

The Promise and Pitfalls of Cannabis Record Clearance: A Case Study

Sarah Gersten,* Adrian Rocha,** and Frank Stiefel***

INTRODUCTION

Throughout the United States, cannabis has seen rapid change in both public policy and public sentiment. Not only is cannabis legalization more popular than ever, garnering support from 70% of Americans,¹ but an overwhelming majority of states currently have some form of medical or adult-use cannabis marketplace.² Cannabis is now a multi-billion dollar industry in the nearly forty states where it is legal for medical or adult use.³ Yet, despite a growing number of states adopting pro-cannabis policies and benefiting from the revenue generated by cannabis sales, countless individuals remain penalized for cannabis and cannabis-related activity. In 2018 alone, there were over 600,000 cannabis-related arrests, the vast majority of which were for simple possession,⁴ and marijuana arrests still make up nearly a third of all drug arrests.⁵

The past century of cannabis criminalization has not only led to the arrests of millions of individuals, but the enforcement of punitive cannabis laws has also been

* Executive director and general counsel of the Last Prisoner Project.

** Policy Manager of the Last Prisoner Project

*** Senior Policy Associate of the Last Prisoner Project

¹ Lydia Saad, *Grassroots Support for Legalizing Marijuana Hits Record 70%*, GALLUP (Nov. 8, 2023), <https://news.gallup.com/poll/514007/grassroots-support-legalizing-marijuana-hits-record.aspx> [https://perma.cc/MD7F-W8SH].

² Will Yakowicz, *Where Is Cannabis Legal? A Guide to All 50 States*, FORBES (Jan. 3, 2025), <https://www.forbes.com/sites/willyakowicz/2022/01/10/where-is-cannabis-legal-a-guide-to-all-50-states/?sh=294e59c7d19b> [perma.cc/K3PS-2S6Q].

³ *2024 Marijuana Industry Statistics & Data Insights*, FLOWHUB, <https://flowhub.com/cannabis-industry-statistics> [https://perma.cc/DZ5U-345N] (last visited Mar. 9, 2025).

⁴ John Gramlich, *Four-in-Ten U.S. Drug Arrests in 2018 Were for Marijuana Offenses—Mostly Possession*, PEW RSCH. CTR. (Jan. 22, 2020), <https://www.pewresearch.org/fact-tank/2020/01/22/four-in-ten-u-s-drug-arrests-in-2018-were-for-marijuana-offenses-mostly-possession/> [https://perma.cc/7GQJ-WFHJ].

⁵ See *Crime Data Explorer*, FED. BUREAU OF INVESTIGATION, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest> [https://perma.cc/DP3Z-SRF3] (last visited Mar. 9, 2025) (select “Drug Possession—Marijuana” from “Crime Select” drop-down menu).

egregiously unequal across demographics.⁶ On average, Black people are 3.64 times more likely than their white counterparts to be arrested for cannabis, despite similar consumption rates.⁷ Sadly, these racial disparities in arrest rates persist even after a state legalizes cannabis.⁸ According to the ACLU, in every state that has decriminalized or legalized cannabis, Black people were still more likely to be arrested for cannabis possession than white people.⁹

Across these demographics, cannabis-related interactions between civilians and law enforcement officials often carry with them life-altering consequences.¹⁰

Even for individuals able to avoid the most serious consequences of cannabis-related convictions—such as state supervision or incarceration—convictions remain on individuals’ criminal records, imposing regimes of penalties that can adversely impact the trajectories of their lives.¹¹ Cannabis legalization has, though, driven momentum for certain types of retroactive criminal justice reforms, most commonly the clearance of cannabis-related criminal records. Prior to the last decade’s uptick in states legalizing cannabis for adult use, very few jurisdictions had any form of state-initiated record clearance, and even petition-based models were typically limited to low-level offenses. This began to change rapidly in conjunction with the expansion of cannabis reform.

⁶ See EZEKIEL EDWARDS ET AL., AM. C.L. UNION, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 5–6 (2020), https://assets.aclu.org/live/uploads/publications/marijuanareport_03232021.pdf [<https://perma.cc/YK26-FMML>].

⁷ *Id.* at 5.

⁸ *Id.* at 34.

⁹ *Id.* Data on the impact of the criminalization of cannabis in the Latine community is more difficult to ascertain because of the limitations of historical data. The Uniform Crime Reporting (UCR) Program’s inability to identify Latine individuals as a distinct community likely means there is an underestimation of the true rate of the racial disparities in law enforcement encounters experienced by Latine individuals. See *Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr> [<https://perma.cc/69D2-RZUS>] (last visited Mar. 9, 2025). As such, an arrest of a Latine individual could be recorded and categorized as a white arrest. This potential for conflation between white arrests and Latine arrests may also result in an underestimation of the racial disparities between Black and white arrests, since an unknown portion of white arrests could actually be of a Latine individual. Lynda Garcia, *The War on Marijuana Has a Latino Data Problem*, AM. C.L. UNION (June 14, 2013), <https://www.aclu.org/news/smart-justice/war-marijuana-has-latino-data-problem> [<https://perma.cc/2YSK-UU74>].

¹⁰ See generally HUM. RTS. WATCH, PUNISHMENT AND PREJUDICE: RACIAL DISPARITIES IN THE WAR ON DRUGS (2000) <https://www.hrw.org/legacy/reports/2000/usa/> [<https://perma.cc/4ZYN-ZJ9X>].

¹¹ Courtney Vinopal, *As More States Legalize Marijuana, People with Drug Convictions Want Their Records Cleared*, PBS NEWS (May 5, 2021), <https://www.pbs.org/newshour/nation/as-more-states-legalize-marijuana-people-with-drug-convictions-want-their-records-cleared>.

In 2016, California became the fifth state to legalize cannabis for adult use.¹² Notably, California was the first state to simultaneously legalize cannabis while creating a dedicated mechanism for individuals with now-legalized-offenses to potentially have their criminal records cleared. The relief included in the omnibus legalization package was, however, limited in scope and petition-based, putting the onus on those with convictions to apply for relief. Two years later, the legislature passed AB 1793, creating a state-initiated process to clear remaining convictions. Now, nearly eight years post-legalization and despite a statutory deadline of July 2020, the state has yet to fulfill its promise of erasing criminal convictions for now-legal cannabis-related activity.

After significant delays in implementation and without meeting the obligatory deadlines of AB 1793, the state passed AB 1706, a bill intended to address the shortcomings of the criminal justice reform measures heralded by California's adult-use legalization framework. AB 1706 charged California's Department of Justice with clearing cannabis records from the state's criminal history database by July 2023. Today, despite two distinct pieces of follow-on legislation to fully implement cannabis record clearance in California, full implementation has not yet been achieved. Unfortunately, this trajectory has been followed in a number of states attempting to implement broad record relief measures tied to legalization.

This paper aims to explore how the issues implementing cannabis-related record clearance in California can serve as a roadmap for the myriad obstacles to be considered when crafting state-initiated record clearance laws, the various stakeholders that must be engaged, and the need for credible technical assistance providers to ensure proper implementation. Finally, the paper will speak to the continued potential to leverage the legalization of cannabis and other offenses for broader criminal justice reform, if states follow best practices for implementing record relief.

I. THE NEED FOR RECORD CLEARANCE

A criminal record can create barriers to employment, housing, political participation, public assistance, education, and more.¹³ With one in every three Americans facing these collateral consequences, more and more states have recognized the need to craft policies that would help to mitigate the resulting harms of having a criminal record.¹⁴ One such policy is record clearance, which, broadly speaking, is the removal of a specific violation, arrest, or conviction from an

¹² See *Proposition 64: The Adult Use of Marijuana Act*, CAL. CTS., <https://www.courts.ca.gov/prop64.htm> [<https://perma.cc/UF2Z-YQ8M>] (last visited Mar. 10, 2025).

¹³ Vinopal, *supra* note 11.

¹⁴ Gary Fields & John R. Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, WALL STREET J. (Aug. 18, 2014, 11:30 PM), <https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402>.

individual's criminal record.¹⁵ States use a variety of terms to define their record clearing policies, and the types of relief they provide can differ depending on individual circumstances, state statutory provisions, and local practices.¹⁶

Research demonstrates that record clearance does *not* create a risk to public safety.¹⁷ In fact, clearing records may support public safety by increasing access to jobs, housing, and educational opportunities that promote community reintegration and stability.¹⁸ Empirical data from a recent study demonstrates that five years after receiving record clearance, individuals were *less* likely than members of the general public to engage in criminal conduct.¹⁹

The potential benefit of these policies in terms of sheer numbers is notable. According to the U.S. Department of Justice, an estimated 70 to 100 million adults in the United States face collateral consequences resulting from arrest, conviction, or incarceration.²⁰ These consequences do not just affect those convicted of felonies and misdemeanors; they also impact individuals who were arrested but never convicted.²¹ Thus, those who have their charges dropped or are unsuccessfully prosecuted can face similar barriers as those with criminal convictions.²²

An overwhelming majority of states practice some form of retroactive relief for non-convictions, misdemeanors and, in some instances, felonies. In fact, only the federal government, Alaska, Florida, Hawaii, Maine, and Wisconsin lack a definitive framework for record sealing or expungement.²³ In 2018, Pennsylvania became the first state to introduce and pass—with bipartisan support—a bill to digitally automate the clearance of some criminal records.²⁴ This process, known as Clean Slate, was the first automatic record clearance policy to be contemplated by a state legislature. Pennsylvania's Clean Slate law garnered support from both

¹⁵ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2463 (2020).

¹⁶ *Id.* at 2463–65.

¹⁷ *Id.* at 2521.

¹⁸ *Id.* at 2468–70.

¹⁹ *Id.* at 2552.

²⁰ CATHERINE E. LHAMON ET AL., U.S. COMM'N ON CIV. RTS., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES 2-3 (2019).

²¹ *Id.* at 9.

²² *Id.* at 42.

²³ RESTORATION OF RTS. PROJECT, *50 State Comparison: Expungement, Sealing & Other Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. (Oct. 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/> [<https://perma.cc/JW4W-SXD5>].

²⁴ See H.B. 1419, 2018 Gen. Assemb., Reg. Sess. (Pa. 2018).

political parties, various elected state officials like District Attorneys, community groups, and business associations.²⁵ Since then, eleven more states have adopted Clean Slate legislation including Utah, Michigan, and Delaware.²⁶ While the associated eligibility criteria vary, it is clear that there is growing momentum for adopting more efficient retroactive relief policies for qualifying offenses.

II. PARDONS AND FEDERAL RECORD CLEARANCE

Unlike legislatively enacted forms of record clearance, pardons are a type of relief that is typically granted by the executive branch or autonomous state agencies. A pardon relieves some or all of the legal consequences of a criminal conviction. Unlike record clearance, pardons can be retroactive or prospective. While a pardon has the legal effect of nullifying and forgiving an individual for the conviction, it does not necessarily guarantee that an individual's criminal record has been cleared. For example, in Oregon, a pardon has the effect of granting an individual an expungement and removing the pardoned conviction from the individual's criminal record.²⁷ In Nevada, however, a pardon is separate and distinct from an expungement, and an individual who receives a pardon still has to seek a record relief remedy to remove the pardoned offense from their criminal record.²⁸

This distinction has become particularly important in cannabis-centric criminal justice policies as more and more states have been wrestling with how to handle criminal records for cannabis-related offenses that have since been legalized. In Oregon, former Governor Kate Brown granted pardons to more than 45,000 individuals with simple possession of cannabis charges.²⁹ Similarly, former Nevada Governor Steve Sisolak issued a pardon resolution that was approved by the Nevada State Board of Pardons Commissioners to grant pardons to individuals who were previously convicted for possession of one ounce or less of marijuana and to persons

²⁵ "Clean Slate" Bill Approved by Pennsylvania General Assembly, PA. LEGAL AID NETWORK (June 25, 2018), <https://palegalaid.net/news/clean-slate-bill-approved-pennsylvania-general-assembly> [<https://perma.cc/4VNX-C5BD>].

²⁶ THE CLEAN SLATE INITIATIVE, CSI 2023 ANNUAL REPORT 6 (2023), <https://www.cleanslateinitiative.org/2023-annual-report> [perma.cc/4CBS-DDUT].

²⁷ OR. REV. STAT. § 144.653 (2019).

²⁸ NEV. REV. STAT. § 213.090 (2023).

²⁹ Whitney Woodworth, *Oregon Gov. Kate Brown Pardons 45K for Marijuana Crimes*, STATESMAN J. (Nov. 21, 2022, 1:16 PM) <https://www.statesmanjournal.com/story/news/local/2022/11/21/oregon-gov-brown-pardons-45k-for-marijuana-crimes-convictions-erases-millions-dollars-fines/69668394007/> [<https://perma.cc/NY53-MTA3>]; Or. Exec. Order, Pardon (Nov. 21, 2022), [https://www.courts.oregon.gov/forms/Documents/GovernorKateBrowns MarijuanaPardon ExecutiveOrder.pdf](https://www.courts.oregon.gov/forms/Documents/GovernorKateBrowns%20MarijuanaPardon%20ExecutiveOrder.pdf) [<https://perma.cc/35EA-F7SA>].

convicted multiple times for the same act.³⁰ Although, prima facie, these executive actions seem equivalent, since a pardon does not effectuate record clearance in Nevada, individuals who received a pardon in Oregon were afforded additional, more robust protections than those individuals in Nevada.

As of the 119th Congress, there is no general record clearance statute available for federal offenses.³¹ With the exception of a handful of offenses in discrete circumstances, federal courts lack the ability to grant expungements for the vast majority of federal offenses, even for charges that do not result in a conviction.³² Increasingly, federal legislative proposals that aim to legalize cannabis have included provisions to create a record clearance mechanism for federal cannabis offenses, like the Marijuana Opportunity Reinvestment and Expungement Act,³³ Cannabis Administration and Opportunity Act,³⁴ and the States Reform Act.³⁵ However, in the absence of any direct federal authority to grant expungements, one of the few tools to provide relief to individuals with federal charges for cannabis-related offenses is a presidential pardon.

In October 2022, President Biden announced his administration would provide pardons for individuals with federal simple marijuana possession offenses.³⁶ His administration doubled down on this pardon initiative in late 2023 by extending the eligibility criteria to include additional variations of simple possession offenses.³⁷ The Justice Department estimates that roughly 13,000 people are eligible for relief under the executive action.³⁸ Although these actions are historic, these pardons will do nothing to shield the offense from the individual's criminal record.

³⁰ Meghin Delaney, *Nevada State Board of Pardon Commissioners Passes Resolution Pardoning Those Convicted of Minor Marijuana Offenses*, STATE OF NEV. (June 17, 2020), https://gov.nv.gov/layouts/full_page.aspx?id=307693 [<https://perma.cc/XP97-L548>].

³¹ RESTORATION OF RTS. PROJECT, *Federal Restoration of Rights & Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. (Jan. 22, 2024), <https://ccresourcecenter.org/state-restoration-profiles/federalrestoration-of-rights-pardon-expungement-sealing/> [<https://perma.cc/886E-GUVJ>].

³² *Id.*

³³ Marijuana Opportunity Reinvestment and Expungement (MORE) Act, H.R. 5601, 118th Cong. § 10 (2023).

³⁴ Cannabis Administration and Opportunity Act, S. 4591, 117th Cong., tit. 3, subtit. B, § 311 (2022).

³⁵ States Reform Act of 2023, H.R. 6028, 118th Cong. tit. I, § 102(e) (2023).

³⁶ Proclamation No. 10467, 87 Fed. Reg. 61441 (Oct. 6, 2022).

³⁷ Proclamation No. 10688, 88 Fed. Reg. 248 (Dec. 22, 2023).

³⁸ Kyle Jaeger, *DOJ Seeks White House Approval for Updated Marijuana Pardon Certificate Form Under Biden's Expanded Proclamation*, MARIJUANA MOMENT (Feb. 2, 2024), <https://www.marijuanamoment.net/doj-seeks-white-house-approval-for-updated-marijuana-pardon-certificate-form-under-bidens-expanded-proclamation/> [<https://perma.cc/EG77-7795>].

III. THE CASE FOR CLEARING CANNABIS-RELATED RECORDS

While there is a growing consensus amongst state lawmakers that a variety of offenses should be eligible for record relief, the case for clearance is particularly salient when the conduct that led to the criminal conviction is no longer illegal. Record clearing addresses the burden imposed on individuals by criminal records consisting of cannabis-related offenses after the statutes under which those individuals were convicted have been repealed or significantly altered. Given the current status of cannabis as a social issue and the profitability of the regulated marketplace, basic fairness and equity dictate that cannabis record clearance is implemented to mitigate the collateral consequences of criminal convictions and to restore the rights of millions of people adversely impacted by the criminalization of cannabis.

The War on Drugs and six decades of overly punitive drug laws in America have resulted in cannabis-related offenses carrying some of the most severe collateral consequences.³⁹ In some cases, individuals with cannabis-related criminal records face harsher penalties than those convicted of violent offenses or white-collar crimes that have much more far-reaching negative impacts on society.⁴⁰ Nearly 45,000 separate collateral consequences exist through federal and state laws and regulations, and further consequences may be imposed at the municipal and county levels.⁴¹

Below are summaries of seven of the most severe consequences faced by those with criminal records. These include political participation, employment, housing, education, public assistance, familial integration, and immigration status.

A. Employment

A criminal record can lead to significant barriers to employment, exacerbating the challenges of reentry and increasing the chances of recidivism.⁴² Beyond the social stigma attached to a criminal record that permeates the hiring process, several federal and state statutes prohibit those with prior convictions from occupying certain jobs and holding professional licenses.⁴³ Many states bar ex-offenders from holding occupational licenses for roles such as nurses, barbers, or EMTs, even if

³⁹ Gabriel J. Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER, RACE, & JUST. 253, 261–62 (2002).

⁴⁰ *Id.* at 256.

⁴¹ *Collateral Consequences Inventory*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.nationalreentryresourcecenter.org/consequences> [<https://perma.cc/6L6L-HTL8>] (without entering any parameters, click “search”) (last visited Mar. 10, 2025).

⁴² LHAMON ET AL., *supra* note 20, at 35.

⁴³ *Id.* at 49.

there is no nexus between the specific record and the license sought.⁴⁴ A number of successful “ban the box” laws—which protect applicants from disclosing past convictions to potential employers—have passed at the state and federal level in recent years.⁴⁵ However, many of these laws only apply to sealed or expunged records, excluding the majority of individuals with criminal records from the protections these laws were meant to provide.⁴⁶ Further, third-party digital repositories of criminal records are increasingly accessible to employers and frequently used in background checks.⁴⁷ Because these databases are not overseen by government entities, many digital records remain even when a conviction is overturned or expunged, which can prevent individuals from obtaining employment.⁴⁸ According to the Center for Economic and Policy Research, the lack of employment opportunities for individuals with past convictions excludes one in four Americans from the job market, resulting in an estimated \$70 to \$80 billion in lost output, accounting for inflation.⁴⁹

B. Housing

Drug-related offenses, including for cannabis, disqualify an individual from receiving public housing assistance from the federal government.⁵⁰ For those already living in federally-subsidized housing, a cannabis-related conviction or at-home cannabis use (even in states where cannabis is legal) carries a penalty of eviction.⁵¹ For many, this means homelessness, exacerbated food insecurity, and a continued cycle of poverty.⁵² Further, a 2002 United States Supreme Court decision held that

⁴⁴ *Id.* at 50.

⁴⁵ BETH AVERY & HAN LU, NAT’L EMP. L. PROJECT, BAN THE BOX: U.S. CITIES, COUNTIES, AND STATES ADOPT FAIR-CHANCE POLICIES TO ADVANCE EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH PAST CONVICTIONS 2 (2021), <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2021.pdf> [<https://perma.cc/QLK2-DKUR>].

⁴⁶ *Id.* at 28–29.

⁴⁷ MARINA DUANE ET AL., URB. INST., CRIMINAL BACKGROUND CHECKS: IMPACT ON EMPLOYMENT AND RECIDIVISM 2 (2017), https://www.urban.org/sites/default/files/publication/88621/2001174_criminal_background_checks_impact_on_employment_and_recidivism_2.pdf [<https://perma.cc/5RU8-CYEK>].

⁴⁸ *Id.* at 3.

⁴⁹ See LHAMON ET AL., *supra* note 20, at 35.

⁵⁰ AM. BAR ASS’N, COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS JUDICIAL BENCH BOOK 5 (2018), <https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf> [<https://perma.cc/ACL2-Q45B>].

⁵¹ *Id.*

⁵² *Id.*

local public housing authorities have discretion under federal law to hold tenants accountable for a broad range of activities at their residences, even activities of which they have no factual awareness.⁵³ Entire households can be evicted for the unknown actions of a single resident, or even a guest.⁵⁴

C. Education

A prior drug offense can result in the loss of eligibility to receive federal grants, loans, or work assistance to use for higher education purposes or for vocational and professional training programs.⁵⁵ A student can lose access to federal aid if convicted of a drug-related offense while enrolled in school, or if they were previously denied federal benefits by a federal or state judge.⁵⁶ Many states also deny state educational aid to those with drug-related convictions.⁵⁷

D. Public Assistance

For those who rely on public assistance for basic necessities like food and housing, a cannabis infraction can spell disaster. The Temporary Assistance for Needy Families program (TANF), more colloquially known as “food stamps,” was reformed in 1996 to allow states to include drug testing as part of the welfare eligibility determination process.⁵⁸ Thirty-seven states practice some form of disqualification from benefit eligibility following a felonious drug conviction, with ten of those states enacting lifetime disqualifications.⁵⁹ Even in states where cannabis is legal, like Arizona, individuals can be permanently barred from receiving TANF.⁶⁰ Similar circumstances exist with Supplemental Nutrition Assistance Program (SNAP) benefits, as some states tie SNAP eligibility to TANF

⁵³ Dep't of Hous. & Urb. Dev. v. Rucker, 535 U.S. 125, 136 (2002).

⁵⁴ Marah A. Curtis et al., *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, 15 CITYSCAPE 37, 39–40 (2013).

⁵⁵ LHAMON ET AL., *supra* note 20, at 26.

⁵⁶ *Id.*

⁵⁷ *See 50-State Comparison: State Financial Aid Barriers for Students Impacted by the Justice System*, EDUC. COMM'N OF THE STATES (Jan. 2020), <https://reports.ecs.org/comparisons/state-financial-aid-barriers-justice-sys-01> [<https://perma.cc/8Y3W-A7JS>].

⁵⁸ MAGGIE McCARTY ET AL., CONG. RSCH. SERV., DRUG TESTING AND CRIME-RELATED RESTRICTIONS IN TANF, SNAP, AND HOUSING ASSISTANCE 7 (2016), https://www.congress.gov/crs_external_products/R/PDF/R42394/R42394.32.pdf [<https://perma.cc/V5E3-7AGH>]

⁵⁹ *Id.* at 9.

⁶⁰ *See id.*

requirements.⁶¹ Other jurisdictions, like Minnesota and Wisconsin, require routine drug testing for those with felony drug convictions to maintain eligibility for SNAP.⁶²

E. *Familial Integration*

Collateral consequences extend beyond the individual and can have generational effects on communities. The Adoption and Safe Families Act of 1997 enabled the revocation of an individual's parental rights as a consequence of a prison sentence.⁶³ In some states, parental rights are severed immediately upon incarceration.⁶⁴ Further, a cannabis-related conviction prohibits an individual from adopting a child in many states.⁶⁵ Given the general lack of retroactive relief, these barriers often persist after adult-use legalization. Even though Virginia legalized adult-use cannabis in 2021, the Governor vetoed a bill in 2024 that would have prevented the Commonwealth from citing cannabis usage as evidence of child abuse or neglect.⁶⁶

F. *Immigration Status*

Non-citizens of the U.S. face harsh penalties and severe collateral consequences for cannabis-related arrests or convictions.⁶⁷ Those convicted of cannabis-related offenses are often subject to deportation.⁶⁸ Even if deportation is avoided, a conviction can result in inadmissibility, meaning that immigrants can be denied

⁶¹ *Id.* at 11.

⁶² *Id.*

⁶³ See generally VERNETTA D. YOUNG & REBECCA REVIERE, *WOMEN BEHIND BARS: GENDER AND RACE IN U.S. PRISONS* 109–138 (2006) (discussing the impact of imprisonment on custodial rights).

⁶⁴ See Eli Hager & Anna Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, THE MARSHALL PROJECT (Dec. 2, 2018, 10:00 PM), <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever> [https://perma.cc/NX5F-GD7P].

⁶⁵ See *Criminal Background Checks for Adoption by State*, ADOPTION NETWORK, <https://adoptionnetwork.com/adoption-laws-by-state/criminal-background-checks/> [https://perma.cc/88W7-MJT7] (last visited Mar. 12, 2025).

⁶⁶ H.B. 833, 2024 Gen. Assemb., Reg. Sess. (Va. 2024).

⁶⁷ KATHY BRADY ET AL., IMMIGRANT LEGAL RES. CTR., *IMMIGRANTS AND MARIJUANA 3* (2021), https://www.ilrc.org/sites/default/files/resources/immigrants_marijuana_may_2021_final.pdf [https://perma.cc/JLE9-B7ZD].

⁶⁸ *Id.* at 5.

reentry to the US if they leave.⁶⁹ Federal law also requires immigration courts to make determinations based in part on a candidate's "good moral character," often resulting in unfavorable outcomes for those arrested for or convicted of cannabis-related offenses.⁷⁰ Even if state and local cannabis laws are followed (i.e., if cannabis is legal), deportation and other penalties still occur.

G. Political Participation

A cannabis- or other drug-related felony conviction can result in the loss of one of the most fundamental individual rights under democratic government: the right to vote.⁷¹ While practices in different states vary widely, a significant majority of jurisdictions levy some form of voting barrier for those convicted of felonies.⁷² According to the National Conference of State Legislatures, thirty-eight states prohibit convicted felons from voting while serving their sentences, with fifteen of those states extending the ban for a period of time after being released from prison.⁷³ In ten states, convicted felons lose their right to vote indefinitely.⁷⁴ Some states, like Florida, also require justice-impacted individuals to pay restitution in order to regain their voting rights; individuals convicted of felonies can also lose their right to serve on federal grand juries, unless they are pardoned for their offenses.⁷⁵ In some states, citizens with felony convictions are barred from holding public office.⁷⁶

While not every state that practices retroactive relief does so for cannabis convictions, there are currently twenty-four states plus Washington, D.C. that have laws allowing for expungement and/or record sealing for cannabis offenses.⁷⁷ In addition, seven states have specific pardoning programs for cannabis (though, as

⁶⁹ *Id.* at 6.

⁷⁰ *Id.*

⁷¹ *Felon Voting Rights*, NAT'L CONF. OF STATE LEGS. (Oct. 18, 2024), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights> [<https://perma.cc/8TE6-NNT3>].

⁷² *See id.*

⁷³ *Id.* at tbl. 1.

⁷⁴ *Id.*

⁷⁵ NICOLE D. PORTER & JEAN CHUNG, THE SENT'G PROJECT, VOTING RIGHTS IN THE ERA OF MASS INCARCERATION: A PRIMER 5 (2021), <https://www.sentencingproject.org/app/uploads/2024/11/Voting-Rights-in-the-Era-of-Mass-Incarceration.pdf> [<https://perma.cc/K48R-UMGQ>].

⁷⁶ LHAMON ET AL, *supra* note 20, at 1.

⁷⁷ Restoration of Rts. Project, *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency*, COLLATERAL CONSEQUENCES RES. CTR. (June 2024), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-marijuana-legalization-expungement/> [<https://perma.cc/LBR4-PTDG>].

noted above, a pardon is functionally different from record clearance).⁷⁸ While the number of states practicing retroactive relief for a variety of offenses is promising, there is much progress to be made on cannabis-specific record clearance.

IV. ISSUES WITH RECORD CLEARANCE AND IMPLEMENTATION

A. *Problems with a Petition-Based Process*

While states generally allow individuals to petition the court to have certain criminal records cleared, the vast majority of individuals eligible to clear, seal, expunge, or set aside their records never obtain relief due to cost, complexity, and lack of legal representation.⁷⁹ As a result, many individuals who are legally eligible for record clearance continue to be burdened by the collateral consequences of criminal records.⁸⁰ Indeed, a comprehensive statewide study of Michigan's record clearance policies and practices revealed that only 6.5 percent of persons eligible for expungement successfully completed Michigan's application process within five years of eligibility.⁸¹

Petition-based record clearance not only puts the burden of overcoming a complex process on the individual seeking relief but it also comes with a monetary fee. When considering the costs of pursuing record clearance, there is little uniformity across the country since each state may impose a different fee for filing a petition for record clearance. For example, at \$550, Louisiana has the highest fee in the nation to simply file an application for record clearance without any guarantee of actually obtaining the relief.⁸²

It is also important to consider that while every state has a unique set of laws that governs their respective record clearance process, a requirement common amongst states is that an individual must have successfully paid off all fines and sometimes restitution associated with the conviction they are seeking to clear.⁸³ This means that an individual's eligibility for record clearance already presupposes pecuniary obligations. While legal counsel is not necessarily required to file for record clearance, the help of an attorney who has experience with record clearance applications is strongly advised. Record clearance procedures are often complex; however, since filing for record clearance is a civil—as opposed to a criminal—

⁷⁸ *Id.*

⁷⁹ See Prescott & Starr, *supra* note 15, at 2549.

⁸⁰ *Id.*

⁸¹ *Id.* at 2489.

⁸² LA. CODE CRIM. PROC. ANN. art. 983 (2015).

⁸³ RESTORATION OF RTS. PROJECT, *supra* note 23.

process, legal counsel is not provided, even if an individual cannot afford an attorney, which imposes additional costs on the individual.

These are just a few of the monetary factors that can impose a significant financial barrier to seeking record clearance. Other ancillary factors may also contribute to the cost of record clearance, such as the fee associated with obtaining all the relevant documents as part of the application, paying for parking or transportation to the relevant government agencies or courthouses, and the amount of time spent away from work in order to attend court proceedings, or performing other functions related to the petition process for record clearance.

Additionally, many states impose narrow criteria that render many who could potentially benefit from record clearance ineligible for relief. For example, in New Jersey, individuals are eligible to apply for a petition-based expungement only once during their lifetime,⁸⁴ and there is a limit of one indictable (felony) offense and three misdemeanor-level (petty or disorderly) offenses.⁸⁵ Nearly every state also imposes a waiting period wherein an individual must remain conviction-free for a specified period of time as part of the eligibility criteria for record clearance. This is true even in states with some form of automatic expungement in place. In Pennsylvania, the nation's first Clean Slate State, an individual with a misdemeanor conviction must clear a waiting period of ten years from the time of conviction in order to be eligible for record clearance.⁸⁶ In 2023, the waiting period was shortened to seven years.⁸⁷

B. Problems with a State-Initiated Process

It is clear that in order to effectively provide relief, the record clearance process needs to be initiated and completed by the state, rather than placing the burden of the onerous petition process on the individual. Unfortunately, "automatic" record clearance is not a simple process in any jurisdiction. States cannot wipe a criminal conviction by pressing a button. The various infrastructures for data keeping across state and municipal criminal legal related agencies are outdated, siloed, and sometimes not even digitized.

As stated, a criminal record does not only contain final dispositions. Records can also include arrests for charges that were dropped, cases in which courts determined individuals were factually innocent, or cases that were otherwise resolved in an individual's favor and did not result in any conviction. These various potential types of criminal records are not maintained by a singular agency.

⁸⁴ N.J. REV. STAT. § 2C:52-14(e) (2023).

⁸⁵ N.J. REV. STAT. § 2C:52-2(a) (2023).

⁸⁶ 18 PA. CONS. STAT. § 9122.1 (2020) (repealed 2023).

⁸⁷ 18 PA. CONS. STAT. § 9122.1 (2023).

Criminal histories are maintained by law enforcement agencies at all levels of government.⁸⁸ It is common practice for local police departments and sheriffs' offices to maintain their own internal repositories of criminal records.⁸⁹ At the state level, state police, troopers, highway patrol, correctional agencies, and other law enforcement agencies also typically manage and maintain their own separate repositories. At the federal level, the FBI's National Crime Information Center (NCIC) maintains a nationwide database of criminal records.⁹⁰ Information stored by the NCIC involves all federal criminal matters as well as information voluntarily turned over by states.⁹¹ Law enforcement agencies often share this information with other government agencies, and it becomes accessible to the public in a variety of forms, including for-profit background check databases.⁹² Thus, to clear a record, the numerous potential data-keepers must first be identified, and then a process must be put in place to alert those various agencies to wipe the record from their systems.

V. THE CASE OF CALIFORNIA

When a state decides to legalize or decriminalize adult-use cannabis, they are explicitly acknowledging that once-proscribed conduct is not inherently criminal. As such, cannabis convictions should not adhere to the same eligibility criteria or limitations that govern the record clearance process for general convictions. Since the state has already conceded that the underlying offense should no longer be criminalized, any decriminalized cannabis offenses should be eligible for clearance. Nonetheless, the record clearance process for cannabis-specific offenses deals with the same barriers to implementation as general state-initiated record clearance laws.

As a national nonprofit focused on redressing the harms of the drug war, the Last Prisoner Project's (LPP) policy team provides technical assistance to states to ensure that when they legalize, they are simultaneously implementing systems of retroactive relief. The policy team began conducting work in California at the start of 2021 after hearing from stakeholders that thousands of individuals still had a criminal record for cannabis, even though the state had legalized adult-use back in

⁸⁸ See ROBERT R. BELAIR & PAUL L. WOODARD, U.S. DEP'T OF JUST., *USE AND MANAGEMENT OF CRIMINAL HISTORY RECORD INFORMATION: A COMPREHENSIVE REPORT 19–20* (1993), <https://bjs.ojp.gov/content/pub/pdf/CCHUSE.PDF> [<https://perma.cc/Z5F2-7YUB>].

⁸⁹ *Police Records*, UNIV. OF CAL. BERKELEY GRADUATE SCH. OF JOURNALISM (2020), <https://multimedia.journalism.berkeley.edu/tutorials/police-records/> [<https://perma.cc/A3PR-4NWC>].

⁹⁰ *National Crime Information Center (NCIC)*, FED. BUREAU OF INVESTIGATION, <https://le.fbi.gov/informational-tools/ncic> [<https://perma.cc/V24L-HLZV>] (last visited Mar. 12, 2025).

⁹¹ See *id.*

⁹² U.S. DEP'T OF JUST., OFF. OF THE ATT'Y GEN., *THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 147* (2006), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ag_bgchecks_report.pdf [<https://perma.cc/MN94-9CRM>].

2016.⁹³ LPP partnered with the San José State University's Human Rights Institute (SJSU) to uncover why so many California residents still had a cannabis record, particularly given the fact that the state had passed legislation in 2018 (AB 1793) that automated the record clearance process for individuals who had a criminal record for cannabis crimes.⁹⁴ The policy team worked with SJSU to research the possible implementation issues that arose after AB 1793 was enacted. The team also reached out to Attorney General Rob Bonta, who was the original sponsor of the bill back in 2018. Our research on the implementation challenges of AB 1793 led to the Attorney General's Office issuing a bulletin, which urged various agencies to complete the work of sealing every last eligible cannabis record. The bulletin also gave our policy team an opening to launch a legislative campaign to address the policy gaps within California's cannabis record clearance process.

A. An Overview of California's Record Clearance Process

Until recently, California had a petition-based record clearance process. This meant that individuals who had a criminal record could petition the sentencing court for dismissal of their charges or for a set aside of their guilty plea.⁹⁵ The petition-based record clearance process mainly applied to misdemeanors that did not result in a sentence of probation as well as infractions (e.g., traffic violations and small possession of cannabis).⁹⁶ It is important to note that this petition-based process that allowed for the dismissal of charges or for a set-aside of a guilty plea did not seal or limit public access to an individual's criminal record.⁹⁷ It was not until California legalized adult-use cannabis in 2016 that many marijuana-related records became eligible for sealing.⁹⁸ The sealing of a criminal record means that the general public will no longer be able to view an individual's record.⁹⁹ California's record sealing

⁹³ Kiera Feldman, *California Was Supposed to Clear Cannabis Convictions. Tens of Thousands Are Still Languishing*, L.A. TIMES (Jan. 13, 2022, 5:00 AM), <https://www.latimes.com/california/story/2022-01-13/california-was-supposed-to-clear-weed-convictions-tens-of-thousands-are-still-languishing> [https://perma.cc/T68L-GT3F].

⁹⁴ CAL. HEALTH & SAFETY CODE § 11361.9 (West 2018).

⁹⁵ RESTORATION OF RTS. PROJECT, *California Restoration of Rights & Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. (Oct. 11, 2024), <https://ccresourcecenter.org/state-restoration-profiles/california-restoration-of-rights-pardon-expungement-sealing/> [https://perma.cc/EZ2U-EHEL].

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Record Cleaning: Arrest with No Conviction*, JUD. BRANCH OF CAL.: CAL. CTS., <https://www.courts.ca.gov/42539.htm#:~:text=You%20may%20request%20that%20a,to%20see%20your%20sealed%20record> [https://perma.cc/34Y7-DSL7] (last visited Mar. 12, 2025).

laws, however, do not preclude law enforcement agencies from accessing an individual's criminal record.¹⁰⁰ California's first major expansion of their record clearance process came in 2014 when the state passed Proposition 47, which expanded the number of offenses that were eligible for dismissal or set aside by reclassifying numerous felonies as misdemeanors.¹⁰¹ Under Proposition 47, eight offenses were reclassified as misdemeanors, including offenses related to simple drug possession.¹⁰² It was not until the state legalized adult-use cannabis that political momentum was created to automate the record clearance process.

B. Cannabis Legalization in California

When California legalized adult-use cannabis in 2016 via Proposition 64, the state allowed individuals to petition for the reduction, dismissal, and sealing of cannabis offenses that were now deemed legal under state law.¹⁰³ For the first time, individuals were able to have their cannabis-related convictions dismissed and sealed because, according to statute, their convictions were now "legally invalid."¹⁰⁴ The record clearance process, however, was vastly underutilized because individuals had to navigate a cumbersome petition process.¹⁰⁵ A nonprofit organization, Code for America, attempted to improve the petition-based process in California by creating an online tool entitled "Clear My Record" so that people could be connected to legal resources.¹⁰⁶ Although "Clear My Record" helped to connect thousands of individuals to legal aid, it was evident that further improvements would need to be made to the petition-based process to ensure that eligible individuals could receive

¹⁰⁰ *Id.*

¹⁰¹ J. RICHARD COUZENS & TRICIA A. BIGELOW, PROPOSITION 47: "THE SAFE NEIGHBORHOODS AND SCHOOLS ACT" 5 (2024), <https://capcentral.org/wp-content/uploads/2023/12/Judge-Couzens-PROP-47-Analysis-MAY-2024.pdf> [<https://perma.cc/WCL3-L5G8>].

¹⁰² Eliza Hersh, *California's Proposition 47 and Collateral Consequences: Part II (Reentry and Restoration of Rights)*, COLLATERAL CONSEQUENCES RES. CTR. (Dec. 1, 2014), <https://ccresourcecenter.org/2014/12/01/californias-proposition-47-collateral-consequences-part-ii-reentry-restoration-rights/> [<https://perma.cc/BTY3-4PM5>].

¹⁰³ STAFF OF S. COMM. ON PUB. SAFETY 2021-2022-1706, Reg. Sess., at 3–4 (Cal. 2022), https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/ab_1706_analysis.pdf [<https://perma.cc/GM48-W9BH>].

¹⁰⁴ RESTORATION OF RTS. PROJECT, *supra* note 95.

¹⁰⁵ *See id.*

¹⁰⁶ *Working with Communities and Government to Fundamentally Transform the Process of Clearing Records*, CODE FOR AM., <https://codeforamerica.org/programs/criminal-justice/automatic-record-clearance/#:~:text=ClearMyRecord.org%20is%20a%20free,with%20resources%20across%20the%20state> [<https://perma.cc/6N3N-G35A>] (last visited Oct. 22, 2024).

record clearance relief.¹⁰⁷ Starting in 2018, Code for America began working with the San Francisco District Attorney's Office to automate the record clearance process so that individuals could have their eligible cannabis records sealed. For the next year, the San Francisco's District Attorney's Office worked with Code for America to implement a "cutting-edge criminal justice reform pilot" that used "the 'Clear My Record' technology [to] automatically and securely evaluate eligibility for convictions by reading and interpreting conviction data."¹⁰⁸ The use of Code for America's technology allowed the District Attorney's Office in San Francisco to streamline their "conviction data processing...[making] it easier for courts to update records, ensuring people get relief as soon as possible."¹⁰⁹ The pilot in San Francisco allowed the District Attorney's Office to seal over eight thousand cannabis-related convictions without the initiation of a petition and it provided the blueprint for what a state-initiated record clearance process could look like for the rest of California.

In 2018, California passed AB 1793, which sought to ensure that eligible individuals were finally able to have their cannabis records sealed.¹¹⁰ The legislation was authored by current Attorney General Rob Bonta and provided for automatic sealing of cannabis criminal records for cannabis offenses that were no longer illegal.¹¹¹ AB 1793 was a nation-leading step because it did not require individuals to petition the courts to have their eligible criminal record sealed. The legislation specifically tasked California's Department of Justice (DOJ) with identifying all cannabis cases that were eligible to be sealed and notifying the county prosecutors who had eligible cases in their jurisdiction.¹¹² The following cannabis offenses were eligible for state-initiated dismissal and sealing under AB 1793: possession of cannabis, possession of concentrated cannabis, possession of cannabis on school grounds, cultivation of cannabis, possession of cannabis with the intent to sell, and the sale of cannabis.¹¹³

The identification and notification process that was undertaken by the DOJ had a deadline of July 1, 2019. County prosecutors then had until July 1, 2020 to decide whether or not they would challenge any of the cannabis cases that had been

¹⁰⁷ *Id.*

¹⁰⁸ Press Release, CODE FOR AM., Leveraging Technology to Fulfill the Promise of Record Clearance Laws (Feb. 25, 2019), https://codeforamerica.org/news/leveraging-technology-to-fulfill-the-promise-of-record-clearance-laws/?_gl=1*k2z8w6*_ga*MTc5MjY2NDU1OC4xNzA5OTIyOTQz*_ga_E86H6WZB5K*MTcwOTkyMjk0My4xLjAuMTcwOTkyMjk2Mi40MS4wLjA [https://perma.cc/#n5D-5EAZ].

¹⁰⁹ *Id.*

¹¹⁰ Assemb. B. 1793, 2017–2018 Gen. Assemb., Reg. Sess. (Cal. 2018).

¹¹¹ *Id.*

¹¹² RESTORATION OF RTS. PROJECT, *supra* note 95.

¹¹³ Assemb. B. 1793, 2017–2018 Gen. Assemb., Reg. Sess. (Cal. 2018).

identified by the DOJ and notify the court and public defender of their decision.¹¹⁴ AB 1793 also specified that if a county prosecutor did not challenge a case that had been identified by the DOJ, then the courts must automatically provide record clearance relief.¹¹⁵ There was no deadline that was given to the courts in each county to seal all eligible convictions that were identified by the DOJ.¹¹⁶ The lack of a deadline led to tens of thousands of eligible individuals not receiving timely record relief.¹¹⁷

C. Automation of California's Record Clearance Process

The automated sealing process that was outlined in AB 1793 may have run into implementation issues, but it was the beginning of further reforms to California's record clearance process. In 2019, the state passed AB 1076, which automated the petition-based record-sealing process in California.¹¹⁸ Specifically, AB 1076 created a new automatic record clearance process, otherwise known as *Clean Slate*, that allowed for non-conviction and conviction records that were already eligible under California's set aside and dismissal process to be sealed.¹¹⁹ The automated record clearance process that was created by AB 1076 was further expanded in 2022 via SB 731, which allowed for conviction records that did not result in an individual being sentenced to a term in state prison to be sealed (the law also allowed for individuals with certain felony offenses to petition to have their records sealed).¹²⁰

According to the newly created record clearance process, an individual may have his/her/their arrest record automatically sealed if he/she/they have: been arrested for a misdemeanor and the charge was dismissed; the person was acquitted or one year has elapsed since the arrest and the person has no further criminal proceedings; been arrested for a felony and the punishment was a term in county jail and the person was either acquitted or three years have passed since the arrest and no further criminal charges have been made against the individual; or completed a

¹¹⁴ *Marijuana Conviction Relief*, SACRAMENTO CNTY. DIST. ATT'Y'S OFF., <https://www.sacda.org/public-resources/marijuana-conviction-relief/> [https://perma.cc/T7BU-W7R8] (last visited Oct. 22, 2024).

¹¹⁵ Assemb. B. 1793, 2017–2018 Gen. Assemb., Reg. Sess. (Cal. 2018).

¹¹⁶ STAFF OF S. COMM. ON PUB. SAFETY 2021-2022-1706, Reg. Sess., at 4 (Cal. 2022), https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/ab_1706_analysis.pdf [https://perma.cc/GM48-W9BH].

¹¹⁷ Feldman, *supra* note 93.

¹¹⁸ Assemb. B. 1076, 2019–2020 Gen. Assemb., Reg. Sess. (Cal. 2019).

¹¹⁹ RESTORATION OF RTS. PROJECT, *supra* note 95.

¹²⁰ *Id.*

specified diversion program.¹²¹ The following conviction records are also eligible to be sealed automatically under the newly created record clearance process: conviction records for individuals that were sentenced to probation and have completed their term of probation without revocation; and individuals who have been convicted of a misdemeanor or infraction, were not sentenced to probation but they have completed their sentence, and at least one year has gone by since they were sentenced.¹²²

There are also a few conditions that limit eligibility for individuals with conviction records, specifically individuals who have to register under the Sex Offender Registration Act; have an active criminal record for either local, state or federal supervision; are actively serving a sentence for an offense or have criminal charges pending; or served a sentence in state prison.¹²³ The automatic record clearance process that was created by AB 1076 and was further expanded by SB 731 came into effect in 2023, and as a part of the process, the DOJ must identify eligible records in their database on a monthly basis and grant record relief.¹²⁴ The DOJ is also required to notify county courts of the eligible records that they have sealed on a monthly basis and annually publish data on how many arrests and convictions have been sealed or have been denied in each county.¹²⁵ According to data released by the DOJ, over eight million non-conviction records were sealed from July 1 to December 31, 2022 (nearly three million conviction records were also sealed during this time period).¹²⁶

D. *Improving California's Automated Cannabis Record Clearance Process*

At the start of 2021, LPP, in conjunction with SJSU, began researching why thousands of individuals had yet to receive record clearance relief that had been granted via AB 1793. The research conducted by LPP and SJSU zeroed in on four main issues that had stalled the implementation of AB 1793: 1) the lack of a deadline for county courts to seal all eligible cannabis records that were identified by the DOJ; 2) the lack of follow-through by county prosecutors to alert county courts on whether or not they would challenge certain cannabis records that had been identified by the DOJ being sealed; 3) the lack of publicly available data to track the

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Sydney Johnson, *Millions of Criminal Records Cleared After Landmark California Law Takes Effect*, KQED (July 7, 2023), <https://www.kqed.org/news/11955206/millions-of-criminal-records-erased-after-landmark-california-law-takes-effect> [<https://perma.cc/T7UZ-7SEV>].

implementation status of AB 1793; and 4) the need for a public awareness campaign to alert eligible individuals that their cannabis record had finally been sealed.¹²⁷

The implementation gaps that LPP and SJSU uncovered were first presented to Attorney General Bonta. In response to these implementation gaps, the Attorney General issued a bulletin urging counties to finish the process of sealing all eligible cannabis records identified under AB 1793. The bulletin specifically called on county prosecutors to provide a list of all eligible cannabis cases that still needed to be sealed by the courts.¹²⁸ It was clear, however, from numerous conversations with stakeholders on the ground (i.e., county prosecutors, public defenders, directly impacted individuals, etc.) that further legislative guidance would be needed in order to fully effectuate record clearance relief for all eligible cannabis records. LPP and SJSU presented the shortcomings of AB 1793's implementation to Assemblymember Mia Bonta (D-18), and her office decided to author a new bill that would provide a legislative solution to ensure that individuals with eligible cannabis records finally received record clearance relief. By the end of 2021, LPP began working with Assemblymember Bonta's office to craft AB 1706, which sought to resolve the implementation delays in California's cannabis record-sealing law.¹²⁹

AB 1706 was introduced in the California legislature in January 2022.¹³⁰ The legislation mandated that county district attorneys and the courts complete the work of processing cannabis records that were deemed eligible for sealing as a part of AB 1793 by March 1, 2023.¹³¹ AB 1706 then provided a deadline of July 1, 2023, for when the DOJ must update its criminal history database to reflect all of the cannabis records that had been sealed by the county courts.¹³² The bill also outlined an oversight mechanism, which required the Judicial Council to monitor the sealing process and produce a regular report to the Legislature in coordination with the DOJ

¹²⁷ E-mail from Last Prisoner Project & SJSU Hum. Rts. Inst., to Michael Redding, Special Assistant to the Cal. Att'y Gen. (Aug. 25, 2021) (on file with author); Letter from William Armaline, Director, SJSU Hum. Rts. Inst. et al., to Cal. Att'y Gen. Robert Bonta (May 10, 2021) (on file with author).

¹²⁸ Letter from Joe Dominic, Chief/CIO of Cal. Just. Info. Servs Div., to All Dist. Att'ys, C.J.J., & Ct. Exec. Officers (Dec. 15, 2021), <https://oag.ca.gov/system/files/media/21-10-cjis.pdf> [<https://perma.cc/43MY-YGVZ>].

¹²⁹ See Press Release, Mia Bonta, Cal. Dist. 18 Assemb., Assemblymember Bonta Introduces AB 1706 to Bring Overdue Relief to Californians with Cannabis Records (Jan. 26, 2022), <https://a18.asmdc.org/press-releases/20220126-assemblymember-bonta-introduces-ab-1706-bring-overdue-relief-californians> [<https://perma.cc/VMW9-2RQ3>].

¹³⁰ *Id.*

¹³¹ STAFF OF S. COMM. ON PUB. SAFETY 2021-2022-1706, Reg. Sess., at 2 (Cal. 2022), https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/ab_1706_analysis.pdf [<https://perma.cc/GM48-W9BH>].

¹³² *Id.*

to ensure compliance with deadlines and data transparency¹³³ (in California, the Judicial Council is “the policymaking body of the California courts” and “is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice”).¹³⁴ Finally, AB 1706 charged the DOJ with conducting a targeted public awareness campaign so that individuals impacted by the sealing process could be aware of updates to their criminal history.¹³⁵ After introducing AB 1706, Assemblymember Bonta stated, “It is unimaginable and unacceptable that years after we legalized cannabis, Californians are still waiting to get their records cleared. We promised this to tens of thousands of Californians, and to date, we have fallen short of that promise. My bill will finally provide that relief and guarantee individuals are not denied opportunities to succeed in life because of minor cannabis records.”¹³⁶ AB 1706 received broad support throughout the legislative process and was signed into law by Governor Newsom on September 18, 2022.¹³⁷

E. *Where California’s Automated Cannabis Record Clearance Process Stands Today*

AB 1706 came into effect on January 1, 2023.¹³⁸ As a part of LPP’s work in California, we have been monitoring the implementation of AB 1706. In particular, LPP has been reviewing the DOJ’s quarterly reports that provide details on the state’s progress clearing all eligible cannabis records. Each quarterly report provides a breakdown of all eligible cannabis records (including how many individuals make up those eligible records) and how many of those records each county has sealed.¹³⁹ The reports also include information on how many eligible

¹³³ *Id.* at 3.

¹³⁴ *Judicial Council*, JUD. BRANCH OF CAL.: CAL. CTS., <https://www.courts.ca.gov/policyadmin-jc.htm> [<https://perma.cc/9SKT-SQUQ>] (last visited Oct. 22, 2024).

¹³⁵ STAFF OF S. COMM. ON PUB. SAFETY 2021-2022-1706, Reg. Sess., at 6 (Cal. 2022), https://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/ab_1706_analysis.pdf [<https://perma.cc/GM48-W9BH>].

¹³⁶ *Last Prisoner Project-Sponsored Legislation to Fix Automatic Cannabis Record Clearance Unanimously Passes Assembly Public Safety Committee*, LAST PRISONER PROJECT (Mar. 17, 2022), <https://www.lastprisonerproject.org/ca-ab1706-press-release> [<https://perma.cc/2FTT-WPRU>].

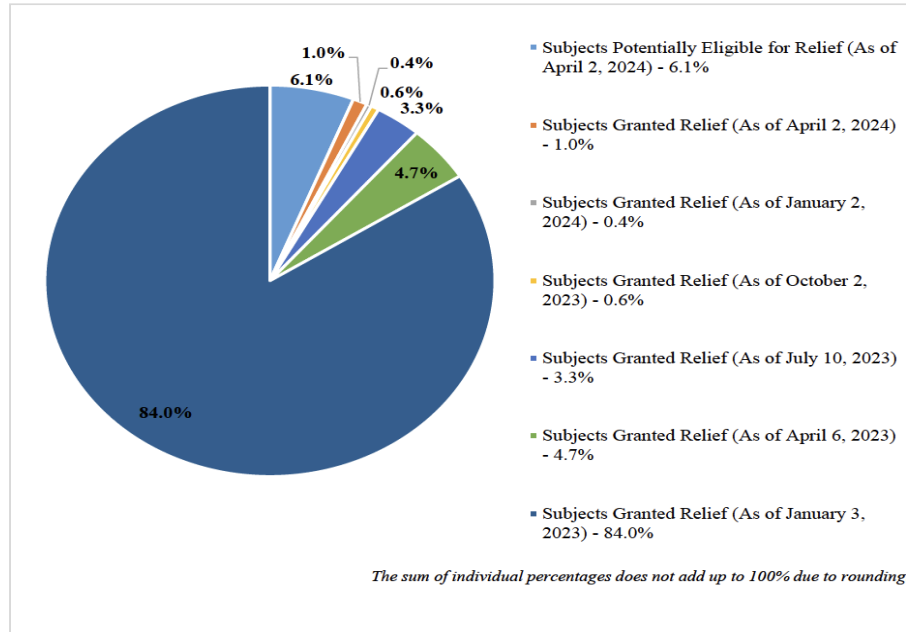
¹³⁷ Assemb. B. 1706, 2021–2022 Gen. Assemb., Reg. Sess. (Cal. 2022).

¹³⁸ See generally State of Cal. Capitol Museum, *Life Cycle of a Bill*, STATE OF CAL., <https://capitolmuseum.ca.gov/learn/about-the-government/life-cycle-of-a-bill/#:~:text=Most%20bills%2C%20whether%20signed%20by,by%20the%20Secretary%20of%20State>. [<https://perma.cc/S4RM-Q2PE>] (last visited Mar. 13, 2025) (stating that Californian laws typically take effect on Jan. 1 of the next year).

¹³⁹ See *Publications: AB 1706 Legislative Report*, CAL. OFF. OF THE ATT’Y GEN., <https://oag.ca.gov/publications> [<https://perma.cc/5AHJ-A4DQ>] (last visited Oct. 22, 2024).

cases county district attorneys have challenged.¹⁴⁰ Finally, the reports provide a breakdown of the race and gender of individuals that are eligible and have received record clearance relief.¹⁴¹

Figure 3: Percentage of Subjects Eligible for or Granted Relief



Unfortunately, the reports that have been issued by the DOJ do not provide information on whether the cannabis records that have been challenged by district attorneys have now been deemed ineligible. If the records that have been challenged by prosecutors are now ineligible, this would mean that hundreds and even potentially thousands of records would no longer be sealed in accordance with the law. The DOJ also provides very limited details on the public awareness campaign that they were mandated to implement as a part of AB 1706. In their reports, the DOJ states that they have hosted webinars with “36 individuals from 18 agencies, which included public defenders, district attorneys, and court staff.”¹⁴²

¹⁴⁰ See, e.g., CAL. OFF. OF THE ATT’Y GEN., AB 1706 LEGISLATIVE REPORT 11 (Dec. 2023), <https://oag.ca.gov/system/files/media/ab1706-q4-report.pdf> [<https://perma.cc/7DX7-3ENM>].

¹⁴¹ See, e.g., *id.* at 18.

¹⁴² *Id.* at 13.

At the start of 2023, LPP held a webinar that outlined the main components of AB 1706 and included testimony from key stakeholders, including District Attorney Diana Becton, who represents Contra Costa County.¹⁴³ Although it has been two full years since AB 1706 came into effect in California, just over 94% of the records that were eligible in 2023 have now been sealed.¹⁴⁴ According to reports issued by the DOJ, there are still over 14,000 people with eligible cannabis records that have not received record clearance relief.¹⁴⁵ While counties like Ventura, Los Angeles, Sonoma, Alameda, Calaveras and San Diego have made substantial progress towards sealing all eligible cannabis records (each of these counties have granted relief for over 90% of eligible cannabis records), there are other counties, such as Marin County, which have struggled to implement the law at all (Marin County has not sealed a single eligible cannabis record in 2023 according to data reported by the DOJ).¹⁴⁶ Counties like Imperial (only seven people out of an eligible 1,516 have been granted relief), San Joaquin (twenty-two people out of an eligible 1,566 have been granted relief), and Trinity (forty-one people out of an eligible 354 have been granted relief) have also significantly lagged behind in their implementation of AB 1706 in 2023.¹⁴⁷ From the reports that the DOJ has issued, it is not clear as to why these counties are significantly falling behind in their implementation of the new law. LPP has followed up with the DOJ numerous times since the start of 2024 to get answers and to offer technical assistance, but those requests have gone unanswered. There are numerous reasons why these counties could be lagging in their implementation of AB 1706 (e.g., data reporting issues, staffing, delays from county prosecutors, etc.), but without information from counties like Marin, Imperial, San Joaquin, and Trinity, it is impossible to provide specific remedies to address the implementation gaps.

The DOJ reports also highlight a high percentage of cannabis records that are eligible for sealing but have been challenged by prosecutors in various counties.¹⁴⁸ The DOJ has not indicated what happened with these cannabis records to warrant prosecutorial challenges. In Fresno, Kern, and Sutter counties, anywhere from five

¹⁴³ Last Prisoner Project, *AB 1706 Webinar - 3/13/23*, YOUTUBE (Apr. 17, 2023), <https://youtu.be/e3ENS6B-zrw>.

¹⁴⁴ CAL. OFF. OF THE ATT'Y GEN., *supra* note 140, at 2, 10.

¹⁴⁵ *Id.* at 10.

¹⁴⁶ Compare CAL. OFF. OF THE ATT'Y GEN., AB 1706 LEGISLATIVE REPORT 8–10 (Mar. 2023), <https://oag.ca.gov/system/files/media/AB-1706-Legislative-Report.pdf> [https://perma.cc/HB3X-9EZH], with CAL. OFF. OF THE ATT'Y GEN., *supra* note 140, at 8–10 (showing California counties' progress in sealing cannabis records between the start and end of the year).

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., CAL. OFF. OF THE ATT'Y GEN., *supra* note 140, at 11.

to seven percent of eligible records were challenged by prosecutors.¹⁴⁹ The DOJ's report showed that in Madera County, over 10% of eligible records were challenged by prosecutors.¹⁵⁰ The DOJ's reports have not made it clear whether these challenged records have now been deemed ineligible for record clearance relief. Without information on the status of these challenged cases, it is hard to evaluate how effective AB 1706 has been in ensuring retroactive relief for individuals with eligible cannabis records. The prosecutorial challenges that have been issued in California could lead to hundreds if not thousands of individuals now being deemed ineligible for record clearance relief.¹⁵¹

Lastly, there is minimal information within the DOJ's reports regarding the scope of the public awareness campaign that the agency was tasked with undertaking. There are numerous ways to educate the public about their newly sealed record (e.g., billboards, social media pages, educational webinars, meetings/presentations with community-based groups, etc.), and it does not appear as though any of these options have been explored. Without an extensive public awareness campaign, individuals will not know if they have received record clearance relief and, therefore, will be unable to successfully navigate a multitude of public services that could be impacted by whether or not they have a criminal record.

While there are various implementation issues that have been identified since AB 1706 came into effect, it is clear that none of these would have been discoverable if it were not for the data reporting requirements that were mandated in the bill. The reports that the DOJ have been issuing on a quarterly basis have allowed numerous stakeholders to identify gaps in implementation that can be raised with the agencies that are responsible for effectuating record clearance relief for eligible cannabis records. Although the DOJ and other agencies must still complete the record clearance process that was mandated in AB 1706, the continued data reporting by the DOJ will ensure that all stakeholders, including the general public, will be able to monitor implementation progress to ensure that every last individual that has an eligible cannabis record is able to have it sealed in accordance with the law.

VI. WHAT WAS LEARNED AND BEST PRACTICES

A. State-Initiated Record Clearance

As stated above, petitioning the state for record clearance is a complicated, expensive, and time-consuming process, especially for those without formal legal

¹⁴⁹ See CAL. OFF. OF THE ATT'Y GEN., AB 1706 LEGISLATIVE REPORT 11–12 (Mar. 2023), <https://oag.ca.gov/system/files/media/AB-1706-Legislative-Report.pdf> [https://perma.cc/HB3X-9EZH].

¹⁵⁰ *Id.* at 11.

¹⁵¹ See generally *id.* (showing over 2,000 total cannabis convictions being challenged by California prosecutors).

training or the resources to engage an attorney. Available data shows that when expungement is not state-initiated, only a small fraction of eligible individuals receive them. This disparity between individuals who are statutorily eligible to have their criminal record cleared and individuals who successfully petition and receive criminal record relief is known as the uptake gap.¹⁵² While data and research on the uptake gap are relatively limited, one study found that individuals impacted by the criminal justice system are more likely to shun interactions with formal government or state institutions and display “system avoidance” characteristics in an attempt to evade state surveillance.¹⁵³ However, system avoidance alone cannot account for the entirety of an uptake gap.¹⁵⁴ Indeed, other studies have found the burdensome nature of the petition process, and its ancillary requirements may be the largest factor contributing to the uptake gap.¹⁵⁵

A striking example of the uptake gap was seen in California, where, according to a report by the Drug Policy Alliance, there were approximately 500,000 people arrested for cannabis-related felonies and misdemeanors between 2006 to 2015.¹⁵⁶ Yet, as of September 2017, only 4,885 people had petitioned the courts to have their records modified.¹⁵⁷ A state-initiated process is necessary to expand the scale, scope, and pace of record clearance and effectively eliminates the uptake gap.

Due to variations in state record clearance laws, processes, data systems, and flows of information between and amongst agencies, there is no single preferred method of updating and automating criminal record clearance processes that is applicable to all states. In determining the state-initiated process that will work best for a particular state, it is recommended that states work collaboratively with agencies that hold court records or state-level criminal histories. In most states, this will include, at a minimum, the agency that maintains the state-level criminal history repository, as well as the state and local courts.

Wherever possible, states are encouraged to leverage existing systems and business processes to accomplish automated record clearance. For example, some states already grant automatic relief for non-convictions or juvenile convictions, which means that states can leverage those and other automated processes already

¹⁵² Prescott & Starr, *supra* note 15, at 2477.

¹⁵³ Sarah Brayne, *Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment*, 79 AM. SOCIO. REV. 1, 2 (2014).

¹⁵⁴ *See id.* at 17–19.

¹⁵⁵ JJ Prescott & Sonja Starr, *The Power of a Clean Slate*, REGUL., Summer 2020, at 28, 31.

¹⁵⁶ Press Release, Drug Pol’y All., *It’s Not Legal Yet: Nearly 500,000 Californians Arrested for Marijuana in Last Decade* (Aug. 17, 2016), <https://drugpolicy.org/news/its-not-legal-yet-nearly-500000-marijuana-arrests-california-last-decade/> [<https://perma.cc/8KPW-PR23>].

¹⁵⁷ STAFF OF S. COMM. ON PUB. SAFETY, 2017-2018-1793, Reg. Sess, at 3 (Cal. 2018).

in use.¹⁵⁸ States will want to take a user-centered, data-driven, and iterative approach to understand their current expungement statutes, criminal history data flow and structures, and existing barriers to petition-based processes.

The development of an automatic record clearance process does not mean the petition-based process for record relief should be abandoned entirely. Clarifying in law that the automatic record clearance process should only apply to digitized criminal records avoids ensnaring records that are only available in a paper form and may not be able to be cleared by operation of law alone. For this reason, it is recommended that states align the earliest year for which the state has digitized records with the look-back period of an automatic record clearance law. Additionally, states should maintain a petition-based process to ensure individuals with records from before the cutoff date of viable data may still seek to clear their criminal record.

B. *The SCREEN Model*

Since 2018, when Pennsylvania became the first state to provide automatic record clearance for adult conviction records, more than fifteen states have passed similar legislation to allow for the automatic removal of at least some type of adult conviction.¹⁵⁹ This includes at least twelve states that meet the criteria to be considered Clean Slate States.¹⁶⁰ Although the core of the Clean Slate model is the automation of the record clearance process, states with Clean Slate include offenses beyond cannabis.¹⁶¹

These two similar but distinct types of record clearance laws allow certain best practices derived from Clean Slate models to inform the design of a cannabis-centric approach that we have termed the State-initiated Cannabis Record Evaluation and Erasure Now (SCREEN) model. For example, many of the implementation barriers of Clean Slate Laws highlighted in The National Consortium for Justice Information and Statistics (SEARCH) report will pose similar impediments to states interested in SCREEN.¹⁶² Nevertheless, the procedures for clearing cannabis-related records

¹⁵⁸ *Automatic Clearing of Records*, NAT'L CONF. OF STATE LEGS. (July 19, 2021), <https://www.ncsl.org/civil-and-criminal-justice/automatic-clearing-of-records> [https://perma.cc/5Q2K-HUWH].

¹⁵⁹ RESTORATION OF RTS. PROJECT, *supra* note 23.

¹⁶⁰ *Clean Slate in the States*, THE CLEAN SLATE INITIATIVE, <https://www.cleanslateinitiative.org/states#states> [https://perma.cc/VR3F-F2QE] (last visited Oct. 22, 2024).

¹⁶¹ DRUG ENF'T & POL'Y CTR., *Marijuana Legalization and Record Clearing in 2022*, THE OHIO STATE UNIV. MORITZ COLL. OF L. https://moritzlaw.osu.edu/sites/default/files/2022-12/Marijuana%20Legalization%20and%20Record%20Clearing%20in%202022_infographic.pdf [https://perma.cc/R59K-VXWV] (last visited Oct. 22, 2024).

¹⁶² See THE NAT'L CONSORTIUM FOR JUST. INFO. & STATS., TECHNICAL AND OPERATIONAL CHALLENGES OF IMPLEMENTING CLEAN SLATE 13–18 (2023),

surface a unique set of challenges associated with these types of adult criminal records that behoove their own unique set of recommendations. As such, it is recommended that states with Clean Slate laws that are inclusive of adult cannabis criminal records, but not exclusive of these types of records, create unique eligibility criteria in order to specify a process specific to this universe of records. States with overlapping Clean Slate and SCREEN laws, such as Connecticut and California, have already enacted laws that codify these distinctions and allow for a bifurcated approach to record clearance. Further, since the experiences and observed best practices from implementing SCREEN also equally apply to states with or without an existing Clean Slate law, such as New Mexico and Missouri, whose laws provide a state-initiated record clearance process for only cannabis-related offenses, may also leverage the technological infrastructure erected to support SCREEN to extend eligibility for record relief to include different types of offenses and additional convictions.

VII. CLEAR AND BROAD ELIGIBILITY

A. Record Clearance Eligibility Should Be Broad, Clearly Defined, and Inclusive of All Convictions and Non-Convictions Involving Cannabis

Historically, cannabis-specific interactions with law enforcement, including those that result in charges that produce a criminal record, have been difficult to ascertain because of the various ways in which arrests related to cannabis have been historically recorded. These factors include (but are not limited to) the differences across jurisdictions in record-keeping requirements and in how cannabis-related offenses are denoted; whether a jurisdiction has criminal statutes pertaining specifically to cannabis or if cannabis-related offenses are covered under more general controlled-substance statutes; whether an individual is charged with a cannabis-related offense at the federal, state, or local level; whether a cannabis-related offense with aggravating factors is charged as a single offense or as one count in a multi-count indictment (i.e., an individual arrested for a cannabis-related offense while in possession of a firearm may face a separate weapons charge or a more punitive sentence if convicted);¹⁶³ and whether the offense that the individual has been charged with has been downgraded or reclassified to a lower offense by the state's legalization law.

California's SCREEN law provides clear statutory language that includes the

https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_ResearchFindings.pdf [https://perma.cc/A5H5-D22N].

¹⁶³ ERIN J. FARLEY & STAN ORCHOWSKY, MEASURING THE CRIMINAL JUSTICE SYSTEM IMPACTS OF MARIJUANA LEGALIZATION AND DECRIMINALIZATION USING STATE DATA 24–25 (2019), <https://www.ojp.gov/pdffiles1/nij/grants/253137.pdf> [https://perma.cc/7JE4-VVVF4].

specific code section violations that are eligible for relief.¹⁶⁴ Additionally, the law further clarifies that relief is extended to criminal records that stem from a cannabis offense wherein the penalty has been redesignated and that reclassification results in the criminal record being eligible for record clearance.¹⁶⁵ These provisions provide clearly defined categories of offenses that require less manual retrieval of records and help ensure that agencies that act as record repositories have clear guidance on what type of data they should be scrutinizing for potential relief. It is important to note that redesignated offenses inherently impose an impediment to a state-initiated record clearance process because the change in the criminal penalty does not automatically ripple through the state's criminal record repositories and convert the historical penalty into its newly reclassified status. To account for this, California's law provides a tiered state review process with clear deadlines for each state agency implicated to appropriately review potentially eligible records and usher them along the process to relief when appropriately warranted. This process includes 1) the California Department of Justice creating and disseminating a list of all potential eligible redesignated offenses to each appropriate county or jurisdiction's District Attorney's office or other prosecutorial offices; 2) a one-year review period in which the prosecutorial office may review and confirm the redesignation thereby resulting in the record being updated accordingly; 3) if the prosecutorial office objects to a redesignation, they may challenge the redesignation in question which results in a hearing being scheduled in the court of appropriate jurisdiction to determine if the redesignation is warranted.

Eligible cannabis charges that appear as part of a multi-count indictment may also pose an impediment to the implementation of SCREEN, especially if the eligible cannabis offense is co-mingled with an offense that is not cannabis-related or otherwise eligible for record clearance under the state's current record clearance statutes. In California, these types of co-mingled charges may be challenged by a prosecutorial office, though they may still be eligible for relief if a court determines such as part of the mandated hearing procedure for records challenged under CAL. HEALTH & SAF. § 11361.9.

Connecticut has implemented an additional feature as part of its SCREEN to address the potential problems associated with co-mingled cannabis charges that further streamline the process. Under Connecticut's law,¹⁶⁶ the eligible cannabis offense that is co-mingled with other offenses as part of a criminal record is cleared regardless of the eligibility or status of the other non-cannabis-related offenses.¹⁶⁷

¹⁶⁴ See CAL. HEALTH & SAFETY CODE § 11361.9(a) (West 2024).

¹⁶⁵ CAL. HEALTH & SAFETY CODE § 11361.9(c)(3) (West 2024); see also CAL. HEALTH & SAFETY CODE § 11361.8(e) (West 2022).

¹⁶⁶ S. B. 1201, 2021 Gen. Assemb., June Spec. Sess. (Conn. 2021).

¹⁶⁷ See Calendar Call, *Episode 81—Cannabis Erasure*, STATE OF CONN. JUD. BRANCH (July 13, 2023), <https://www.jud.ct.gov/podcast/Default.aspx?ArchMY=202307> [https://perma.cc/AGF5-FBFV].

As part of this procedure, Connecticut preserves the other non-eligible charges, ensuring those charges remain and are not mistakenly cleared.

VIII. NO LIMIT ON THE NUMBER OF ELIGIBLE
CANNABIS-RELATED CONVICTIONS THAT CAN BE CLEARED

A. Allow for Unlimited Eligible Cannabis-Related Records to Be Cleared, and Clarify Cannabis-Related Charges Should Not Hinder an Individual's Ability to Have Their Record Cleared

Though the universe of potentially eligible records under SCREEN and criminal records eligible under a general expungement statute or even a Clean Slate model may overlap, there remains a crucial distinction. Since SCREEN models are enacted in conjunction with adult-use legalization, there exists a finite population of records eligible for relief. That is to say, upon adult-use legalization, many criminal penalties for cannabis-related offenses are either nullified or downgraded. For offenses that are nullified, like simple possession of cannabis, that offense should no longer lead to an interaction with law enforcement that generates a criminal charge. This, in turn, means that the state should no longer accrue additional criminal records for these types of offenses and that the universe of potentially eligible records will remain static. This is in contrast to general expungement statutes or a Clean Slate model wherein criminal penalties will continue to accrue, thus generating criminal records in perpetuity until the state further decriminalizes or reconsiders the legality of the offense committed.

This distinction should be acknowledged by existing laws governing the record clearance process in a state to clarify that certain eligibility criteria or disqualifiers should not apply to adult cannabis criminal records. This is especially crucial in states that maintain a numerical limit on how many expungements an individual may be granted within their lifetime. These types of thresholds exist in states with petition-based expungements,¹⁶⁸ Clean Slate laws,¹⁶⁹ and states with SCREEN.¹⁷⁰ Consideration and carveouts to numerical limitations should apply to cannabis criminal records that are cleared as part of SCREEN so as not to disqualify individuals from consideration for record clearance under the state's non-cannabis centric record clearance law.

¹⁶⁸ N.C. GEN. STAT. § 15A-145.5 (2023).

¹⁶⁹ MICH. COMP. LAWS § 780.621 (2024).

¹⁷⁰ MO. REV. STAT. § 610.140 (2025).

IIX. NO WAITING PERIOD

A. Mandate No Waiting Periods for Receiving Record Relief; All Eligible Records Should Be Cleared as Soon as Possible Following the Passage of Record Relief Legislation

A common component in all variations of record clearance laws is the requirement that individuals must remain free of any criminal charges or must not accrue additional offenses for a specified period of time. These types of criteria are often referred to as “waiting periods,” and nearly every state enforces some type of waiting period for criminal convictions.¹⁷¹ Many states also provide exceptions to waiting periods for non-conviction records. Exempting non-convictions from a waiting period is a critical feature to ensure an individual does not obtain a criminal record for an offense they ultimately were not convicted of. This waiver of the waiting period should also apply to cannabis-related convictions, as they do in California, as well as in Connecticut,¹⁷² Minnesota,¹⁷³ and Virginia.¹⁷⁴

Even after adult-use legalization, cannabis-related offenses that are pending final adjudication should warrant special consideration and may require additional legislative language. Some states may have existing constitutional concerns or precedents that should inform how the state must incorporate cannabis-related offenses as part of a comprehensive SCREEN. For example, in Connecticut, the Chief State’s Attorney for the Division of Criminal Justice argued that, because the state did not retroactively decriminalize cannabis as part of the adult-use legalization law, seeking to clear cannabis-related offenses pending final adjudication, even if they would have been eligible upon final adjudication, would result in the “unconstitutional expedient of usurping and directing the exercise of the core executive branch power of prosecutorial discretion in violation of the Connecticut Constitution.”¹⁷⁵ In this case, the Chief State’s Attorney issued a letter instructing state prosecuting offices to conduct a review of pending cases and dismiss those

¹⁷¹ See, e.g., MICH. COMP. LAWS § 780.621 (2024).

¹⁷² S. B. 1201, 2021 Gen. Assemb., June Spec. Sess. (Conn. 2021).

¹⁷³ MINN. STAT. § 609A.055 (2023).

¹⁷⁴ VA. CODE ANN. § 19.2-392.6 (2023).

¹⁷⁵ *Raised Bill 6787, AAC the Prosecution of Cannabis-Related Cases and Modification of Sentences for Cannabis Related Offenses: Hearing on B. 6787 Before the Joint Judiciary Comm.*, 2023 Gen. Assemb. 3 (Conn. 2023) (statement of Patrick J. Griffin, Chief State’s Att’y), <https://www.cga.ct.gov/2023/juddata/TMY/2023HB-06787-R000301-Griffin,%20Patrick,%20Chief%20States%20Attorney-Division%20of%20Criminal%20Justice-Opposes-TMY.PDF> [https://perma.cc/C2VH-3B3H].

charges that would be eligible for record clearance under the state's SCREEN.¹⁷⁶ This resulted in the dismissal of an additional 1,562 cannabis-related cases being dropped,¹⁷⁷ demonstrating that the universe of pending charges that are eligible for relief may be substantial.

IX. LIMITED JUDICIAL REVIEW

A. Limit Judicial and Prosecutorial Review to Statutory Ineligibility, and Provide Carveouts to Account for Gaps in Data that Otherwise Render a Record Ineligible

Maintaining judicial discretion in any court procedure, including record clearance, is of paramount concern. In order to ensure courts preserve the ability to rule a criminal record ineligible for relief under a SCREEN model, judicial review should be clearly defined and limited only to records that are found to be statutory ineligible for relief. It is recommended that, as part of the eligibility criteria under SCREEN, states provide exceptions for common and persistent issues related to data-keeping practices.

In Arizona, under the Smart and Safe Arizona Act ("Prop. 207"), individuals who were arrested, charged, convicted, or acquitted of a qualifying offense that occurred prior to legalization (November 30, 2020) may petition the court to have eligible records expunged.¹⁷⁸ Prior to Prop. 207, all marijuana possession charges under two pounds were considered class six felonies.¹⁷⁹ Consequently, many records related to an arrest for marijuana below two pounds do not have a specific weight associated with the conviction since the exact amount did not matter, so it was rarely documented. However, because Prop. 207 contained specific language that only convictions for charges of two and a half ounces or less are eligible for expungement, a Pima County judge ruled that the court must issue an objection and send petitions requesting an adult cannabis criminal record to a hearing, wherein the court may review any documents that may contain the weight associated with the charge the individual is seeking to have cleared.¹⁸⁰ Historic data-keeping practices should not

¹⁷⁶ Letter from Patrick J. Griffin, Chief State's Att'y, to Conn. Joint Judiciary Comm. (Mar. 31, 2023), <https://s3.documentcloud.org/documents/23741308/connecticut-marijuana-cases-letter.pdf> [<https://perma.cc/B4Y5-RUJ6>].

¹⁷⁷ Ken Dixon, *CT Chief State's Attorney Reviewed 4,248 Pending Cannabis Cases, Dropping Charges on 1,562 Defendants*, CONN. INSIDER (Apr. 4, 2023), <https://www.ctinsider.com/politics/article/prosecutors-reviewed-4-248-cannabis-cases-17875404.php> [<https://perma.cc/4M89-38X5>].

¹⁷⁸ ARIZ. REV. STAT. ANN. § 36-2862 (2020).

¹⁷⁹ ARIZ. REV. STAT. ANN. § 13-3405(B)(1) (2019).

¹⁸⁰ Kiera Riley, *The Devil in the Details*, THE STATE PRESS (Sept. 8, 2021, 7:51PM), <https://www.statepress.com/article/2021/09/marijuana-expungement-prop-207> [<https://perma.cc/6D7N-CVDJ>].

render records ineligible or cause them to be sequestered for further judicial review.

Although not an automated process, this type of compulsory review was avoided in California's SCREEN because the law references the statutes of the eligible offenses as opposed to including weights, conditions, or other components of the statute itself. This ensures that any individual charged under the referenced statute remains eligible for relief, even if details related to the conviction are missing.

As part of its SCREEN, Rhode Island offered additional legislative language to further limit judicial review and ensure their state-initiated process could be implemented without a manual review of records.¹⁸¹ Though Rhode Island's SCREEN includes a weight component to its eligibility criteria, the law also provides a carve-out that in the event that court materials or supplemental documents do not state the weight, the court shall presume the amount is at or below the limit that is eligible for record clearance.¹⁸²

X. PUBLIC ADVOCACY CAMPAIGN

A. *Mandate a Public Advocacy Campaign as Part of State-Initiated Record Clearance Laws to Ensure Affected Individuals Are Aware They Have Received Relief*

The traditional petition-based model is prohibitive in many ways, and record relief is optional at all points in the process. Filing a petition does not guarantee that an individual will actually receive relief but merely ensures the individual will be assessed for relief. Nevertheless, the outcome of each petition is communicated directly to the petitioner at the conclusion of the court process. Creating a state-initiated process removes the petitioner, thereby necessitating a notification process to ensure that the record holder is aware they have received relief.

Under a state-initiated model, the state proactively evaluates the known universe of criminal records against the eligibility criteria outlined in statute to determine which records should be granted relief. In this way, records are presumed eligible until proven otherwise. This presumption coupled with the technical considerations allow for significantly more records to be cleared than ever before.

As part of the legalization ballot initiative that Missouri voters approved in 2022, Amendment 3 included provisions to provide state-initiated record clearance for qualifying cannabis-related offenses.¹⁸³ A 2023 study of Missouri's criminal record repository found that there were around 518,000 individuals with convictions that were potentially eligible for record relief and there were a total of about 1.2

¹⁸¹ 12 R.I. GEN. LAWS. § 12-1.3-5(d) (West 2022).

¹⁸² *Id.*

¹⁸³ *Missouri Amendment 3, Marijuana Legalization Initiative*, BALLOTPEDIA, [https://ballotpedia.org/Missouri_Amendment_3_Marijuana_Legalization_Initiative_\(2022\)](https://ballotpedia.org/Missouri_Amendment_3_Marijuana_Legalization_Initiative_(2022)) [<https://perma.cc/Y2MT-3SHU>] (last visited Mar. 13, 2025); MO. CONST. art. XIV, § 2(10)(8)(b).

million records eligible but not yet granted relief.¹⁸⁴ Yet, within one year of SCREEN, Missouri had already granted 103,558 expungements.¹⁸⁵ Although available data does not distinguish how many of those 1.2 million records were for cannabis, Missouri's SCREEN represents a significant impact in closing the uptake gap.

The transition to a state-initiated record clearance process raises the question of when we should consider the record relief process complete. Is relief considered granted upon the completion of the technical steps associated with the record clearance procedure; or is it when the individual is cognizant that the record clearance procedure has been completed on their behalf and they are now fully knowledgeable about their relief and its associated benefits? What duty does a state have to inform individuals about their relief and how would they provide that notification?

California's law does presume some state responsibility for notifying individuals by including provisions that the state must conduct a public awareness campaign,¹⁸⁶ but, as demonstrated earlier, that campaign has been relatively underwhelming, and not as robust as it could be. This means that many individuals are unaware of the fact that they have received relief, negating the impact given that they don't know they are eligible to take advantage of a new universe of opportunities such as housing, employment, public benefits, and more.

Research has shown that court-initiated notifications of upcoming court dates have significantly reduced the rate of failures to appear.¹⁸⁷ However, since record clearance contemplates relief for criminal records that can be decades old, a court-initiated notification program may not have the same success because an individual's contact information may be incorrect or outdated. Another potential solution is to determine which counties or communities indicate the areas of the highest concentration of record relief and conduct targeted outreach in these areas to

¹⁸⁴ COLLEEN CHIEN, SANTA CLARA L., THE MISSOURI SECOND CHANCE EXPUNGEMENT GAP 3 (2023), <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2012&context=facpubs> [<https://perma.cc/NX7H-5H2J>].

¹⁸⁵ Rebecca Rivas, *Missouri Courts Request \$3.7 Million to Continue Arduous Marijuana Expungement Process*, MO. INDEP. (Jan. 17, 2024, 8:00 AM), <https://missouriindependent.com/2024/01/17/missouri-courts-request-3-7-million-to-continue-arduous-marijuana-expungement-process> [<https://perma.cc/2BTv-CWXZ>].

¹⁸⁶ CAL. HEALTH & SAFETY CODE § 11361.9(e) (West 2024).

¹⁸⁷ JOANNA THOMAS & ABDIAZ AHMED, COURT DATE NOTIFICATIONS: A SUMMARY OF THE RESEARCH AND BEST PRACTICES FOR BUILDING EFFECTIVE REMINDER SYSTEMS 28–29 (2021), <https://www.nycja.org/assets/downloads/Court-Notification-Report-DRAFT-NN-3-8-final.pdf> [<https://perma.cc/X8KB-V7LQ>].

encourage individuals to check the status of their criminal record.¹⁸⁸

Notification of relief under state-initiated record clearance models is a persistent issue that no state has been able to completely solve. Legal tools such as Rasa Legal¹⁸⁹ have made significant strides in simplifying the process of evaluating an individual's eligibility for relief, but even tools like this still require an individual to initiate the process. As more states contemplate state-initiated record clearance models, this will be a burgeoning field of research to determine potential solutions.

XI. REPORTING REQUIREMENTS

A. Include Provisions that Require the State's Lead Actor in the Record Clearing Process to Issue a Report on a Regular Basis Summarizing Key Metrics Related to the Fulfillment of State-Initiated Record Clearance for Qualifying Offenses

In transitioning to a state-initiated record clearance process, lawmakers should consider reporting requirements to ensure that the automatic record clearance process for qualifying cannabis offenses are implemented with fidelity and in accordance with the law (i.e., deadlines are met, agencies complete their responsibilities, appropriate individuals receive relief). In a petition-based model for record clearance, these types of reporting requirements have less utility since the petitioner is inherently aware of their petition and whether or not it results in record relief. Consequently, there are few states that require reporting or data collection on the number of petitions filed for clearance or the ultimate outcomes of those petitions. However, in the context of a state-initiated process, these reporting requirements are critical to both ensure full implementation and to account for the impact of the program. Legal provisions that require the criminal record repository or other appropriate agencies as needed to issue a report on a regular basis (e.g., yearly, quarterly, etc.) on key metrics related to the fulfillment of state-initiated record clearance can help spotlight potential areas of concern and, depending on the metrics required, can be used to collect data to support other types of state-sponsored programs or initiatives.

California's law mandates quarterly reports to the Legislature that must include, at a minimum 1) the total number of cases recalled, dismissed, resentenced, sealed, and redesignated in each county, and the status of the department's update to the state summary criminal history database; 2) the status of cases challenged by the prosecution, and all relevant statistical information regarding the disposition of the challenged cases in each county; and 3) the number of past convictions in the state

¹⁸⁸ See CAL. HEALTH & SAFETY CODE § 11361.9(a) (West 2024) (showing that some states, like California, already notify the prosecutors of a jurisdiction about eligible cases, so areas ripe for targeted research are more easily ascertainable).

¹⁸⁹ See RASA LEGAL, <https://www.rasa-legal.com> [<https://perma.cc/HD8A-VXAY>] (last visited Oct. 22, 2024).

summary criminal history database that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.¹⁹⁰

XII. INDIVIDUALS CAN STILL ACCESS THEIR RECORDS

A. *Ensure Access by the Record Holder to Their Criminal Record Post-Relief*

Even after an individual has had their record cleared, it is crucial to ensure that individuals preserve some level of access to their criminal record in order to prove that record relief has been granted.

The area where this problem most commonly occurs is in the context of immigration. Since the enactment of the Immigration and Nationality Act, drug-related offenses may serve as grounds for deportation for any non-citizens, regardless of residency status.¹⁹¹ The act establishes that “any alien who at any time after admission has been convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to controlled substances” is deportable by law.¹⁹² Individuals are considered in violation of the Immigration and Nationality Act for the possession of more than thirty grams of marijuana, elevating offenses that would typically constitute mere misdemeanors to aggravated felonies for non-citizens.¹⁹³ This charge elevation designates marijuana possession as grounds for federal deportation. Non-citizens who need to prove eligibility for an immigration benefit, like naturalization, may need to prove that their expunged conviction is not a bar to eligibility. As such, non-citizens may need to prove that even though the “conviction” still may exist for immigration purposes, it does not involve the type of crime that precludes them from immigration benefits.

Another complexity to permanent erasure is the proliferation of third-party background check companies. This proliferation has given rise to the increasing practice of data scraping, especially when it comes to criminal records and court history. Scraping occurs when companies use digital tools to wholesale copy or extract data or source code materials from websites that are then used to create facsimiles of the information extracted.¹⁹⁴ Scraping can be particularly detrimental to individuals who have benefited from record clearance because these snapshots represent outdated data and may not reflect cleared offenses. Despite this concern,

¹⁹⁰ CAL. HEALTH & SAFETY CODE § 11361.9(h) (West 2024).

¹⁹¹ Margaret E. Finzen, *Systems of Oppression: The Collateral Consequences of Incarceration and Their Effects on Black Communities*, 12 GEO. J. POVERTY L. & POL’Y 299, 308 (2005).

¹⁹² Chin, *supra* note 39, at 261.

¹⁹³ *Id.*

¹⁹⁴ Andre Assumpcao, *Tech Series: What’s Web Scraping?*, NAT’L CTR. FOR STATE CTS. (Nov. 2, 2023), <https://ncsc.contentdm.oclc.org/digital/collection/tech/id/1182/> [<https://perma.cc/VBR6-XZEK>].

the United States Ninth Circuit Court of Appeals has found that scraping publicly accessible data from the Internet does not constitute a violation of the Computer Fraud and Abuse Act.¹⁹⁵ This means that an individual's criminal record can ricochet across the Internet long after an individual has been granted relief.

For these reasons, it is recommended that states avoid record clearance procedures that permanently erase records. Balancing the privacy of cleared records while retaining access for the individual may require additional provisions of law to ensure the criminal record is preserved in some capacity. Some states, like Hawai'i and New Jersey, provide certificates of expungement to individuals to certify that relief has been granted. Pennsylvania, the first state to enact a Clean Slate law, provides the most protection against scraping for individuals. The Administrative Office of Pennsylvania Courts (AOPC) maintains a life cycle file for all criminal records that follows each criminal record from its creation all the way through criminal record clearance.¹⁹⁶ The AOPC regularly updates the life cycle to reflect changes, like newly cleared records, and requires all purchasers, including third-party background check companies, to update their data.¹⁹⁷ Although Pennsylvania's law is comprehensive, few states have the technical infrastructure to support such robust reporting features. In California, individuals may request their criminal history information to verify their updated record has rippled through the state's criminal repositories or may contact the courts, prosecuting office, or public defender's office to assist in verifying the updates.¹⁹⁸ This provision does not ensure third-party background check companies are also updating their facsimile of records, but it does provide individuals the ability to contest potentially erroneous or outdated records.

Many jurisdictions that have implemented some form of record clearance have overlooked this important element, incorrectly assuming that completely eradicating the criminal records is in the best interest of the beneficiary. New states that are looking to enact some form of record clearance for cannabis-related offenses or otherwise can learn from the states who have devised solutions so that individuals retain access to these records as needed.

CONCLUSION

Though the implementation of state-initiated record clearance for cannabis offenses in California, like many other states, has been fraught, we now have a

¹⁹⁵ *HiQ Labs v. LinkedIn*, 31 F.4th 1180, 1201 (9th Cir. 2022).

¹⁹⁶ General Policy Statement, Pa. Governor's Off. of Admin., Information Technology Policy: The Life Cycle of Records (Sept. 21, 2007), https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf [<https://perma.cc/CBC3-XBPF>].

¹⁹⁷ THE NAT'L CONSORTIUM FOR JUST. INFO. & STATS., *supra* note 162, at 11.

¹⁹⁸ CAL. HEALTH & SAFETY CODE § 11361.9(a) (West 2024).

roadmap for how to achieve true relief for individuals still burdened with the collateral consequences of a cannabis conviction. States are increasingly likely to pass legislation with the intent of providing this relief, even in the more conservative jurisdictions that have not yet fully legalized cannabis. Though the political will is there, the key to undoing the costly harms of prohibition will be in crafting thoughtful legislation that considers each jurisdiction's criminal legal data infrastructures, as well as cohesive technical assistance that engages relevant stakeholders, and robust informational campaigns to ensure recipients can take full advantage of this record clearance.

While no state has perfectly implemented cannabis record clearance, the decriminalization of cannabis, and now other substances, provides an opportunity to enact bold retroactive criminal legal reforms. Though a critical step in reversing our nation's failed approach to drug policy, legalization of cannabis is insufficient to fully address the harm caused by a century of prohibition.¹⁹⁹ Legalization is a proactive measure, creating a new and regulated market and ending arrests and prosecutions of most cannabis-related activity. But truly equitable legalization that is in line with the spirit of ending prohibition will require retroactive justice for those who remain impacted by the legal consequences of cannabis-related arrests and convictions.²⁰⁰ As entrepreneurs thrive, states benefit from increased tax revenue, and consumers enjoy safe and legal access to regulated cannabis marketplaces, those who bore the brunt of cannabis criminalization—and continue to pay the price today—should have their records automatically cleared in the interest of justice.

¹⁹⁹ Douglas A. Berman & Alex Kreit, *Ensuring Marijuana Reform Is Effective Criminal Justice Reform*, 52 ARIZ. STATE L.J. 741, 766–67 (2020).

²⁰⁰ *Id.* at 743.