

## 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 and sealing.
- There also may be other situations where you will need your records and destruction of the records will interfere with 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 (marijuana), you can seal the case without a waiting period expires. 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. 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.

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

**Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114**

## PETITION TO SEAL

**TO:** Commissioner of Probation, One Ashburton Place, Room 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 - 4 | 1 | <input type="checkbox"/> | <b>Section 100B - Chapter 276.</b> Delinquency (juvenile) cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 years prior to this request.  |
|       | 2 | <input type="checkbox"/> | <b>Section 100A - Chapter 276.</b> Misdemeanor cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 years prior to this request (or, which was a felony when committed, and is presently a misdemeanor). |
|       | 3 | <input type="checkbox"/> | <b>Section 100A - Chapter 276.</b> Felony cases, all sentence elements of which, and of any subsequent court appearances, were completed 7 years prior to this request. For eligible sex offenses 15 years prior to this request.                    |
|       | 4 | <input type="checkbox"/> | <b>Section 100A - Chapter 276.</b> 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 \_\_\_\_\_

*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 preceding 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 preceding 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 state or county within the preceding three years.

Signed under penalties of perjury,

2. ☐ To the best of my knowledge:
- \_\_\_\_\_  
Signature of Petitioner

3. ☐ a) All of my court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor occurred not less than three 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 seven 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, three years before such request, and in the case of a felony, seven 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 state or county in the case of a misdemeanor within the preceding three years and in the case of a felony the preceding seven 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 131H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268A, except for convictions for resisting arrest.

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)

(OCP 4/12)

<b>PETITION FOR EXPUNGEMENT</b> G.L. c. 276, § 100K	DOCKET NO. _____	<b>Trial Court of Massachusetts</b> 
YOUR NAME AND ADDRESS _____ _____ _____ _____	COURT DEPARTMENT <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Boston Municipal Court  <input type="checkbox"/> District Court         </div> <div> <input type="checkbox"/> Juvenile Court  <input type="checkbox"/> Superior Court         </div> </div> 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: <div style="margin-left: 20px;"> <input type="checkbox"/> False use of my identification  <input type="checkbox"/> Unauthorized use of my identity  <input type="checkbox"/> Theft of my identity  <input 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         </div> Specifically (provide as much detail as possible explaining the reasons for your request): _____ _____ _____ _____		
<div style="margin-left: 20px;"> <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.         </div> 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		
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.		
DATE: _____	PETITIONER'S SIGNATURE _____	

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

**INSTRUCTIONS TO PETITIONER:**

**Reasons for Expunging a Record Under G.L. c. 276, § 100K**

Under chapter 276, § 100K, you can directly ask a judge to permanently destroy, or "expunge", the official court records that were created because of one of the following reasons: (i) false use of your identification; (ii) unauthorized use of your identity; (iii) theft of your identity; (iv) an offense that is no longer a crime; (v) demonstrable errors by law enforcement; (vi) demonstrable errors by civilian or expert witnesses; (vii) errors by a court employee; or (viii) demonstrable fraud perpetrated upon the court.

Under this law, the judge can order expungement of the court record only if he or she determines on clear and convincing evidence that the record was created because of one of the reasons above and that expungement of the record would be in the interests of justice.

Expungement may also be available in circumstances other than those listed above. If you want to seek expungement under one of these other circumstances, you must fill out a different petition and submit it to the Office of the Commissioner of Probation. You can find information about these other provisions, including eligibility requirements, at [www.mass.gov](http://www.mass.gov).

**What You Must Show**

You must demonstrate to the judge that the court record was created because of one of the reasons above and that expunging the record would be in the interests of justice. When you fill out this petition, you should provide as much detail as possible. You may give the judge copies of documents that support your reasons for asking for expungement. On the petition, there is a box to check for a hearing. At a hearing, you can tell the judge why your petition fits under one of the reasons above, and why granting the petition would be in the interests of justice.

**Multiple Charges**

On this petition, you should include all of the charges connected to the case that you are asking the judge to expunge. If you would like to ask a judge to expunge records in different cases, you should file separate petitions for each case.

**Where to File the Petition**

You should file this petition in the clerk's office in the court where the case was heard.

**Providing a Copy of the Petition to the District Attorney's Office**

You must provide a copy of this petition and any documents that you file with the petition to the District Attorney's Office that prosecuted the case on or before the day that this petition is filed in the court. You can do this by bringing a copy to the District Attorney's Office or by mailing a copy to the District Attorney's Office by first class mail.

**Records will be Permanently Destroyed**

An order of expungement requires the clerk of the court where the record was created to destroy/permanently erase the trial court records within the care, custody or control of the clerk's office, probation, and the Department of Criminal Justice Information, except for information contained in the domestic violence record keeping system. It also requires criminal justice agencies to destroy/permanently erase the record from all publicly available police logs maintained pursuant to G.L. c. 41, § 98F within their care, custody or control. Further, criminal justice agencies are required to respond to inquiries from any party, including criminal justice agencies, a county agency, a municipal agency or state agency that no record exists.

While the clerk will provide you with a copy of the expungement order, if you want copies of the records, any documents that you filed, or the petition, you must make copies *before* the court orders expungement. Once the record is destroyed, you will not be able to get a copy from the court.

Additional Information:

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# PETITION TO SEAL

TO: Commissioner of Probation, One Ashburton Place, Room 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 - 4
- 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.
- 2 ☐ Section 100A - Chapter 276. Misdemeanor cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 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 7 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 07/04/2000  
Last Name First Name Middle Name

Alias/Maiden/Previous Name \_\_\_\_\_

Mailing address 24 Jump St Apt #6 City Boston State MA Zip 02114

Occupation student Social Security # 012-34-5678 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.

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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 preceding 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 preceding 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 state or county within the preceding three years.

Signed under penalties of perjury,

2. ☐ Signature of Petitioner

To the best of my knowledge

3. ☐ a) All of my court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor occurred not less than three 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 seven 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, three years before such request, and in the case of a felony, seven 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 state or county in the case of a misdemeanor within the preceding three years and in the case of a felony the preceding seven 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 131H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268A, except for convictions for resisting arrest.

Signed under penalties of perjury,

Signature of Petitioner

**PETITIONER NOT TO WRITE BELOW THIS LINE**

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

01

02

03

04

(OCP 4/12)

<b>PETITION FOR EXPUNGEMENT</b> G.L. c. 276, § 100K	DOCKET NO. 0202CR123456789	<b>Trial Court of Massachusetts</b>
YOUR NAME AND ADDRESS John Jay Jones 16 Jump St. #74 Roxbury 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 <div style="text-align: center; font-size: 1.2em;">Roxbury</div>	
<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):  <div style="text-align: center; font-size: 1.2em; border: 1px solid black; padding: 5px;">             Possession Class D (cannabis) under 2 ounces           </div>		
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): <div style="border: 1px solid black; padding: 5px; font-family: cursive;">             My record carries a stigma, and puts me at a disadvantage in applying for jobs, housing or other opportunities. It is not fair this charge is on my record because possession of cannabis under 2 ounces is no longer a crime.           </div>		
<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 <b>OR</b> <input checked="" type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on <div style="text-align: center;">             10-23-18  <small>date</small> </div>		
<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:  <div style="font-size: 1.2em;">10-23-18</div>	PETITIONER'S SIGNATURE  <div style="font-size: 1.2em; font-family: cursive;">John Jones</div>	

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