

## BOOKLET 7

### HOW TO SEAL OR EXPUNGE DECRIMINALIZED CANNABIS CASES

#### SPECIAL CONSIDERATIONS

- If you are not a citizen, do not expunge any records and talk to an immigration lawyer about your criminal cases and record expungement or sealing.
- There also may be other situations where you will need your records and destruction of the records will interfere with the exercise of your other legal rights, such as possibly getting reimbursed for fees you paid in a case dismissed due to the Dookhan or Farak drug scandals, or bringing a police brutality lawsuit.
- FBI records are often incomplete and often do not include the final outcome of a case.
- Once your records in Massachusetts are expunged, it is unlikely that you will be able to obtain copies of the court, police or other records that were destroyed.
- If there are no records, you may be unable to prove how your case ended or that you were found not guilty or that the case ended favorably.

**1. What is the difference between sealing and expungement?** Sealing of a case only limits who has access to the record of the criminal case. Expungement means records of the case are destroyed and are no longer available.

**2. Should I seal or expunge a criminal case if I am NOT a citizen?** Your criminal record history is reviewed when you apply for a “green card,” citizenship or try to change your immigration status. A criminal record can be grounds for exclusion or deportation. The FBI often has records of a criminal case even if the state court record was sealed or expunged. FBI records often do not include the final outcome of a case. **This means you may not be able to show how your case ended, or prove you were found not guilty, or that the case was dismissed if you expunge your records.** You also might need certified copies of your record for other reasons.

**SEALING.** If you are not a citizen, talk to an immigration lawyer **BEFORE** sealing any records and ask **whether you should seal any of your records.** At a minimum, get certified copies of the complaint and docket sheets. Otherwise, you may have to go to each court where a record is sealed to ask a judge to unseal the case so you can get papers needed for purposes of immigration, or get help from the Commissioner of Probation’s office to unseal the cases. You might not get the paperwork you need in time for an application or immigration hearing, or to meet another deadline if your cases are sealed.

**EXPUNGING.** If you are not a citizen, do **NOT** expunge your records until you get legal advice from an immigration lawyer about **whether to expunge your records.** A conviction, a continuance without a finding or other criminal record can be grounds for deportation or exclusion. If your records are expunged, they are destroyed and no longer exist. You might not get paperwork you need for an immigration hearing or an application if your criminal records are expunged. You also might need certified copies of your record for other reasons.

### 3. How can I seal or expunge a past decriminalized offense?

Do **NOT** seal or expunge any case **BEFORE** you get multiple or as many **CERTIFIED** copies of the complaint, docket sheets and any other papers that you might need in the future.

**How to Seal.** The Massachusetts sealing law lets you immediately seal offenses that are no longer crimes. G.L. c 276, § 100A. If you have a past criminal case for possession AND the case involved only 2 ounces or less of cannabis, you can seal the case without a waiting period. The law only decriminalized charges for “possession” and not “possession with the intent to distribute” or other drug crimes. G.L. c. 94G, § 13. The sealing process is free and quick. To seal the records, look at the attached sample PETITION TO SEAL form and fill in the blank form. Mail or deliver your PETITION to the Commissioner of Probation, One Ashburton Place, Rm 405, Boston MA 02108. You will get a reply by mail from the Commissioner within a few weeks telling you if your request was approved. If the petition is denied, seek legal advice about your rights.

**How to Expunge.** Expungement of a decriminalized cannabis offense is available for both adult and juvenile cases under section 100K of Chapter 267. To expunge your records, look at the attached sample **PETITION TO EXPUNGE** and fill in the blank form. The process is free and a petition form must be filed in the court that handled the case AND you must send a copy to the District Attorney. The law provides that a hearing is held if a petitioner or the District Attorney request a hearing. The law is new and we do not yet know how long the process might take.

### 4. What are my rights after sealing or expungement?

The “Ban the Box” law prohibits most employers from asking about convictions and other cases on an initial job application whether or not the record is sealed or expunged.

If an employer, housing screener or occupational screener wants to know if you have a criminal record after all your cases are **sealed**, you may answer “I have no record.” G.L. c. 276 §§ 100A.

After a record is **expunged**, the law provides that no person whose record was expunged shall be held guilty of perjury or giving a false statement by reason of the person's failure to acknowledge such record, or portion thereof, in response to any inquiry made of him or her for any purpose. You can say “I have no record” after expungement. G. L. c. 276, § 100M-N.

Beginning October 13, 2018, a new Massachusetts law requires that the FBI and Dept. of Justice (DOJ) be notified of sealing and expungement orders and that our state request that they seal or expunge their corresponding records. G.L. c. 276, § 100T. We do not know if the FBI will honor any or all requests to expunge or seal records in their databases.

For more information about sealing and expungement, read our other booklet, KNOW YOUR CORI RIGHTS available at [https://www.gbls.org/cori\\_record\\_sealing\\_booklets](https://www.gbls.org/cori_record_sealing_booklets)

**IMPORTANT.** This information is provided as a public service by Greater Boston Legal Services and does not constitute legal advice which can only be given to you after a consultation with your own attorney.

PETITION TO SEAL

To: Commissioner of Probation, One Ashburton Place, Rm. 405, Boston, MA 02108

← mail this

SELECT appropriate box(es). If 1, 2, or 3 are selected, you must sign the corresponding numbered affidavit below.

PART A

- 1  Section 100B - Chapter 276. Delinquency (juvenile) cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 years prior to this request.
- 1 - 4 2  Section 100A - Chapter 276. Misdemeanor cases, all sentence elements of which, and any subsequent court appearances, were completed 5 years prior to this request (or, which was a felony when committed, and is presently a misdemeanor).
- 3  Section 100A - Chapter 276. Felony cases, all sentence elements of which, and of any subsequent court appearances, were completed 10 years prior to this request. For eligible sex offenses 15 years prior to this request.
- 4  Section 100A - Chapter 276. Recorded offense which is no longer a crime, except where the elements of the offense continue to be a crime under a different designation.

Print SMITH JOHN JONATHAN Date of Birth: 7-4-2000  
 Last name First name Middle name

Alias/Maiden/Previous name \_\_\_\_\_  
 Mailing Address 24 JUMP ST #6 City BOSTON State MA Zip 02114

Occupation student Social Security # 012-34-56789 Place of Birth Boston MA

Father's Name Jonathan Smith Mother's Maiden Name Jones Husband/ Wife's Name \_\_\_\_\_

Petitioner's Signature John Smith

In accord with the provision of Chapter 276, Sections 100A and 100B, as established by Chapter 686 of the Acts of 1971, Chapter 404 of the Acts of 1972, Chapter 322 of the Acts of 1973 and Chapter 256 of the Acts of 2010, respectively, I hereby request that my record of adult criminal and/or juvenile Massachusetts court appearances and dispositions be sealed forthwith.

To the best of my knowledge:

1.  a) My delinquency court appearances or dispositions including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years prior to said request; b) I have not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the three years preceeding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceeding three years; and c) I have not been adjudicated delinquent or found guilty of any criminal offenses in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned under sentence or committed as a delinquent in any other state or county within the preceeding three years.

Signed under penalties of perjury,

\_\_\_\_\_  
Signature of Petitioner

To the best of my knowledge:

2.  a) All of my court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor occurred not less than five years prior to this request; b) that my court appearance and court disposition records, including any period of incarceration or custody for any felony occurred not less than ten years prior to this request; c) that I have not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, five years before such request, and in the case of a felony, ten years before such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; d) I have not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned in any other state or county in the case of a misdemeanor within the preceeding five years and in the case of a felony the preceeding ten years; and e) my record does not include convictions of offenses other than those to which the section applies, or convictions for violations of sections 121 to 131 H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268 A.

Signed under penalties of perjury,

\_\_\_\_\_  
Signature of Petitioner

PETITIONER NOT TO WRITE BELOW THIS LINE

Petition Allowed/Disallowed 01 02 03 04  
 Allowed (Copy to Clerk and Probation Office)  
 Reason for Disallowance (Copy to petitioner only)

<b>PETITION FOR EXPUNGEMENT</b> G.L. c. 276, § 100K	DOCKET NO. 0202 CR 123456789	<b>Trial Court of Massachusetts</b>
YOUR NAME AND ADDRESS John Jay Jones 16 Jump St # 174 Brighton, MA 02134 617-123-4567	COURT DEPARTMENT <input checked="" type="checkbox"/> Boston Municipal Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> District Court <input type="checkbox"/> Superior Court	
	COURT DIVISION Brighton	
<input type="checkbox"/> I request the assistance of an interpreter for the following language: _____ (There is no charge to you for interpreter or translation services)		
I request that this Court order that the records of the following charges be expunged (list charges):  Possession Class D. (Cannabis) under 2 ounces		
I make this request because the records were created as a result of: <input type="checkbox"/> False use of my identification <input type="checkbox"/> Unauthorized use of my identity <input type="checkbox"/> Theft of my identity <input checked="" type="checkbox"/> The offense(s) described above is/are no longer a crime <input type="checkbox"/> Errors by law enforcement <input type="checkbox"/> Errors by civilian or expert witness(es) <input type="checkbox"/> Errors by Court employees <input type="checkbox"/> Fraud perpetrated upon the Court		
Specifically (provide as much detail as possible explaining the reasons for your request): my record carries a stigma and puts me at a disadvantage in applying for jobs, housing or other opportunities. It causes unequal protection of the law because people are no longer arrested for possession of cannabis unless the amount is over 2 ounces, but I have a criminal record.		
<input checked="" type="checkbox"/> I request that the Court hold a hearing on my petition. <input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary. <input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.		
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input type="checkbox"/> by delivering a copy in hand <u>OR</u> <input checked="" type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on 10-23-18 <small style="margin-left: 20px;">date</small>		
<b>I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.</b>		
DATE: 10-23-18	PETITIONER'S SIGNATURE John Jones	

Please see reverse side for instructions and space for additional information.

PETITION TO SEAL

To: Commissioner of Probation, One Ashburton Place, Rm. 405, Boston, MA 02108

SELECT appropriate box(es). If 1, 2, or 3 are selected, you must sign the corresponding numbered affidavit below.

PART A

- 1 [ ] Section 100B - Chapter 276. Delinquency (juvenile) cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 years prior to this request.
1 - 4
2 [ ] Section 100A - Chapter 276. Misdemeanor cases, all sentence elements of which, and any subsequent court appearances, were completed 5 years prior to this request (or, which was a felony when committed, and is presently a misdemeanor).
3 [ ] Section 100A - Chapter 276. Felony cases, all sentence elements of which, and of any subsequent court appearances, were completed 10 years prior to this request. For eligible sex offenses 15 years prior to this request.
4 [ ] Section 100A - Chapter 276. Recorded offense which is no longer a crime, except where the elements of the offense continue to be a crime under a different designation.

Print Last name First name Middle name Date of Birth:
Alias/Maiden/Previous name
Mailing Address City State Zip
Occupation Social Security # Place of Birth
Father's Name Mother's Maiden Name Husband/ Wife's Name
Petitioner's Signature

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To the best of my knowledge:

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Signed under penalties of perjury,

Signature of Petitioner

To the best of my knowledge:

- 2. [ ] a) All of my court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor occurred not less than five years prior to this request; b) that my court appearance and court disposition records, including any period of incarceration or custody for any felony occurred not less than ten years prior to this request; c) that I have not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, five years before such request, and in the case of a felony, ten years before such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; d) I have not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned in any other state or county in the case of a misdemeanor within the preceeding five years and in the case of a felony the preceeding ten years; and e) my record does not include convictions of offenses other than those to which the section applies, or convictions for violations of sections 121 to 131 H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268 A.

Signed under penalties of perjury,

Signature of Petitioner

PETITIONER NOT TO WRITE BELOW THIS LINE

Petition Allowed/Disallowed 01 02 03 04
Allowed (Copy to Clerk and Probation Office)
Reason for Disallowance (Copy to petitioner only)

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	COURT DIVISION	
<input type="checkbox"/> I request the assistance of an interpreter for the following language: _____ (There is no charge to you for interpreter or translation services)		
I request that this Court order that the records of the following charges be expunged (list charges): _____ _____ _____ _____		
I make this request because the records were created as a result of: <ul style="list-style-type: none"> <li><input type="checkbox"/> False use of my identification</li> <li><input type="checkbox"/> Unauthorized use of my identity</li> <li><input type="checkbox"/> Theft of my identity</li> <li><input type="checkbox"/> The offense(s) described above is/are no longer a crime</li> <li><input type="checkbox"/> Errors by law enforcement</li> <li><input type="checkbox"/> Errors by civilian or expert witness(es)</li> <li><input type="checkbox"/> Errors by Court employees</li> <li><input type="checkbox"/> Fraud perpetrated upon the Court</li> </ul>		
Specifically (provide as much detail as possible explaining the reasons for your request): _____ _____ _____ _____		
<input type="checkbox"/> I request that the Court hold a hearing on my petition. <input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary. <input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.		
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input type="checkbox"/> by delivering a copy in hand <b>OR</b> <input type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on _____ date		
<b>I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.</b>		
DATE:	PETITIONER'S SIGNATURE	

Please see reverse side for instructions and space for additional information.