

Achieving Social Justice While Ending Cannabis Prohibition

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As New Jersey moves closer toward creating a regulated adult use cannabis marketplace, how the state will address the criminal records for prior offenders remains up for debate. Gov. Phil Murphy acknowledged that it would be unfair for a person to be incarcerated for an offense that subsequently becomes legal. On the other hand, opponents argue that it would be wrong to absolve individuals who knowingly committed a crime simply because the law changed. Even if the legislature is in agreement that prior cannabis offenders deserve leniency – what that looks like and how it is reached is unclear.

New Jersey is not the first state to face this dilemma, other states that have ended cannabis prohibition or ended criminal penalties for its use and possession have also grappled with how to handle prior offenders. In Colorado, almost five years after the legalization of cannabis, the state afforded prior offenders the ability to seal prior criminal conviction records that occurred under the old law. As more states create a regulated adult use marketplace or decriminalize cannabis use and possession, the laws surrounding the drug have increasingly focused on how best to address this social justice quandary. For example, in California, the ballot initiative to legalize marijuana also included a provision to expunge or seal criminal records. The initiatives recognize the impact that even low-level convictions can have on an individual's livelihood including the ability to obtain a job, receive housing benefits, etc. The legislation also reflects the evolving nationwide debate on how to treat recreational cannabis use while dealing with the havoc of the prior enforcement of the failed policy of cannabis prohibition. Michigan, whose voters just approved a regulated cannabis program there, is currently considering a pardon/clemency program along with a modified expungement process to address prior offenses.

Although New Jersey Governor Phil Murphy stated he would consider using pardons to assist prior offenders, draft bills include provisions for expedited expungement of marijuana offenses. There are critical distinctions between a pardon and an expungement of a criminal offense. Pardon is essentially a "forgiveness" program which, while acknowledging the crime, offers the offender forgiveness of the offense. The offense does not disappear from the offender's record when a pardon is issued. An expungement on the other hand, allows the offender to erase a prior criminal offense as if it never happened. Thus, the offender can proceed through life and properly claim never to have been convicted of a crime when the offense has been expunged.

Currently, to expunge a criminal record, the individual must prepare and file a Petition for Expungement including detailed records of the arrest and conviction and pay the required fee (with limited exceptions). One proposed bill includes an "Expungement Coordinator Program" with the goal that the program could assist individuals seeking an expungement after the legalization of cannabis. In a more recent bill, the Judiciary Ombudsman would assist with filing the petitions and there would be no fee for the filings. Both bills recognize the need for a fresh start with the hope to streamline the process for prior offenders. These corrective actions are needed since a criminal record can significantly alter the course of an individual's life. Ending cannabis prohibition and the expungement of prior offenses will have a lasting and positive effect on the lives of many New Jerseyans.