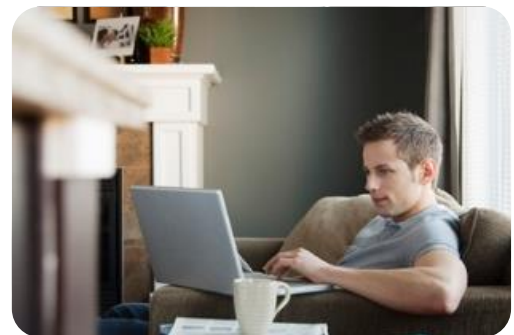


## Weeding Out Connecticut Convictions for Marijuana Possession

Connecticut reduced the penalties for possession of small amounts of marijuana in 2011, and legalized the use of medical marijuana the following year. On March 24, the Connecticut Supreme Court ruled that persons who were previously convicted of possessing less than one-half ounce of marijuana are now entitled to get those records erased. As these conviction records are expunged from public records, employers will no longer be able to access the information through criminal background checks and factor it into their hiring and other employment decisions.

### Background

In 2011, Connecticut replaced criminal sanctions for possession of small amounts of marijuana with civil fines. For a first offense of possessing less than one-half ounce of marijuana, the penalty was reduced from imprisonment of up to one year and/or a \$1,000 fine to a fine of \$150. For subsequent offenses, the penalty was reduced from a maximum fine of \$3,000 and/or up to five years imprisonment to a fine ranging from \$250 to \$500. Connecticut legalized the use of medical marijuana the following year. That law prohibits employers from refusing to hire an applicant or discharging an employee based on the individual's status as a "qualifying patient," and provides job protections for primary caregivers who manage the patient's care.



Connecticut law allows the erasure of criminal convictions for offenses that are later "decriminalized." A person who has been convicted in any court in Connecticut of an offense that is decriminalized after the date of the conviction has the right to petition for an order of erasure of all public records relating to the conviction. In such cases, the state Superior Court or records center of the judicial department shall direct all pertinent police and court records and the state's or prosecuting attorney's records to be destroyed. The statute does not expressly define the term "decriminalized."

## Erasing Marijuana Convictions

Relying on Connecticut's erasure law, Nicholas Menditto sought to erase two prior convictions for illegal possession in 2009 and to dismiss a pending possession case in 2011. The trial court denied his petitions to destroy the conviction records and his motion to dismiss. On appeal, the state's second-highest court ruled that the 2009 records should not be erased since the convictions occurred before the penalties for possession were reduced. Construing "decriminalization" to mean legalization, the court concluded that the state did not legalize possession of less than a half ounce of marijuana.

The Connecticut Supreme Court did not agree. On March 24, it unanimously ruled in *Connecticut v. Menditto* that the reduction of penalties in 2011 decriminalized possession of less than one-half ounce of marijuana for purposes of the state's erasure law. Thus, persons who were convicted of possessing such amounts can now have those criminal records erased. As Justice Carmen Espinosa wrote, "The legislature has determined that such violations are to be handled in the same manner as civil infractions, such as parking violations." Failing to find that the state had suggested any plausible reason why erasure should be denied, the court ruled that Menditto could apply to have the earlier convictions erased. It did not, however, address the later case.

**Comment.** In 2014, Colorado's second-highest court also approved the reversal of convictions for marijuana offenses that are no longer unlawful in the state. The Colorado Court of Appeals [ruled](#) that convictions for possession of one ounce or less of marijuana that were subject to appeal or post-conviction motion when the law changed could be retroactively overturned.

## In Closing

In a decision that could have broad implications, Connecticut's highest court has ruled that individuals who were convicted for possession of small amounts of marijuana will now be able to have those convictions completely expunged from public records. Sealed or expunged conviction records or arrests do not show up in criminal background checks, and applicants are not required to disclose them. As a consequence, Connecticut employers will no longer be able to secure such records through lawful criminal checks and inquiries or factor them into employment decisions. As states move to decriminalize — and in some cases legalize — marijuana, employers in those states may face similar issues.

**Authors**

Nancy Vary, JD  
Abe Dubin, JD

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