Recommendations for

Automatic Record Clearance Policies in Legalization and Decriminalization Legislation

11 best practices for creating high-impact, implementable policies that clear conviction records—automatically

January 2022
Introduction

Automatic criminal record clearance is a new approach to addressing harm caused by interactions with the criminal legal system.

It is crucial that cannabis legalization and drug decriminalization policies include record clearance as an equity provision—**but it must be automatic record clearance.**

If and when the laws determining criminality change, government should provide automatic record clearance as a reparative service to the people who were impacted by criminalization before the change.

This report provides 11 recommendations for crafting automatic record clearance legislation that is **impactful** and **implementable.** There are key factors that allow automatic record clearance policies to help as many impacted people as possible—and to provide that help on a meaningful timeline.

We hope to provide you with useful information on what automatic record clearance is, how it works, and why it’s the only **just and equitable** way to approach record clearance.

No one can deny that cannabis legalization has gained incredible momentum in recent years. Eighteen states have legalized recreational consumption by adults, and combined with decriminalization and medical marijuana programs, 37 states permit some type of non-criminal adult use.

Many states are poised to pass legalization laws in the near future, and an end to federal prohibition is likely on the horizon. This comes as some state and local jurisdictions move to legalize or decriminalize other scheduled substances, such as psychedelics or all drugs in small amounts.

When substances are legalized or decriminalized, it means that adult use will no longer be a law enforcement issue in most cases—and no longer one of the main entry points for people into the criminal legal system.

**But what about the people who have already been impacted by criminalization?** Decades of draconian policies like the War on Drugs have led to countless people being detained, cited, arrested, and incarcerated in jurisdictions where controlled substances like cannabis were (or still are) considered a criminal offense.

These interactions with the criminal legal system create **criminal records** that follow people around indefinitely, and a criminal record, no matter what it’s for or when it’s from, **can easily become a life sentence to poverty.** Criminal records stop people from moving forward in their lives by blocking them from good jobs, housing, education, lawful immigration status, and more. These barriers don’t just impact individual people—they undermine families and entire communities, especially Black, Indigenous, and people of color (BIPOC) who have been disproportionately harmed by criminalization policies like the War on Drugs.

**Clearing criminal records** is one of the best tools we have to address and begin repairing this lasting form of harm.
Nearly every state that has legalized cannabis so far has ensured that some types of past convictions and non-convictions (e.g. arrests without charges) would be eligible for record clearance. The record clearance process can include expungement, sealing, or another legal remedy that limits what consumer reporting agencies, data aggregators, background check companies, and the general public are able to find out about someone’s criminal case history.

This process is very important, but it has not yet been widely perfected.

The problem is that just because a conviction is eligible for record clearance does not guarantee that individuals will receive relief. While hundreds of thousands of cannabis convictions have become eligible, in many places the burden remains on the people living with those records to figure out what to do about it, and the traditional “petition-based” processes in most states simply can’t clear records at scale.

It doesn’t need to be this way. Every state government has the capability to clear eligible criminal records automatically, without requiring people to personally apply for the relief for which they’re eligible. An automatic process shifts the burden from individuals to government, making record clearance into a reparative service government can and should provide.

Our perspective comes directly from our work. Code for America is a national nonprofit organization that believes that the mindful use of technology can help make government work better, for everyone.

Our criminal justice portfolio helps government implement policies that decarcerate, decriminalize, and reinvest in communities by eliminating barriers to jobs, housing, education, and more. Our flagship program in the criminal justice portfolio, Clear My Record, works with advocates, policymakers, and government staff across the U.S. to design and implement automatic record clearance policies.

The recommendations in this report were developed based on our experience helping states design and implement automatic record clearance policies so that all eligible people can receive much-needed relief.

At Code for America we want to clear all eligible records, and we believe that the only just and equitable path is for government to make this happen automatically. We believe automatic record clearance is a service that government can and should provide to people living with convictions, free of charge and as soon as they become eligible.

Legislation legalizing or decriminalizing cannabis and other substances must include automatic record clearance provisions in order to be just and equitable—and those provisions need to be high-impact and implementable if they are going to clear barriers to good jobs, housing, education, family life, and more for the millions of people impacted by criminalization.
Recommendations: How to make automatic record clearance policies that are impactful and implementable

People should not need to continue suffering the burden and stigma of records for conduct that is no longer considered criminal. Record clearance is the best remedy we have, but making old convictions eligible for record clearance is not enough. This is why in recent cannabis legalization legislation, advocates and policy makers have included automatic record clearance as a core provision.

In this section we provide recommendations for crafting automatic record clearance policies that should be included in legalization or decriminalization legislation.

The recommendations can also be used in stand-alone legislation to automate record clearance in states that have already legalized or decriminalized drug-related conduct, but only provided eligibility for traditional, petition-based record clearance processes. The same is true for states that have legalized or decriminalized but did not make now-legal conduct eligible for record clearance at all.

We believe that automatic record clearance is the only just and equitable approach, so our recommendations are designed to help advocates and policymakers craft laws that help as many people as possible—and can be implemented effectively.

Traditional, petition-based record clearance systems are not up to the task of clearing records at scale, and they do not distribute the benefits of record clearance equitably. In order to clear eligible records, these older systems require individual people to file lengthy applications, pay fees, and navigate complex and time-consuming legal processes. Very few eligible people—usually only single-digit percentages—actually receive record clearance in these systems.

Automatic record clearance shifts the burden from individual people to the government and eliminates the application process for individuals altogether. In an automatic system, your record gets cleared as soon as it's eligible.

These recommendations are based on our experience implementing automatic cannabis record clearance in California and helping multiple state governments design and implement “Clean Slate” legislation that automates relief for a broader range of misdemeanors and felonies.
Our recommendations are presented in three categories. First are recommendations about the process of automatically clearing records. They include an advisory against relying on petition-based record clearance, a statement on the importance of the process being initiated and coordinated by a state-level agency, and an explanation about why there need to be deadlines attached to every major milestone of the automatic record clearance process. These recommendations are very important for implementation, but are also important to maximizing impact. In order to build public trust in automatic record clearance, we close this section with a recommendation that government study and publicize findings on the impact of automatic record clearance, especially as it relates to equity-related metrics such as racial disparities.

Next are recommendations about who should be eligible for automatic record clearance. In order to maximize impact, legislation needs to provide eligibility that is as expansive as possible. The recommendations explain that, at a bare minimum, all records should be cleared for conduct that is no longer criminalized or can no longer be charged. We advise against including conditions that disqualify people from eligibility because they reduce impact and also make implementation more challenging. Expansive eligibility must be anchored in the law, so we offer an advisory to be as specific as possible when drafting legislation—leave nothing open to interpretation because that causes challenges for implementation. We also recommend that after a bill is passed, no system actors (e.g. judges, prosecutors) should have discretion over who gets relief in the process of automatically clearing records because it leads to inequity and is nearly impossible to implement.

Finally, we offer recommendations about who should have access to and jurisdiction over cleared records. People living with convictions should be able to access confidential documentation about their criminal case histories, whether their records are cleared or not, and there is a big opportunity for government to offer this as a human-centered, trauma-informed digital service. We recommend that courts maintain confidential documentation of records that have been affected by record clearance rather than having all traces of records completely destroyed. We also recommend that courts maintain jurisdiction over these records so that people can continue to exercise their legal rights to pursue any other post-conviction relief remedies besides automatic record clearance, and so that people can access the information about their cleared records should they need it in the future.
What is automatic record clearance?

Automatic record clearance means that individual people are not required to petition the government for relief—their government clears eligible records for them instead. These systems essentially consist of a state-level agency generating lists of eligible convictions and sending those lists to other relevant agencies who collect and distribute the information that comprises criminal records. Those agencies then update their records to reflect new, “cleared” dispositions, which then prevents background check companies from accessing and collecting them.

Example: Petition-based clearance process

<table>
<thead>
<tr>
<th>Individual</th>
<th>Get fingerprinted</th>
<th>Receive record</th>
<th>Apply for clearance</th>
<th>Appear at hearing</th>
<th>Get relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>Provide record</td>
<td>Receive process, review app</td>
<td>Hearing</td>
<td>Make decision &amp; update records</td>
<td>Notify other agencies</td>
</tr>
<tr>
<td>State Police</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other agencies</td>
<td></td>
<td></td>
<td>Appear at hearing</td>
<td>Sequester records &amp; confirm</td>
<td></td>
</tr>
</tbody>
</table>

Example: Automatic clearance process

<table>
<thead>
<tr>
<th>Individual</th>
<th>Get relief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>Determine who’s eligible</td>
</tr>
<tr>
<td>State Police</td>
<td>Update records</td>
</tr>
<tr>
<td>Other agencies</td>
<td>Update records</td>
</tr>
</tbody>
</table>

Why are impact and implementation primary concerns?

Small changes in legislation can have enormous downstream consequences on the number of people who get included or excluded from the benefits of automatic record clearance, so we hope to show which factors maximize impact. But maximum impact means nothing if the law cannot be implemented effectively, so we also show which policy decisions allow an automatic record clearance system to run optimally.
Recommendations on the automatic record clearance process

Recommendation 1: Record clearance must be automatic to be effective—don’t just add cannabis to the list of convictions that are eligible for clearance in a petition-based system.

This is the most important recommendation because, without it, none of the other recommendations would apply.

Under no circumstances should the petition system be the default mechanism for clearing records that are no longer illegal. For the maximum number of people to get record relief, that relief has to be granted automatically.

If a petition-based system is the default mechanism for clearing records, it ultimately matters little that cannabis or controlled substance records are eligible—the systems are so complex that only a small handful of the eligible people receive relief no matter what those convictions are for.

Petition-based systems fail because of administrative burden—they require system-impacted people to know they are eligible for relief, and then somehow navigate a complex, time-consuming, and expensive legal process. These are built-in flaws that automatic record clearance avoids entirely.

Other than not offering record clearance at all, relying on the petition-based system is the worst choice if the goal is to maximize the number of people who get relief.

All available evidence shows that relying on a petition system as the default record clearance mechanism essentially guarantees that more than 90% of eligible people will not benefit. A study published in the Harvard Law Review estimates that only 6.5% of eligible people receive record clearance through the petition-based process. In New York, only around 0.5% of the estimated 600,000 eligible people have been able to clear convictions through the petition process established by the state’s 2017 record clearance law. At Code for America, we estimate that less than 10% of eligible people received record clearance through California’s petition-based process in the four years after the state legalized cannabis—and that is in spite of heroic efforts of community activists and legal aid groups to conduct extensive outreach and host expungement clinics.

(Because we mentioned the above figures, it should also be noted that Michigan recently passed a “Clean Slate” automatic record clearance law that provides relief for a range of misdemeanors and felonies; New York included automatic record clearance in its cannabis legalization law; and California eventually passed an automatic record clearance law that we helped to implement to close the delivery gap, along with broader automatic record clearance legislation thereafter.)
It might be tempting for policymakers to rely on the petition system and simply expand eligibility to include cannabis convictions, especially because it might seem to be an easy implementation option. This is not the case. **Petition-based systems often struggle after legalization**—there will be an initial influx of petitions that create a backlog because every petition has to be handled manually. Courts become overburdened, and relief is delayed for those who manage to apply, even as the number of petitions filed dwindles over the years. Well-designed automatic systems avoid this entirely, while maximizing the number of people who get a fresh start to move forward with in their lives.

**Recommendation 2:** A state-level agency must initiate and coordinate automatic record clearance implementation—when there is a statewide policy, local jurisdictions should not be implementing their own processes independently.

Nearly every state has a state-level agency that serves as a central repository of criminal record data—often the state police or an administrative office of the courts. Implementation should be initiated by agencies like these, and then local jurisdictions and other agencies should update their records to show that eligible records have been cleared.

This might seem like a straightforward idea, but we still chose to include it since there have been attempts at creating automatic record clearance systems that are initiated at the county level. This results in many independent implementation projects happening at once, which increases the probability that problems will surface. Implementation that is initiated and coordinated at the state level ensures more uniformity and allows for the most accountability.

It is also worth noting that implementing automatic record clearance at the state level can help pave the way for broader automatic record clearance policies, such as “Clean Slate” laws, which clear a broader range of eligible misdemeanors and felonies. Statewide implementation of automatic record clearance as a part of legalization shows what is possible and creates a sense of legitimacy and inevitability for the expansion into other types of criminal records. If the state agencies initiating and coordinating automatic record clearance show that they can identify records that are eligible for record clearance and communicate to other state and local agencies which conviction records need to be modified, they are demonstrating that the essential core of all types of automatic record clearance is possible.
Recommendation 3: Automatic record clearance legislation must place firm deadlines for agencies involved in implementation, attached to the major milestones of the implementation process—relief delayed is akin to relief denied.

Implementing automatic record clearance policies takes work, but without a reasonable timeline, relief is not meaningful. With recommendations like those featured in this report, implementation timelines can be made more efficient.

There are specific milestones in the implementation timeline for statewide automatic record clearance, so the timeline should at least feature deadlines attached to each milestone.

For example, there need to be deadlines:

- for central criminal record repositories to create lists of all eligible records based on the eligibility rules in the law
- for those lists of eligible records to be distributed to all other government agencies that need to make updates
- for those agencies to update their own records with new dispositions or sealings

We have seen situations where one or more of those milestones did not have a deadline attached, and the process dragged on and on.

In order for people to benefit from the relief provided by automatic record clearance, the implementation timeline needs to be as short as realistically possible. **Code for America is available to consult with advocates and policymakers to help determine what a reasonable timeframe looks like given a state’s capacity and circumstances.**
Recommendation 4: Require government to study and publish the impact of automatic record clearance legislation—especially equity metrics and racial disparities.

Automatic record clearance can be life changing for people who have been living with records. This is a bold new policy that helps create an equitable path to justice for millions of people. This is especially the case when it is used as a remedy for the harms caused by cannabis criminalization and the War on Drugs, which have disproportionately harmed BIPOC communities. Automatic record clearance is a tangible step toward repairing this harm.

Therefore, wherever automatic record clearance policies are adopted and implemented, government should analyze the numbers and types of records cleared, and publicize the impact of record clearance. Government publication should particularly include anonymized equity information that illuminates the impact of automatic record clearance based on key metrics such as race, age, gender, county, ZIP code, conviction types, age of convictions, and more. Government can go even further by publishing analysis that demonstrates impact in other ways—for example, which professional licenses are now available to people due to the types of records cleared by the legislation, or by publishing qualitative analysis based on interviews with people who benefitted from record clearance.

Publishing analysis on the impact of automatic record clearance communicates to the public the importance of this policy as a life-changing tool to remedy the harms caused by contact with the criminal legal system. As it builds public trust in the policy, it can help pave the way for more expansive automatic record clearance policies, such as “Clean Slate” laws, that address a broader range of eligible convictions.

Recommendations on eligibility for automatic record clearance

Recommendation 5: Legislation should make as many convictions eligible for automatic record clearance as possible—at a bare minimum, no one should have a criminal record for conduct that is no longer criminalized.

The point of automatic record clearance is to improve the lives of as many people as possible. It’s the difference between simply making convictions eligible for record clearance and actually delivering on that promise. To help as many people as possible, the legislation needs to make as many convictions eligible as possible.
At a bare minimum, automatic record clearance legislation should extend eligibility to any type of conviction that is no longer illegal or able to be prosecuted post-legalization or post-decriminalization—if it’s no longer criminalized, people shouldn’t continue to suffer consequences for it. This includes convictions for actions that were likely criminalized before, such as possession, use, and cultivation, but policymakers should also consider convictions for charges that can no longer be brought in a post-legalization or post-decriminalization world—even if they were not specifically legalized. One example could be paraphernalia convictions—paraphernalia might not have been explicitly legalized in a cannabis legalization bill, but since there can’t be new paraphernalia charges brought against people in connection to cannabis use moving forward, the same decriminalization logic should apply.

<table>
<thead>
<tr>
<th>“Green Standard” Automatic Record Clearance</th>
<th>Broader Automatic Record Clearance Such as “Clean Slate” Laws</th>
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<tbody>
<tr>
<td>Automatically clearing records for conduct that is no longer criminalized, e.g. clearing cannabis-related convictions as a part of equitable legalization legislation.</td>
<td>Automatically clearing a range of criminal records, including misdemeanor and felony convictions—ideally starting with everything that is eligible for a state’s petition-based record clearance system as a baseline and then expanding upon that eligibility.</td>
</tr>
</tbody>
</table>

We call this the “Green Standard” for automatic record clearance—a minimum eligibility policy, specifically for the context of legalization and decriminalization efforts. Its basic fairness should be obvious to most people and hard to dismiss. That said, we do not believe the “Green Standard” is truly the gold standard for automatic record clearance. To fully deliver on the promise of removing barriers to jobs, housing, education, family life, and more, automatic record clearance should extend to a much broader range of convictions. The “Green Standard” is a policy minimum that advocates and policymakers should eventually hope to surpass, but it is a strong first step as a part of equitable legalization and decriminalization efforts.

What about people who are serving sentences when legalization or decriminalization legislation gets passed?

It is important to point out that there are still people serving sentences for cannabis and controlled substance convictions. As a part of equitable legalization and decriminalization, government should automatically review every active and ongoing sentence for conduct that is no longer criminalized in order to release people from those sentences. While this report focuses on automatic record clearance, many of the principles underlying its recommendations should be the starting point for these reviews and releases as well—if something is not criminalized anymore, no one should have a criminal record—or be serving a sentence—for it.
Recommendation 6: Do not include disqualifying conditions or waiting periods in the eligibility rules—they undermine impact and make implementation much harder.

Disqualifying conditions—like barring people from relief if they have outstanding fines and fees or based on other convictions on their record—reduce the impact of automatic record clearance legislation because they exclude people from eligibility. These rules undermine the number of people who stand to benefit, plain and simple. But there are other reasons to avoid them.

How disqualifying conditions undermine impact

Eligibility determinations become complicated and difficult to implement when legislation tries to include rules that disqualify certain people. Every disqualifying condition needs to be built into an eligibility algorithm in order to be implemented. Adding disqualifying conditions means that in order to determine who is eligible, the algorithm may need to pull information from several different government data sources instead of just one or two. When there are more data sources that need to be blended together seamlessly, the process becomes much more complicated. Complex disqualification criteria not only exclude specific people from getting relief, they delay implementation for everyone.

The same is true for waiting periods. The relief provided by automatic record clearance in legalization or decriminalization legislation is intended to remedy a situation as quickly as possible. There is no need to make people wait a certain amount of time after their convictions have taken place or their sentences have been completed. Like disqualifying conditions, waiting periods also make implementation challenging for government because they need to be built into an algorithm and pull data from various sources as well.

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Recommendation 7: Legislation must *clearly define* eligibility in order to be implemented effectively—cite *specific statutes and codes*, and do not leave anything up to interpretation.

The clearer the eligibility rules are in the legislation, the easier it is to implement automatic record clearance systems. This means that specific conviction types need to be explicitly cited as being eligible in the legislation. The legislation should cite the criminal codes or other statutes that could have led to convictions prior to legalization, and any other criminal codes or statutes that led to convictions for things that can no longer be charged but were perhaps not explicitly made legal (e.g. paraphernalia charges related to cannabis use).

Legislation should never be vague in defining and describing eligibility for automatic record clearance. For example, rather than stating “convictions related to marijuana use” are eligible, the legislation should cite specific criminal code violations.

**What if a state does not have separate statutes for specific controlled substances, or what if specific controlled substances aren’t indicated in conviction records?**

In some states, there aren’t separate laws criminalizing various controlled substances—for example, a state’s statutes criminalizing cannabis possession might be the same statutes that criminalize possession of other controlled substances. As such, it may be hard to identify charges that are *only* related to cannabis in government data systems. Rather than risk excluding people who should be eligible under the “Green Standard” approach, the best solution is to err on the side of including convictions for other controlled substances up to the effective date of the legislation, even if they are not the subject of the legalization or decriminalization legislation. We understand that this might not be politically feasible in some situations. Code for America is happy to consult with state policymakers to explore technical solutions to this issue (including ways to parse the data) that do not result in the unnecessary exclusion of people from the benefits of automatic record clearance.

Recommendation 8: Only decide on eligibility rules during the *legislative process* and do not give system actors discretion to decide on eligibility after the law is passed—individual discretion is inequitable and difficult to implement.

All record clearance systems rely on a set of rules that determine which convictions are eligible for relief, and these rules are created by legislation. Many petition-based systems and early attempts at automatic systems gave state actors in the criminal legal system, like prosecutors and judges, the ability to deny relief to eligible people. This after-the-fact discretion prevents the automation of record clearance systems and leads to inequitable outcomes.
The decision over who is eligible for relief should be made in the legislative process, not during the actual process of clearing records. If a legalization or decriminalization law is intended to repair the harm of criminalization, it is inequitable to allow people’s eligibility to be withdrawn because a system actor thinks differently or singles them out.

Like other points of human intervention, after-the-fact discretion breaks the “automatic workflow.” Every point of human intervention in the record clearance process creates a bottleneck—think of a court clerk needing to manually sign a record clearance petition—and then imagine that happening hundreds of thousands of times. After-the-fact discretion is no different, and it makes implementation extremely difficult and cumbersome. You can’t have an automatic system if individual system actors are deciding on their own whether people get relief. The law is more just, equitable, impactful, and implementable if conviction eligibility is only determined by the legislation.

Recommendations on access to and jurisdiction over cleared records

Recommendation 9: Government should provide people with access to free, confidential, easy to understand, up to date, and on demand information about their records—cleared or not.

To ensure that people with cleared records are aware of the clearance and do not over-disclose a cleared record, government must provide free, safe, and fast means for a person to access, understand, and dispute errors on their record. Government should also direct people to other resources for additional help.

Unlike with traditional, petition-based record clearance, people may not know if or how their records have been affected by automatic record clearance. In a petition-based system, people apply for record clearance and government responds to the contact information listed on their paperwork. In an automatic system, contact information is less reliable and often unknown. Because all that is available is whatever happens to be on file from the time of someone’s last contact with the criminal legal system, that information could very likely be out of data—using it to attempt to notify people about changes to their criminal records is therefore risky and unwise.

We recommend developing strategies, in collaboration with government, for widespread outreach to communities that may be impacted and requiring government to provide impacted individuals access to private documentation of any criminal record information that has been affected by record clearance, on demand.

This is only the first step. In order for people to take full advantage of the benefits of records clearance, they don’t just need to know that it has occurred. They need to know what it means for them.

For this to happen, government agencies should provide free, confidential, easy to understand, on demand, and up to date information about everything on someone’s criminal record, cleared or not, as a routine service. Like record clearance, obtaining a copy of your criminal record can be a complex, time-consuming, and expensive process—and that’s all before you must interpret the information you receive. It should not be this complicated.
Ideally, government would have the responsibility of providing people with access to their own criminal record histories, designed in a way to help them understand their records, with a simple path to dispute errors on their records, and with information about other resources and services. Code for America envisions this as a government service that’s provided in a digital, accessible, trauma-informed, and people-centered way, and we are happy to consult with you and state policymakers to explore how this service could be offered.

**Recommendation 10:** Courts should maintain confidential, sealed copies of cleared records that are not publicly accessible—destroying all traces of a cleared record can actually harm system-impacted people down the line.

This recommendation may seem counterintuitive at first. We do not recommend that record clearance remedies completely destroy all traces of an eligible record upon relief. This has become a connotation for the term “expungement,” but entirely erasing all traces of a record is not necessary and can actually be harmful to people with past convictions. Rather, we recommend that courts maintain jurisdiction over the information contained in records affected by record clearance and that the information remain confidential except for individual people who are subjects of the records (more on that in **Recommendation 9**, above).

States usually have a range of record clearance mechanisms and terminology, including expungement, expunction, orders of non-disclosure, sealing, and more. To make matters more confusing, the meaning of these terms really depends on the jurisdiction in which they’re being used—although “sealing” usually implies that a record still exists in a government system but is not publicly accessible, and “expungement” can imply that all traces of a record are completely wiped clean (which is the case in some jurisdictions, but not all). For clarity, we use the term “complete destruction” to mean wiping away all traces of a record rather than the term “expungement.”

The everyday benefits of automatic record clearance can only occur if eligible criminal records don’t end up in the hands of background check companies—but that does not necessitate complete destruction of all traces of a record from every government agency. We advise against complete destruction for two reasons.

**First, complete destruction of all traces of a record can make technical implementation seem daunting.** Instead, we recommend focusing on updating any government system that background check companies use to extract criminal record data, and using any type of record clearance that at least prevents eligible records from being shared publicly. The main impact of record clearance comes when old records don’t show up on background checks for things like jobs, housing, education, and family life, so as long as every government system that background check companies use to gather criminal record data gets updated, people will benefit.
Second, complete destruction of records may actually have unintended, negative consequences for the people with eligible records. There are certain situations when someone may need documentation to prove that they used to have a conviction on their record that has now been cleared. Many cannabis legalization policies include equitable business licensing provisions to provide opportunities to start legal cannabis companies for people who were impacted by criminalization. If all traces of a person's record are completely destroyed, it could pose a challenge in applying for the equitable licensing program. People may also need to provide documentation of a clear record during immigration proceedings or during background checks if a company has not updated its records. If all government traces are wiped clean, this becomes extremely difficult as well.

On the topic of record clearance remedies that support immigrants, we recommend considering whether the record clearance remedy in your legislation can include language about vacating or dismissing convictions "on the basis of legal invalidity." This means the remedy doesn't just dismiss a conviction, it legally means the conviction should not have happened. Standard record clearance remedies like expungement and sealing may not be enough to counteract the federal government's rules as to what counts as a conviction without specifying that clearance is based on legal invalidity. For more information on this topic and other immigration concerns in record clearance provisions of legalization and decriminalization legislation, we recommend the Immigrant Legal Resource Center’s guide, available here: https://www.ilrc.org/sites/default/files/resources/2020.08.28_mj_best_practices-final.pdf.

**Recommendation 11:** Make it clear that courts still have jurisdiction to provide other forms of post-conviction relief before or after automatic record clearance so that people can exercise all of their legal options.

Legislation should make clear that the relief resulting from automatic record clearance does not preclude someone’s right to pursue any other legally available remedies. It must also make clear that automatic record clearance does not remove a court’s jurisdiction to provide further relief.

**We recommend stating in the legislation that any relief resulting from the law's automatic record clearance does not prohibit the court from granting further relief through additional motions to amend a record, a motion to vacate convictions, innocence and exoneration claims, or any other type of collateral attack on the conviction.**

This is especially important in the context of immigration, because some record clearance remedies do not counteract federal rules for what counts as a conviction, and thus additional remedies may be necessary. This recommendation is essential because some courts may believe that once the automatic record clearance has been completed, they no longer have jurisdiction over the affected records. For more information about record clearance best practices in the context of drug reform and immigration, please see the Immigrant Legal Resource Center’s guide, available at: https://www.ilrc.org/sites/default/files/resources/2020.08.28_mj_best_practices-final.pdf
Conclusion

Automatic record clearance is a new, transformative policy that has the potential to help millions of people who have been impacted by the criminal legal system in the United States. Rather than relying on the status quo of outdated, petition-based record clearance, automatic record clearance delivers on the promise of a fresh start by removing barriers to jobs, housing, education, family life, and more.

As efforts to legalize cannabis and decriminalize other controlled substances gain momentum across the U.S., advocates will continue developing ways to make these policies equitable and reparative by including provisions that are targeted to help the people and communities most impacted by criminalization.

**Automatic record clearance must be one of those provisions**—it’s the only just and equitable approach to clearing convictions for conduct that is no longer criminalized.

In this report, we offered a series of 11 recommendations for advocates and policymakers to craft automatic record clearance provisions that are high-impact and implementable.

<table>
<thead>
<tr>
<th>Recommendations for the Automatic Record Clearance Process</th>
<th>Recommendations on Eligibility for Automatic Record Clearance</th>
<th>Recommendations on Access to and Jurisdiction over Cleared Records</th>
</tr>
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<tbody>
<tr>
<td>1: Record clearance must be automatic to be effective.</td>
<td>5: Legislation should make as many convictions eligible for automatic record clearance as possible.</td>
<td>9: Government should provide people with access to free, confidential, easy to understand, up to date, and on demand information about their records.</td>
</tr>
<tr>
<td>2: Automatic record clearance implementation needs to be initiated and coordinated by a state-level agency.</td>
<td>6: Do not include disqualifying conditions or waiting periods in the eligibility rules.</td>
<td>10: Courts should maintain confidential, sealed copies of cleared records.</td>
</tr>
<tr>
<td>3: Automatic record clearance legislation must place firm deadlines attached to implementation milestones.</td>
<td>7: Eligibility must be clearly defined by legislation in order to be implemented effectively—cite specific statutes and codes.</td>
<td>11: Make it clear that courts still have jurisdiction to provide other forms of post-conviction relief before or after automatic record clearance.</td>
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<td>4: Require government to study and publish the impact of automatic record clearance legislation.</td>
<td>8: Do not give system actors discretion to decide on eligibility after the law is passed.</td>
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We believe these recommendations are the starting point for impactful and implementable automatic record clearance policies— for clearing cannabis and controlled substance convictions, and for a broader range of misdemeanors and felonies as a part of “Clean Slate” legislation. Both types of automatic record clearance have the potential to help millions of people and address harms caused by interactions with the criminal legal system. We hope that in pushing for automatic record clearance for cannabis and controlled substance convictions, advocates and policy makers will create a favorable environment for broader automatic record clearance policies like “Clean Slate” to take hold as well.

Code for America is a nonprofit organization that believes that the mindful use of technology can help make government work better, for everyone. We are people-centered problem solvers attempting to show what’s possible. Our Clear My Record program works with advocates, policy makers, and government staff across the U.S. to design and implement automatic record clearance policies.

**We’d love to work with you.** Our team can answer common automatic implementation questions to ensure your automatic policy is impactful, implementable, and equitable, such as:

- How can my state implement automatic record clearance in a cost-effective manner?
- Which government stakeholders and agencies do I engage in implementation planning during the legislative process?
- How can my state identify all records that are eligible for automatic relief?
- How can my state update all relevant criminal legal system data systems to reflect automatic relief?
- How can my state inform people that they received automatic relief?

Our services include technical evaluation and policy design support, and we can support implementation by building technology that includes bulk data processing, qualitative and quantitative analysis, service mapping, digital service software development, business intelligence software, and more.

There may be scenarios and situations not covered in the best practices and recommendations included in this report. We would be happy to meet with you and walk through those situations together, especially as they pertain to technical and policy solutions.

For more information about automatic record clearance and how to make sure your policy is as impactful, implementable, and equitable as possible, please contact David Crawford, Senior Program Manager - Criminal Justice, at dcrawford@codeforamerica.org.