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Cities, states work to clear marijuana convictions, calling it a states' rights issue

By [Katie Zezima](#) February 1 [Email the author](#)

A sheriff's deputy arrests a man for alleged marijuana crimes in California in September. (AP Photo/Noah Berger, File)

When California voters passed a measure in 2016 that legalized cannabis and allowed for people to have their marijuana convictions wiped away or reduced, San Diego County District Attorney Summer Stephan ordered her staff to immediately start scouring the city's criminal records to find people who qualified.

As marijuana becomes legal in more states, some are allowing people to ask to have their old marijuana convictions expunged or reduced. It is, proponents say, a way to atone a war on drugs that disproportionately affected low-income and minority communities and to ensure that the criminal records people carry are not out of sync with current laws.

It also attempts to get to the root of a complex legal question: what happens when people have a conviction on their record for a crime that is no longer illegal?

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"If you've made a legislative determination that this is no longer criminal, why would you want to continue to have people feeling the ramifications of something that people going forward will no longer have to suffer?" said Jenny Roberts, an American University law professor.

[*\[San Francisco to clear all marijuana misdemeanor convictions dating to 1975\]*](#)

At least nine states, including Colorado, Maryland and Oregon, have made it easier to have some marijuana charges sealed or thrown out completely. Recreational marijuana use is legal in some, but not all, of those states. Colorado last year approved a bill that allows people convicted of misdemeanor marijuana possession before Dec. 10, 2012, to petition to have their convictions sealed.

In Oregon, lawmakers stated that judges must take the current law -- which says that possessing and selling marijuana is legal -- into account when they consider whether or not to change a person's criminal record. In Maryland, people convicted of marijuana possession can petition a court for expungement.

"It really makes sense to not burden these people with a lifelong criminal record," said Kate Bell, a lobbyist for the Marijuana Policy Project in Maryland.

In most places, people must specifically request to have their records expunged, a process that can be costly and time-consuming. Though the laws largely aimed to help low-income people, there is concern that the petitioning process makes it more difficult, and therefore less likely, that they will move to have their records changed.

On Wednesday, San Francisco District Attorney George Gascón announced that his office will clear all marijuana misdemeanor convictions dating to 1975 and review all felony convictions to see if they are eligible for a reduction.

“California voters have clearly sent a message,” he said. “The war on drugs has been a failure, and more specifically, the war on marijuana has been a failure.”

Gascón said he is concerned about how U.S. Attorney General Jeff Sessions is handling federal marijuana policy. Sessions last month rescinded Obama-era guidance that eased the federal enforcement of marijuana.

“It’s really a question of states’ rights,” Gascón said. “I’m very disturbed and concerned about the national trend ... when you have the attorney general making marijuana a potential threat against our communities. Any middle school kid will tell you that’s a complete joke.”

A spokesman for Sessions declined comment Thursday.

Gascón said he made the decision to automatically clear records so people “will not have to jump through hoops to get relief.” He estimates that about 3,000 people will be eligible to have their convictions vacated and about 5,000 will be eligible to have their cases reviewed for possible reduction.

Prosecutors can decide not to support a reduction should a person have a major felony, such as murder, on their record. Old convictions will be reclassified under the law as it reads now. For example, if someone had been convicted of possessing an ounce or less of marijuana, that conviction would be tossed out because that is now legal under California law.

California Assemblyman Rob Bonta (D-Oakland) introduced a bill that would require automatic expungement of records.

“The role of government should be to ease burdens and expedite the operation of law — not create unneeded obstacles, barriers and delay,” Bonta said in a statement. “These individuals are legally entitled to expungement or reduction and a fresh start. It should be implemented without unnecessary delay or burden.”

Nevada assemblyman William McCurdy (D) introduced a bill that would allow people convicted of possessing less than an ounce of marijuana to have their records wiped clean; it was vetoed by Gov. Brian Sandoval (R). McCurdy said he would like to reintroduce the legislation in the state, where marijuana is now legal.

“I’ve always been under the belief that if you made a mistake in the past and the law has changed, you should definitely benefit from the changing of that law,” he said. “There’s a lot of folks who are sitting behind bars for less than an ounce of marijuana, and that’s troubling.”

In San Diego, Stephan ordered attorneys to look at cases shortly after voters passed the ballot initiative in November 2016, when the expungement provisions took effect. Prosecutors first looked at people in prison, then at those who were recently convicted, recommending their cases to public defenders.

They worked “backward, with the idea that persons that received their convictions more recently might be directly impacted in terms of their ability to look for jobs or have informal probation, housing benefits, military, other things,” she said.

About 680 people have had their convictions lessened, 55 of whom are currently behind bars, Stephan said. She believes there are about 5,000 people who are eligible to have their convictions changed.

“Our hope is that they will take advantage of it and use it to reintegrate and enter society without the burden of having a felony conviction,” she said.

Most of the sentencing laws are tied to the legalization of marijuana, something that Kevin Sabet, the founder of Smart Approaches to Marijuana, which opposes legalization, said shouldn’t be the case.

“People deserve a second chance, and we shouldn’t penalize people for past convictions, but it shouldn’t take having to legalize -- and commercialize -- marijuana for that to happen,” he said. “This a false choice between legalization and criminalization.”

Mark A.R. Kleiman, a professor of public policy at New York University, said the logic of such laws is complex.

“On the one hand, we’ve decided that doing X is no longer against the law, why are we still punishing people for still doing X?,” he said. “And one answer is, ‘We didn’t let Al Capone out of prison until after prohibition.’”

But, Kleiman said that he thinks California and other states are making the correct decisions.

“I think Gascón is absolutely right to get rid of as many of these convictions as possible, especially if it’s the sole conviction,” he said. “It’s very expensive over a lifetime.”