

# New York's New Marijuana Law

A Train the Trainer Experience  
DAY 2



# 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  
the **Drug**  
**Policy**  
**Alliance.**

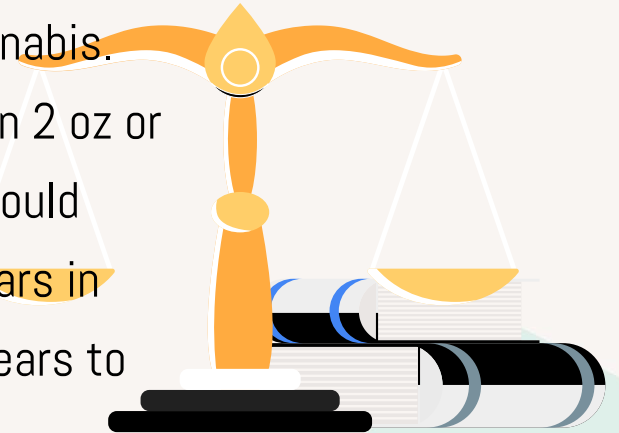
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# Marihuana Prohibition in New York

- 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

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| <ul style="list-style-type: none"><li>o Ali Forney Center</li><li>o All that Jive NYC</li><li>o Anti-Racist Alliance</li><li>o Back to Basics Outreach Ministries</li><li>o Black Alliance for Just Immigration</li><li>o BOOM!Health</li><li>o Bronx Defenders</li><li>o Brooklyn Community Bail Fund</li><li>o Brooklyn Defenders</li><li>o Brooklyn Movement Center</li><li>o Brotherhood/Sister Sol</li><li>o Buffalo Legal Aid</li><li>o CAAAV</li><li>o CannaGather</li><li>o Cannabis Bar Association</li><li>o Cannabureau</li><li>o Cannabis Cultural Association</li><li>o Center for Constitutional Rights</li><li>o Center for Law and Justice</li><li>o Center for Optimal Living</li><li>o Center for Popular Democracy</li><li>o Child Welfare Organizing Project</li><li>o Citizen Action</li></ul> | <ul style="list-style-type: none"><li>o Color of Change</li><li>o Commend</li><li>o Common Defense</li><li>o Correctional Association of New York</li><li>o Cre8tive Youth Inc</li><li>o Doctors for Cannabis Reform</li><li>o Dream Action Coalition</li><li>o Drug Policy Alliance</li><li>o Empire State Indivisible</li><li>o Empire State NORML</li><li>o End the New Jim Crow Action Network</li><li>o Evergreen Health Services</li><li>o Families for Sensible Drug Policy</li><li>o H360</li><li>o High NY</li><li>o Hiller P.C.</li><li>o Immigrant Defense Project</li><li>o Institute for the Black World</li><li>o Jade Insights</li><li>o Jews for Racial &amp; Economic Justice</li><li>o Justice Strategies</li><li>o JustLeadership USA</li><li>o Katal</li></ul> | <ul style="list-style-type: none"><li>o Latino Justice PRLDEF</li><li>o Law Enforcement Action Partnership</li><li>o Leafly</li><li>o Legal Aid Society</li><li>o Make the Road New York</li><li>o Marijuana Arrest Research Project</li><li>o Marijuana Business Association</li><li>o Marley Natural</li><li>o Minorities for Medical Marijuana</li><li>o Minority Cannabis Business Association</li><li>o Million Hoodies</li><li>o MJ Majority</li><li>o Mobilization for Justice (formerly MFY)</li><li>o NAACP New York State Conference</li><li>o NAACP Peekskill Area Chapter</li><li>o National Action Network</li><li>o National Advocates for Pregnant Women</li><li>o National Coalition Building Group</li><li>o New Agrariae</li><li>o New York Civil Liberties Union</li><li>o NY Small Farm Alliance of Cannabis Growers</li><li>o Newman Ferrara LLP</li><li>o New York Immigration Coalition</li></ul> | <ul style="list-style-type: none"><li>o Open Buffalo</li><li>o Partnership for the Public Good</li><li>o Peaceprints</li><li>o People United for Sustainable Housing</li><li>o Prisoners Are People Too</li><li>o Privateer Holdings</li><li>o Police Reform Organizing Project</li><li>o A Rebel Minded Society</li><li>o Rise Up</li><li>o Rochester NORML</li><li>o Sea Sweet Collective</li><li>o Showing Up for Racial Justice NYC</li><li>o Students for Sensible Drug Policy</li><li>o Take Root Justice</li><li>o VOCAL-NY</li><li>o WesPAC</li><li>o Westbury Quaker Meeting</li><li>o Western New York Peace Center</li><li>o Western NY NORML</li><li>o Women Abuv Ground</li><li>o Women Grow</li><li>o Working Families Party</li></ul> |
|---|--|--|--|



# 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.

# 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.


# What Does Expungement Mean?



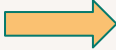
Expungement means that your case is vacated, dismissed and "deemed a nullity." It's like any other case that was dismissed.



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.



# 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.



## 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!
- 
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# 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?

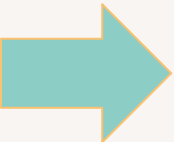
Almost nothing.

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

# 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.

# 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

## 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](mailto:CaseClosed@legal-aid.org)

Phone: (212) 298-3120

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# Vacating Convictions for Immigrants

The infographic features two teal circles with orange borders. The left circle is positioned over a background of a light green triangle and a grid of small yellow dots. The right circle is positioned over a background of a light orange triangle and a series of dark green diagonal lines. Below each circle is a bold black label. At the bottom left, a dark green text label is placed over a light orange triangle.

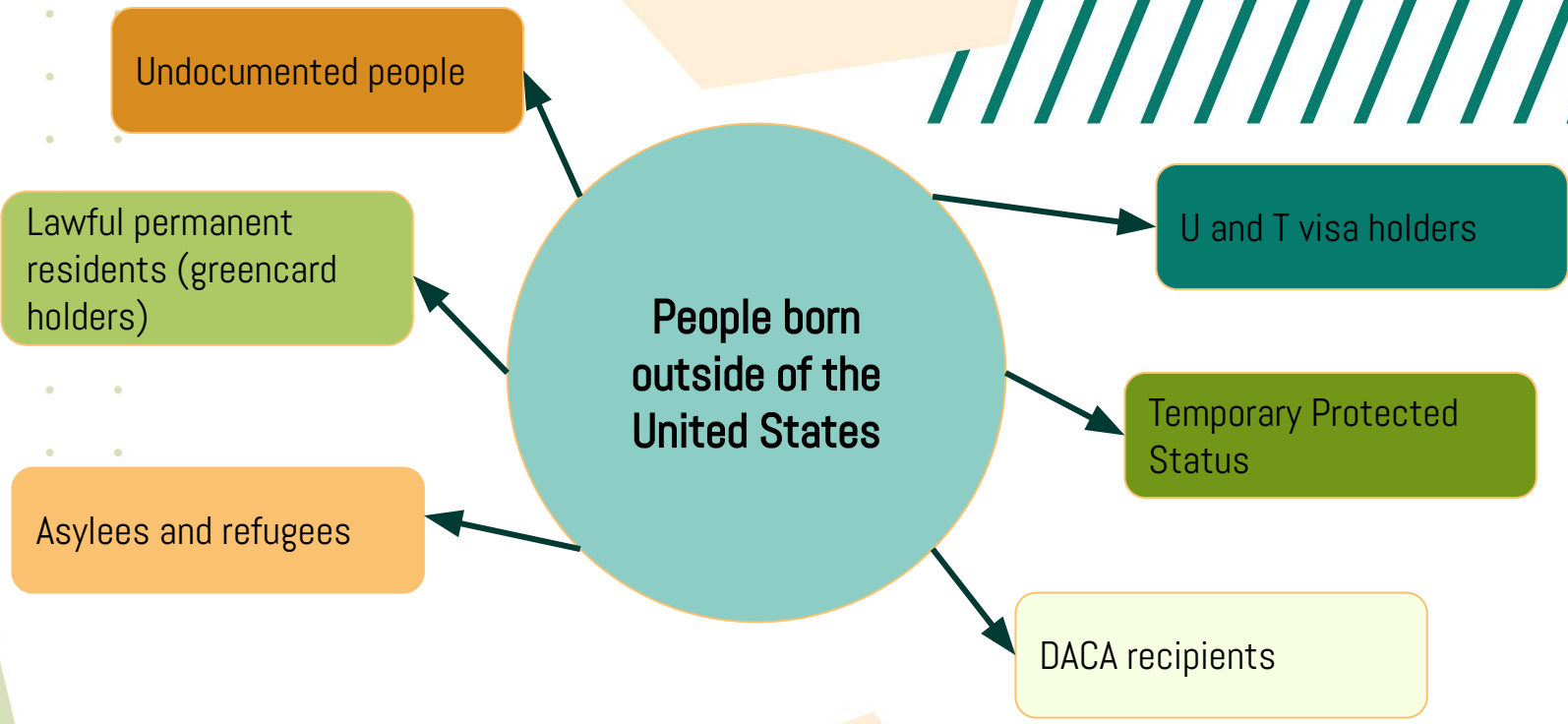
**People born in  
the United  
States**

**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.



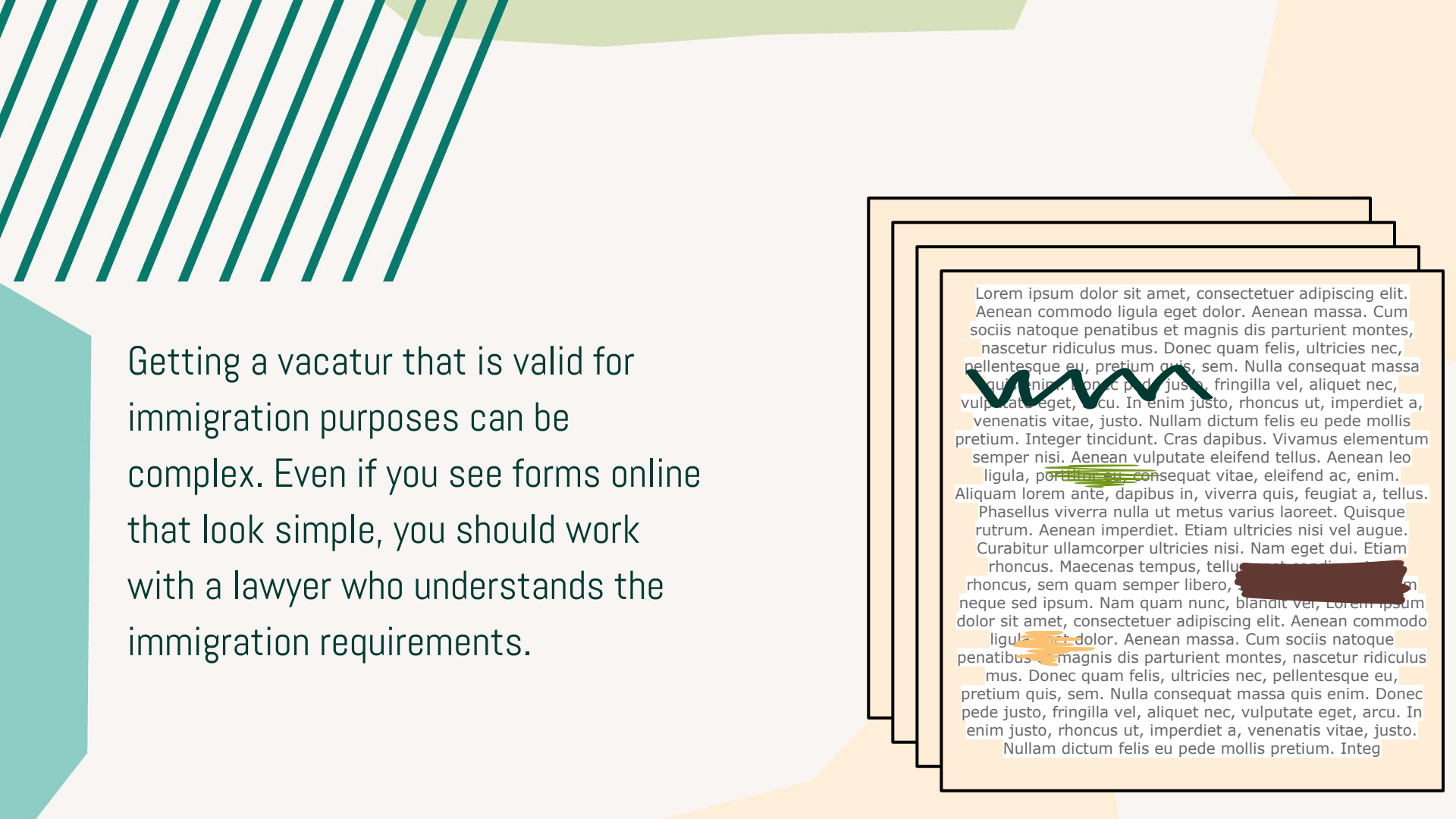
# Individualized Vacatur

## CPL 440.10 Vacatur

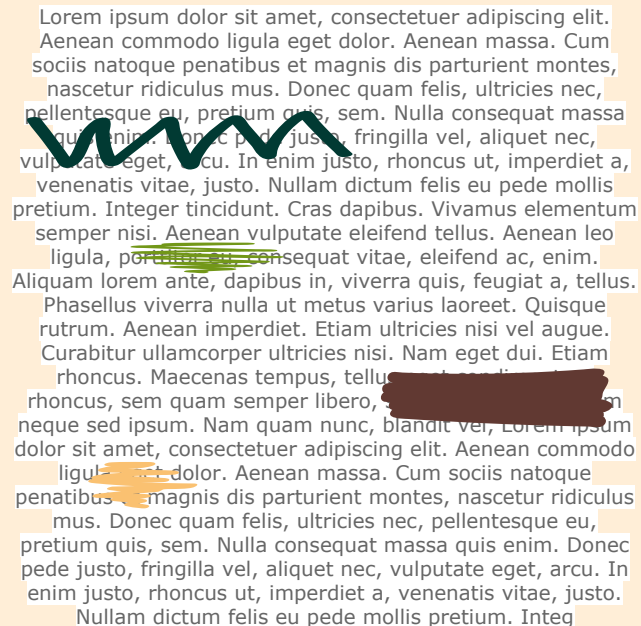
- Expanded access to court review for people who may suffer immigration consequences despite an expungement
- Presumption in the law that your conviction is not valid, but prosecutor can present evidence that the conviction was valid.
- If you win, your conviction is erased.

## 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.



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](mailto:info@immdefense.org)

[www.immdefense.org](http://www.immdefense.org)

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