

New York's New Marijuana Law

A Train the Trainer Experience
DAY 2



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Welcome!

Today's Speakers

- Jose Chapa (He/Him), Senior Policy Associate, Immigrant Defense Project
- Emma Goodman (She/Her), The Legal Aid Society
- Marie Mark (She/Her), Director of Legal Support and Resources, Immigrant Defense Project

DAY 2 NY's New Marijuana Law TTT



Jose Chapa, Immigrant Defense Project
The Road to Legalization in NY

Emma Goodman, The Legal Aid Society
Automatic Expungement and How It Works

Marie Mark, Immigrant Defense Project
Vacating Convictions for Immigrants

Question and Answer

Brought to you by:



The Bronx
Defenders

Redefining
public
defense

We are
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Policy
Alliance.

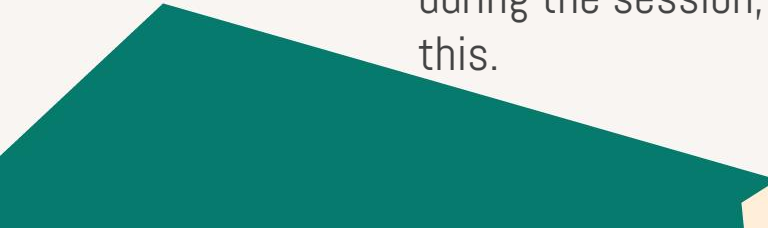
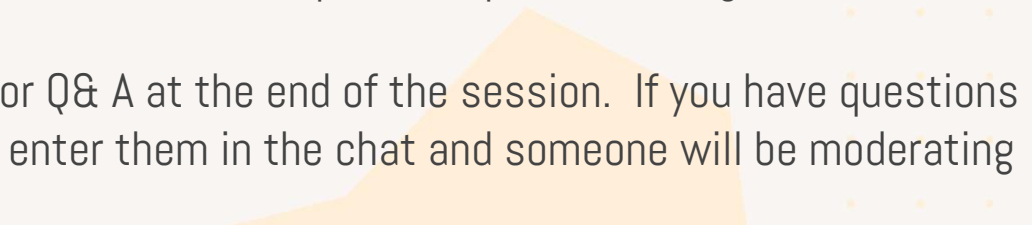
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SOCIETY**

Justice in Every Borough.

IDP





FORMAT OF TODAY'S TRAINING

- 
- This is a Train the Trainer model and is meant to provide you with additional content and information that may be useful for giving your own KYR presentation.
 - Throughout this training, we'll use slides labeled "context" to give you tips and background information.
 - Some of the context slides will also provide tips for training on content.
 - There will be time for Q& A at the end of the session. If you have questions during the session, enter them in the chat and someone will be moderating this.
- 



STRATEGIES FOR A KYR TRAINING:

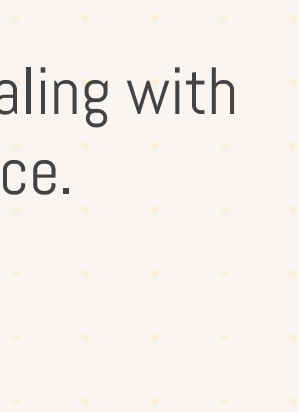
Before the event

- 
- Tailor the content to your audience.
 - Find local organizations to get more information about ICE or police practices and other resources.
 - Plan interactive activities like role play to practice.
 - Create a plan for answering unexpected questions.
- 



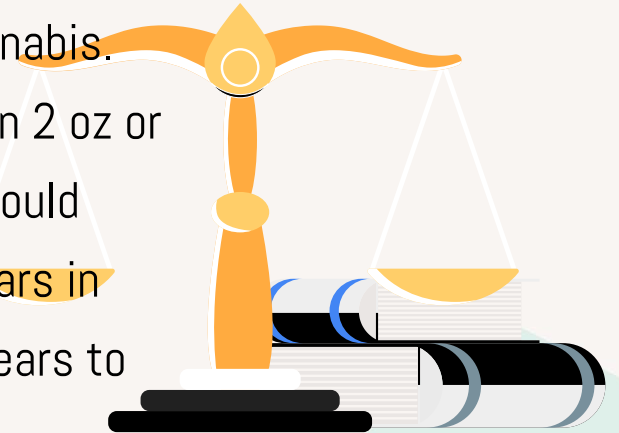
STRATEGIES FOR A KYR TRAINING:

During the event

- Discuss community defense strategies
 - Encourage people who may be at risk of arrest to get screened by trusted agencies/advocates.
 - Be mindful that audience members may be dealing with past trauma from interactions with ICE or police.
- 

Marihuana Prohibition in New York

- In 1914, the Boylan Bill added cannabis indica to the city's list of restricted drugs
- In 1973, Gov. Rockefeller signed legislation that increased the penalty of several substances, including cannabis.
 - Specifically, selling more than 2 oz or processing more than 4 oz would result in a minimum of 15 years in prison to a maximum of 25 years to life.



The Road to Decriminalization

- Partial decriminalization
 - 1977, NY decriminalized 25 grams ($\frac{7}{8}$ oz) or less of marijuana to an infraction, with a \$100 fine (equivalent to to \$430 in 2020), but possession in public remained a misdemeanor--a clear loophole to make arrests
- In 2014, Mayor de Blasio directed the NYPD to cease arrests and instead issue tickets for small possession even in cases where the 1977 law might allow arrests. However, arrests went back up despite a sudden drop after de Blasio's direction.
- In 2018 the Manhattan and Brooklyn DAs announced that they would continue reducing the set of offenses that they would prosecute

Medical Marijuana in 2014 & Decriminalization

- In July 2014, New York State Governor signed legislation permitting the use of cannabis for medical purposes. This allowed an 18 month window for the state Department of Health to enact a medical marijuana program and provide non-smoked methods of cannabis consumption to patients.
- In 2019, New York State decriminalized the use of recreational cannabis use

Marijuana Justice Movement in New York

- The Drug Policy Alliance created the Start SMART NY Coalition – Sensible Marijuana Access through Regulated Trade – campaign in partnership with groups dedicated to ending the ineffective, racially biased, and unjust enforcement of marijuana prohibition and create in its place a new, well-regulated, and inclusive marijuana industry that is rooted in racial and economic justice.

The Road to Legalization: A Coalition's Work

START SMART COALITION

- | | | | |
|---------------------------------------|--|--|---|
| o Ali Forney Center | o Color of Change | o Latino Justice PRLDEF | o Open Buffalo |
| o All that Jive NYC | o Commend | o Law Enforcement Action Partnership | o Partnership for the Public Good |
| o Anti-Racist Alliance | o Common Defense | o Leafly | o Peaceprints |
| o Back to Basics Outreach Ministries | o Correctional Association of New York | o Legal Aid Society | o People United for Sustainable Housing |
| o Black Alliance for Just Immigration | o Cre8tive Youth Inc | o Make the Road New York | o Prisoners Are People Too |
| o BOOM!Health | o Doctors for Cannabis Reform | o Marijuana Arrest Research Project | o Privateer Holdings |
| o Bronx Defenders | o Dream Action Coalition | o Marijuana Business Association | o Police Reform Organizing Project |
| o Brooklyn Community Bail Fund | o Drug Policy Alliance | o Marley Natural | o A Rebel Minded Society |
| o Brooklyn Defenders | o Empire State Indivisible | o Minorities for Medical Marijuana | o Rise Up |
| o Brooklyn Movement Center | o Empire State NORML | o Minority Cannabis Business Association | o Rochester NORML |
| o Brotherhood/Sister Sol | o End the New Jim Crow Action Network | o Million Hoodies | o Sea Sweet Collective |
| o Buffalo Legal Aid | o Evergreen Health Services | o MJ Majority | o Showing Up for Racial Justice NYC |
| o CAAAV | o Families for Sensible Drug Policy | o Mobilization for Justice (formerly MFY) | o Students for Sensible Drug Policy |
| o CannaGather | o H360 | o NAACP New York State Conference | o Take Root Justice |
| o Cannabis Bar Association | o High NY | o NAACP Peekskill Area Chapter | o VOCAL-NY |
| o Cannabureau | o Hiller P.C. | o National Action Network | o WesPAC |
| o Cannabis Cultural Association | o Immigrant Defense Project | o National Advocates for Pregnant Women | o Westbury Quaker Meeting |
| o Center for Constitutional Rights | o Institute for the Black World | o National Coalition Building Group | o Western New York Peace Center |
| o Center for Law and Justice | o Jade Insights | o New Agrariae | o Western NY NORML |
| o Center for Optimal Living | o Jews for Racial & Economic Justice | o New York Civil Liberties Union | o Women Abuv Ground |
| o Center for Popular Democracy | o Justice Strategies | o NY Small Farm Alliance of Cannabis Growers | o Women Grow |
| o Child Welfare Organizing Project | o JustLeadership USA | o Newman Ferrara LLP | o Working Families Party |
| o Citizen Action | o Katal | o New York Immigration Coalition | |

Recreational Marijuana Is Legal In NY

NY Lawmakers attempted to legalize recreational cannabis use between 2018-2021

- NY State Senate control went to the Democrats in 2018, the first time since 2010.
- Marijuana Regulation and Taxation Act passed in the NY Assembly (94-56) and Senate (40-23) on March 20, 2021
 - Main Sponsors of the bill, Majority Leader of the Assembly, Crystal Peoples-Stokes representing the 141st Assembly District in Buffalo & Senator Liz Krueger representing the 28th Senate District in New York City

The MRTA:

- Allows the use of marijuana by adults over 21; and automatically expunges records for prior criminalization
- Improves the medical marijuana program and expands hemp/CBD farming program
- Establishes the Office of Cannabis Management and Cannabis Control Board to regulate all aspects of cannabis in New York

New York's legalization centers racial and economic justice by:

- Addressing devastating impacts of marijuana prohibition in the fields of immigration, housing, employment, child welfare, and other consequences of criminalization.
- Establishing an equitable and diverse industry, including having a social equity licensing program supporting directly impacted people, farmers, and small businesses, plus an incubator program to provide low- and zero-interest loans, technical assistance, and legal counsel
- Using revenue from marijuana legalization for restitution to communities that have been most impacted by criminalization



It is now legal for adults 21 and over in New York to:

- Possess 3 ounces or less of marijuana in a public place
- Possess higher amounts of marijuana if prescribed by a doctor
- Give lawful amounts of marijuana to other people 21 and over as long as no compensation is exchanged



Automatic Expungement

Who's eligible and
how it works



Marijuana Justice created Automatic Expungement in New York. This means no applications and no need for a lawyer to get your record expunged!

Expungement is about Racial and Economic Justice

Racial Justice

The vast majority of people that are arrested and incarcerated in New York are Black or Latinx + People of color are far more likely to be discriminated against based on a conviction record.



Economic Justice

People who have been to prison lose an average of \$484,400 in earnings over their lifetime. That changes if they get their record cleared.

Expungement under the law (CPL § 160.50(3)(k)) is automatic, but there are still lots of questions about how it works and what it means to get your record expunged. This section aims to give you all of the information you need to answer those questions without having to call us.

If you still have questions, please reach out!

More information on our website: <https://legalaidnyc/case-closed>

Email: CaseClosed@legal-aid.org

Phone: (212) 298-3120

Presenter Tip

Who is eligible for automatic expungement?

Anyone that has a conviction for an eligible offense.

This generally means all convictions for possessing up to 16 oz. or selling up to 3 oz. of marijuana, but check the specific Penal Law offense you were convicted of to be sure.

Convictions that will be automatically expunged:

Old offenses: **PL 221.05, PL 221.10, PL 221.15, PL 221.20, PL 221.35, PL 221.40, PL 240.36, PL 240.37, and PL 220.03 or 22.06** IF the sole controlled substance was concentrated cannabis

New offenses: **PL 222.10, PL 222.15, PL 222.25, PL 222.45**

*There are NO RESTRICTIONS on eligibility. It does not matter if you have other convictions, if you are currently incarcerated or if you didn't pay a fine.


New York's other record clearance laws are more complicated, with many eligibility requirements

For example, New York's main application-based sealing law (CPL 160.59), is limited to people who have been out of incarceration at least 10 years, have no new convictions, and only have 2 total non-violent convictions (only one of which can be a felony) in their lifetime. (Find more information at: <https://legalaidsnyc.org/case-closed>)


Automatic expungement under the MRTA has none of these restrictions! If you have a conviction for the applicable Penal Law offense, it will be expunged. Period.

Presenter Tip


What Does Expungement Mean?



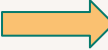
Expungement means that your case is vacated, dismissed and "deemed a nullity." It's like any other case that was dismissed.



If you are asked about whether you have a conviction record on a job application and your case has been expunged, you can answer "no."



Your case should not show up on a background check and should not be used against you, including in employment, licensing, housing and ACS proceedings.



Exceptions: Expunged records can still be seen when you are applying for a gun license or a job as a peace or police officer.

What expungement means can be complicated. It's like the case was dismissed and sealed, but it still technically exists in very limited circumstances.

This is very important to remember, especially for immigrants.

People may still want to consult with a lawyer to make sure they are doing everything they need to do to protect themselves when applying for jobs, housing or other opportunities.



Presenter Tip

How Automatic Expungement Works*

1. The Office of Court Administration (“OCA”) will identify all of the cases that are eligible.
2. OCA will enter a code in their system so that the electronic record is marked as expunged.
3. OCA will send a notification to the Department of Criminal Justice Services and they will also mark their records as expunged.
- 4. Any of the courts’ paper or electronic files must be “conspicuously marked” as expunged.
- 5. Notifications will be sent to Law Enforcement and Prosecutors telling them that they must
- also mark the records as expunged.

More information is available on OCA's website:

<https://www.nycourts.gov/courthelp/Criminal/marihuanaExpunge.shtml>

*Automatic expungement must be completed by March 31, 2023.

How can I confirm my record is expunged?

The best ways to confirm your record is properly expunged:

- ➡ Request a copy of your Certificate of Disposition from the Court
- ➡ Request a copy of your fingerprint-based RAP sheet

Information about how to access your records can be found on our website: <https://legalaidnyc.org/case-closed>. We hope there will be an easier, free process to confirm expungement in the future.

What about Record Destruction?

If you are eligible for automatic expungement, you may also request that the physical records from your case be destroyed.

THIS COULD BE DANGEROUS. Please consult with an attorney before requesting the physical destruction of your records.


Record destruction isn't as good as it sounds. There are still records in certain places, and getting the record destroyed could make it harder to show what happened in your case. It is very unlikely that destroying the record will help at all.

Under the Court's interpretation of the law, they will keep a copy of the expunged Court record EVEN IF YOU REQUEST DESTRUCTION. This could be a good thing for many purposes including immigration, but please consult with a lawyer before requesting record destruction to make sure it is a good choice for you.

Presenter Tip



Reasons you may still need a lawyer

- ➡ If you are not a US citizen, you may still need to file an application to have your conviction vacated (more on that in the next section).
 - ➡ If you have a marijuana conviction that is NOT eligible for automatic expungement, you may still be eligible to vacate your conviction or reduce your sentence.
 - ➡ If you are considering requesting the physical destruction of your records.
 - ➡ If you are looking to seal or expunge a conviction for something else, you may have other options!
- 

Applying to vacate convictions Under CPL § 440.46-a

If you have a marijuana conviction that is not eligible for automatic expungement, you may have other options!

You may be eligible to apply to vacate your conviction or reduce your sentence.

What's the difference between vacatur and expungement?

Almost nothing.

The big difference is that you have to apply to vacate your record.

There are a lot of different terms for record clearance: for example
Expungement, Sealing, Vacatur, Dismissal, Set-aside

The differences in what they mean and how they are different can get very complicated. They depend on the specific laws.

Under the marijuana laws, for most things like jobs and housing there is no difference between vacating and expunging your record. ****BUT if you are an immigrant the words and process could make a big difference.**

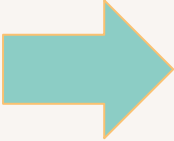


Presenter Tip

Applying to vacate convictions Under CPL § 440.46-a

Convictions that are eligible:

PL 221. 25, PL 221.30, PL 221.45, PL 221.50, PL 221.55 IF under 100 lbs.



Convictions that are expunged are eligible BUT unless you are advised by an immigration lawyer to file a 440 motion to vacate your conviction YOU DO NOT NEED TO APPLY TO VACATE YOUR CONVICTION FOR SOMETHING THAT WAS AUTOMATICALLY EXPUNGED.

Applying to vacate convictions Under CPL § 440.46-a: Why would you file?

Examples of circumstances in which you may be eligible to file a CPL §440.46-a application:

- You have a felony conviction that is now a misdemeanor (this is the most common reason and most simple reason to file an application)
- You have a sale conviction in which there was no compensation
- Some charges were expunged but others still stand, and you want to request a sentence reduction
- You have a PL § 221.45 conviction for sale of under 3 oz

Applying to vacate convictions Under CPL § 440.46-a: The Process

1. Confirm that you have an eligible conviction.
2. Fill out the application. The Court form is available here:
 - a. <https://www.nycourts.gov/LegacyPDFs/forms/criminal/pdfs/MarijuanaResentencingApplicationCPL440.46-a-fillable.pdf>
3. Follow all of the instructions and file it properly.
4. **You may have a hearing. If so, request that the Court assign a lawyer to your case.**

Under the current law, you must be able to show that you are experiencing **severe or ongoing consequences related to your conviction or sentence**. If you can not show that you are still experiencing hardship because of your conviction then the application will be denied.

THIS REQUIREMENT SHOULD BE REMOVED SOON.

Applying to vacate convictions Under CPL § 440.46-a

THERE IS A MISTAKE IN THE LAW!

You should be able to get your record vacated or your sentence reduced without showing that you have severe and ongoing consequences but there is a typo in the current law. An amendment was introduced in Albany and the law will hopefully change very soon.

When the law changes, you will be eligible to get your sentence reduced even if you can not show that there are severe and ongoing consequences to your conviction.

For now, getting your conviction vacated will be more complicated and may require the help of a lawyer, BUT this is very likely to change by January 2022, if not before. We will update these materials when the law changes.

Severe and ongoing consequences to a conviction could be many things:

- Immigration consequences
- Employment, licensing or housing consequences



Presenter Tip

Addressing “Collateral Consequences”

There are thousands of barriers that people with criminal records face. It is part of a system of perpetual punishment that disproportionately affects Black and Latinx people.

The new marijuana law tries to remove some of these barriers.

Addressing “Collateral Consequences”

The law prohibits discrimination for lawful cannabis use in the following contexts:

- Housing (unless the landlord would lose a federal benefit or as part of a general no-smoking policy)
- Education (unless school would lose federal benefit or as part of a religious-based no-cannabis policy)
- Employment (THC drug testing no longer allowed as grounds for denying a job in most cases)
- ACS (Lawful cannabis consumption cannot be reason for child welfare case; prior restrictions for child welfare and foster care amended so that expungement-eligible convictions can't be used to deny)
- Professional licensing
- Medical care

The law on all of these issues sounds clear, but it can still get very complicated. Lawyers at The Legal Aid Society can help to answer questions about whether you are being discriminated against based on cannabis use or an old conviction.

Go to: <https://legalaidnyc.org/get-help/>

Or call (212)-577-3300 to get connected with someone that can help.

Presenter Tip

Still Have Questions? Contact Us

The Case Closed Project is the sealing and expungement advocacy unit at The Legal Aid Society. We represent people in CPL § 160.59 sealing applications and speak at community education events around New York City. We also recognize the need for more laws like the MRTA and fight every day for systemic change through lobbying and litigation.

More information on our website: <https://legalaidnyc/case-closed>

Email: CaseClosed@legal-aid.org

Phone: (212) 298-3120

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Vacating Convictions for Immigrants

A note on immigration status

- **People often think that only undocumented people are at risk of deportation. This is not true.** People with immigration status, including lawful permanent residents can be at risk of deportation.
- **Immigration status and criminal history can be sensitive.** It is best practice not to ask people to volunteer their status or arrest history in a group setting unless you've created a community of trust and safety for sharing confidential information.
- **These systems are complex. No everyone knows their immigration status or exactly what they're been convicted of.** It is helpful to be able to refer community members to a reputable legal service provider when they are unsure.

Presenter Tip

The infographic features two teal circles with orange borders. The left circle is positioned over a background of small yellow dots, and the right circle is over a background of dark green diagonal stripes. Below each circle is a bold black label. At the bottom, a dark green title is set against a white background with orange and green geometric shapes.

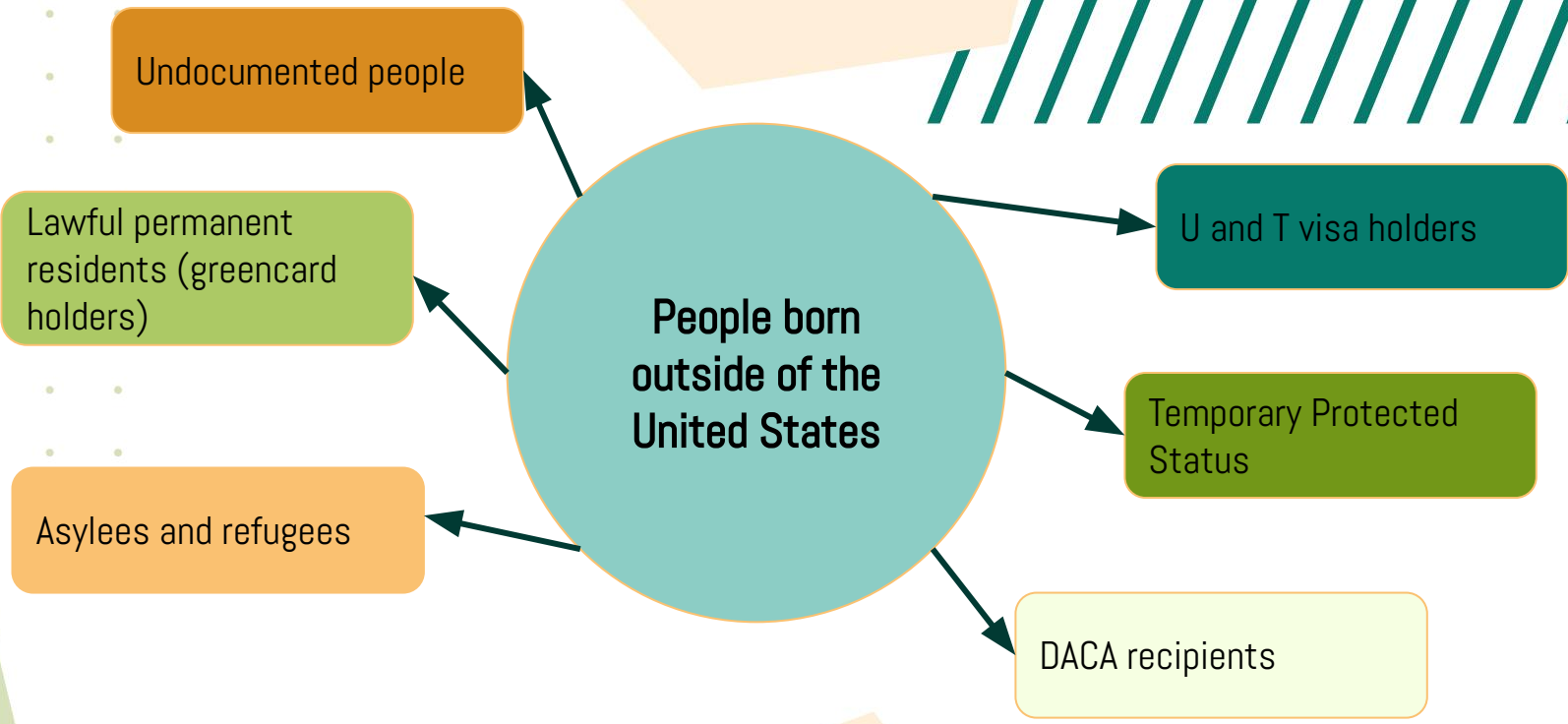
**People born in
the United
States**

United States Citizens

**People born
outside of the
United States**

Immigrants

Immigrant Communities: Who is at risk?



Immigrant Communities: Who is at risk?

Immigration consequences of convictions

Marijuana convictions have devastating consequences:

- Basis for ineligibility for lawful permanent residency.
- Basis for deportation.
- Basis to deny citizenship.
- Basis for immigration detention during deportation proceedings



Immigration consequences of convictions

A mismatch between the state definition of conviction and the immigration law definition of conviction means that even though a conviction may be expunged by the state, it can still result in negative immigration consequences.



Individualized Vacatur

CPL 440.10 Vacatur

- Expanded access to court review for people who may suffer immigration consequences despite an expungement
- Presumption in the law that your conviction is not valid, but prosecutor can present evidence that the conviction was valid.
- If you win, your conviction is erased.

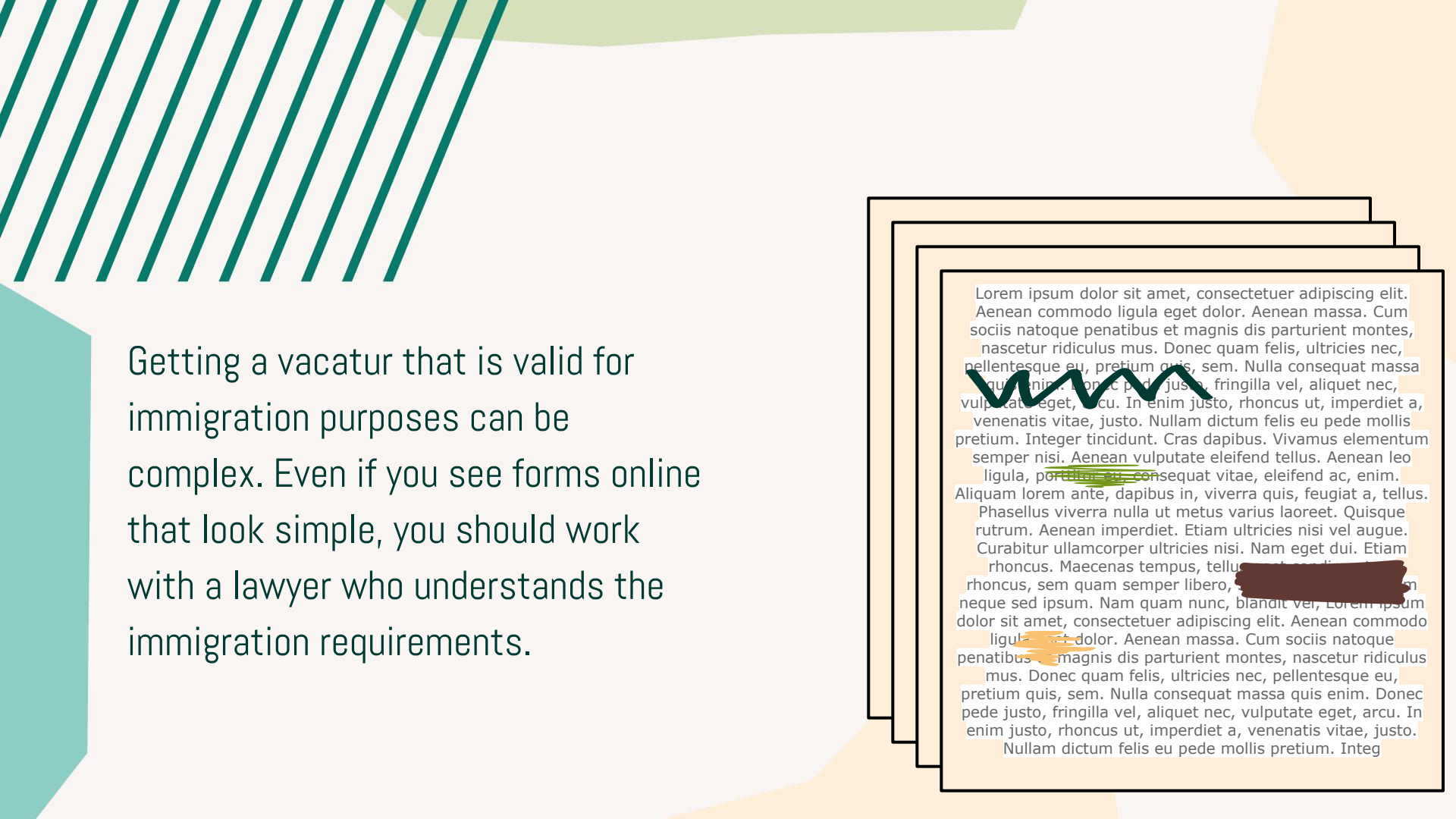
CPL 440.46-a Resentencing

- Available to almost everyone with a NY marijuana conviction
- You can make a special motion under this law if you need the change to be effective for immigration purposes.
- Court can substitute an offense for your old conviction but you can argue your conviction should be erased.

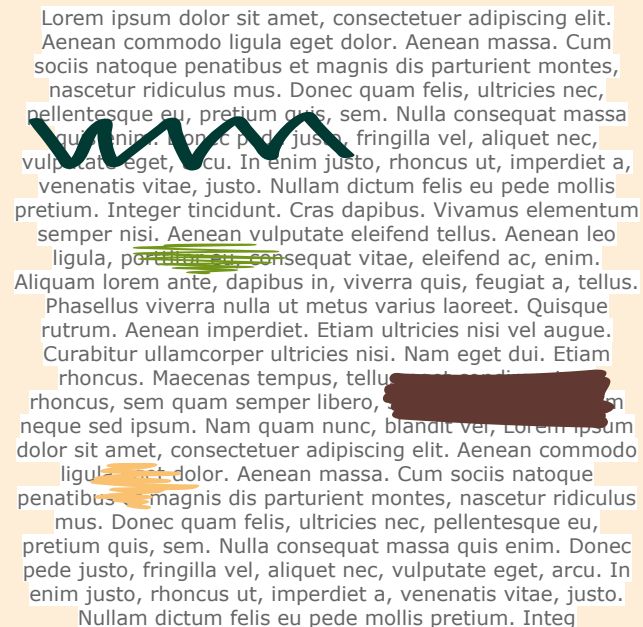
The post-conviction vacatur motion process is complex

- To determine which vacatur is most appropriate and whether or how it can help an immigrant, an attorney must understand the client's complete criminal and immigration history. They must prepare the case carefully, so that the federal government cannot argue that the vacatur didn't actually erase the conviction for immigration purposes. And the attorney must understand the possible immigration consequences of any new plea or sentence.
- The government may try to use statements made in the initial motion papers to make arguments against the immigrant in Immigration Court or to deny an application.
- A good attorney will investigate all avenues for overturning a conviction, not just those based on the MRTA, to ensure the client has the best chance of achieving their goal.

Presenter Tip



Getting a vacatur that is valid for immigration purposes can be complex. Even if you see forms online that look simple, you should work with a lawyer who understands the immigration requirements.



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What to do to prepare

- ❑ Understand your complete immigration history and current status by gathering any relevant paperwork and talking to family, if necessary.
- ❑ Gather documents about your criminal history. Get certificates of disposition from every arrest. If you're not sure about your arrest history, get a copy of your rap sheet.
- • •
- • • ❑ Avoid international travel or applying for anything from immigration until you've consulted with an attorney.
- • •
- • • ❑ Consult with an attorney early. The process to vacate a conviction can take months. Don't wait until you're experiencing a negative immigration consequence to begin.
- • •
- • •

Record Destruction

The MRTA allows individuals to petition to completely destroy the records related to marijuana convictions that are expunged. **This is NOT always a good idea**

- Immigration keeps its own files on you, so immigration officers may still know about the conviction even if the state record is destroyed.
- You need the record to be able to vacate it later.

Summary

- All immigrants can be at risk of negative immigration consequences (like deportation, detention, or denial of status or citizenship) as a result of a conviction, even people with lawful status.
- Even an expunged conviction can cause negative immigration consequences because of a mismatch in federal and state law.
- The MRTA created special vacatur paths that immigrants can use to erase or change their convictions in a way that will be valid for immigration purposes.
- The vacatur process is complex and should be done with an attorney. You can get started by collecting information about your immigration and criminal history.
- Destroying records of your conviction can be counter-productive. Talk with an attorney before going forward with that process.

Thanks!

Do you have any questions?

info@immdefense.org

www.immdefense.org

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