



Criminal Records Expungement and the Marijuana Opportunity Reinvestment and Expungement (MORE) Act of 2019

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The Marijuana Opportunity Reinvestment and Expungement (MORE) Act of 2019 (H.R. 3884; S. 2227) [would expunge the criminal records of convictions for qualifying federal marijuana offenses](#) and all related arrests for individuals no longer serving a criminal justice sentence. Most of these offenses fall under the [Controlled Substances Act](#), but Section 2 of both the House and Senate bills references other federal marijuana offenses in Title 16 and Title 18 of the U.S. Code. The bills would require each federal district court, within one year of enactment of the bill, to issue an order expunging records of convictions or adjudications for juvenile delinquency and related arrests for federal marijuana offenses entered into, on, or after May 1, 1971, up until the day the bill is enacted. Also, the bills would allow anyone who has been convicted or adjudicated delinquent for a marijuana offense and is not currently serving a sentence to petition the court for expungement, which would allow for convictions and associated arrests to be expunged before the end of the one-year review period. Expunged records would be sealed and removed from “each official index or public record,” though the record could be made available pursuant to a court order.

The MORE Act would allow those currently serving a sentence for a federal marijuana offense to petition a court for resentencing as if the penalty for their marijuana offense was not in effect at the time of their initial sentencing. At the time of resentencing, the court would be required to expunge the records related to the marijuana conviction and any related arrests.

Federal Marijuana Offenders

There is no official estimate of how many people might be eligible to have their criminal history records related to federal marijuana offenses expunged if the MORE Act were to become law (i.e., how many people have ever been convicted for a federal marijuana offense). However, some data provide a sense of how many people are arrested and how many are convicted for federal marijuana offenses each year.

- As part of its [Domestic Cannabis Eradication/Suppression Program](#) (DCE/SP) that exclusively targets drug trafficking organizations involved in marijuana cultivation, the

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Drug Enforcement Administration (DEA) [arrested 4,718 individuals for marijuana offenses in 2019](#)—this was down from [5,632 arrests in 2018](#). Of note, the DEA generally does not arrest for simple possession of marijuana.

- [Data from the U.S. Sentencing Commission \(USSC\)](#) show that 1,675 (8.5%) of all federal drug trafficking cases (19,765) involving offenders sentenced in FY2019 under [U.S. Sentencing Guidelines, Chapter 2, Part D](#), involved marijuana as the primary drug type. The USSC also noted that the number of marijuana trafficking offenders sentenced under Chapter 2, Part D decreased by 51.6% from FY2015 to FY2019.
- Data from the Federal Bureau of Investigation’s (FBI’s) [Uniform Crime Reporting Program \(UCR\)](#) show that there were [over 1.6 million arrests for drug abuse violations in 2018](#), of which [37% were for marijuana possession and 3% were for selling or manufacturing marijuana](#). However, UCR data largely reflect arrests made by state and local law enforcement agencies.

Potential Issues Related to Expungement

The expungement provision in the MORE Act could raise several issues for policymakers. The legislation would only address expungement of criminal records related to federal marijuana offenses; it would not provide relief from convictions for marijuana offenses in state courts. [A report from the Collateral Consequences Resource Center \(CCRC\)](#) notes that state laws vary as to when criminal records can be expunged, but 18 states and the District of Columbia have enacted relief laws specifically related to marijuana offenses. However, the types of offenses for which records can be expunged and the process for seeking relief [varies in the states that have enacted these laws](#). An issue policymakers might consider is whether Congress should provide an incentive for states to adopt uniform laws regarding the expungement of convictions for state level marijuana offenses. For example, Congress may place conditions on federal criminal justice funding, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) program, or provide funds to states to help them implement expungement programs. Congress may consider providing guidelines to states on how to structure their expungement programs.

While the MORE Act would require courts to expunge arrest records associated with a conviction for a marijuana offense, it would not provide for the sealing of criminal records for marijuana-related arrests that did not lead to a conviction. The FBI has a [process through which people can obtain a copy of their criminal history record and challenge inaccurate or incomplete information](#) (e.g., the arrest record does not reflect that the charges were dropped or the person was not convicted). However, under this process it is the responsibility of the person to ensure his or her record is correct, and [research suggests that about half of arrests might not have associated disposition data](#). If arrest records resulting in a conviction are expunged, it might raise a question about whether non-conviction arrests should be handled in the same manner.

Finally, while the MORE Act would require expunged records to be removed from “each official index or public record,” [CCRC notes](#) that criminal records are also maintained in privately owned databases, which consist of records assembled by private companies from public sources, such as court records. Individuals or businesses who want to do a background check, for instance, can access the information in these private databases for a fee. [Private background check companies are subject to federal regulation under the Fair Credit Reporting Act](#), which requires consumer reporting agencies to “assure maximum possible accuracy of the information concerning the individual referenced in the report.” However, [CCRC reports](#) that many private companies continue to report expunged criminal records because they claim they did not know that the record was expunged. Policymakers might consider whether federal courts should be required to send lists of criminal records that would be expunged under the MORE Act to private background check companies in their respective districts to notify them of the expungement.

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