

CANNABIS AUTOMATIC EXPUNGEMENT, PARDONS, AND VACATE AND EXPUNGE ESTIMATES:

Potential Impact of the Cannabis Regulation and Tax Act (Pub. Act 101-27)
As amended by Senate Bill 1557, House Amendment 1

The SPAC research team reviewed state data to estimate potential impacts of expunging past criminal history records under the Cannabis Regulation and Tax Act of 2019, as amended by Senate Bill 1557, House Amendment 1 (SB 1557, HA 1). First, this report summarizes the number of cases and people affected. Second, a chart displays the cases categorized into twelve groups. Finally, the report provides a narrative description of each step in the analysis and discusses potential implementation and interpretation challenges. These estimates are based on SPAC's interpretation of the law as amended. Other reasonable interpretations and the exercise of agency discretion in implementation could change these numbers.

The data are from a snapshot of the Criminal History Records Information (CHRI) system through December 31, 2018, for people arrested after their 18th birthday. Because these calculations are not on the live database and have not incorporated recent case developments or data updates, we rounded to the nearest 1,000. Here a "case" is a unique docket number.

SB 1557, HA 1 changes the pardon and expungement processes for minor cannabis convictions. The amendment shifts approximately 16,000 cases out of over 119,000 from the cohort that requires petitions to be filed by either the individual or the State's Attorney to the cohort that is processed by the Prisoner Review Board and pardoned by the Governor.

- **572,000 cases** could be eligible for the **automatic expungement** as Minor Cannabis Offense (MCO) arrests and non-conviction dispositions.
 - Non-conviction includes dismissals, *nolle prosequi*, and acquittals. Cases without dispositions (**174,000 cases**) are not included in this number.
 - These cases relate to 394,000 people.
 - 72% of these cases are from Cook County.
- **85,000 cases** could be eligible for the **pardon process** as Minor Cannabis Offense convictions.
 - Convictions for Minor Cannabis Offenses can be processed either through the pardon process, individual or legal aid vacate and expunge requests, or vacate and expunge requests made by the county State's Attorney.
 - These cases relate to 73,000 people.
 - 35% of these cases are from Cook County.
- An additional **34,000 cases**, not including the pardon process cases, could be eligible for the **State's Attorney vacate and expunge** process.
 - Convictions for misdemeanor and Class 4 felony cannabis possession or possession with the intent to deliver can be requested to be expunged by the individual or legal aid or the county State's Attorney. This number is provided as mutually exclusive of Minor Cannabis Offense convictions.
 - These cases relate to 32,000 people.
 - 52% of these cases are from Cook County.

Table 1 on Page 3 shows cases on the left (Group A) that begin as the statutorily defined “Minor Cannabis Offenses,” and cases on the right (Group B) that end with misdemeanor and Class 4 felony cannabis possession or manufacture/delivery dispositions. Group A cases without a conviction may be eligible for the automatic expungement. Group A cases with convictions may be eligible for the pardon or the individual/legal aid or State’s Attorney vacate and expunge processes. Group B cases may also be statutorily Minor Cannabis Offenses (MCO) if the case begins without an MCO arrest but, through charging decisions, eventually meets the statutory criteria. Some Group B cases may be eligible only for the individual/legal aid or State’s Attorney vacate and expunge processes.

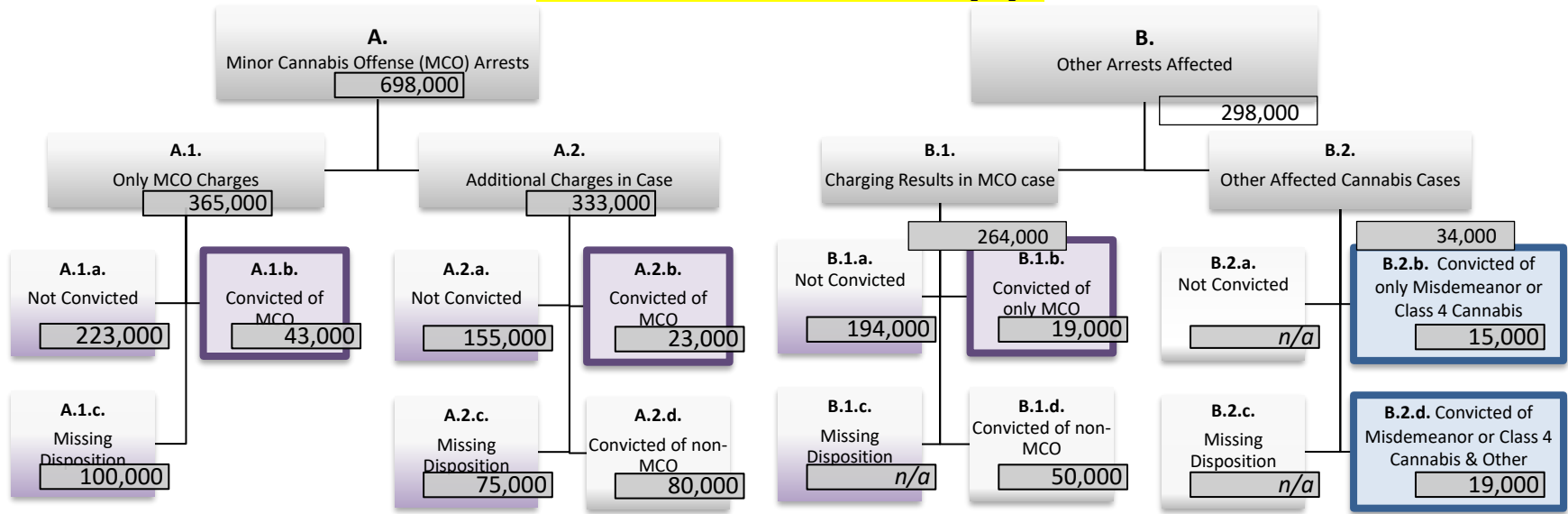
- **Arrest:** any arrest or charge not initiated by arrest that creates a new case number within the state’s Criminal History Records Information system.
- **Case:** a set of records with a unique document control number (DCN). The records in each DCN may include: arrests, charges, interim case actions (*i.e.*, continuations, failure to appear, warrants, etc.), final dispositions, and sentences. Each case is counted once even for multiple charges/counts within a DCN.
- **Convicted:** final disposition of guilty. Convicted does not include juvenile adjudications and does not include court supervision or qualified probation under 720 ILCS 550/10.
- **Minor Cannabis Offense (MCO):** offenses under possession (720 ILCS 550/4) and possession with intent to deliver, manufacture and delivery (720 ILCS 550/5) that are (1) below 30 grams and (2) have no violent crime conviction within the same case. The case may include violent crime arrests, charges, or court supervision dispositions. The statutory description of a MCO also excludes any offense that has a sentence enhancement for delivering to a person under 18; SPAC was unable to identify consistently cases with this enhancement.
- **Missing Disposition:** arrest and charging records exist for the DCN but no final disposition is available, meaning the case may still be pending, the disposition has not yet entered, or the data are missing due to error.
- **Not Convicted:** final disposition is a dismissal, acquittal, court supervision, or qualified probation under 720 ILCS 550/10.
- **Violent Crime:** any crime listed under subsection (c) of Section 3 of the Rights of Crime Victims and Witnesses Act (725 ILCS 120/3(c)).



Illinois Sentencing Policy Advisory Council

Table 1. Cases with Minor Cannabis Offenses and Pardon or Vacate/Expunge Convictions

NOTE: this table counts cases and not people



	Automatic Expungement	Possible Automatic Expungement	Missing Dispositions	Pardon Expungement	Vacate and Expungement
	A.1.a., A.2.a., & B.1.a.	A.2.d. & B.1.d.	A.1.c. & A.2.c.	A.1.b., A.2.b., & B.1.b.	B.2.b. & B.2.d.
Distinct Cases (DCNS)	572,000	130,000	174,000	85,000	34,000
Distinct People (State ID numbers)	394,000	116,000	91,000	73,000	32,000
Cook County	71%	42%	60%	35%	52%
Black*	55%	43%	52%	46%	51%
Non-Black	45%	57%	48%	54%	49%
Top 10 Counties <i>(ranked by number of cases, excluding Cook County)</i>	Lake DuPage Kane Will Sangamon Madison McHenry McLean St. Clair Winnebago	DuPage Lake Kane Winnebago Will McLean Rock Island Sangamon Peoria Champaign	Sangamon Kane DuPage Lake Madison Peoria St. Clair Winnebago Rock Island	DuPage Kane Peoria Rock Island Lake Winnebago McLean Sangamon Will Champaign	DuPage Lake Kane Peoria Winnebago Will Madison Sangamon Champaign McLean

□ **Data:** SPAC used a static view of the Criminal History Records Information (CHRI) system, which are arrests, charges, convictions, and sentences from across the state as entered by law enforcement and Circuit Clerks. SPAC excluded arrests for those under 18 years old and cases where the records are insufficient to identify the exact statutory citation or felony/misdemeanor classification. The columns and boxes are mutually exclusive. All numbers are rounded to nearest 1,000 and percentages may not equal 100%.

* CHRI data prior to 2014 identifies Hispanic ethnicity as “White.” To keep the analysis consistent, the only race/ethnicity shown is consistent throughout the entire analysis period.

A. Minor Cannabis Offense (MCO) Arrests - 698,000 cases. These cases had one or more MCO arrests, defined by statute: cannabis possession, possession with intent to deliver, manufacture or delivery offenses of under 30 grams where the case did not have a conviction for a violent crime.¹

Note: There were 155,000 additional arrests for cannabis possession, possession with intent to deliver, manufacture or delivery offenses that did not cite a specific subsection *and* that did not result in a conviction. They may or may not be eligible, depending on what the arrest was. Over 95% of these cases were from arrests occurred before 2001.

1. Only Minor Cannabis Offense (MCO) Charges – 365,000 cases. These cases had only MCO charges. (52% of A.)

a. Not Convicted – 223,000 cases. These cases had *only* MCO charges and these charges did not result in a conviction. None of these cases had a violent arrest involved. (61% of A.1., 32% of A.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(1) “Expungement of Arrest Records of Minor Cannabis Offenses.”

b. Convicted of MCO – 43,000 cases. These cases had *only* MCO charges and these charges resulted in a conviction disposition. 3% of these cases had a violent arrest did not result in a conviction. (12% of A.1., 6% of A.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(2) “Pardons Authorizing Expungement of Minor Cannabis Offenses,”

20 ILCS 2630/5.2(i)(3) vacate and expunge eligibility by an individual or legal aid, and

20 ILCS 2630/5.2(i)(4) vacate and expunge eligibility by the State’s Attorney.

c. Missing Dispositions – 100,000 cases. These cases had *only* MCO arrest charges but did not appear to have a final disposition. These cases may be pending or the missing disposition could be due to an error. 6% of these cases had a violent arrest did not result in a conviction. (14% of A.1., 6% of A.)

2. Additional, Non-MCO Charges – 333,000 cases. These cases had MCO arrest charges *and* additional charges within the case. (48% of A.)

a. Not Convicted – 155,000 cases. These cases had MCO charges *and* additional charges. None of the charges resulted in a conviction. Under 1% of these cases had a violent arrest involved. (47% of A.2., 22% of A.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(1) “Expungement of Arrest Records of Minor Cannabis Offenses.”

b. Convicted of MCO – 23,000 cases. These cases had MCO charges *and* additional charges, but only the MCO charges resulted in a conviction and the non-MCO charges resulted in a non-conviction disposition. None of these cases had a violent arrest involved. (7% of A.2., 3% of A.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(2) “Pardons Authorizing Expungement of Minor Cannabis Offenses,”

20 ILCS 2630/5.2(i)(3) vacate and expunge eligibility by an individual or legal aid, and

20 ILCS 2630/5.2(i)(4) vacate and expunge eligibility by the State’s Attorney.

c. Missing Dispositions – 75,000 cases. These cases had *only* MCO arrest charges but did not appear to have a final disposition. These cases may be pending or the missing disposition could be due to a data reporting error. (22% of A.2., 11% of A.)

d. Convicted of non-MCO – 80,000 cases. These cases had a non-MCO conviction. The arrest charge fits the definitions under 20 ILCS 2630/5.2(i)(1) “Expungement of Arrest Records of

¹ SPAC was unable to restrict cases with Section 7 sentencing enhancements for delivering to a person under the age of 18. Cases with this enhancement may be included in the totals listed in this analysis. 720 ILCS 550/7.

Minor Cannabis Offenses” but the final conviction is not referenced under the new laws. 4% of these cases had a violent arrest did not result in a conviction. (24% of A.2., 12% of A.)

B. Other Offense Arrests – 298,000 cases. These cases are not Minor Cannabis Offenses (MCO) but relate to cannabis final dispositions or convictions.

1. Charging Results in a Minor Cannabis Offense – 264,000 cases. These cases did not begin as MCO arrests but the final disposition or conviction is for a MCO. (89% of B.)

a. Not Convicted – 190,000 cases. These cases have an MCO charge in the disposition records and the disposition is not a conviction. 2% of these cases had a violent arrest did not result in a conviction. (74% of B.1., 65% of B.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(1) “Expungement of Arrest Records of Minor Cannabis Offenses.”

b. Convicted of Only MCO – 19,000 cases. These cases had *only* MCO charges and these charges resulted in a conviction disposition. 3% of these cases had a violent arrest did not result in a conviction. (7% of B.1., 7% of B.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(2) “Pardons Authorizing Expungement of Minor Cannabis Offenses,”

20 ILCS 2630/5.2(i)(3) vacate and expunge eligibility by an individual or legal aid, and

20 ILCS 2630/5.2(i)(4) vacate and expunge eligibility by the State’s Attorney.

c. Missing Disposition – n/a. These cases have neither MCO arrest charges nor a final disposition with an MCO charge. There may be cases in this category but the selection criteria are for a MCO arrest or final disposition, of which this group has neither.

d. Convicted of non-MCO – 50,000 cases. These cases had a non-MCO conviction. The MCO charge fits the definitions under 20 ILCS 2630/5.2(i)(1) “Expungement of Arrest Records of Minor Cannabis Offenses” but other final convictions are not referenced under the new laws. 2% of these cases had a violent arrest did not result in a conviction. (19% of B.1., 17% of B.)

2. Other Affected Cannabis Cases – 34,000. These cases result in a non-MCO final disposition or conviction that is a misdemeanor or Class 4 felony cannabis possession, possession with intent to deliver, manufacture or delivery offenses under Sections 4 and 5 under the Cannabis Control Act. (11% of B.)

a. Not Convicted – n/a. These cases are non-MCO arrests that did not result in a conviction.

These cases may be expunged through the normal expungement process but are not part of the P.A. 101-27 expungement reforms. There may be cases in this category but the selection criteria are for a MCO arrest or final disposition, of which this group has neither.

b. Convicted of Only Misdemeanor or Class 4 Cannabis – 15,000 cases. These cases are non-MCO but have *only* misdemeanor or Class 4 felonies in the case *and* result in a conviction. 2% of these cases had a violent arrest. (45% of B.2., 5% of B.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(3) vacate and expunge eligibility by an individual or legal aid, and

20 ILCS 2630/5.2(i)(4) vacate and expunge eligibility by the State’s Attorney.

c. Missing Disposition – n/a. These cases are non-MCO and did not result in a conviction. These cases may be expunged through the normal expungement process but are not part of the new Pub. Act 101-27 expungement reforms. There may be cases in this category but the selection criteria are for a MCO arrest or final disposition, of which this group has neither.

d. Convicted of Other Cannabis & Others – 19,000 cases. These cases are non-MCO but have misdemeanor or Class 4 felonies in the case *and* additional charges in the arrest, charging, or final disposition. 84% of these cases had a violent arrest. (55% of B.2., 6% of B.)

These cases likely fall under:

20 ILCS 2630/5.2(i)(3) vacate and expunge eligibility by an individual or legal aid, and

20 ILCS 2630/5.2(i)(4) vacate and expunge eligibility by the State’s Attorney.

Examples of Implementation Challenges:

Legal Issues	(G-5) definition of “Minor Cannabis Offense” vs. (i)(4)’s “misdemeanor or Class 4 felony violation of Section 4 or Section 5 of Cannabis Control Act (CCA)”	Subsection (i) is titled “Minor Cannabis Offenses under the CCA,” so Paragraph (4)’s vacate and expunge portion may still include narrower MCO restrictions. State’s Attorney authorization is also “may” rather than “shall,” so additional restrictions could be added.	
	Prior to Pub. Act 99-697, cannabis possession cases under Subsections (a), (b), and (c) all had weights under 30 grams and would thus fall under the definition of Minor Cannabis Offenses. After that Act, effective July 29, 2016, Subsection (c) was revised to define possession as 30 to 100 grams of cannabis, thus exceeding the scope of a Minor Cannabis Offense.		
Scenario			
Table 1 Categorization			
Logic Issues	Selection Criteria Examples	Person arrested for <30 grams cannabis; no additional charges and case dismissed w/o convictions	Group A.1.a.
		Person arrested for <30 grams cannabis <i>and drug paraphernalia</i> ; pled to cannabis and paraphernalia dropped	Group A.2.b.
		Person arrested for <30 grams cannabis <i>and drug paraphernalia</i> ; pled to court supervision disposition and complete successfully	Group A.2.a.
		Person arrested for <30 grams cannabis <i>and drug paraphernalia</i> ; guilty on both charges	Group A.2.d.
	Pardon vs. Vacate/Expunge Examples	Person arrested for 100 grams of cannabis; no additional charges; pled to court supervision disposition and completed successfully	Group B.1.a.
		Person arrested for 100 grams of cannabis; no additional charges; pled to <30 grams	Group B.1.b.
		Person arrested for 100 grams of cannabis <i>and drug paraphernalia</i> ; pled to <30 grams possession and paraphernalia charge	Group B.1.d.
		Person arrested for 100 grams of cannabis <i>and retail theft</i> ; convicted on both charges	Group B.2.b.
		Person arrested for <30 grams of cannabis <i>and domestic battery</i> ; witness is uncooperative and only cannabis convicted	Group B.2.d. under current law Group B.1.b. under HA 1
	Data Issues	Missing statutory citations	Person arrested for cannabis possession w/o specific statutory citation (<i>e.g.</i> , 720 ILCS 550/4)
Person arrested for cannabis possession w/o specific statutory citation (720 ILCS 550/4) but court supervision for Minor Cannabis Offense (<i>e.g.</i> , Subsection (a))			
Missing sentence classification		Person convicted of Section 4 or 5 cannabis offense, likely for a Class 4 felony or misdemeanor, but specific misdemeanor/felony class missing	
Missing sentence enhancement data		Person convicted of Minor Cannabis Offense but sentenced under Subsection 7’s sentence enhancement	
Missing dispositions		Person arrested but no final disposition is recorded; case may be active/still pending or there may simply be missing data	