¹ Dana DiFilippo, New Jersey State Police’s Expungement Backlog of 46K Cases Spurs Lawsuit, N.J. MONITOR (Oct. 23, 2023, 11:50 AM), <https://newjerseymonitor.com/2023/10/23/new-jersey-state-polices-expungement-backlog-of-46k-cases-spurs-lawsuit/> [https://perma.cc/4XPD-T92J].

¹²² Arnett, *supra* note 65, at 473.

span, any barriers to entry or attainment created by criminal records may have immediate and accumulative adverse consequences for emerging adults.¹²³ Further, since patterns of criminal records and opportunities for achieving key attainment milestones are socially structured, they may jointly engender stratification processes that sustain race and class inequalities across the life span.¹²⁴

In the short-term, emerging adults are more vulnerable to the marginalizing consequences of a criminal record relative to individuals in other life stages that involve fewer life transitions, on average. Emerging adults acutely experience the negative credentialing consequences of having a criminal record during the course of normal activities of this life stage, such as gaining employment and living independently.¹²⁵ This blocked access can have numerous negative repercussions. Records may hamper individuals' ability to experiment with different career paths, blocking employment and its positive spillovers for maturation processes and educational attainment, especially for individuals from disadvantaged backgrounds.¹²⁶ Because records indeed obstruct post-secondary educational opportunities,¹²⁷ they may place individuals on flattened trajectories of socioeconomic attainment, which is more common amongst those without college degrees. As a result, reducing opportunities for economic and social stability can delay or block transitions to adult roles.¹²⁸

These possibilities for short-term blockages and long-term cumulative disadvantage co-exist with other pathways through which records can continually stigmatize and disadvantage individuals. For example, we demonstrated earlier that cleared records may not be completely nor thoroughly sealed across government databases, allowing their consideration in future decision-making for legal or hiring purposes—whether specified as permissible in law or a product of cross-database slippage in implementation. Any such persistence of records can particularly disadvantage emerging adults who are closer to typical peak rates of arrest than older persons.¹²⁹ Records may persist outside of the legal system in similarly meaningful ways, such as private databases commonly used to screen job and/or housing

¹²³ See Kurlychek and Johnson, *supra* note 66.

¹²⁴ Shanahan, *supra* note 68, at 674–75.

¹²⁵ Jeffrey Jensen Arnett, *Emerging Adulthood: What Is It, and What Is It Good For?*, 1 *CHILD DEV. PERSPS.* 68, 70–71 (2007); Douglas N. Evans & Jeremy R. Porter, *Criminal History and Landlord Rental Decisions: A New York Quasi-Experimental Study*, 11 *J. EXPERIMENT CRIMINOLOGY* 21, 23 (2015); Uggen et al., *supra* note 7, at 630.

¹²⁶ Jeremy Staff & Jeylan T. Mortimer, *Educational and Work Strategies from Adolescence to Early Adulthood: Consequences for Educational Attainment*, 85 *SOC. FORCES* 1169, 1188–90 (2007).

¹²⁷ Stewart & Uggen, *supra* note 50, at 159–62, 171–78.

¹²⁸ Sheldon Danziger & David Ratner, *Labor Market Outcomes and the Transition to Adulthood*, 20 *FUTURE CHILD.* 133, 142–47 (2010).

¹²⁹ ALFRED BLUMSTEIN ET AL., *CRIMINAL CAREERS AND "CAREER CRIMINALS"* 23 (1986).

applicants that are not consistently updated to remove expunged records and are subject to numerous other errors.¹³⁰

Notably, foundational legal principles in the juvenile justice system have long been presumed to render formal records of delinquency as “confidential” or expungement eligible in alignment with the private nature of juvenile court proceedings.¹³¹ This premise is based on the overarching rationale that motivated the creation of a distinct system of juvenile justice—specifically, that enduring stigma should not attach to youthful indiscretions so as to avoid lifelong punishment and stigmatization.¹³²

However, juvenile record protections are sometimes a “myth”¹³³ in practice, and record sealing has limited utility in supporting a smooth transition to adulthood absent effective communication (of expungement eligibility) and/or receipt (of automated clearance).¹³⁴ Still, the rhetoric of providing second chances that permeate juvenile justice reform applies to emerging adults. There is growing momentum toward implementing policies for emerging adults that incorporate elements of developmentally-tailored practices, previously reserved for legal juveniles alone, that reflect a new understanding of psychosocial maturity and historical shifts in normative ages of developmental transition attainment.¹³⁵ Our review suggests that careful consideration of the appropriate use of records obtained during this developmental phase of emerging adulthood is warranted to align with the lessons of this newly emergent but powerful paradigm.

For these reasons, we contend that the relationship between the characteristics of these relief laws and their implementation problematically interacts with the fragility of successful transitions during this life stage to amplify the stratifying consequences of records. This outcome is antithetical to the equity-increasing goals of including relief laws alongside recreational cannabis legalization, especially as system involvement and records are concentrated amongst socially disadvantaged persons. Counterproductively, these marginalizing forces may exacerbate pre-existing inequalities in an age-graded fashion. Our conclusions are drawn from our specific consideration of record relief laws following recreational cannabis

¹³⁰ ARIEL NELSON, NAT’L CONSUMER L. CTR., *BROKEN RECORDS REDUX: HOW ERRORS BY CRIMINAL BACKGROUND CHECK COMPANIES CONTINUE TO HARM CONSUMERS SEEKING JOBS AND HOUSING* 15–23 (2019), <https://www.nclc.org/resources/report-broken-records-redux/> [<https://perma.cc/GS2V-PLNP>].

¹³¹ ANDREA R. COLEMAN, U.S. DEP’T OF JUST., *EXPUNGING JUVENILE RECORDS: MISCONCEPTIONS, COLLATERAL CONSEQUENCES, AND EMERGING PRACTICES* 3(2020), <https://ojjdp.ojp.gov/publications/expunging-juvenile-records.pdf> [<https://perma.cc/GS2V-PLNP>].

¹³² Jacobs, *supra* note 9, at 149–50, 156–57.

¹³³ Joy Radice, *The Juvenile Record Myth*, 106 *GEORGETOWN LAW J.* 365, 365 (2017).

¹³⁴ Riya Saha Shah & Lourdes M. Rosado, *Overcoming Obstacles to Success: Notifying Youth of Their Juvenile Record Expungement Rights and Eligibility*, 2 *CRIM. L. PRAC.* 59, 66–67 (2015).

¹³⁵ Chester et al., *supra* note 103, at 18–23.

legalization but likely have merit for considering the uniquely heightened consequences of all forms of criminal records in this life stage.

CONCLUSION

Our review details that states are indeed implementing record relief measures as they move to decriminalize marijuana and legalize cannabis for recreational use. However, the characteristics of the laws and the contexts in which they are implemented severely limit individuals' access to these benefits. These circumstances indicate that relief for a narrow substantive set of records is even more narrowly accessible in practice, diminishing the capacity of these laws to address inequities entrenched during the War on Drugs. Such blockages are especially detrimental to emerging adults for whom a criminal record during this transitory and mobile life stage can block entry to adult roles and, in turn, compromise long-term trajectories of socioeconomic attainment. Our discussion of implementation leads us to conclude that more careful attention to the construction and implementation of criminal record relief laws is warranted—particularly if we wish to ensure the timely delivery of legally permitted relief and, ultimately, the full removal of records as a mechanism of cumulative disadvantage.

Theory and data suggest that prioritizing attention to expediting the delivery of available relief may have especially large equity-increasing benefits, especially for emerging adults, and the promise of removing records as an enduring stratifying force—concerning short-term transitions and long-term attainments—over the life span. As state policymakers grapple with backlogs of thousands of records after decades of cannabis criminalization, they might prioritize expungement of records for young adults or, more recently-created marijuana criminal records. Doing so would help expedite processing of particularly impactful records and provide more immediate and consequential relief to this group.

* * *

Table 1A: States included in Comparative Statutory Analysis.

| <u>State</u> | <u>Abbreviation</u> | <u>Legal Recreation</u> | <u>Year Legal Recreation Law into Effect</u> |
|---------------|---------------------|-------------------------|--|
| Alaska | AK | Yes | 2015 |
| Arizona | AZ | Yes | 2020 |
| California | CA | Yes | 2016 |
| Colorado | CO | Yes | 2012 |
| Connecticut | CT | Yes | 2021 |
| Delaware | DE | Yes | 2023 |
| Illinois | IL | Yes | 2020 |
| Maine | ME | Yes | 2018 |
| Maryland | MD | Yes | 2023 |
| Massachusetts | MA | Yes | 2016 |
| Michigan | MI | Yes | 2018 |
| Minnesota | MN | Yes | 2023 |
| Missouri | MO | Yes | 2022 |
| Montana | MT | Yes | 2021 |
| Nevada | NV | Yes | 2017 |
| New Jersey | NJ | Yes | 2021 |
| New Mexico | NM | Yes | 2021 |
| New York | NY | Yes | 2021 |
| Oregon | OR | Yes | 2015 |
| Rhode Island | RI | Yes | 2022 |
| Virginia | VA | Yes | 2021 |
| Vermont | VT | Yes | 2018 |
| Washington | WA | Yes | 2012 |