

# YOUR RIGHTS AFTER CANNABIS LEGALIZATION IN NEW YORK

## KNOW YOUR RIGHTS



On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) was signed into law. As of that date, it became legal for New Yorkers over the age of 21 to possess and use cannabis recreationally. The MRTA is the nation's most comprehensive policy to legalize, tax, and regulate cannabis with an equity and racial justice framework, but there are still some important things New Yorkers need to know in order to protect their rights. The following info explains what's legal, what's still prohibited, and what to expect now that the MRTA has become law.



### HOW MUCH CANNABIS CAN I POSSESS?

New Yorkers over the age of 21 are now legally allowed to possess up to three ounces of cannabis and up to 24 grams of concentrated cannabis (like oils and edibles) in public. It's also now legal to share that same amount with another person over the age of 21 so long as there's no compensation.

### WHERE CAN I SMOKE CANNABIS?

Generally the same rules that govern cigarette smoking apply: you can smoke cannabis in the same places where cigarette smoking is permitted, and you can't smoke cannabis in places where cigarette smoking is prohibited. In New York City, for example, cigarette smoking is banned in public parks, so the same will apply to cannabis. The penalty for smoking where prohibited is a civil fine. New Yorkers also cannot smoke cannabis in cars, on school grounds, or on federal property.

### WHEN WILL RETAIL SALES OF CANNABIS START?

The earliest that retail sales could begin is April 1, 2022, but the actual date might be later. This will depend on how quickly the new state agencies governing the cannabis industry are set up and how long it takes for them to issue all the necessary rules and regulations for the industry.

### CAN I GROW MY OWN CANNABIS?

Eventually, yes. The MRTA will allow individuals to grow up to three mature and three immature plants at home, with a maximum of six mature and six immature plants allowed in any one household. New Yorkers will be able to store up to five pounds of cannabis in their homes under this provision. But this doesn't take effect immediately. Before New Yorkers can grow their own cannabis plants, the new state Office of Cannabis Management will have to issue regulations, which will happen within 18 months of the start of retail sales.

### CAN MY LANDLORD BAN CANNABIS USE IN MY APARTMENT?

Landlords will still be able to enforce smoke-free policies in apartments, but they cannot ban the possession of cannabis or non-smoking uses of cannabis.

### WHAT HAPPENS IF I HAD A PRIOR CONVICTION ON A CANNABIS-RELATED OFFENSE?

The Office of Court Administration will be required to automatically expunge, or remove, records for cannabis-related criminal offenses repealed by the MRTA. This means that arrest and conviction records won't show up in your criminal history and don't have to be listed on things like job or school applications. You do not have to apply to have your record expunged, but it may take some time to be completed. The state has two years to complete the expungement process.



## **WHAT ABOUT PEOPLE CURRENTLY INCARCERATED ON A CANNABIS OFFENSE – WILL THEY BE RELEASED?**

It depends on whether the person's sentence stems from additional charges and the specific cannabis-related conduct in the initial charge. The Office of Court Administration is required to notify prisons and jails when they expunge someone's records so that correction officials can provide relief, but that person might still have other convictions that aren't affected. In cases where someone's initial conduct would still have violated the new MRTA provisions but where the ultimate penalty has been reduced, that person will be able to ask the court for resentencing to reflect the new, lesser penalty. This won't be an automatic process and it will require people to file a motion in court. The law requires that these resentencing requests be granted unless the prosecutor can present clear and convincing evidence as to why it shouldn't be. It will be important for people to discuss their specific cases with their lawyer.

## **CAN I LOSE MY JOB OR CUSTODY OF MY CHILDREN FOR USING CANNABIS? WHAT ABOUT OTHER POTENTIAL CONSEQUENCES?**

The MRTA makes it unlawful to discriminate against people for legally using cannabis. This means that even though your employer may be able to take adverse action if you're impaired or using cannabis while on the job, they can't retaliate against you for using cannabis outside of work hours. Legal use of cannabis also cannot be the basis for denying someone housing, making child custody or visitation determinations, or

negatively impacting someone's parole or probation status.

## **CAN I STILL BE SUBJECT TO IMMIGRATION CONSEQUENCES EVEN IF MY PAST CONVICTION WAS EXPUNGED?**

Cannabis remains illegal under federal law and it can still lead to serious immigration consequences. The new system for automatically expunging past convictions may not be enough to avoid the potential for federal immigration consequences, so the MRTA also allows immigrant New Yorkers to request that a judge vacate their prior convictions in a manner that U.S. immigration law will recognize. Immigrant New Yorkers with prior cannabis convictions should consult with an attorney to make sure they're able to vacate their convictions through this new process.

## **CAN POLICE SEARCH ME CLAIMING THAT THEY SMELLED THE ODOR OF CANNABIS?**

In general, police are no longer allowed to consider the odor of cannabis in determining whether there's probable cause for a search or an arrest. In the driving context, however, police can use the odor of burnt cannabis as one factor in determining whether a driver is impaired.

## **WHAT ARE THE RULES FOR DRIVING?**

It remains unlawful to drive while impaired by cannabis. Officers are allowed to use the odor of burnt cannabis (but not the odor of unburnt cannabis) as one factor in determining whether a person is driving

while impaired, but the odor of burnt cannabis cannot serve as a basis to search parts of the car like the trunk that are not readily accessible to the driver. There is no accepted, scientifically accurate test to measure for a level of cannabis impairment, but the MRTA offers support for expanded police use of so-called "drug recognition experts" and "advanced roadside impaired driving enforcement" training.

## **WHAT HAPPENS IF MY LOCALITY "OPTS OUT" OF LEGALIZED SALES?**

Individual towns, cities, or villages have until December 31, 2021 to pass a local law prohibiting the establishment of cannabis retail dispensaries and/or businesses providing for on-site consumption of cannabis. The residents of any such locality can overturn these opt-out laws through a referendum. Even if your locality opts out of retail sales and on-site consumption licenses, the possession and use of cannabis will remain legal.

## **HOW WILL THE REVENUE GENERATED FROM LEGALIZED SALES BE SPENT?**

Forty percent of the tax revenue generated from cannabis sales will go into a new Community Grants Reinvestment Fund. This fund is specifically set up to reinvest in the communities hardest hit by the racist war on drugs, and it can help support things like job placement, mental health treatment, housing, childcare services, and other community-based services. Another 40 percent will go toward investments in public education, and the remaining 20 percent will be spent on drug treatment and education programs.

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