



New York's New Marijuana “Decriminalization” and Expungement Law

There are two parts to this law

1. Decriminalization

In New York State, beginning on August 28, 2019:

- It will be a non-criminal violation, not a crime, to possess up to 2 ounces of marijuana
- Police can still stop and question you for this violation, but if you live in New York State and have an ID they are supposed to give you a ticket, not put you through the system. You have the right to contest the ticket if you think you did not violate the law, but if you choose not to, you will simply pay a fine
- The maximum penalty for possession of up to 1 ounce of marijuana (a non-criminal violation) will be a \$50 fine [PL 221.05]
- The maximum penalty for possession of up to 2 ounces of marijuana (a non-criminal violation) will be a \$200 fine [PL 221.10]
- Smoking marijuana in places like bars, restaurants, workplaces and on public transit violates the public health law [PHL 1399-O]
 - You can't be *arrested* for a Public Health Law violation, but you will be given a ticket and, unless you contest the ticket, required to pay a fine
- “Marijuana” under the new law includes the plant, seeds, and any oil or resin extracted from the plant [PHL 3302]
- It is still illegal under New York State law to sell, trade, transport, or grow marijuana

- Medical marijuana use and possession is legal in New York State if you have a valid Medical Marijuana Card
- It is still *illegal under federal law* to possess/smoke, sell, trade, transport, or grow marijuana. What this means for New Yorkers still has to be seen

2. Expungement

Between August 28, 2019 and July 29, 2020:

- The two state agencies that report information for background checks will stop disclosing any information about past convictions for PL 221.05 or PL 221.10 on background checks. But they will still disclose the information for law enforcement purposes
- Unless you are applying for a job with law enforcement, most employers should not see the conviction when you apply for a job and the case should be treated as sealed. Consult with an attorney if you have questions

By July 29, 2020:

- All records for PL 221.05 and PL 221.10 convictions will be automatically expunged
- “Expunged” means that the electronic court records will be automatically marked as expunged and sealed from public view. Your case will be automatically dismissed, and considered “terminated in [your] favor. . . and deemed a nullity”
- All mugshots and fingerprints associated with the case will be destroyed or returned to you
- Police Departments, other law enforcement agencies and District Attorney’s offices must mark their records as expunged
- You can also request in writing that your physical records be destroyed. There are times when this may be a bad idea, particularly if you have immigration concerns. Please consult with an attorney before you request destruction of your records
- If for some reason your conviction is not automatically expunged by July 29, 2020, you can bring a copy of your Certificate of Disposition or your RAP Sheet to the courthouse and they will expunge your record
- Expungement can’t be waived as part of a plea agreement
- Once a case is expunged, most employers should *not* see the conviction when you apply for a job

- Once a case is expunged, you can legally deny that the case existed if you are asked about it in almost all employment situations. However, employers for these and certain other positions may consider the expunged conviction. Carefully review application materials and consult with a lawyer if necessary:
 - Police or peace officers
 - Employers with specific exemptions under New York law or that are not subject to New York State law, including federal employers, employers subject to federal laws regarding employee clearance or licensing, or the Port Authority

Information for People who are not US citizens

- If you are not a US citizen, it may benefit you to *apply to vacate your conviction on the merits* for PL 221.05 or PL 221.10 even though your conviction will be automatically expunged under the new law. This other application may be important for your immigration status
- An application to vacate your conviction for PL 221.05 or PL 221.10 must be submitted to the court and decided on the merits; it is not automatic. You will need to work with an attorney to file this application
- If you are considering asking the court to destroy its records (see above), speak with an attorney first. In some circumstances, records destruction may not be a good idea

Questions?

Free legal services are available.

Contact us.

Legal Action Center (212) 243-1313

Community Service Society (212) 614-5441

The Legal Aid Society (212) 298-3120
CaseClosed@legal-aid.org