

# Marijuana Misdemeanor Expungement Act

*designed and drafted by Erik Luna and Weldon Angelos\**

The following draft text provides a model for expunging federal marijuana-related misdemeanors and other petty offenses and civil penalties. The drafting process drew heavily from current federal law (e.g., [18 U.S.C. 3607](#), [34 U.S.C. 40311 et seq.](#)); past and pending congressional bills (e.g., [H.R. 6667](#), [H.R. 6129](#), [H.R. 5977](#), [H.R. 4020](#), [H.R. 3617](#), [H.R. 2410](#), [H.R. 121](#)); respected legal opinions (e.g., DOJ's Office of Legal Counsel [2006](#); DOJ Memoranda [2009](#), [2013](#), [2014](#); Congressional Research Service [2016](#), [Jan. 2020](#), [Feb. 2020](#)); and various secondary works (e.g., [Model Law on Non-Conviction Records](#)).

After naming the bill in Section 1, Section 2 defines key terms such as “official record” and “expungeable event.” The text then creates a two-stage expungement mechanism for low-level violations of federal marijuana law: (1) an automatic, systemwide court-led review and expungement of qualifying cases under Section 3; and (2) a case-by-case review of unexpunged cases as they are brought by individual petitioners under Section 4.

Section 5 spells out the impact of expungement, detailing the beneficial relief for affected individuals along with the requirements and basis for compliance of various actors, including State and local government and private providers of criminal records. Section 6 specifies who may access expunged records, including the beneficiaries of an expungement order and approved entities that study the law and its implementation.

Section 7 allows the court to make referrals to the President (via the Pardon Attorney) for clemency consideration. Section 8 ensures that potential statutory impediments do not apply (e.g., the Administrative Procedure Act). Section 9 contains appropriations for expungement efforts. Finally, Section 10 contains a savings clause and a severability clause for purposes of interpretation and implementation.

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**DRAFT TEXT**

**SECTION 1. SHORT TITLE.**

This Act may be cited as the Marijuana Misdemeanor Expungement Act.

**SEC. 2. DEFINITIONS.**

As used in this Act—

(a) STATE.—The term “State” means each of the several States, the District of Columbia, Puerto Rico, any other territory or possession of the United States, any “Indian Tribe” as defined in section 5304(e) of title 25, United States Code, and any unit of local government.

(b) CRIMINAL JUSTICE AGENCY.—The term “criminal justice agency” means:

(1) a Federal or State court.

(2) a governmental agency, commission, or any subunit thereof that:

(A) performs the administration of criminal justice pursuant to a statute or executive order, and allocates a substantial part of its annual budget to the administration of criminal justice;

(B) is designated by Congress, the President, the Attorney General of the United States, the Federal Bureau of Investigation, or other appropriate Federal official, to perform centralized recordkeeping functions for official records, including the collection, storage, maintenance, updating, and dissemination of such records and responding to requests for information in or about such records; or

(C) is designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for official records, including the collection, storage, maintenance, updating, and dissemination of such records and responding to requests for information in or about such records.

(3) a Federal or State inspector general in his or her review of other criminal justice agencies.

(c) OFFICIAL RECORD.—

(1) The term “official record” means any documentation or other information on an individual, in electronic or physical form, consisting of identifiable descriptions or notations by criminal justice agencies about that individual, regarding:

(A) investigations (including questioning and searches and seizures) and arrests conducted by criminal justice agencies, as well as their decisions not to refer cases for prosecution or other legal proceedings;

(B) prosecution or initiation of other legal proceedings by indictment, complaint, information, other formal criminal charge, summons or citation, juvenile certification (pursuant to 18 U.S.C. 5032), or notice of civil penalty; and

(C) legal results or consequences of subsections (c)(1)(A) and (c)(1)(B) of this section, including court-ordered detention, pretrial and post-trial release, diversion, non-prosecution or deferred prosecution, deferred adjudication, pleas (e.g., not-guilty pleas, guilty pleas, and nolo contendere), nolle prosequi, competence findings, dismissal, acquittal, conviction, mistrial,

adjudication on juvenile delinquency, sentencing, imprisonment, rehabilitation, probation, parole, correctional supervision, release, and imposition of civil penalty.

(2) The term does not include identification information, such as fingerprint records, if such information does not indicate involvement of the individual with an expungeable event (as defined in subsection (i) of this section).

(d) EXPUNGE.—The term “expunge” means to remove an official record and any references to it in any other official record (including an official index or list), except for publicly available court opinions and legal briefs.

(e) SEAL.—The term “seal” means to store securely any expunged records possessed by the court issuing the expungement order to prevent access to such records except pursuant to section 6 of this Act or by further order of the court.

(f) SEQUESTER.—The term “sequester” means to retain an unaltered nonpublic copy of an expunged official record and any other official record (including an official index or list) subject to an expungement order, and to store such records in a separate, secure area to prevent access to those records except pursuant to section 6 of this Act or by further order of the court issuing the expungement order.

(g) REDACT.—The term “redact” means to remove or obscure from an official record any references to an expunged record, including, as necessary and consistent with subsection (c)(2) of this section, any identifying information.

(h) MARIJUANA.—The term “marijuana” means the substance defined as “marihuana” in section 102 of the Controlled Substances Act (21 U.S.C. 802(16)), and also defined or referred to as “marijuana” (e.g., 18 U.S.C. 1791(d)(1)(B), 21 U.S.C. 863(d)) and “tetrahydrocannabinols” (e.g., 21 U.S.C. 812(c)).

(i) EXPUNGEABLE EVENT.—

(1) The term “expungeable event” means an investigation, arrest, prosecution, initiation of other legal proceedings, and any legal results or consequences, as defined in subsection (c)(1)(A)-(C) of this section, for violating, attempting to violate, or conspiring to violate the following, as well as sentencing (including probation) and imposition of civil penalty pursuant to the following:

(A) subsection (b)(4) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)(4));

(B) subsection (c)(2) of section 402 of the Controlled Substances Act (21 U.S.C. 842(c)(2)), where the controlled substance was marijuana;

(C) section 404 of the Controlled Substances Act (21 U.S.C. 844(a)), where the controlled substance was marijuana;

(D) section 6486 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 844a), where the controlled substance was marijuana;

(E) the Federal First Offender Act (18 U.S.C. 3607), where the controlled substance was marijuana;

(F) the Assimilative Crimes Act (18 U.S.C. 13), where the underlying act or omission involves marijuana, including marijuana-related drug paraphernalia (as defined in subsection (f) of section 863 of title 21, United States Code), and results in a Federal misdemeanor or the imposition of a civil penalty; and

(G) any other Federal misdemeanor, petty offense, infraction, or civil penalty involving marijuana, including marijuana-related drug paraphernalia, where all elements of that offense or violation would not have been satisfied but for the involvement of marijuana.

(2) To be considered an expungeable event for purposes of sections 3 and 4 of this Act:

(A) the relevant conduct must not involve the use, attempted use, or threatened use of physical force against the person or property of another;

(B) at least one year must have passed since the date of the arrest or since the last docket entry in the case (except for technical or unrelated entries and other minor issues, as determined by the court), whichever is latest; and

(C) the court must not have been informed by the Attorney General of the United States, the United States Attorney for the relevant district, the Federal Bureau of Investigation, or another Federal criminal justice agency, that the case is ongoing or the individual has evaded prosecution.

### **SEC. 3. COURT REVIEW FOR EXPUNGEMENT.**

(a) PROCEDURES.—Not later than 1 year after the date of the enactment of this Act, the Chief Justice of the United States shall promulgate procedures or practices for the review, expungement, sealing, sequester, and redaction of official records pursuant to and consistent with the provisions of this Act, and to facilitate the study of such records pursuant to section 6 of this Act. In determining such procedures or practices, the Chief Justice of the United States and his or her designees—including, at the discretion of the Chief Justice, the Administrative Office of the United States Courts, the Federal Judicial Center, and the Judicial Conference of the United States—may consult with relevant entities, including but not limited to the Attorney General of the United States and any agency (as defined in 18 U.S.C. 6) within the United States Department of Justice (including the Federal Bureau of Investigation, the Drug Enforcement Agency, the Federal Bureau of Prisons, and the Office of the Pardon Attorney), representatives of the United States Sentencing Commission, representatives of the Federal Defenders Organizations, academic scholars and subject-matter experts, and, for purposes of section 6 of this Act, the Comptroller General of the United States.

(b) REVIEW AND EXPUNGEMENT ORDER.—

(1) Not later than 2 years after the date of the enactment of this Act, each Federal district shall conduct a comprehensive review of its official records, pursuant to procedures or practices established under subsection (a) of this section, and the court (including magistrate judges) of that district shall issue an order expunging, sealing, and sequestering:

(A) each official record for an expungeable event; and

(B) any other official record related to or referencing an expungeable event, unless such other official record is for a felony or for a misdemeanor unrelated to marijuana, in which case the court shall redact from such other official record any reference to the expunged official record, and seal or order the sequester of an unaltered nonpublic copy of such other official record.

(2) In conducting the review, the court may deny an expungement if it finds by a preponderance of the evidence that the interests of justice and of public safety weigh against such expungement.

(c) NOTIFICATION OF EXPUNGEMENT.—

(1) GOVERNMENT.—Not later than 7 days after issuing an expungement order, to notify affected criminal justice agencies and to facilitate the timely update of relevant records, the court shall send a copy of the final order to:

(A) the Attorney General of the United States, the United States Attorney for the district in which the order was issued, and the relevant criminal justice agency (as defined in subsection (b)(2)(B) of section 2 of this Act); and

(B) the relevant criminal justice agency (as defined in subsection (b)(2)(C) of section 2 of this Act) that serves the jurisdiction in which the expungeable event occurred or was obtained, ordered, or imposed (as the case may be), or if no such agency exists, the chief law enforcement officer of the State encompassing the district in which the order was issued.

(2) INDIVIDUALS.—

(A) Pursuant to procedures or practices established under subsection (a) of this section:

(i) notification about the expungement of an official record and the effect of such expungement shall be provided to the individual who is the subject of the expungement order; and/or

(ii) a reasonable process shall be available so that such individuals may inquire as to whether an official record has been expunged and, if so, the effect of such expungement.

(B) Upon motion or written request of an individual whose official record has been expunged pursuant to this section, the court shall send a copy of the final order to:

(i) the relevant criminal justice agency (as defined in subsection (b)(2)(C) of section 2 of this Act) that serves the jurisdiction in which the individual resides or, if no such agency exists, the chief law enforcement officer of the State in which the individual resides, when such criminal justice agency or chief law enforcement officer is different from those notified pursuant to subsection (c)(1)(B) of this section.

(ii) any local law enforcement agency that serves the jurisdiction in which the individual resides.

(3) NO NEW RECORDS.—A notification pursuant to this section shall not be or become a publicly accessible record that identifies the individual who is the subject of the expungement order, and such notifications shall not be used by criminal justice agencies except for purposes of complying with this Act and court orders issued pursuant to it.

(d) RECONSIDERATION AND APPEAL.—Subject to procedures or practices established under subsection (a) of section 2 of this Act, and consistent with this section, appropriate Federal rules of procedure and evidence shall apply to the following process.

(1) PETITION FOR RECONSIDERATION.—Not later than 60 days after the issuance of an expungement order, the Attorney General of the United States and the United States Attorney for the district in which the order was issued (hereinafter “Government”) may file a petition for reconsideration with the court.

(2) NOTICE AND INTERVENTION.—To the extent practicable, the notice shall be provided to the individual who is the subject of the expungement order. Such individual may intervene in the reconsideration as a matter of right.

(3) EVIDENCE.—The Government and the individual who is the subject of the expungement order may file with the court relevant evidence relating to the petition for reconsideration. The court shall have discretion in admitting and evaluating the petition and any evidence submitted by an individual pro se. See, e.g., *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

(4) STANDARDS.— The burden shall be on the Government to show by a preponderance of the evidence that the official record is not for an expungeable event, the requirements for expungement have not been met, or the interests of justice and of public safety weigh against expungement.

(5) APPEAL.—

(A) GOVERNMENT.—Not later than 60 days after denying a petition for reconsideration, the Government may appeal that denial or final order of expungement to the United States Circuit Court of Appeals for that district by filing a notice of appeal pursuant to procedures or practices established under subsection (a) of section 2 of this Act, or, if no such procedures or practices apply, pursuant to appropriate Federal rules of procedure. The individual who is the subject of the expungement order shall be the Respondent in such proceedings.

(B) INDIVIDUAL.—Not later than 30 days after granting a petition for reconsideration, the individual who is the subject of the expungement order may appeal that grant or final order to the United States Circuit Court of Appeals for that district by filing a notice of appeal pursuant to procedures or practices established under subsection (a) of section 2 of this Act, or, if no such procedures or practices apply, pursuant to appropriate Federal rules of procedure. The Government shall be the Respondent in such proceedings.

#### **SEC. 4. PETITIONING COURT FOR EXPUNGEMENT.**

(a) FEDERAL RULES.—Subject to procedures or practices established under subsection (a) of section 2 of this Act, and consistent with this section, appropriate Federal rules of procedure and evidence shall apply to the following petition process. A magistrate judge may preside over a hearing under this section.

(b) PETITION.—Beginning on the date of enactment of this Act, any individual with respect to whom there is an official record for an expungeable event may file a motion for expungement in the court for the Federal district in which the official record was entered. A petition filed pro se shall be construed liberally so as to ensure substantial justice. See, e.g., *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam).

(c) SERVICE AND RESPONSE.—The clerk of the court shall serve that petition on the United States Attorney for the district in which the order was issued. Not later than 60 days after service of such petition, the United States Attorney for that district or the Attorney General of the United States (hereinafter “Government”) may submit a response to the Petitioner’s motion.

(d) FEES AND REPRESENTATION.—No fee shall be imposed for filing a petition in any proceeding provided for under this section. If an indigent Petitioner submits a facially viable claim for expungement that nonetheless requires the assistance of legal counsel for purposes of filing a superseding petition, presenting evidence in support of the petition, or responding to the Government, the court may appoint counsel to represent the individual in proceedings under this section.

(e) COURT PROCESS.—

(1) EVIDENCE.—The Petitioner and the Government may file with the court relevant evidence relating to the petition. The court shall have discretion in admitting and evaluating the petition and any evidence submitted by a Petitioner pro se. See, e.g., *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

(2) STANDARDS.— The initial burden shall be on the Petitioner to establish a prima facie case that the official record in question is for an expungeable event, at which point the burden shall be on the Government to show by a preponderance of the evidence that the official record is not for an expungeable event or the requirements for expungement have not been met.

(3) EXPUNGEMENT ORDERS.—

(A) If the Government fails to respond to the petition or fails to meet its burden under subsection (e)(2) of this section, so long as the court does not find by a preponderance of the evidence that the interests of justice and of public safety weigh against expungement, the court shall enter an appropriate order for the expungement, sealing, sequester, and redaction of official records of the investigation, arrest, legal proceedings, and any legal results or consequences, as defined in as defined in subsection (c)(1)(A)-(C) of section 2 of this Act.

(B) In addition, the court may order the expungement, sealing, sequester, and redaction of any other official record referencing the expunged official record, unless such other official record is for a felony or for a misdemeanor unrelated to marijuana, in which case the court shall redact from such other official record any reference to the expunged official record, and seal or order the sequester of an unaltered nonpublic copy of such other official record.

(f) NOTIFICATION OF EXPUNGEMENT.—

(1) Not later than 7 days after granting an expungement petition, to facilitate the timely update of relevant records, the court shall send a copy of the petition and final order to:

(A) the Attorney General of the United States, the United States Attorney for that district, and the relevant criminal justice agency (as defined in subsection (b)(2)(B) of section 2 of this Act); and

(B) the relevant criminal justice agency (as defined in subsection (b)(2)(C) of section 2 of this Act) that serves the jurisdiction in which the expungeable event occurred or was obtained, ordered, or imposed (as the case may be), or if no such agency exists, the chief law enforcement officer of the State in which the expungeable event occurred or was obtained, ordered, or imposed.

(2) Upon motion or written request of a Petitioner whose expungement petition was granted, the court shall send a copy of the petition and final order to:

(A) the relevant criminal justice agency (as defined in subsection (b)(2)(C) of section 2 of this Act) that serves the jurisdiction in which the Petitioner resides or, if no such agency exists, the chief law enforcement officer of the State in which the Petitioner resides, when such criminal justice agency or chief law enforcement officer is different from those notified pursuant to subsection (f)(1)(B) of this section.

(B) any local law enforcement agency that serves the jurisdiction in which the Petitioner resides.

(3) Notifications pursuant to this subsection shall not be or become publicly accessible records about the expungeable event, including information identifying the individual who is the subject of

the expungement order; and such notifications shall not be used by criminal justice agencies except for purposes of complying with this Act and court orders issued pursuant to it.

(g) APPEAL.—

(1) GOVERNMENT.—Not later than 60 days after the issuance of an expungement order under this section, the Attorney General of the United States and the United States Attorney for that district may appeal such order to the United States Circuit Court of Appeals for that district by filing a notice of appeal pursuant to procedures or practices established under subsection (a) of section 2 of this Act, or, if no such procedures or practices apply, pursuant to relevant Federal rules of procedure. The individual who is the subject of the expungement order shall be the Respondent in such proceedings.

(2) INDIVIDUAL.—Not later than 30 days after the denial of his or her petition, the Petitioner may appeal that denial to the United States Circuit Court of Appeals for that district by filing a notice of appeal pursuant to procedures or practices established under subsection (a) of section 2 of this Act, or, if no such procedures or practices apply, pursuant to relevant Federal rules of procedure. The Government shall be the Respondent in such proceedings.

## SEC. 5. EFFECT OF EXPUNGEMENT.

(a) IN GENERAL.—Consistent with this Act (including subsection (d) of this section), an order of expungement shall restore the affected individual, to the legal status he or she occupied before the investigation, arrest, legal proceedings, and any legal results or consequences, as defined in subsection (c)(1)(A)-(C) of section 2 of this Act, for which he or she is the subject of an expunged official record.

(b) SELF-DISCLOSURE.—An individual who is the subject of an expungement order may treat the expunged official record of an investigation, arrest, legal proceedings, and any legal results or consequences, as defined in subsection (c)(1)(A)-(C) of section 2 of this Act, as if it never occurred or never was obtained, ordered, or imposed (as the case may be); and to the maximum extent Federal law may demand it, that individual shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement for failure to disclose, recite, or acknowledge such official record and any related expungeable event.

(c) DISQUALIFICATION.—An individual who is the subject of an expungement order shall not be disqualified under Federal law, due to an expunged official record and any related expungeable event, from pursuing or engaging in any lawful activity, occupation, or profession (including federal employment and contracting).

(d) LIMITATIONS.—

(1) Expungement under this Act does not include an official record for a felony or for a misdemeanor unrelated to marijuana, and such official record may be accessed, with any redactions, pursuant to this Act or by further order of the court issuing the expungement order.

(2) Nothing in this Act is intended to create a right to compensation, restitution, or any monetary damages in law or in equity.

(e) COMPLIANCE.—

(1) This Act and courts orders issued pursuant to it shall apply to:



(A) criminal justice agencies in the Federal government.

(B) other Federal agencies that are in possession of expunged documents or related official documents.

(C) State criminal justice agencies that are in possession of expunged documents or related official documents and are subject to Federal law—due to the powers delegated to the Federal government by the Constitution of the United States, due to voluntary agreement of the relevant State, and/or due to that State’s acceptance of relevant Federal funding—where such Federal law may include, but is not limited to:

(i) section 9101 of title 5, United States Code;

(ii) section 922 of title 18, United States Code;

(iii) section 103 of the Brady Handgun Violence Prevention Act (National Instant Criminal Background Check System, 18 U.S.C. 922 note);

(iv) section 534 of title 28, United States Code;

(v) the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq. (Justice System Improvement));

(vi) section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. 12592);

(vii) the National Child Protection Act of 1993 (34 U.S.C. 40101 et seq.);

(viii) the Crime Identification Technology Act of 1998 (34 U.S.C. 40301 et seq.);

(ix) the National Criminal History Access and Child Protection Act (34 U.S.C. 40311 et seq.);

(x) section 4 of the Katie Sepich Enhanced DNA Collection Act of 2012 (34 U.S.C. 40743);

(xi) the NICS Improvement Amendments Act of 2007 (34 U.S.C. 40902 et seq.);

(xii) sections 0.85(j) and 50.12 of title 28, Code of Federal Regulations (or any successor regulations); and

(xiii) parts 20, 23, and 25(A) of title 28, Code of Federal Regulations (or any successor regulations).

(D) Any consumer credit agency (as defined in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) subject to the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(2) An individual or entity covered by subsection (e)(1) of this section:

(A) shall comply with a court order issued pursuant to this section and, to the extent possible, conform their official records to be consistent with such order;

(B) shall respond to any inquiries as though the expunged official record does not exist; or, in the case of another official record subject to an expungement order and consistent with subsection (c)(2) of section 2 of this Act, subsection (b)(2) of section 3 of this Act, and

subsection (e)(3)(B) of section 4 of this Act, shall respond as though that other official record does not reference the expunged official record; and

(C) shall not disseminate, use internally, or reveal the existence of expunged records for any purpose, except as authorized under this Act or by further order of the court issuing the expungement order.

## **SEC. 6. ACCESS, STUDY, AND RESEARCH.**

(a) ACCESS.—Any expungement of an individual’s official record for an expungeable event or any related sealing, sequester, and redaction of relevant official records pertaining to that individual, may be made available only:

(1) to that individual or to such individual’s designated agent.

(2) to the Chief Justice of the United States and his or her designees (including for research under subsection (c)(1) of this section).

(3) to the Comptroller General of the United States and his or her designees (including for research under subsection (c)(2) of this section) for purposes of conducting the study described in subsection (b) of this section.

(4) to a criminal justice agency (as defined in subsection (b) of section 2 of this Act), for the exclusive purpose of:

(A) maintaining accurate official records.

(B) investigating or prosecuting an individual or for conducting a background check on an individual who has applied for employment by such criminal justice agency, so long as the relevant official record is for a felony, or for a misdemeanor unrelated to marijuana, and such record has appropriate redactions of any reference to official records expunged pursuant to this Act.

(5) to the United States Department of Justice’s Office of Justice Programs (and its units or subunits), and to qualified academic researchers from relevant schools and centers at accredited non-profit universities and colleges, for purpose of research, evaluative, or statistical activities pursuant to an agreement with the Chief Justice of the United States and his or her designees (including the Administrative Office of the United States Courts) that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical purposes, and ensures the confidentiality and security of the information consistent with this Act and with Federal law, including but not limited to information identifying an individual who is the subject of the expungement order.

(b) STUDY.—The Comptroller General of the United States, in consultation with the United States Secretary of Health and Human Services, shall conduct a study of investigation, arrests, legal proceedings, and any legal results or consequences, as defined in subsection (c)(1)(A)-(C) of section 2 of this Act, for Federal marijuana-related misdemeanors, petty offenses, infractions, and civil penalties.

(1) DEMOGRAPHICS. Such study shall include information about the age, race, ethnicity, sex, and gender identity of those individuals with an official record for an expungeable event, as well as information about the type of community such individuals dwell in and such other demographic information as the Comptroller General determines should be included.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall report to Congress the results of the study conducted under this subsection. In consultation with the Chief Justice of the United States, the Comptroller General shall also report to Congress on the implementation of this Act, including issues relevant to future expungement efforts (e.g., expungement of Federal marijuana-related felonies, expungement of Federal offenses for other controlled substances, models for automatic record-clearing and for general expungement).

(c) RESEARCH.—In addition to Federal funding and other resources afforded for staffing and implementation of this Act:

(1) at the discretion of the Chief Justice of the United States and his or her designees (which may include the court for the relevant district) and pursuant to rules and procedures established by the Chief Justice, legal researchers and law students from eligible non-profit law schools accredited by the American Bar Association, as well as academic researchers and students from other relevant schools and centers at accredited non-profit colleges and universities, may be retained (including on a pro bono basis) to conduct research and provide other support for the implementation of this Act.

(2) at the discretion of the Comptroller General of the United States and his or her designees and pursuant to rules and procedures established by the Comptroller General, legal researchers and law students from eligible non-profit law schools accredited by the American Bar Association, as well as academic researchers and students from other relevant schools and centers at accredited non-profit colleges and universities, may be retained (including on a pro bono basis) to conduct research and provide other support for the study described in subsection (b) of this section.

## **SEC. 7. PARDON REFERRAL.**

After issuing an order of expungement under section 3 or section 4 of this Act, the court may, for good cause, refer the case or petition to the President of the United States and the Office of the Pardon Attorney for consideration consistent with the authority granted to the President under Article II, Section 2 of the Constitution of the United States. See, e.g., *United States v. Angelos*, 345 F. Supp. 2d 1227, 1230-31, 1261-62 (D. Utah 2004) (court making a commutation recommendation to the Office of Pardon Attorney regarding a federal marijuana-related sentence that was “unjust, cruel, and even irrational” “but nonetheless constitutional”). Notwithstanding 28 C.F.R. Part 1 (Executive Clemency), the Pardon Attorney may prescribe rules for receiving and reviewing such referred cases.

## **SEC. 8. INAPPLICABILITY.**

The Administrative Procedure Act (5 U.S.C. 551 et seq.) and the Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to this Act and to orders or other actions taken pursuant to it.

## **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

(a) EXPUNGEMENT.—There is authorized to be appropriated for fiscal year 202\_, to the Federal judiciary the sum of \$ \_\_\_\_\_ to be allocated by the Administrative Office of the United States Courts to carry out this Act. The funds so appropriated shall remain available until expended.

(b) STUDIES.—There is authorized to be appropriated for fiscal year 202\_, to the Comptroller General of the United States the sum of \$\_\_\_\_\_ to carry out subsection (b) of section 6 of this Act. The funds so appropriated shall remain available until expended.

#### **SEC. 10. INTERPRETATION AND SEVERABILITY.**

(a) Nothing in this Act should be construed to preempt or supersede the laws of any State with respect to its authority to define and enforce the criminal law of that State, or with respect to any power reserved to the States respectively, or to the people, or with respect to the rights guaranteed to each citizen, under the Constitution of the United States. This Act does not annul, alter, or affect, or exempt any person subject to this Act from complying with, the laws of any State, except to the extent that those laws are inconsistent with the provisions of this Act, and then only to the extent of the inconsistency and of Federal supremacy on that issue. This Act shall not in any way abridge or alter the remedies now existing at common law or by statute, but consistent with subsection (d)(2) of section 5 of this Act, the provisions of this Act are in addition to such remedies.

(b) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.