

BOOKLET 7

HOW TO EXPUNGE DECRIMINALIZED MARIJUANA OFFENSES

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 in Massachusetts 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 or seal 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. Are there other things to consider before expunging my records?

Yes. Other things to consider are:

- It is important to obtain certified copies of the docket sheets, complaint, and the court order for expungement BEFORE the records of the offense are destroyed.
- There may be situations where you will need copies of your records and destruction of the records might 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 to file a lawsuit for police brutality and injuries related to your arrest for the offense.
- Once your records in Massachusetts are expunged, it may be very 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 are kept in a separate deferral database which often list cases without a final outcome which means certified copies can be very important if you apply for a federal agency job or other opportunity requiring a fingerprint and FBI background check.
- If you need to delay expunging your records, sealing of the record may be an alternative. Sealing shields the records from many employers and others, but it does not destroy the records.

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, the expungement order, and any other papers that you might need in the future.

When you can expunge. Expungement of a decriminalized marijuana offense is available for both adult and juvenile records under sections 100K and 100K ½ of chapter 267. If the amount you possessed was 2 ounces or less, the possession offense is decriminalized. Also, you can ask to expunge 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. **Effective Nov. 9, 2022, the court is required to order expungement of the offenses within 30 days of your filing of a petition to expunge if the amount you possessed (or cultivated) was decriminalized. G.L. c. 276, § 100K 1/2.**

In addition, the Supreme Judicial Court has said that there is a “strong presumption” in favor of expunging decriminalized criminal records and the fact that you have other offenses on your record besides the charges you are trying to expunge is not a reason to deny the petition. Likewise, even if the judge thinks the expungement will not benefit you, that is not a ground to deny the petition if the offense is eligible for expungement. See *Com. v. K.W.*, 193 N.E.3d 1069, ___Mass. ___ (2022).

What to File. The process is free. To expunge your records, you must fill out and file a PETITION TO EXPUNGE and list your marijuana offenses that are eligible for expungement. The petition form must be filed in the court that handled the offenses. It is not yet known when the trial court will revise the petition form because of a change in the law. **You are required to deliver or send a copy of the petition to the District Attorney’s office and they may have an office at the courthouse.**

The law provides that a hearing is held only if you as a petitioner or the District Attorney request a hearing. Otherwise, the court decides the case on the papers unless it decides to schedule a hearing on its own.

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

4. What are my rights after 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.

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 of it in response to any inquiry made for any purpose. You can say “I have no record” after expungement. G. L. c. 276, § 100M-N. Massachusetts law requires the state to notify the FBI of expungement orders and to request that they expunge their corresponding records. G.L. c. 276, § 100T.

This booklet is provided as a public service and does not constitute legal advice which can only be given to you by your own attorney. This booklet relates to marijuana offenses only in Massachusetts and was last updated on October 2, 2022.



PETITION FOR EXPUNGEMENT G.L. c. 276, § 100K	DOCKET NO	Trial Court of Massachusetts
YOUR NAME AND ADDRESS _____ _____ _____	COURT DEPARTMENT <input type="checkbox"/> Boston Municipal Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> District Court <input type="checkbox"/> Superior Court	
_____	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. <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 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 <u>OR</u> <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.		

(Rev. 10.12.18)

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.

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:

(Rev. 12.20.18)

SAMPLE

PETITION FOR EXPUNGEMENT G.L. c. 276, § 100K	DOCKET NO. 9902CR1234567X	Trial Court of Massachusetts
YOUR NAME AND ADDRESS JOHN DOE 23 JUMP ST. BOSTON, MA 02114 617-012-3456	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	
<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 of Class D (marijuana)		
Possession with intent to distribute Class D (marijuana). This offense arose out of same incident and can be expunged under G.L.c. 276 section 100K 1/2 effective Nov. 9, 2022.		
I make this request because the records were created as a result of: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <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 </div> <div style="width: 50%; font-style: italic;"> See also G.L.c 276 section 100K 1/2. The amount was decriminalized and section 100K 1/2 requires expungement within 30 days. </div> </div>		
Specifically (provide as much detail as possible explaining the reasons for your request): The amount was under 2 ounces and possession of such an amount is no longer a crime which makes it unjust for this offense to remain on my record. I was overcharged with distribution and this second offense arose out of the same incident when possession of any amount of marijuana was a crime. There is a presumption that my records should be expunged. See Com. v K.W., 193 N.E.3d 1069 (2022)		
<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 Nov. 9, 2022		
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: Nov. 9, 2022	PETITIONER'S SIGNATURE 	

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

(Rev. 10.12.18)