

# NYS Marijuana Criminal Record Expungement

## Frequently Asked Questions

### 1. What is expungement?

- a. Expungement restores a person to the status the person had before a specific criminal conviction. That specific criminal conviction is suppressed except in certain law enforcement situations.

### 2. What effect does expungement have?

- a. An expunged conviction is not available to the public.
- b. If a specific conviction is expunged and a person does not have any other state or federal convictions, the person can usually say that they do not have a criminal record.
- c. An expunged conviction cannot be used against a person when applying for a job, housing, or student loans. An expunged conviction does not need to be listed on these applications and it will not show up in a background check.
- d. If the person interacts with law enforcement, the expunged conviction will not be found by law enforcement unless the person applies for a gun license or a job in law enforcement.

### 3. Who is eligible for expungement?

- You are eligible for expungement if you were convicted of possessing up to 16 ounces of marijuana or selling up to 25 grams. The following convictions will be automatically expunged—without any need to file a motion, or pay any fees:
  - PL 221.05 Unlawful Possession of Marijuana in the Second Degree
  - PL 221.10 Unlawful Possession of Marijuana in the First Degree
  - PL 221.15 Criminal Possession of Marijuana in the Fourth Degree
  - PL 221.20 Criminal Possession of Marijuana in the Third Degree
  - PL 221.35 Criminal Sale of Marijuana in the Fifth Degree
  - PL 221.40 Criminal Sale of Marijuana in the Fourth Degree
  - PL 240.36 Loitering in the First Degree
  - PL 240.37 Loitering for the Purpose of Engaging in Prostitution
  - (New) PL 222.10 Restrictions on Cannabis Use
  - (New) PL 222.15 Personal Cultivation and Home Possession of Cannabis
  - (New) PL 222.25 Unlawful Possession of Cannabis, and
  - (New) PL 222.45 Unlawful Sale of Cannabis

- Additionally, if the only substance involved was concentrated cannabis, the following crimes will also be automatically expunged:
  - PL 220.03 Criminal Possession of a Controlled Substance in the Seventh Degree, and
  - PL 220.06 Criminal Possession of a Controlled Substance in the Fifth Degree

#### **4. How does expungement work?**

5. A person does not need to apply for expungement of eligible convictions.
6. It is free and automatic.
7. The Office of Court Administration (OCA) will identify eligible cases for expungement. OCA will enter a code in their electronic system so that the specific conviction is marked expunged.
8. OCA will also send a notification to the Department of Criminal Justice Services to indicate in their records the specific conviction is expunged.
9. Notifications will be sent to Law Enforcement and Prosecutors telling them that they must also mark the specific conviction in the record expunged.

#### **10. How can I find out if my case was expunged?**

11. A person will **not** be notified of a conviction that was automatically expunged.
12. If a person wants proof that the record has been properly expunged, a person can [request a certification of disposition](#) from the **Court where the case was decided**. There may be a small fee of \$5-10, but waivers are available.
  - i. A person can also request a copy of the complete criminal record from the Division of Criminal Justice Services. For more information, email [RecordReview@dcjs.ny.gov](mailto:RecordReview@dcjs.ny.gov).

#### **13. When may a lawyer be necessary?**

14. For marijuana convictions that are NOT eligible for automatic expungement, a person may also want a lawyer to determine whether the conviction is eligible for expungement or reduction of a sentence under Criminal Procedure Law section 440.46.
15. A person who is not a US citizen may still need to file an application to have the conviction expunged.

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