



## Growing Trends in Clean Slate Laws Automatic or Petition

For some people having certain types of criminal history records can sometimes present obstacles to obtaining employment, a professional or recreational license, education, housing, as well as having the personal and social stigma of having criminal convictions surrounding them. Over the last 10 years, movement among states regarding the legalization of marijuana has continued to grow, including the use of marijuana for medical and recreational purposes.

### Expunging Criminal Records

States have long offered expungement options for many crimes for individuals who met certain eligibility requirements. For example, barring certain types of crimes such as a sex offense, sex involving a child, or a sexually violent offense, the Commonwealth of Massachusetts offers time-based expungements for many convictions so long as the individual has completed all parts of their sentence depending on whether the conviction was a felony or misdemeanor.

### Legalization of Marijuana

Since the legalization of certain amounts of marijuana began in 2012, currently 31 states, District of Columbia and Virgin Islands have taken strides to legalize or decriminalize certain amounts of marijuana. In the Commonwealth of Massachusetts, low-level amounts of marijuana became eligible for expungement by court petition starting in 2018 without a waiting period as a result of state legislation. Along with Massachusetts, 23 states and the District of Columbia have enacted similar laws allowing for the expungement or sealing of some marijuana cases and decriminalization of legalized offenses.

But not everyone may be aware of the processes surrounding the expungement or sealing of their criminal cases. Before the Clean Slate Law initiative gained traction, states that did not already have time-based expungement processes in place required the individual to petition the court and pay fees to have their offense removed from public view. This causes a delay of several months in some jurisdictions before the process is complete which can often be too burdensome for some individuals, and at times require attorney representation in other instances in order to navigate the lengthy court process.

### Clean Slate Law Concept

A newer approach to the longer standing process of self-petitioned expungements is the Clean Slate Law concept which is an initiative aimed to provide eligibility for arrest and conviction records to be *automatically* cleared from an individual's criminal record as long as they remain conviction free for a period of time. The purpose of the initiative is to provide individuals a "second chance" at more opportunities due to the legalization of marijuana, which has seen more traction in the past few years with an increasing number of states introducing bills into their legislative sessions.



The adaptation of the “Clean Slate Law” was first enacted by the Commonwealth of Pennsylvania in 2018. Those eligible for automatic expungement after 10 years without convictions for qualifying records are automatically expunged with no petition required by the court. Today, Clean Slate Laws vary by state with different types of records being eligible for automatic clearance, different waiting periods, and requirements.

## **Clean Slate Law Enactments by State**

According to Collateral Consequences of Criminal Conviction and Restoration of Rights, as of January 2023, 10 states (California, Colorado, Connecticut, Delaware, Michigan, New Jersey, Oklahoma, Pennsylvania, Utah, and Virginia) have enacted automatic clearing of eligible misdemeanor and felony arrest and criminal records related to marijuana charges from public view.

The states listed below are set to have their Clean Slate Laws go into effect the beginning of 2023 and into 2025.

### California

Effective July 2023, the automatic sealing of conviction and arrest records after four years which also includes arrest records that did not result in a conviction. The new law does not apply to serious felonies that will remain petition based.

### Colorado

The petition-based sealing of certain marijuana and felony convictions was made automatic in 2022 and set to take effect July 2024. The automatic sealing of eligible petty offenses or misdemeanor marijuana possession cases will occur after seven years of final disposition, civil infractions after four years, and felony offenses after ten years.

### Connecticut

Connecticut’s law went into effect January 1, 2023, allowing for the automatic sealing of certain misdemeanor convictions and less serious felony convictions with a waiting period from seven to ten years, respectively, after the most recent conviction of a crime.

### Delaware

Starting August 2024, certain misdemeanors and felonies will automatically be expunged after three to seven years, respectively, with no subsequent conviction. Senate Bill 112 became effective January 2022 which authorized the mandatory expungement of felony convictions related to low-level drug possession (after five years have passed) and drug crimes after 10 years.



## Michigan

With its implementation beginning April 2023, eligible misdemeanors will have an automatic expungement after seven years and eligible felonies after ten years. Automatic expungement applies to an unlimited number of minor misdemeanors and no more than two serious felony convictions and four serious misdemeanor convictions for an individual.

## Rhode Island

House Bill H5307 was signed into law May 2022 which allows for the decriminalization of marijuana and implementation of the automatic expungement of prior civil or criminal records. The new law is set to go into effect by the courts in July 2024. All other eligible criminal arrests and convictions, along with non-violent felonies, can be expunged by petition only.

## Virginia

In October 2025, certain misdemeanors and felonies will be eligible for automatic expungement after seven and ten years, respectively, provided the individual has not been convicted of another crime.

## **Current Clean Slate Legislation**

In addition to the states that already have some form of expungement process of dismissed records, non-convictions, or marijuana-related offenses, several states have bills that have been introduced in their legislation relating to the automatic expungement of criminal records.

Below are a few current Clean Slate Law bills that may be enacted in the coming years:

Louisiana – HB 707. The bill would allow for the automatic expungement of non-convictions, misdemeanors after five years and felonies after ten years if the individual has not been convicted of any other criminal offense.

Massachusetts – H1763 / S1037. Also known as the 2022 Second Chance & Opportunities Bill, it would allow for the automatic sealing of certain records after the applicable waiting periods.

Missouri – SB 347. This bill would limit the number of certain felony and misdemeanor offenses that can automatically be expunged to three and five years, respectively. If an individual would like additional records expunged, they would need to petition the court. The enactment of the bill is currently set for August 2025.

New York – S1553D. This bill would allow for the automatic sealing of some convictions after a certain amount of time has passed from the imposition of sentence.



## **Social Equity and Unintended Consequence of Automatic Expungement**

The purpose of Social Equity Laws is to ensure individuals who reside in communities who have a disproportionate effect on marijuana and discriminatory law to be considered in the new state marijuana legalization laws. Social Equity would allow for the establishment of marijuana businesses, employment of individuals who may have had previous marijuana criminal convictions, and bring profit to an establishment that may not be able to do so previously.

The benefits of Social Equity Laws are to ensure people who reside in communities who are disproportionately affected by discriminatory and marijuana laws are provided with the opportunity to receive priority consideration in the license process, be eligible for reduced application and license fees, assistance with technical issues, and reduced interest loans.

One of the requirements that establishes an individual's social equity standing is if they have been arrested or convicted, or who are hiring individuals who have been arrested or convicted. With more states implementing Clean Slate Laws that would allow for the automatic expungement of records, being able to establish social equity standing may become difficult for some and create barriers in their social equity application.

## **Conclusion**

With the growing push from communities to introduce and enact Clean Slate bills into their legislation each year, more states are feeling the growing pressure to provide individuals with the prospect of having their criminal records automatically expunged. Implementing this automatic process makes it easier, faster and less expensive for the individual having the record expunged and lifts the backlog on courts to file each petition individually by having the information processed in a streamlined capacity monthly across multiple departments. The process also provides an individual with the capability to obtain employment, housing and/or licensing by allowing them a "second chance" at opportunities they may have not been able to achieve previously.

Automatic expungement can also have a negative effect on social equity applications and the ability to have access to lower cost application, licenses, interest on loans, and the ability to provide other individuals with criminal records the opportunity to seek employment. It may also affect the ability to bring a small business service to a community due to the higher costs associated with the fees required by state and city laws.

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