

From: Civil Justice Clinic, Quinnipiac University School of Law
Re: Erasure of Marijuana Convictions
Date: October 17, 2019

Under current Connecticut law, an individual with a conviction for an offense that is later decriminalized can petition the court for an order of erasure.¹ However, the burden is on the individual to file the petition in court and establish an adequate factual record showing that the conduct of conviction has been decriminalized.² Individuals convicted of marijuana possession can obtain an erasure order if they establish that the offense involved possession of less than a half-ounce of marijuana (as this conduct was decriminalized in 2011). Because the statute of conviction covered possession of larger amounts of marijuana as well, petitioners must establish the quantity of marijuana involved in the offense.

We propose that Connecticut enact legislation requiring state agencies to identify and erase some marijuana possession convictions. Across the country, some states and localities have recently adopted this approach. Connecticut law currently provides for the automatic erasure of police and court records when a charge has been dismissed or nolled, or a defendant has been acquitted after trial, but does not provide for the automatic erasure of any type of conviction.³

I. APPROACHES OF OTHER STATES AND LOCALITIES

In some states and localities, prosecutors and other government entities are identifying and erasing marijuana convictions.

Under legislation passed in California in 2018 following legalization of marijuana, the state Department of Justice had until July 1, 2019 to identify cases that may be eligible for sealing or redesignation because the conduct underlying the offense is no longer criminal or the offense was reduced to a misdemeanor or infraction.⁴ After the convictions have been identified, prosecutors then have one year, from July 1, 2019 to July 1, 2020, to decide whether to challenge the sealing or redesignation of identified cases. Any case that prosecutors do not challenge will be sealed or redesignated. The public defender's office must make reasonable efforts to notify the person whose entitlement to relief is being challenged. Those who are presently serving a sentence or who proactively petition for dismissal will be prioritized for review and dismissal. Any felony conviction redesignated as a misdemeanor or infraction "shall be considered a misdemeanor or infraction for all purposes." Code for America, a nonprofit tech organization, developed a computer program that quickly identifies eligible cases in court documents. The program, which is being made available to all district attorney offices in California, has already been used by some counties to clear approximately 75,000 marijuana convictions.⁵

¹ Conn. Gen. Stat. § 54-142d. Such an order directs "all police and court records and records of the state's or prosecuting attorney pertaining to such case to be physically destroyed." *Id.*

² *State v. Spielberg*, 323 Conn. 756 (2016).

³ Conn. Gen. Stat. § 54-142a.

⁴ Cal. Health & Safety Code § 11361.8, 11361.9.

⁵ Associated Press, *Goodbye Old Pot Charges: California Program to Erase Old Marijuana Convictions*, NBC Los Angeles, Sept. 6, 2019, <https://www.nbclosangeles.com/news/local/marijuana-los-angeles-san-francisco-recreational-pot-559590321.html>.

Under legislation enacted in New York that became effective on August 28, 2019, records of past convictions for certain marijuana possession offenses will be automatically expunged. The new legislation designates possession of under two ounces of marijuana a violation, punishable by a fine of up to \$200. Possession of under one ounce is punishable by a fine of up to \$50.⁶ The legislation requires past convictions involving quantities that have been decriminalized to be vacated and dismissed, and all records of such conviction shall be expunged within one year of the law's effective date.⁷

Following legalization of marijuana in Illinois, legislation was enacted providing for expungement of certain prior convictions for possession of less than 30 grams of marijuana. The legislation places the burden on the state police to identify these records and provides an opportunity for prosecutors to file objections. Convictions meeting certain criteria are sent to the governor's office with a recommendation from the Prisoner Review Board. If the governor grants a pardon, the case is filed with the court, and the court is required to grant expungement.⁸

Prosecutors in other cities such as Boulder and Seattle are taking the lead in affirmatively identifying marijuana convictions and petitioning for their erasure.⁹

Other states are also implementing laws providing for automatic expungement of certain prior convictions. Pennsylvania and Utah both passed Clean Slate laws, under which certain categories of past convictions will be automatically expunged or sealed. Pennsylvania provides an automatic mechanism to seal certain types of misdemeanor convictions after a person has been crime-free for a period of ten years following the date of conviction and has paid financial obligations.¹⁰ In Pennsylvania, possession of less than 30 grams of marijuana is a misdemeanor punishable by up to thirty days imprisonment and a fine of up to \$500, and convictions for such offenses are eligible for sealing.¹¹ In addition to sealing of marijuana offenses, Pennsylvania's legislation allows for the sealing of a conviction for possession of any controlled substance, such as heroin and cocaine, among many other substances.¹² Utah's Clean Slate Act, effective May 1,

⁶ S6579A (N.Y. 2019) (codified at N.Y. Penal § 221.05, 221.10),
<https://legislation.nysenate.gov/pdf/bills/2019/S6579A>.

⁷ N.Y. Crim. Pro. § 160.50, N.Y. Penal §§ 221.05, 221.10

⁸ HB 1438 (codified at 20 ILCS 2630/5.2), <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0027.pdf>

⁹ See, e.g. Mitchell Byars, *Boulder County DA Looking to Dismiss Thousands of Past Marijuana Possession Convictions*, Daily Camera, Nov. 30, 2018, http://www.dailycamera.com/news/boulder/ci_32302890/boulder-county-da-looking-dismiss-thousands-past-marijuana; Christina Maxouris and Brandon Griggs, *Seattle Will Vacate more than 500 Convictions for Marijuana Possession, Saying They Unfairly Impact People of Color*, CNN, Sept. 25, 2018, <https://www.cnn.com/2018/09/25/health/seattle-vacates-weed-charges-trnd/index.html>.

¹⁰ HB 1419 (Penn. 2018) (codified at 18 Pa.C.S.A. § 9122.2),
<http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56>. The state identifies and seals cases every month, and since the law went into effect on June 28, 2019, it has sealed 10 million cases.

<https://mycleanslatepa.com/clean-slate-a-future-without-judgment/>

The automated process is also expected to save the state money, with the cost of clearing records coming in at about 5 cents per case, compared to possibly thousands of dollars under normal petition systems.

<https://www.washingtonpost.com/nation/2019/07/01/criminal-records-can-be-life-sentence-poverty-this-state-is-automatically-sealing-some/>

¹¹ 35 P.S. § 780-113.

¹² *Id.*

2020, allows for automatic expungement of a “clean slate eligible case.”¹³ Clean slate eligible cases include class B and C misdemeanors, and possession of marijuana is a class B misdemeanor in Utah.¹⁴ To have the case expunged, an individual must pay any court-ordered restitution, meet certain other criteria, and wait until a certain period of time has elapsed since conviction or release.¹⁵

II. PROPOSAL FOR CONNECTICUT

Connecticut could enact legislation that provides for the erasure of some marijuana possession convictions and requires state agencies to identify and erase the convictions.

- **Possession Offenses Committed prior to July 1, 2011**

For offenses committed prior to October 1, 2015, marijuana possession was charged as a misdemeanor under Conn. Gen. Stat. § 21a-279(c) if less than four ounces of marijuana was involved in the offense. Although some other substances could technically be charged under that subsection, we understand that the vast majority of offenses charged under § 21a-279(c) involved marijuana (and none of the offenses involved narcotics or hallucinogens, which were charged under other subsections). Prior to July 1, 2011, individuals could be convicted under § 21a-279(c) for possession of any quantity of marijuana. (Possession of less than half an ounce was decriminalized in 2011). Thus, in many instances, pre-2011 convictions under § 21a-279(c) involved conduct that has since been decriminalized. Unfortunately, charging documents do not typically identify the particular substance and quantity of drug involved in the offense and the Judicial Branch’s database does not contain this information. Rather than engage in the time-intensive process of considering individual petitions to determine substance type and quantity, state agencies (Judicial and the state police) could simply identify and erase all convictions under § 21a-279(c) from prior to 2011—as the agencies can identify convictions under a particular subsection without difficulty and all of the convictions will be at least eight years old.

- **Possession Offenses Committed on or after July 1, 2011**

From July 1, 2011 until October 1, 2015, possession of marijuana was charged as a misdemeanor under Conn. Gen. Stat. § 21a-279(c) if the offense involved at least a half ounce but less than four ounces of marijuana.

Following legislation that took effect on October 1, 2015, possession of all types of drugs is charged as a misdemeanor under Conn. Gen. Stat. § 21a-279(a) (simple possession).

¹³ H.B. 431 (Utah 2019) (codified at Utah Code 1953 § 77-40-102),
<https://le.utah.gov/~2019/bills/static/HB0431.html>

¹⁴ *Id.* §§ 77-40-102, 58-37-8

¹⁵ *Id* §§ 77-40-102, 77-40-105. The relevant time period for a Class B misdemeanor is 4 years.

Legislation could provide for automatic erasure of convictions for conduct occurring on or after July 1, 2011 if the offense involved marijuana, at least three years has elapsed since the date of conviction, and the person has not reoffended in the previous three years.

The legislation could require identification by the Judicial Branch of all convictions (1) for violations of § 21a-279(c) between July 1, 2011 and October 1, 2015 and (2) for violations of § 21a-279(a)—where three years has passed without a subsequent conviction.

The office of the state's attorney should be given a period of time to review the cases and either agree to erasure or object on the ground that the offense did not involve marijuana. Cases with no objection filed would be erased automatically by state agencies. Cases where an objection is filed would be considered by the court so that the substance involved in the offense could be determined.