

**Designing an Expungement Mechanism in Marijuana Legalization**  
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**Joint Informational Meeting of**  
**The House Health Subcommittee on Healthcare and**  
**The House Judiciary Committee on Crime and Corrections**  
**On the Criminal Justice Implications of Adult-Use Cannabis Legalization**  
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Good morning. My name is Sharon Dietrich. I am the Litigation Director at Community Legal Services, Inc. (CLS) in Philadelphia. My mission today is to present our thoughts about how to design a broad expungement mechanism in marijuana legalization legislation.

This testimony is also presented on behalf of the Last Prisoner Project, a national non-profit organization working to mitigate the collateral consequences of marijuana cases after the underlying conduct has been legalized.

I have been an employment lawyer for CLS since 1987. Over that time, problems connected to criminal records have become, by far, the most common reason our low-income clients seek our employment-relates services. Last year, for instance, we handled 1,168 criminal record cases, out of a total of 1,938 employment cases of all sorts. Quite simply, criminal records has become the most intractable barrier to employment over the last several decades.

After decades of work to mitigate criminal record barriers, CLS proposed legislation to seal criminal records by automation, known as Clean Slate. We remain proud that Pennsylvania became the first state to not only consider a Clean Slate bill, but to enact it into law, with strong bipartisan support, as Act 56 of 2018. As a result, almost 46 million cases have been sealed in part or in their entirety to date. Another dozen states have since enacted Clean Slate laws, with dozens more considering legislative proposals. Moreover, this legislature expanded Clean Slate to sealing felony convictions in Act 36 of 2023.

We understand and support a goal in the forthcoming bill of expunging marijuana-related arrests and convictions as broadly as possible. We understand that cannabis legalization bills adopted in other states typically have included such broad expungement provisions.

While Clean Slate provides for sealing, we agree that for marijuana legalization, expungement is more appropriate. Sealing maintains records for use by law enforcement and a few other designated parties, while expungement provides for the elimination of case records. Marijuana legalization will remove all legal prohibitions, so it makes sense to expunge the cases that were premised on conduct that no longer is illegal.

Based on my experience with Clean Slate, my testimony today focuses primarily on the process by which marijuana legalization legislation can most broadly expunge such cases in Pennsylvania. Broad expungement of marijuana cases is easier said than done, because the drug cases for virtually all substances are prosecuted under the Controlled Substance Act (35 P.S. § 780-113), and criminal record data generally does not indicate whether marijuana or another drug was the substance involved in such a case. In many cases, to confirm that marijuana was the substance involved in the offense, documentation from the court file must be examined. This limitation presents a challenge for designing a robust Clean Slate-like automated process.

For that reason, we propose a methodology that would combine automated expungement where possible with a simple petition-based process in situations where documentation of the substance involved in the offense must be sought.

### **Automated Process**

Because of the unique challenges of culling marijuana cases from other substances covered by the Controlled Substances Act, our thoughts on what might be the broadest automated marijuana expungement may continue to evolve as we explore whether digitized data that currently not used in Clean Slate might exist to help identify marijuana cases. But here are our initial thoughts on an automated process.

- 1) **Using an automated process, expunge by automation all “small amount of marijuana” cases under §31 of the Controlled Substance Act.** Offenses arising under this section by definition involve only marijuana, not other controlled substances.
- 2) **Require the Pennsylvania State Police (PSP) to identify and expunge §31 charges in its database that are not expunged through the court-initiated automated process.** Such charges are usually in cases where the person was arrested but not prosecuted by the District Attorney (which might be especially common in small amount of marijuana cases). They remain in the PSP database until a person needs a PSP or FBI background check. They are especially prejudicial because the report will show no disposition, typically leading the entity obtaining the background check to worry that the person was convicted or that the case is still unresolved. These cases can be identified and expunged through automation.

### **Petition-Based Process**

Automation of record clearing is vastly preferable to a petition-based process, because it can be done at scale and produces more effective results for a larger percentage of eligible people. Petition-based expungement and sealing are generally limited by lack of knowledge by eligible individuals, lack of resources for legal representation, filing fees, and many other barriers. However, there is a role for petition-based expungement of marijuana cases, especially if the usual expungement petition process is modified to ameliorate the barriers.

3) **Allow expungement of marijuana cases by a simplified petition process in all other sections of the Controlled Substances Act when the petitioner alleges that the only substance was marijuana, and the sentence has been completed.** The most important charges to include are:

- a. §16 – knowing and intentional possession (misdemeanor)
- b. §30 – possession with intent to deliver (felony)
- c. §32 – use or possession with intent to use drug paraphernalia

The petition form and the process should be simplified, so that it can be used by lay people who know that their case concerned marijuana and only marijuana, without need for a lawyer. No filing fee should be required or permitted.

Many of these cases already may be sealed under Clean Slate, especially when Act 36 is implemented for drug felonies by this June. This proposal would both make them expungable (rather than sealable) and would eliminate waiting periods and other obstacles if marijuana was the substance.

4) **Allow any case that can be expunged by automation to also be expunged by petition.** This allows expungement where there are technical or data impediments to automation.

#### **Provisions for Both Processes**

5) **Waive all financial obligations connected to these expunged cases.** This recommendation not only flows from the policy goal that animates the broad expungement imperative, that Pennsylvania is undoing marijuana prosecutions because the underlying conduction is being legalized. Waiver of all remaining financial obligations also facilitates expungement, because the courts keep records of the debt through their automated case record system. That is to say, sealing allows fines and costs records to be retained (and the debt still collected); expungement does not. When the record is expunged, the ability to collect is eliminated.

6) **Provide for broad notice of both the automated and petition-based remedies.** Because many offenses concerning marijuana will require petitions for expungement, the public must be broadly informed of the fact and method of this remedy. Moreover, such public information will help persons who have obtained automated expungements learn that they have benefited. Such affirmative steps will help effectuate widespread access to these remedies.

I am happy to entertain any questions related to my testimony. Thank you for considering my remarks.

**Sharon M. Dietrich**

Ms. Dietrich has been an attorney with the Employment Unit of Community Legal Services, Philadelphia, since 1987. She currently serves as its Litigation Director.

A focus of Ms. Dietrich's work has been issues involving the employment of people with criminal records. She has represented thousands of people who have been denied employment because of their criminal records. Among her areas of expertise is criminal record expungement and sealing.

Ms. Dietrich was one of the architects of Pennsylvania's innovative Clean Slate law (Act 56 of 2018), which seals minor criminal records by automation. Almost 46 million cases have been sealed in Pennsylvania to date. She also was a leader in the campaign in Pennsylvania to expand Clean Slate to drug felonies (Act 36 of 2023). In addition to facilitating the legislation and implementation of Pennsylvania's Clean Slate law, she speaks widely about automated sealing and provides technical assistance in other states looking to adopt and implement Clean Slate.