



What is in the Law

Penal Law

Overview

On March 31, 2021, New York State legalized adult-use cannabis (also known as marijuana, or recreational marijuana) by passing the Marijuana Regulation & Taxation Act (MRTA). The legislation creates a new Office of Cannabis Management (OCM) governed by a Cannabis Control Board to oversee and implement the law. The MRTA modifies criminal violations and penalties relating to the sale and possession of cannabis.

Personal Possession

Adults 21 years of age and older may possess up to 3 ounces of cannabis and 24 grams of concentrated cannabis (like vaporization oil or an edible).

Cannabis and Police Searches

The MRTA changes how the odor or presence of cannabis can be used to determine reasonable cause by law enforcement. No finding or determination of reasonable cause to believe a crime has been committed can be based solely on or in combination with the odor of cannabis or burnt cannabis, the possession of cannabis in amounts in accordance with state law, cash or currency present next to cannabis or multiple containers of cannabis, and planting or growing cannabis in accordance with state law. This law does not apply to an investigation of a person who operates a vehicle while under the influence of cannabis. During such investigations, the odor of burnt cannabis shall not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.

Home Cultivation of Cannabis

New Yorkers 21 years of age and older can grow up to 6 cannabis plants in their home for personal use (3 mature plants and 3 immature plants) and a maximum of twelve plants per household (6 mature plants and 6 immature plants). ***Please be aware the home cultivation of cannabis is not allowed immediately.*** Pursuant to the MRTA, the home cultivation of cannabis is only permitted after the OCM issues regulations governing home cultivation of cannabis, which will occur within 18 months of the first adult-use retail sale. The MRTA also permits the home cultivation of medical cannabis for certified patients registered in the Medical Cannabis Program. Home cultivation for certified patients has an accelerated timeline, but is not authorized until the OCM issues regulations, which will occur on or before September 30, 2021.

Expungement of Criminal Records

The MRTA will automatically expunge records for people with previous convictions for activities that are no longer criminalized. Individuals who qualify for expungement are not required to take any further action to have their records expunged.

The following convictions qualify for expungement:

- A violation of Article 220 or section 240.36 of the penal law, prior to the effective date of

Article 221 of the Penal law, where the sole controlled substance involved was marihuana and the conviction was only for a misdemeanor and/or violation

- An offense defined in section 221.05 or 221.10 of the Penal law prior to the effective date of chapter 132 of the laws of 2019
- An offense defined in former section 221.05, 221.10, 221.15, 221.20, 221.35, or 221.40 of the Penal Law
- An offense defined in section 240.37 of the Penal law
- A violation of section 220.03 or 220.06 of the Penal law prior to the effective date of the MRTA, where the sole controlled substance involved was concentrated cannabis
- An offense defined in section 222.10, 222.15, 222.25 or 222.45 of the Penal law.

Penalties

Violation	Description	Punishable By
Unlawful Possession	Knowingly and unlawfully possessing more than 3 ounces of cannabis or 24 grams of concentrated cannabis.	Fine of up to \$125
Criminal Possession in the 3rd Degree	Knowingly and unlawfully possessing more than 16 ounces of cannabis or 5 ounces of concentrated cannabis.	Class A Misdemeanor
Criminal Possession in the 2nd Degree	Knowingly and unlawfully possessing more than 5 pounds of cannabis or 2 pounds of concentrated cannabis.	Class E Felony
Criminal Possession in the 1st Degree	Knowingly and unlawfully possessing more than 10 pounds of cannabis or 4 pounds of concentrated cannabis.	Class D Felony
Unlawful Sale of Cannabis	Knowingly and unlawfully selling any amount of cannabis or concentrated cannabis.	Fine of up to \$250
Criminal Sale of Cannabis in the 3rd Degree	Knowingly and unlawfully selling more than 3 ounces of cannabis or 24 grams of concentrated cannabis; or giving or selling cannabis to anyone under the age of 21.	Class A Misdemeanor

Violation	Description	Punishable By
Criminal Sale of Cannabis in the 2nd Degree	Knowingly and unlawfully selling more than 16 ounces of cannabis or 5 ounces of concentrated cannabis; or giving or selling more than 3 ounces of cannabis or 24 grams of concentrated cannabis to anyone under the age of 18.	Class E Felony
Criminal Sale of Cannabis in the 1st Degree	Knowingly and unlawfully selling more than 5 pounds of cannabis or 2 pounds of concentrated cannabis.	Class D Felony
Aggravated Criminal Sale of Cannabis	Knowingly and unlawfully selling more than 100 pounds of cannabis or concentrated cannabis.	Class C Felony
Smoking Cannabis	The smoking or vaporization of cannabis is prohibited anywhere that smoking of tobacco is prohibited.	Civil penalty up to \$25 or up to 20 hours of community service

Contact Us

Please visit our website or contact us using the e-mail and phone number below for more information.

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