Changing the Past: Cannabis Record Clearance Policy in California

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Abstract

Record clearance programs for prior cannabis offenses are essential for rectifying the historical injustices and disparities associated with marijuana-related offenses. Clearing records provides a fresh start by removing the barriers that come with a criminal record, by making it so landlords, employers, or others conducting a background check on a person cannot see a person's past record. California recognizes that cannabis specific record clearance programs are a crucial component of the broader effort to create a fair and inclusive legal framework surrounding recreational cannabis use and has adopted an automatic record clearance program following their legalization of marijuana. California has been at the forefront of cannabis criminal justice policy. This paper analyzes the successes and failures of California's record clearance program from the passage of Proposition 64 (2016) that legalized marijuana to AB 1706 (2022) that provides an internal accountability framework for the CA Department of Justice. Using county level expungement data overtime, this paper contributes to the policy analysis conversation around automatic expungement programs in America. California's automatic expungement policy worked best when state justice departments had incentive structures and clear record keepings, but counties varied significantly in expungement rates despite state efforts. As states continue to legalize marijuana and adopt cannabis specific criminal justice policies, they should learn from the successes and failures of The Golden States' program.

Introduction

Although the substance has been legal for medicinal use since 1996 and recreational use since 2016, hundreds of thousands of Californians have been arrested on marijuana charges. A criminal record limits employment opportunities, presents housing difficulties, and restricts access to education. Expungement programs for prior cannabis offenses are a popular policy option for state governments seeking to rectify the historical injustices associated with marijuana-related offenses. systemic inequalities, particularly for people of color, where enforcement of marijuana-related offenses has had a disproportionate impact. Marijuana expungement programs are a crucial component of the broader effort to create a fair and inclusive legal framework surrounding recreational cannabis use, but many put significant time and financial burdens on the individual seeking to get their record cleared or hidden. As states continue to legalize marijuana and adopt record clearing reforms, it is important to study the most effective programs.

Not only do the barriers that come with convictions harm everyone with a record, but they exasperate racial inequalities. Although many states have legalized marijuana, leading to a decline of marijuana arrests nationwide, racial disparities in arrest rates persist. Black Americans are still 3.64 times more likely to be arrested for simple possession than their White counterparts.[1] If Black Americans are more likely to be arrested and convicted of marijuana

[1] American Civil Liberties Union (2020). A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, *ACLU*, *1-110*

related offences than their White counterparts, then racial inequalities will grow as employers, educational institutions, and housing opportunities discriminate against people with criminal backgrounds.

As states legalize marijuana, they face political pressure to ensure the marijuana legalization laws recognize and correct historical injustices. Equity based business applications that promote people of color in the cannabis business sector and cannabis specific record clearance or resentencing programs have become popular provisions to cannabis legalization reforms. However, these programs are very new, and little research has been done on the effectiveness of these programs. Even less research has been done on automatic record clearance programs. Legalization alone has not remedied disparities in arrest rates, but some states have taken additional measures to ensure social justice in marijuana policy.

Drug policy has exacerbated racial disparities in marijuana-related offenses. The recent wave of marijuana legalization cannot be separated from this historical context. This paper will provide an exploration of the impact of marijuana legalization on past disparities in arrest rates. Understanding current political environment around cannabis through its historical context is just one part of the story. The other component is record-clearance programs. While these are nothing new policy wise, their impact considering changing drug laws is important to understand. A review of studies by the ACLU, Stubenberg et all, data from the FBI Crime Explorer, California's DOJ, and Politico will provide the reader with a comprehensive understanding of the different types of record clearance programs through their benefits and challenges.

After providing the important historical and policy context surrounding the issue, I will dissect California's cannabis specific record clearance programs beginning in 2016 when the state legalized marijuana until today. Legalization of marijuana being recent, the changes in the policy have been significant. Proposition 64 initially legalized marijuana in California for adult recreational use and authorized petition-based expungement for a variety of cannabis offences. California amended this in 2018 with AB1793. AB1793 expanded the expungement program to issue automatic relief for eligible marijuana convictions. However, counties were slow to initiate the expungement process, causing California to pass AB1706. It required the California DOJ to review state records to identify past convictions that were potentially eligible for changes or expungement. Once these potentially eligible convictions were determined, California began the process of automatic record clearance. Under AB 1793, if a case was not challenged by July 1, 2020, the case was empowered to be dismissed. A subsequent act, AB 1706 extended the deadline to submit the official changes in sentencing to March 1, 2023. The goal of these reports was to produce official numbers for total cases whose status was changed under the law overtime. It also required the DOJ to produce a quarterly joint progress report to the Legislature until June 1, 2024, and I will be using the data from the first five in my analysis section.
Most cases meeting the criteria for expungement have been successfully cleared, but this thesis will focus on the cases eligible for record clearance that remain in the system. Data cleaning and merging will be done in Excel, and STATA will be used to create a predictive model. My goal is to determine the significance of demographic factors in predicting which cases will be expunged.

I hypothesize the regression analysis will reveal a significant relationship between overrepresented races in arrest rates and expungement outcomes.

Marijuana in U.S. History

Cannabis was effectively banned by the federal government under the 1937 Marihuana Tax Act.[2] Before 1937, American cannabis legislation was left to the states. California has earned a reputation as a marijuana friendly state, but it was one of the first states to ban the drug. The state legislature amended Chapter 342 Section 8(a) of the California Poison Law to make recreational use of hemp and hemp derivatives illegal. Like California, many states already banned marijuana by the time the 1937 Marihuana Tax Act instituted federal involvement in marijuana legislation.[3]

Congress passed the Controlled Substance Act (CSA) in 1970 with the support of President Nixon. The CSA classified marijuana as the most dangerous class of drugs (Schedule 1) under the pretense that it has the highest potential for abuse and no recognized medical use. Despite harsher federal policy, drug sales and use rose throughout the 1980's. In response to an unsustainable increase in marijuana arrests, the California legislature passed the Moscone Act in 1975 to reduce possession charges for marijuana from a felony to a misdemeanor.[4] In the 1990s, states began to legalize marijuana for medical reasons. (See Appendix). Among these states, California legalized marijuana for medical use in 1996.[5] Marijuana still had "no recognized medical use" under federal law, but it was available for cultivation, sale, and use by patients with a state recognized medical card. Medical cards were granted by physicians to anyone with an "illness where marijuana provides relief.[6]" In response to medical marijuana laws, the United States Department of Justice (DOJ) released the first of many memorandums regarding marijuana enforcement in October 2009. The memorandum instructed federal prosecutors to defer to state laws for the sale and use of medical marijuana.[7] Despite efforts of marijuana advocates, marijuana policy remained relegated to medical prescriptions.

In 2012, Colorado and Washington legalized the drug for adult recreational use through ballot initiatives.[8] The states were not challenged by the federal government. The following year, the DOJ issued another memorandum and Attorney General Holder met with Colorado and

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[2] Gieringer, D. H. (1999). The Forgotten Origins of Cannabis Prohibition in California. Contemporary Drug Problems, 26(2), 237-288. https://doi.org/10.1177/009145099902600204

[3] Ibid.

[4] Murphy, Partick; Carnevale, John (2016) Regulating Marijuana in California. 1-32. https://www.ppic.org/wp-content/uploads/content/pubs/report/R_416PMR.pdf

[5] Compassionate Use Act of 1996, California Health and Safety Code, Article 2. Cannabis [11357 – 11362.9] November 5, 1996, Proposition 215, Sec. 1

[6] Ibid.

[7] Ogden, D (2009). October 19, 2009. Memorandum for Selected United States Attorneys, Deputy Attorney General, Department of Justice, Washington D.C.

[8] Johnson, K (2013). Justice Department Announces Marijuana Policy Shift." USA Today, 29 Aug. 2013, Accessed 4/19/2024.

Washington Governors signaling that the DOJ would likely not contest the state[9] laws. Like the wave of medical legalization in the 1990s, the 2010s inspired a wave of recreational marijuana legalization. California, Nevada, Maine, and Massachusetts all legalized marijuana in 2016. The 2018 Farm Bill legalized the production of industrial hemp with THC levels of 0.3% or less, leading to an increase in hemp derived THC and CBD products on the market.[10] 12 years after the first 2 states legalized recreational marijuana, 38 states and the District of Columbia changed their laws regulating and taxing marijuana to resemble state alcohol or tobacco laws. (See Appendix)

The drug remains federally illegal, but policy makers from the local to federal level are looking to erase convictions for the substance. In 2022 President Biden pardoned 6,500 people convicted on simple marijuana charges and issued another pardon in 2023.[11] Most of the arrests for marijuana are conducted through state and county law enforcement, not federal. Many individuals were convicted for possessing or using a substance that is now legal in their state. Most marijuana arrests are for possession. States that decriminalize or legalize marijuana have fewer marijuana arrests, but racial disparities in arrest rates persist. Drug possession arrests (including marijuana) in the United States have declined since the Colorado and Washington legalized marijuana in 2012.[12] In 2020, the United States saw, for the first time since 1994, the number of marijuana possession arrests fall below another category of drug possession arrests. [13] Possession arrests still constitute most marijuana related arrests at 89.6% in 2018.[14] As more states have legalized marijuana overall drug possession arrests have declined. In 2012 over 1.2 million people were arrested for drug possession and sale offenses. Ten years later, less than 800 thousand people were arrested for drug possession and sales[15].

50.7% of White Americans have used marijuana in their lifetimes compared to 42.4% of Black Americans, and 17.8% of Black Americans have used it in the past year compared to 16.5% of White Americans. Despite using marijuana at similar rates, as of 2018, Black Americans were 3.64 times more likely than White Americans to be arrested for marijuana possession.[16] This racial disparity between Black and White Americans grew from 3.31 times more likely in 2010 to 3.64 times more likely in 2018. During the same 8-year time frame, 9 states legalized recreation marijuana. Going against the national trend, racial disparities declined

[9] Holder, E (2013). August 29, 2013. Guidance regarding Marijuana Enforcement, Deputy Attorney General, Department of Justice, Washington D.C. Accessed 4/19/2024

[10] "H.R.5485 - 115th Congress (2017-2018): Hemp Farming Act of 2018." Congress.gov, Library of Congress, 12 April 2018, Accessed 4/19/2024

[11] A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana, Attempted Simple Possession of Marijuana, or Use of Marijuana." *Whitehouse.Gov*, The White House, 22 Dec. 2023, Accessed 4/19/2024

[12] United States Department of Justice, Federal Bureau of Investigation. (2022). Crime in the United States, 2022. Retrieved 4/19/2024,

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

from the time of legalization in Alaska, California, Colorado, Maine, Nevada, Oregon, and Washington. Nevada .[17] As of 2018, California's Black to White arrest ratio rate was 1.81, only 4 states had lower arrest disparities for marijuana, including Alaska and Colorado. It is important to note that rates of marijuana arrests have decreased significantly nationwide and in California since 2018. National arrests for drug possession have nearly halved, going from 1,179,021 arrests in 2018 to 673,001 in 2022. Drug possession arrests in California went from roughly 200,000 in 2018 to100,000 in 2022.

Criminal Records in America

Criminal records follow a person for life, restrict employment and housing opportunities, and are publicly accessible in the U.S. background checks are used by most employers, landlords, and colleges to screen for applicants' criminal records.[18] Concealing records from public view is one policy option to limit discrimination surfaced in background checks for housing, employment, and education, particularly for Black and Hispanic communities, where enforcement of marijuana-related offenses has had a disproportionately impact.[19] [20] Hawaii, North Dakota, New Hampshire, and Utah have not fully legalized marijuana, but have some program for reevaluating cannabis offenses. Most states that have legalized marijuana have accompanying record clearing reforms. Arizona, California, Colorado, Connecticut, Delaware, Illinois, Massachusetts, Maryland, Michigan. Minnesota, Montana, Missouri, New Jersey, New Mexico, Nevada, New York, Ohio, Oregon, Rhode Island, Virginia, Vermont, Washington, and the District of Columbia all have some form of expungement or sealing laws specific to marijuana.13 of the 24 states that have marijuana specific sealing or expungement laws have some form of automatic relief program, although most are only for misdemeanors or require waiting periods.[21] For these states, record clearance programs are a crucial component of the broader effort to create a fair and inclusive legal framework as they expand their laws surrounding recreational cannabis use.

Not all expungement programs are created equal. Automatic programs require no action from the individual -- the burden falls on the state to initiate the process. Petition-based programs require the individual to initiate the record clearance process, usually through filing paperwork with the prosecutor's office that processed their offense. Stubenberg et all's study *Criminal Justice Record Clearing: An Analysis from Two States*, petition record clearance programs have been found to put significant financial and time burdens on individuals who are attempting

[17] Ibid.

[18] Lo, Kenny. "Expunging and Sealing Criminal Records." *Center for American Progress*, Center for American Progress, 24 May 2023, Accessed 4/19/2024

[19] Ibid.

[20] Stubenberg, Matthew and Danser, Renee and Greiner, Daniel James, Criminal Justice Record Clearing: An Analysis from Two States, February 4, 2023, Accessed 4/19/2024

[21] "50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency." *Collateral Consequences Resource Center*, Margaret Colgate Love, Jan. 2023, Accessed 4/19/2024

change their record.[22] Barriers include time, money, and legal literacy. The barriers are intended to filter the people who are "serious" about getting back on their feet. However, combined with other challenges people with criminal records face like finding employment, housing, or receiving government assistance petition-based systems put the people they aim to help most at a disadvantage.[23] Stubenberg, Colleen Chien, and Prescott & Starr have all studied uptake or second chance gaps in 17 states. Automatic record clearance programs are intended to reduce these barriers and consequently reduce the second chance gap. Pennsylvania passed The Clean Slate Act in 2018 to expand automatic record clearing for non-violent offenses. 30 million records in the state were sealed the following year. Although, Stubenberg's 2023 study found that Pennsylvania still has a second chance gap. These studies examined the impact of expungement programs for all eligible offences, not just marijuana specific. My research will differ from these studies as I focus on cannabis specific expungement programs, often passed in conjunction with cannabis legalization.

Most states with legal marijuana have one or a combination of both types of cannabis specific expungement programs. 24 states with recreational marijuana have some form of petition-based expungement programs, and 13 states have automatic expungement programs.[24] Thirteen states have adopted automatic expungement programs, but California's is a standout. It was the 6th state to legalize marijuana through Proposition 64; a ballot measure that was adopted through popular vote. In addition to legalizing marijuana, it created a record clearance program specifically for cannabis offenses. California's 2018 bill, Assembly Bill 1793, expanded the record clearance provisions in Prop. 64. Cannabis offenses that were eligible for petition under Prop. 64. were made eligible for automatic record clearance. Until 2021, CA was only one of two states to offer automatic expungement for cannabis related charges.[25] More states have passed cannabis specific automatic clearance policies, but limit expungements to misdemeanors and some felonies. Both misdemeanors and felonies are eligible under California law.[26] California is the largest state in the U.S. by population, with an estimated 39 million residents in 2023.[27] Cannabis arrests in California have continued a downward trend post legalization, as opposed to other states where declines in arrests only began after legalization.[28] The timing of California's marijuana legalization, the size of the state, and its cannabis specific record clearance program make it a great state to study the effects of record clearance.

The Legalization of Marijuana in California

[22] Ibid.
[23] Ibid.
[24] Ibid.
[25]Love, Margaret and Hrdinova, Jana and Ridgway, Dexter, Marijuana Legalization and Record Clearing in 2022 (December 19, 2022). Ohio State Legal Studies Research Paper No. 747, Drug Enforcement and Policy Center, December 2022, Accessed 4/19/2024
[26] Ibid.
[27] "Population estimates" People, US Census, July 1, 2023, Accessed 4/19/2024
[28] Ibid.

In 2016 California embarked on an ambitious policy objective. The state passed a sweeping ballot proposition on marijuana legalization, known as the Adult Use of Marijuana Act (AUMA). In addition to legalizing and regulating the cultivation, manufacturing, and sale of marijuana, it amended the state's Health and Safety Code. Section 11362 of the HSC now allows individuals currently serving time and who have already served marijuana sentences who would not have been guilty of would have been guilty of a lesser offense if AUMA was in place at the time to petition for their sentences to be dismissed or sealed. The 2016 Proposition 64 Section 11361.8 provisions paved the way for the automatic record clearance process passed in September 2018. Assembly Bill No. 1793 (AB 1793) adds Section 11361.9 to the cannabis Health and Safety Code to change the process for cannabis record clearance from petition to automatic. Section 11361.9 required action by the Department of Justice, County Prosecutors, and the Courts to implement the state-initiated expungement program. It set a two deadlines. The Department of Justice was required to review all records in the state summary criminal database to identify which cases were eligible for resentencing by July 1, 2019. If a conviction was found to be eligible for recall or dismissal, dismissal and sealing, or redesignation, the prosecuting agency for the case was notified of the decision by the DOJ. The prosecution had until July 1, 2020 to challenge the DOJ classification if the person did not meet the eligibility requirements given above or posed an unreasonable risk to public safety. The prosecution passed their decision along to the courts to designate what action to take on the sentences. AB 1793 did not provide a deadline for the courts. Because there was no deadline given to the courts, the implementation of the last part of AB 1793 required another act to bolster it.

Assembly Bill 1706 was passed in September 2022, 4 years after AB 1793. It provided directions for courts on resentencing and expunging records and required the California Department of Justice to issue progress reports on the policy implementation.[29] It set a date for the court to deliver their decision. Of the cases that were not challenged by the prosecution before July 2020, the court had to notify the DOJ of their decisions on which cases to recall, dismiss, seal, or redesignate by March 1, 2023. The California DOJ was also required to produce progress reports to the Legislature regarding the implementation status of the *Cannabis Convictions: Resentencing Act* (AB 1793) quarterly from March 2023 to July 2024. These reports have been used in combination with data from the FBI crime database, US census, and news sources like Politico to determine the factors that affect county compliance with the laws. The factors that affect county level compliances will be the focus of this study.

Variables & Predictions:

Counties within California vary in marijuana arrest numbers because district attorneys and police departments have discretion in how they chose to enforce the law.[30] Two years after the state legalized marijuana Siskiyou County , Shasta County, Contra Costa County, Humboldt

[29] Ibid.
[30] Ibid.

County, and Alameda County had the 5 highest disparities in arrest rates in the state. The disparities in the counties ranged from black residents being 8.03 times more likely than white residents to be arrested for marijuana possession in Siskiyou County to 4.09 times more likely in Alameda County. A total of 11 counties in California had a black/white arrest ratio for marijuana possession above the national average. Ten California counties: Los Angeles, San Diego, Orange, Riverside, San Bernadino, Santa Clara, Alameda, Sacramento, Contra Costa, and Fresno County, have populations greater than 1 million. Of these most populous counties, Alameda, Contra Costa, and Sacramento also had notable disparities in arrest rates. Alpine, Sierra, Modoc, Mono, Trinity, Mariposa, Inyo, Plumas, Colusa, and Del Norte were the ten least populous counties. Trinity County is the 5th least populous county in California but had arrest rates over the national average as of 2018. It is important to note that since the ACLU conducted its study on racial disparities, California has changed its record clearance system for marijuana to automatic. The effect of this policy on arrest rates has yet to be studied. That should not affect my research. If a county had high racial disparities in arrests at the time that cases became eligible for automatic record clearance, I hypothesize that they were one of the counties that had a low compliance rate with AB 1793 and 1706. Three of the ten most populous counties and only one of the ten least populous counties had high disparities in arrest rates. More populous counties are more likely than less populous ones to have high racial disparity rates. If a county does not enforce its marijuana possession laws at equal rates between races, it may not expunge black and white convictions at the same rate either.

This report looks to explain why some counties have higher expungement rates than others from the implementation of Proposition 64 to AB1793 and AB1706. To provide this analysis, this paper will examine factors in each county to explain their influence on rates of expungement. I wanted to examine the population numbers, percentage of Black, White, and Hispanic residents, and percentage of vote for Trump and Biden in 2020, because I thought these variables would have the most impact on a county's rate of compliance with AB 1793/1706. A higher population means there will be more cases for the county to process not just marijuana cases but all cases which may lead to a delay in implementing the automatic record clearance policy.

Racial disparities in arrest rates have been studied before. While arrests are conducted by police officers, this paper focuses on the role of courts and prosecutors. However high disparities in arrest rates may signify racial prejudice throughout the system. On the other hand, if Black marijuana users were arrested at higher rates than their white counterparts for low level possession offenses, their convictions may be more easily expunged if they are more likely to meet the criteria. For these reasons I believe racial makeup will influence the county expungements. I also wanted to study if the political leanings of a county influence the expungement process. I would guess that counties that lean more toward the democratic party would be quicker to change their eligible records, because they are likely to elect democrats who would be in the same party as the one that passed AB 1793 and 1706. Because the State of California is reliant on County Prosecutors to identify the cases in question, this will be an

examination of county level success within a broader state policy context. Based on the data collected, my analysis will answer two questions: What makes some counties better at initiating record clearance than others? What are my policy recommendations moving forward?

AB 1706 & US Census Data:

The nature of expungement programs means that the information is not publicly available thus baring me from collecting the data on my own. I was unable to obtain the demographic characteristics through FOIA request during my limited time writing this report. However, population, percent vote for Trump and Biden in the 2020 election, and demographic data on each county were all available. California Assembly Bill 1706 required quarterly joint process reports be published by the California Department of Justice in collaboration with the Office of the Attorney General, California Justice Information Services Division, Justice Data & Investigative Services Bureau, and Criminal Justice Statistics Center. The first report was released on March 1, 2023. There have been 4 consecutive reports published. The final report in the series will be published in June of 2024. All available reports have been published on the California Office of the Attorney General's website under publications. Given the time constraints of this research paper, I will only be examining the first 5 reports in the series. The goal of each report is to break down the numbers of counties reporting, resentencing petitions, and redesignation applications quarterly from January 2023 until March 2024. When a report is issued, it gives the numbers for the prior quarter. So, the first report from March 1, 2023, reports the numbers from January 3rd, 2023. The final report will give the numbers for March of 2024, but excluding that report still gives an entire year of data.

Each report is structured the same. First, they provide a summary and background to the report that details the laws that created the need for the publication. Then the reports gives the *Counts of Convictions* in four columns. Column 1 lists the 58 California counties in alphabetical order. Columns 2 and 3 lists the number for past convictions that are **potentially eligible** for recall or dismissal of sentence, dismissal and sealing, or redesignation as of July 2019 and January 2023. July 2019 was when the DOJ was required to review the cases in the state summary criminal database and acts as a benchmark to compare county progress against. The final column gives the number of convictions that have met the eligibility requirements and received a change or dismissal in sentencing. The cases still eligible and that have received resentencing should add up to the 2019 numbers. Each report provides the 2019 data and the data for its quarter. The March 2023 report gives the numbers as of January 2023, the June 2023 report gives the numbers as of April 2023, and so on. The reports do not provide the numbers for the previous quarters, so I had to merge them into one excel file. The file gives the quarterly numbers by county for July 2019, January 2023, April 2023, July 2023, October 2023, and January 2024. Using this year of expungement data, I was able to analyze which counties had the highest rates of expungements since the DOJ identified the eligible cases in 2019.

Imperial County had the lowest compliance out of all the counties. By January 2024, 85% of Imperial County Convictions that were eligible for a change in sentence had not been changed.

Marin, San Joaquin, Plumas, and Nevada County all had high rates of remaining eligible convictions at 61%, 40%, 39% and 26% respectively. None of these counties had a black/white arrest ratio above the national average or extremely high or low populations. Some counties were in 100% compliance with the law, or all eligible convictions had successfully been resentenced. These counties were Alpine, Mono, Sierra, and Siskiyou. This is an interesting finding. Siskiyou and Alpine both had black/white arrest ratios above the national average but were in full compliance with the DOJ's findings.[31] This may signify that arrest ratios are not a helpful predictor of which counties will have greater success expunging records. The remaining 9 counties identified in the ACLU report had the following % of cases remaining: Humboldt, 7.78%; Trinity, 23.86%; Shasta, 0.1%; Glenn, 5.51%; Placer, 22.24%; Sacramento,11.19%; Contra Costa, 1.88%; Alameda, 0.64%; and San Benito, 2.94%.[32] The percent of cases left varied widely between the counties with the highest black/white arrest disparities. It also varied among the 10 most populous counties. Of the top 10, San Diego County had the least at 0.37% of eligible cases being expunged by January 2024, and Orange County had the most at 19.66% of cases left. Of the 10 least populous counties Plumas had the most cases left at 38.5% and Alpine, Mono, and Sierra addressed all of their identified cases. Although the 10 least populous counties had more in full compliance of the DOJ decision, Plumas County was among the least compliant. Population and arrest rates did not seem to be predictors for how compliant a county was with the law from this analysis, but a regression analysis will give more definite numbers.

The process of gathering data was relatively simple. California had documented the changes in policy from Proposition 64 to AB 1706 through the reports on the website for the California Attorney General. I did need to supplement some data. The population numbers given above were found through US Census Data.[33] The last Census was surveyed in 2020, so any figures for the populations of the counties past 2020 were estimated based on that year. The Census also provides figures for the racial demographics of each county. The races that people are asked to identify themselves by in the census are White, Black/African American, American Indiana/Alaskan Native, Asian, Native Hawaiian/Pacific Islander, Other, and Two or More Races. If a person is of hispanic origin, it identified separately. The Census also provides a diversity index for each county using an equation. (See Appendix) This index is used to identify how diverse each county is by variance in the different races. Solano County had the highest percentage of Black residents at 13.7%. It is the only county in California higher than the total percent of Black Americans at 13.6%. Sacramento, Contra Costa, and Alameda County all had high disparities in racial arrest rates and were in the top 10 counties with the highest % of Black residents. I used the % of white resident and % of Hispanic residents as well in my regression. Finding the percentage of each group in each county was preferable over just numbers because the population of the counties vary from a many as 9.7 million people in Los Angeles County to

[31] Ibid.

[32] Ibid.

[33] "California Remained Most Populous State but Growth Slowed Last Decade" America Counts Staff, US Census, August 25, 2021, Accessed 4/19/2024

as little as 1.1 thousand in Alpine County. The last piece of supplementary data used was from Politico's reporting on the 2020 presidential election. I found the percent of the popular vote of each county that went to Trump and Biden. This is the final piece of data and is used to measure how liberal or conservative a county was. Even if a county went to one candidate or the other by a small margin, the percentage would identify these are swing counties. I want a holistic understanding of the causes for counties to vary in expungement rates, so having the percent by county is important. This analysis is surface level, and its purpose is to acquaint the reader with the counties that stood out for one reason of another as I conducted my analysis. None of these observations make any conclusive findings. A regression model was needed to see if any of these factors had any correlations.

Predictive Model Using Regression Analysis

I had to manipulate the data I found before being able to run a proper regression. First, I had to compile all the data I found from the various sources into one dataset. I began with the data from the AB1706 reports. This gave me the data for eligible cases that had not yet been changed and the cases that had been reversed. This was noted by the variables names eligible and reserved in the dataset. These values were listed by county and quarter. So, each row started with the county, then went to cases eligible as of January 2023, then to cases still eligible as of April 2023, and so on until January 2024. It then repeated this for the cases that had been reversed. I did not include the July 2019 number because this would not be consistent with the quarterly time window. The total of the eligible and reversed columns for each date should add up to the 2019 number, but this was not necessary to include in the final dataset. This was a good format to visualize the trends in my data, but STATA would not be able to process it.

This was when I changed the way the data was formatted to a long format. Instead of listing the dates as their own columns, I created a variable for each of the quarters. There were 5 quarterly dates used: January 2023, April 2023, July 2023, October 2023, and January 2024. Instead of column A listing the counties once each (e.g. Alameda, Alpine, Amador, Butte, etc.), it listed each five times in a row. So, Alameda would be listed five times in column A. Next to the 1st listing, the quarter column would read "1", "2" next to the second time the county name was listed, and so on. This allowed me to record the changes in the variables eligible and reversed over the 5 consecutive quarters. I could now run it in STATA, but I needed to include the other key variables I identified. With the help of my advising professor, we merged the data in STATA so for each of the 5 entries for the counties the number for the other variables repeated 5 times. Using a simple model, I did not adjust for population change overtime. I went by the Census's most recent estimates for the population variables. The Census data is estimated for 2023 anyways, and I would not have been able to break it down by month because it was not available. I suggest, especially once the final A 1706 report is published in June, that the state of California run a similar model but with population adjusted for changes each quarter. This model just wants to look at the overall size of the county to determine if there was a trend between population and records expunged. This long format was applied to the number and percent of

each demographic identified in the US Census, the total population, and percent of the vote for Biden of Trump in the 2020 election. STATA does not accept variable names with spaces, and it is best to keep them short. I entered the name without any spaced for each of the races identified in the Census. The population of each county was noted by the variable, total. I created 3 variables to reflect the percent of white, Hispanic, and black residents in each county. Although the other identified racial identities were included in the dataset, I identified these 3 as having the most impact on a county's likeliness to expunge. These are 3 of the largest demographic groups in the United States, and the disparities in Black and White arrests has been studied. I again urge the State of California to build on my model and include the other racial demographics. Due to my limited resources, I wanted to keep the model and simple as possible. The last variable I included was the percent of the 2020 vote that went to then Vice President Biden (pctBIDEN) and at the time Incumbent President Trump (pctTRUMP).

At the advice of my advisor, I changed to population variable 'total' to 'total_thousands' and divided it by 1,000. This made the variable easier to interpret when analyzing the coefficient. The data was ready for regression analysis in STATA. I needed to run a regression with the 'xtset' command in STATA, because I was working with location data over time. First, I had to change the way the county names were formatted. I used the command **encode County, gen(County_id)** to convert the county name from a string variable to a numerical identifier. This gave each county name a unique id number that replaced its current format as a string of letters. Then I created a panel variable for County_id and quarter. The **xtset** command declared the dataset to be panel data. County_id was defined as the panel variable, and quarter was the time variable. I then ran a regression as I normally would, but instead of using command reg, I used xtreg to run a fixed effects regression. A fixed effect regression accounts for any variability or diversity of data points at the county level and estimates the effects of the demographic variables on the number of convictions reversed by controlling for county level factors that did not change over time. Now that my data processing was complete, I ran the following regression equation in STATA:

xtreg reversed pctblack pctwhite pcthispanic total_thousands pctBIDEN

The command **xtreg** began the equation, followed by my dependent variable **reversed**. This equation examines the effects of the percentage of Black, White, and Hispanic residents, population size, and percent of the vote for Biden in 2020 in a fixed effect model. The R^2 value of the model was .9322. This value suggests that 93.22 percent of the variation in **cases reversed** is due to changes in the independent variables **pctblack, pctwhite, pcthispanic, total_thousands, and pctBIDEN**. This is a very high R^2 value, which means the model is an accurate predictor model that includes most of the variables that explain a counties reversal rate. Moving on to analysis of each the variables, given a p-value of 0.837, there is no statistically significant evidence of a relationship between the percent of Black residents and the number of cases reversed. Same for Percent of Hispanic residents. A p-value of 0.114 indicates that there is no statistically significant evidence of a relationship between the percent of Hispanic residents and the number of cases reversed. However, a p-value of 0.005 for the variable pctwhite

indicates that there is statistically significant evidence of a relationship between the percentage of White residents and cases reversed. While the percent of Black and Hispanic residents did not affect the expungement rate, the percent of White residents did. I can conclude that the percentage of White residents is the most important demographic characteristic for the implementation of the policy. A p-value of 0.000 indicates that there is statistically significant evidence of a relationship between population size and cases reversed. Larger counties were more likely to expunge more cases. Finally, the percent of the county that voted for Biden in 2020 was not found to be statistically significant with a p-value of 0.397. Population and the percentage of White residents were the biggest predictors of a cases reversed.

Before being satisfied with this model, I checked for multicollinearity. Multicollinearity means that two variables are correlated. An increase in one variable leads to an increase in another. I was worried this model would have multicollinearity because I used percentages of demographics and the total population. I think that using the percentages for the demographics and an absolute number for the total population helped me avoid this phenomenon. The average VIF was lower than 10, indicating there was not multicollinearity in the model.

Implications

While expungement clears the criminal records of people, it does not erase indirect consequences that come from marijuana related criminal charges. The ACLU has identified denial of public benefits, drug tests for benefit eligibility, loss of driver's licenses, family separation through the welfare system, deportation, loss of federal financial aid, felony disenfranchisement, and barriers to participation in the marijuana industry as "collateral consequences" to marijuana arrests and convictions.[34] These are entirely not remedied by expungement alone. The burdens imposed by these barriers can stay with a person for years, but when a case is sealed so that it is hidden from public view and background checks it stops those barriers from continuing. States have begun to expand record clearance laws for all crimes, especially marijuana in particular. These states have erased decades of marijuana criminalization through legalization. Even though the state has moved on, the people who were convicted for using the substance cannot. The most populous state, California, passed a record clearance program in 2016 when it legalized the substance. It since expanded on this program by making it so the individual holding the conviction did not have to file for it to be changed. As of 2018, the state would be the one to initiate the expungement process. The state faced its own barriers to fully expunging records. Hard deadlines for the Department of Justice and Prosecutors were met. Without a set deadline, the county courts dragged their feet when it came to expungements. California passed its latest update on the policy in 2022 which gave the courts a year to submit their decisions on the fate of the DOJ identified sentences. Accompanying this deadline, the Department also was required to issue quarterly joint progress reports from March 2023 to June 2024. These gave the numbers of convictions that were eligible, had yet to be addressed, and had been addressed from January 2023 to March 2024. These reports were one way of holding

[34] Ibid.

counties accountable to the state, but not all counties were in full compliance. Although most counties expunged a majority of eligible cases, Imperial and Marin County had not taken action on over 60% of cases. Running a regression analysis, I found that the counties that were more likely to have high compliance with the law were larger and had a higher percent of white residents. I encourage subsequent studies to examine this law once the final report is released.

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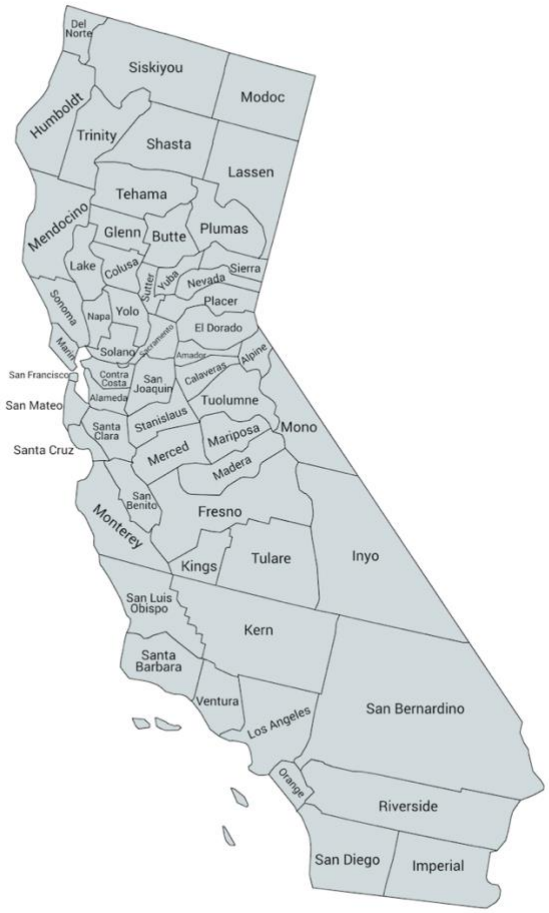
Appendix:

Map of California by County



Legalization Status of Marijuana by State

State	Recreation	Year legal	Medical	Year legal
Idaho	No		No	
Indiana	No		No	
Kansas	No		No	
Nebraska	No		No	
North Caro	No		No	
South Caro	No		No	
Tennessee	No		No	
Texas	No		No	
Wisconsin	No		No	
Wyoming	No		No	
Delaware	Yes	2023	Yes	2011
Minnesota	Yes	2023	Yes	2014
Ohio	Yes	2023	Yes	2016
Rhode Islar	Yes	2022	Yes	2006
Maryland	Yes	2022	Yes	2013
Missouri	Yes	2022	Yes	2018
New Mexic	Yes	2021	Yes	2007
Connecticu	Yes	2021	Yes	2012
New York	Yes	2021	Yes	2014
Virginia	Yes	2021	Yes	2020
Montana	Yes	2020	Yes	2004
Vermont	Yes	2020	Yes	2004
Arizona	Yes	2020	Yes	2010
New Jersey	Yes	2020	Yes	2010
Illinois	Yes	2019	Yes	2013
Michigan	Yes	2018	Yes	2008
California	Yes	2016	Yes	1996
Nevada	Yes	2016	Yes	1998
Maine	Yes	2016	Yes	1999
Massachuse	Yes	2016	Yes	2012
District of	Yes	2015	Yes	2011
Alaska	Yes	2014	Yes	1998
Oregon	Yes	2014	Yes	1998
Washingtor	Yes	2012	Yes	1998
Colorado	Yes	2012	Yes	2000
Hawaii	No		Yes	2000
New Hamp	No		Yes	2013
Georgia	No		Yes	2015
Louisiana	No		Yes	2015
Arkansas	No		Yes	2016
Florida	No		Yes	2016
North Dako	No		Yes	2016
Pennsylvar	No		Yes	2016
Iowa	No		Yes	2017
West Virgi	No		Yes	2017
Oklahoma	No		Yes	2018
Utah	No		Yes	2018
Mississippi	No		Yes	2022
South Dako	No		Yes	2020
Alabama	No		Yes	2021
Kentucky	No		Yes	2023

Regression Output via STATA

```
. xtreg reversed pctblack pctwhite pcthispanic total_thousands pctBIDEN

Random-effects GLS regression                   Number of obs     =        290
Group variable: County_id                       Number of groups  =         58

R-squared:                                      Obs per group:
     Within  =      .                                           min =          5
     Between = 0.9335                                           avg =        5.0
     Overall = 0.9322                                           max =          5

                                                Wald chi2(5)      =     729.55
corr(u_i, X) = 0 (assumed)                      Prob > chi2       =     0.0000

------------------------------------------------------------------------------
    reversed | Coefficient  Std. err.      z    P>|z|     [95% conf. interval]
-------------+----------------------------------------------------------------
    pctblack |   23.22485   113.0798     0.21   0.837    -198.4075    244.8572
    pctwhite |   97.05914    34.5683     2.81   0.005     29.30652    164.8118
 pcthispanic |   41.48551   26.22362     1.58   0.114    -9.911837    92.88285
total_thous~s|   5.305231   .2151374    24.66   0.000     4.883569    5.726892
    pctBIDEN |   18.32599   21.62021     0.85   0.397    -24.04883    60.70082
       _cons |  -8614.543   3473.756    -2.48   0.013    -15422.98   -1806.106
-------------+----------------------------------------------------------------
     sigma_u |  2064.3711
     sigma_e |  310.63498
         rho |  .97785879   (fraction of variance due to u_i)
------------------------------------------------------------------------------

. predict xb, xb

. reg xb reversed pctblack pctwhite pcthispanic total_thousands pctBIDEN

      Source |       SS           df       MS      Number of obs   =       290
-------------+----------------------------------   F(6, 283)       =         .
       Model |  1.5616e+10         6  2.6026e+09   Prob > F        =         .
    Residual |            0       283           0   R-squared       =    1.0000
-------------+----------------------------------   Adj R-squared   =    1.0000
       Total |  1.5616e+10       289  54034000.6   Root MSE        =         0

------------------------------------------------------------------------------
          xb | Coefficient  Std. err.      t    P>|t|     [95% conf. interval]
-------------+----------------------------------------------------------------
    reversed |  -4.74e-09          .        .       .            .           .
    pctblack |   23.22485          .        .       .            .           .
    pctwhite |   97.05914          .        .       .            .           .
 pcthispanic |    41.4855          .        .       .            .           .
total_thous~s|   5.305231          .        .       .            .           .
    pctBIDEN |   18.32599          .        .       .            .           .
       _cons |  -8614.542          .        .       .            .           .
------------------------------------------------------------------------------

. vif

    Variable |       VIF       1/VIF
-------------+----------------------
total_thou~s |     16.47    0.060705
    reversed |     14.75    0.067782
    pctwhite |      5.36    0.186491
 pcthispanic |      3.25    0.307796
    pctblack |      1.59    0.628064
    pctBIDEN |      1.42    0.706084
-------------+----------------------
    Mean VIF |      7.14
```

Offences Eligible for Record Clearance in California un AB 1793

Offense Code Description	Charge Level *
11357(C) HS-POSS MARIJUANA OVER 28.5 GRAMS	M
11357(B) HS-POSS MARIJUANA 28.5- GRAMS	M
11357(A) HS-POSSESS CONCENTRATED CANNABIS	M
11357(B) HS-POSS MARIJUANA 28.5- GRAMS	I
11357 HS-POSSESS MARIJUANA/HASHISH	F
11357(A) HS-POSSESS MARIJUANA/HASHISH	F
11357(A) HS-POSSESS CONCENTRATED CANNABIS	F
11357(C) HS-POSS MARIJUANA OVER 1 OZ/28.5 GRM	M
11357(B) HS-POSSESS MARIJUANA UNDER 1 OZ	M
11357 HS-POSSESS MARIJUANA/HASHISH	M
11357(D) HS-POSS MARIJ:SPECIFIC CIRCUMSTANCES	M
11357(E) HS-POSS MARIJ:SPECIFIC CIRCUMSTANCES	M
11358 HS-PLANT/CULTIVATE/ETC MARIJUANA/HASH	F
11358(A) HS-PLANT/CULTIVATE/ETC MARIJ/HASHISH	F
11358(B) HS-PLANT/CULTIVATE MARIJUANA W/PRIOR	F
11359 HS-POSSESS MARIJUANA FOR SALE	F
11359(A) HS-POSSESS MARIJUANA/HASH FOR SALE	F
11360(B) HS-GIVE/TRNSP/ETC MARIJUANA 28.5-GRAM	M
11360 HS-SELL/TRANSPORT/ETC MARIJUANA/HASH	F
11360(A) HS-SELL OR TRANSPORT MARIJUANA/HASH	F
11360(B) HS-SELL/TRANSPORT MARIJUANA W/PRIOR	F
11360(C) HS-GIVE/TRANSPORT ETC MARIJUANA	M
11360(B) HS-GIVE/TRANSPORT/ETC MARIJUANA	M
11360(A) HS-SELL/TRANS/ETC MARIJ/HASH	F
11360(B) HS-GIVE/TRANSP MARIJUANA UNDER 1 OZ	M
11360(A) HS-GIVE/ETC MARIJ OVER 1 OZ/28.5 GRM	F
11360(A) HS-SELL/FURNISH/ETC MARIJUANA/HASH	F