

CANNABIS CHARGES AND PUBLIC HEALTH: THE IMPACT OF EXPUNGEMENT

Despite the legalization of cannabis possession for adults ages 21 years and older, the consequences of cannabis criminalization are still felt by Maryland residents who carry criminal records for past cannabis offenses. These records can appear in background checks and interfere with job searches, housing applications, government benefits, and other consequences.

The impacts of these arrests are disproportionately felt by the historically marginalized communities targeted by law enforcement during the War on Drugs. For example, a 2020 report found that Black Marylanders were 2.1 times more likely to be arrested for cannabis possession than white individuals, while cannabis was used at similar rates between the two groups.¹

To address this disproportionate impact, Maryland expanded eligibility for the expungement of state cannabis convictions in 2023. Expungement is a remedy ordered by a court in response to a petition by the defendant, requiring any state office holding public record of a case to destroy it or remove it from public access. This prevents the charge from showing up in background checks, making it easier for individuals to find work, housing, and other benefits.

Maryland has complex rules for determining whether a case is eligible for expungement, which take into account the result of the case, how long ago it was decided, what specific charges, if any, resulted in a conviction, and what convictions, if any, the individual has received since.

Prior to 2023, many cannabis possession and “possession with intent” cases were eligible for expungement, but many fell outside of the requirements for various technical reasons. The changes enacted in 2023 created specific rules that reduced the number of threshold factors that must be met for a cannabis possession case to be expunged. The new laws also reduced the wait time that must elapse before a “possession with intent” conviction becomes eligible for expungement from fifteen years to three.²

CANNABIS EXPUNGEMENT ELIGIBILITY

Expungement eligibility for cannabis convictions depends on the specific offense that an individual was convicted of and whether there were other charges arising from the same incident. Most cannabis-related convictions in Maryland state courts fall within one of these categories:

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AUTOMATIC EXPUNGEMENT:

If an individual was convicted of cannabis possession before July 1, 2023, and there were no other charges involved in that case, the records associated with that case were automatically removed from the state's centralized criminal record database prior to July 1, 2024.³ No action was required by individual citizens to have these records removed.

POSSESSION AFTER JULY 1, 2023:

A person convicted of cannabis possession with no other charges after July 1, 2023, is eligible for expungement, but would need to file a petition with the court to expunge the records. They can do so as soon as their sentence is completed.⁴

PARTIAL EXPUNGEMENT:

If an individual was charged with cannabis possession and there were other charges involved in that case, the cannabis conviction can be expunged from the record even if the other charges cannot. This is an exception to a general prohibition called the “unit rule,” which typically prevents a single charge being expunged from a case if there are other charges that cannot be expunged arising from the same incident.⁵ The petition to expunge the cannabis charge may be filed as soon as the sentence is completed.

POSSESSION WITH INTENT:

“Possession with intent to distribute” is a separate crime from the “possession” offenses discussed above, which is used for an individual who has a significantly larger amount of cannabis in their possession. This amount must be greater than the “civil use amount,” which is 2.5 ounces of cannabis product, 20 grams concentrated cannabis, or cannabis products with 1250 mg delta-9 THC.⁶ A person convicted of possession of cannabis with intent to distribute can typically expunge the case three years after the completion of their sentence, although a conviction for another crime within that three-year period could delay or disqualify expungement eligibility.⁷

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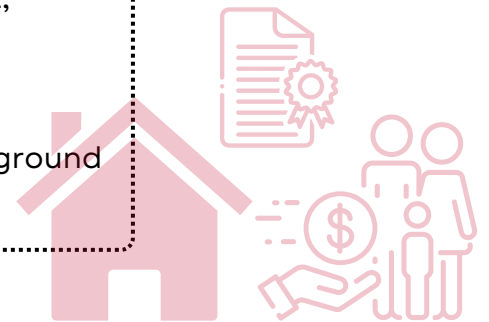
Except for the cases subject to automatic expungement, individuals must file a separate petition with the court that entered the conviction to request an expungement for each eligible case. Individuals who were charged with a crime but not convicted (i.e., those who are acquitted or whose cases were dismissed) are able to expunge those records in most cases.⁸

IMPACTS ON PUBLIC HEALTH AND BEYOND

Criminal records have wide-ranging impacts on the lives of former defendants, their health, and the health of their communities. The impact of a criminal record is often greater for individuals in marginalized groups, exacerbating existing racial and socioeconomic inequalities within communities.⁹

Criminal records can lead to:

- Reduction of employment opportunities by 50 to 70 percent;¹⁰
- Difficulty obtaining housing;¹¹
- Denial of public assistance;¹²
- Denial of professional licenses or certifications;¹³ and
- Difficulty accessing any other resource that involves a background check.¹⁴



These economic and social consequences lead many individuals and their families into cycles of poverty with far-reaching effects. A criminal record is a social determinant of health. Social determinants of health are “conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.”¹⁵ The individual harm of a person’s criminal record becomes community harm when that individual’s family, friends, and neighbors are no longer able to rely on social and economic relationships with that person. Decades of criminal prosecution against specific communities have created community-wide economic instability, which in turn produces higher rates of mental illness and chronic disease, as well as overall higher mortality rates.¹⁶

Because of the long-lasting negative effects of a criminal record, expunging cannabis offenses promotes public health both for the individual obtaining the expungement and the community that has been economically impacted by cannabis criminalization.

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OBTAINING AN EXPUNGEMENT

The procedures described in this document are unique to criminal cases that were heard in Maryland state courts. Expungement does not apply to federal charges, and other U.S. states have their own expungement processes.

Determining whether specific cases are eligible for expungement is a complicated process, which requires consideration of multiple factors beyond just the crime charged. Individuals filing for expungement may wish to contact an attorney for assistance, particularly if they have more than one case on their record. There are several organizations in Maryland that provide free expungement assistance to individuals who cannot afford to hire an attorney, such as Maryland Legal Aid (mdlab.org) and Maryland Volunteer Lawyers Service (mvlslaw.org).

For further information, please reach out to PubHealthCannabis@law.umaryland.edu.

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For legal advice, please consult specific legal counsel.

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¹ ACLU, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* 28-29, 67 (2020), <https://www.aclu.org/publications/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

² 2022 Md. Laws Ch. 26. (available at https://mgaleg.maryland.gov/2022RS/chapters/noln/Ch_26_hb0837E.pdf).

³ Md. Code Ann., Crim. Proc. § 10-112 (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcp§ion=10-112&enactments=false>).

⁴ *Id.* § 10-105 (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcp§ion=10-105&enactments=false>).

⁵ *Id.* § 10-107 (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcp§ion=10-107&enactments=False&archived=False>).

⁶ *Id.* § 10-110 (<https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcp§ion=10-110&enactments=false>).

⁷ *Id.* § 10-110(c)(5) (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcp§ion=10-110&enactments=false>).

⁸ *Id.* § 10-105 (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcp§ion=10-105&enactments=False&archived=False>).

⁹ Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Socio. 937, 959-60 (2003).

¹⁰ *Id.*

¹¹ U.S. Comm'n on Civ. Rts., *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 60-64 (2019).

¹² See, e.g., Hum. Servs. § 5-601 (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghu§ion=5-601&enactments=false>).

¹³ See, e.g., Lab. & Empl. § 7-308 (available at <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gle§ion=7-308&enactments=false>).

¹⁴ See, e.g., National Inventory of Collateral Consequences, <https://niccc.nationalreentryresourcecenter.org/> (last visited Aug. 14, 2024).

¹⁵ *Social Determinants of Health*, Off. of Disease Prevention & Health Promotion, <https://health.gov/healthypeople/priority-areas/social-determinants-health>.

¹⁶ *Poverty*, Off. of Disease Prevention & Health Promotion, <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/poverty>.