

# The MRTA: What You Need to Know About Marijuana Legalization in New York

Miles Gresham, Esq.

In March 2021, New York State adopted the Marijuana Regulation and Taxation Act (MRTA), a historic law that legalizes the use of recreational marijuana. In doing so, the MRTA centers racial and economic justice to repair the harms caused by decades of biased marijuana enforcement. It will bring revenue from marijuana legalization to communities most impacted by criminalization. It also removes or expunges past marijuana convictions. This fact sheet provides answers to important questions about the MRTA.

## What is the MRTA?

The MRTA, or the [Marijuana Regulation and Taxation Act](#), is a new law that legalizes the recreational use of cannabis (aka marijuana or marihuana), subject to certain rules and exceptions.

## What are the rules?

Any adult over the age of 21 may possess, obtain, and transport up to 3 ounces of cannabis (marijuana “buds” or “flower”) or up to 24 grams of concentrated cannabis (hashish, cannabis-infused oil, butter, sugar, etc.) in a public place without any criminal penalty. Additionally, one can smoke cannabis anywhere one can legally smoke a cigarette, *except in the car*.

## Wait, why can't I smoke in a car?

Unlike cigarettes or other tobacco products, driving and smoking cannabis is considered “drugged driving” in New York and most other places where recreational cannabis is legal.

## But I thought that police couldn't use the smell of cannabis to justify a search anymore?

The MRTA does state that the smell of marijuana alone can no longer be used as a reason to search a vehicle. However, it also states that the smell of cannabis can be used as evidence of Driving

This fact sheet summarizes what residents should know about the MRTA – New York’s marijuana legalization and regulation law. It covers the rules created by MRTA, exceptions to legal marijuana possession and use, and information on record expungement. It was drafted by Miles Gresham, Esq., Policy Fellow at Partnership for the Public Good. Contact the author at [Miles@ppgbuffalo.org](mailto:Miles@ppgbuffalo.org).



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While Ability Impaired, which is a misdemeanor. This doesn't mean that you will get charged just for having the smell of burnt cannabis in your car, but if an officer smells it while conducting a traffic stop, it could justify an investigation which could result in those charges. If someone is charged with Driving While Ability Impaired, their car can be impounded, which would allow the police to perform an "inventory search" of the vehicle before towing it away.

### **What happens if someone possesses more than the legal limit of cannabis?**

For possessing more than the legal limit of cannabis, penalties include:

- a violation punishable by a fine of \$125, for possession of over 3 to 16 ounces of cannabis or more than 24 grams to 5 ounces of concentrated cannabis;
- a misdemeanor punishable by up to a year in jail, for possession of more than 16 ounces of cannabis or more than 5 ounces of concentrated cannabis;
- a felony punishable by 15 months to 7 years in jail, for possession of over 5 pounds of cannabis or 2 pounds of concentrated cannabis.

### **Are there any rules on growing cannabis?**

Growing cannabis for recreational use is still currently illegal.

However, no later than eighteen months after the first recreational dispensary opens, each household will be able to grow up to six plants per adult in the household, with a maximum of twelve plants for households with two or more adults. (If you have three adults in the household, the limit will still be twelve plants.) Each adult will be allowed able to have three mature and three immature plants at a time (again, with a maximum of six mature and six immature plants for households with two or more adults).

### **What is the penalty for having more cannabis plants than the legal limit allows?**

Once cultivation is allowed, possessing more than the legal limit of plants will be punishable by a fine of \$1,000 per plant. However, it is important to note that cultivation also counts as possession. So, if an illegal amount of plants in one's possession yields 5 pounds or more of cannabis, it will be possible to be charged with a felony.

It is still illegal to smoke marijuana while in a car.

Police cannot search your vehicle only because they smell marijuana, but the smell can be used as evidence when police are investigating driving while impaired—a misdemeanor charge.

**Is it now legal to sell cannabis?**

No! It is legal to *possess* a certain amount of cannabis, but selling it is still illegal (unless you own a licensed medical dispensary). For selling cannabis, penalties include:

- Selling up to 3 ounces of cannabis or 24 grams of concentrated cannabis is a violation punishable by a fine of up to \$250.
- Selling over 3 ounces to 16 ounces of cannabis, or over 24 grams to 5 ounces of concentrated cannabis, is a misdemeanor punishable by up to 1 year in jail.
- Selling over 16 ounces of cannabis or over 5 ounces of concentrated cannabis is a felony, with punishments ranging from 15 months to 15 years in jail, depending on the amount.

Giving or selling any amount of cannabis to someone under 21 years of age is a **misdemeanor at minimum**, and can rise to a felony depending on the amount.

**If it's illegal to sell cannabis, how can one possess it?**

It is legal for someone 21 or older to give up to 3 ounces of cannabis, or up to 24 grams of concentrated cannabis, to another person who is 21 or older, as long as it's done as a gift. The transfer cannot be done in exchange for money.

**Is it illegal to make money from giving cannabis “gifts?”**

It is not illegal to give a certain amount of cannabis as a gift. It is illegal to make money from it. Possession of cannabis with intent to sell without having a license to do so is defined as “illicit” cannabis under the MRTA.

In addition to the penalties for illegal sale mentioned above, the act imposed heavy monetary penalties for every ounce of “illicit” cannabis: \$200-400 for every ounce of illicit cannabis flower, \$5-10 per milligram of the total weight of any illicit cannabis edible product, \$50-100 per gram of the total weight of any product containing illicit cannabis concentrate, and \$500-\$1,000 for each illicit cannabis plant, with penalties increasing for subsequent violations.

It is still illegal to sell marijuana, unless you own a licensed medical dispensary.

Giving or selling any amount of cannabis to someone under 21 years of age is a **misdemeanor at minimum**, and can rise to a felony depending on the amount.

In addition, if the illicit cannabis is brought across state lines for the purpose of sale, ones could also face federal trafficking charges.

**So how can I get a license to sell cannabis?**

The MRTA established an Office of Cannabis Management and a Cannabis Control Board that has been charged with establishing the regulations that will govern the licensing, sale, delivery, and on-site consumption of recreational cannabis. They will not issue those rules until at least 2022; as a result, sales are not expected before 2022.

**Does the MRTA allow for the expungement of past cannabis-related convictions?**

Yes. Most low-level convictions (the charges decriminalized under the MRTA) will be expunged automatically and immediately. However, due to the backlog of court cases throughout the state, the New York State Office of Court Administration estimates that these expungements may take up to two years to process.

Additionally, some cannabis-related felonies are now eligible for reduction to a misdemeanor, but this will require a motion to a court.

**Can I apply to have my record cleared sooner?**

Residents with past marijuana charges can contact these nonprofit legal service providers that are offering assistance with cannabis expungement:

**Legal Aid Bureau of Buffalo, 716-853-9555**

[legalaiddbuffalo.org](http://legalaiddbuffalo.org)

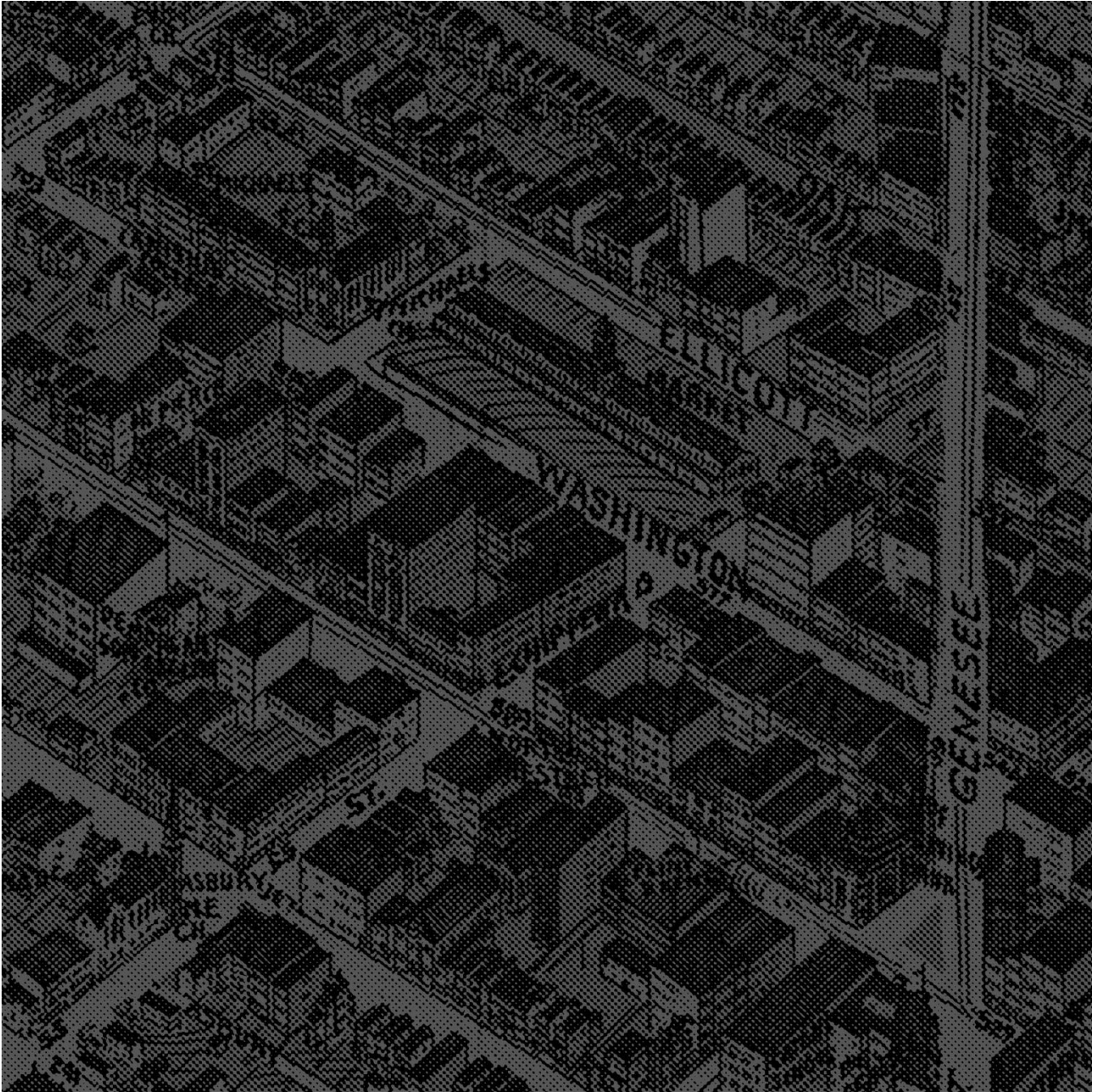
**Western New York Law Center, 716-855-0203**

[wnylc.com](http://wnylc.com)

Past marijuana convictions will be expunged, or cleared, automatically within two years.

Residents can seek legal assistance to have their records cleared sooner.





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617 Main Street, Suite 300  
Buffalo, New York 14203

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