CODE *for* AMERICA

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Recommendations for *Automatic* Record Clearance Policies in Legalization and Decriminalization Legislation

Code for America's 11 best practices for creating high-impact, implementable policies that clear conviction records—*automatically*

With momentum increasing across the U.S. to legalize or decriminalize cannabis and other controlled substances, these laws need to include provisions that clear criminal records. It's crucial that this record clearance be automatic in order to be truly effective and repair past wrongs that criminalization caused before laws changed.

Traditional "petition-based" record clearance systems can't clear records at scale. In fact, petition-based systems are expensive, confusing, and time-consuming—and provide relief to less than 10% of people eligible for record clearance, according to multiple studies and our own estimates from working in various states.

The *automatic* approach shifts the burden from people with records to government. In essence, the automatic record clearance process involves a state-level agency, such as a criminal record repository, identifying which records are eligible for relief based on the law—then sealing those records and coordinating to make sure other state and local agencies limit public access as well. Well-designed legislation makes this relief possible.

Code for America helped implement California's automatic cannabis record clearance law and **reduce or dismiss 144,000 marijuana convictions**. Since then, we have worked in multiple states to help design and implement broader automatic record clearance legislation. Through this work, we have identified **11 best practices** for crafting automatic record clearance legislation that is *impactful*—helping as many people as possible—and *implementable*—meaning government can provide that help efficiently and on a meaningful timeline. These recommendations should be understood as a starting point for crafting legislation, but not all-encompassing.

> **Please refer to our full-length report** for in-depth explanations and additional context, or contact David Crawford, Senior Program Manager - Criminal Justice, at dcrawford@codeforamerica.org for more information.

Recommendations for the automatic record clearance process

1. **Record clearance must be *automatic* to be effective—don't just add a controlled substance to the list of convictions that are eligible for clearance in a petition-based system.** Relying on the petition-based approach to record clearance will leave behind the vast majority of people. Automatic record clearance is the only way to ensure that if convictions become eligible for record clearance, they actually get cleared.

2. **A *state-level agency* must initiate and coordinate automatic record clearance implementation**—often the agency that serves as a state's criminal history repository. Local jurisdictions should not be implementing their own processes independently. State-level coordination ensures more uniformity and greater accountability.

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.

4. **Require government to *study and publish* the impact of automatic record clearance legislation—especially equity metrics and racial disparities.** Showing the life-changing impact of automatic record clearance on people who have been harmed by criminalization builds public trust and paves the way for more expansive automatic record clearance policies in the future.

Recommendations on <u>eligibility</u> for automatic record clearance

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.** This *minimum* eligibility policy is known as the "Green Standard."

6. **Do not include *disqualifying conditions* or *waiting periods* in the eligibility rules.** These conditions reduce the number of people who will benefit from record clearance, and they make implementation much more difficult.

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.** If a state does not have separate statutes for various controlled substances, we can help explore technological solutions that do not result in people's unnecessary exclusion from eligibility.

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.** Allowing system actors, such as judges or prosecutors, to single out people who would otherwise be eligible is inequitable—and it is extremely challenging to implement in an automatic record clearance system.

Recommendations on <u>access</u> to and <u>jurisdiction</u> over cleared records

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.** This access is important because in an automatic record clearance system, people may not know that their record has been impacted—and if they don't know, they can't take advantage of the benefits of record clearance.

10. **Courts should maintain *confidential*, *sealed* copies of cleared records that are not publicly accessible.** Destroying all traces of a cleared record is unnecessary to keep it out of the hands of background check companies, and it can make implementation challenging. It may also harm people down the line should they need access to their own cleared records for equitable licensing or grant programs, immigration proceedings, and more.

11. **Legislation must make 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.**

The above recommendations are summaries of those included in a [full-length report](#) with additional explanations and context, available here.

We can work with you to create impactful, implementable, and equitable automatic record clearance policies—and help implement those policies.

For more information and to collaborate, please contact **David Crawford, Senior Program Manager - Criminal Justice, at [dcrawford@codeforamerica.org.](mailto:dcrawford@codeforamerica.org)**