

## **BOOKLET 7**

### **HOW TO EXPUNGE DECRIMINALIZED MARIJUANA OFFENSES**

#### **SPECIAL CONSIDERATIONS**

- If you are not a citizen, do not expunge any records and talk to an immigration lawyer about your criminal cases and your rights to expunge and seal records.
- 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.
- It is important to obtain certified copies of the docket sheets, complaint, and court order for expungement BEFORE the records of the offense are destroyed.
- 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, it will be harder to prove how your case ended, what fees were paid, or that you were found not guilty or that the case ended favorably.
- The FBI records has a separate database which often list cases without a final outcome so certified copies can be very important if you apply for a federal agency job or other opportunity requiring a high level security clearance or FBI background check.

#### **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. G.L. c. 276, § 100E.

#### **2. Should I 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.

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 expunge a past decriminalized marijuana offense?**

Do NOT expunge any case BEFORE you get multiple and as many CERTIFIED copies of the complaint, docket sheets and any other papers that you might need in the future. If the court orders expungement, be sure to get a CERTIFIED of the court order for expungement before the court records are destroyed.

**How to Expunge.** It is easier to expunge decriminalized marijuana charges, including some distribution offenses, because the law has changed. The new provisions take effect on November 9, 2022.

- **Effective Nov. 9, 2022, the court is required to order expungement of marijuana offenses within 30 days of your filing of a petition for expungement if the amount of marijuana you possessed or cultivated was decriminalized. G.L. c. 276, § 100K ½.**
- Expungement of a decriminalized possession of marijuana offense is available for both adult and juvenile records under sections 100K and 100K ½ of chapter 276. If the amount you possessed was 2 ounces or less, it is decriminalized.
- You also can request expungement of an offense for “possession with intent to distribute” or another distribution charge if the offense(s) arose out of same incident involving possession or cultivation of an amount of marijuana that was later decriminalized.

**What to File.** The process is free. To expunge your records, you must fill out a PETITION FOR EXPUNGEMENT and list your marijuana offenses that are eligible for expungement. The petition must be filed in the court that handled the criminal or juvenile offense. It is not yet known when the court will revise the petition form.

The law provides that a hearing is held if you as the petitioner or the District Attorney request a hearing.

A blank form and an example of a completed petition appear at the end of this booklet.

#### **4. What are my rights after a court orders 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. G. L. c. 151B, § 4, paragraph 9 1/2.

You can say “I have no record” regarding the expunged offenses. G. L. c. 276, § 100N.

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. G. L. c. 276, § 100M.

Massachusetts law also requires that the FBI and Dept. of Justice (DOJ) be notified of expungement orders and that our state request that they 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.gbls.org/cori\\_record\\_sealing\\_booklets](https://www.gbls.org/cori_record_sealing_booklets)

This booklet is provided as a public service by Greater Boston Legal Services and does not constitute legal advice which is can only be given to you after a consultation with your own attorney. This booklet relates to marijuana offenses in Massachusetts only and was last updated on August 22, 2022.

<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		
<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.

#### 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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Example: Petition Including Intent to Distribute Offense Eligible on 11-9-22

<b>PETITION FOR EXPUNGEMENT</b> G.L. c. 276, § 100K	DOCKET NO. 0202CR0123456789	<b>Trial Court of Massachusetts</b> 
YOUR NAME AND ADDRESS JOHN J. JONES 1234 JUMP ST. #1234 BOSTON, MA 02119 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 Roxbury Division, Boston Municipal Court 	
<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 (marijuana less than 2 ounces)  Possession with intent to distribute (marijuana)		
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): Section 100K 1/2 of ch. 276 requires expungement of these offenses because the possession offense was for less than 2 ounces and is decriminalized; and the distribution offense arose out of the same incident involving possession of less than 2 ounces of marijuana. It is unjust that these offenses remain on my record when the underlying possession of marijuana offense is no longer a crime. Drug offenses carry a stigma and put me at a potential disadvantage or risk of rejection related to jobs, housing, or other opportunities that might arise.		
<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 OR <input checked="" type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on 11-9-22		
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: 11-9-22	PETITIONER'S SIGNATURE John Jones	

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