

Court Service Center

New Hampshire Trial Courts

ANNULLING PERSONAL POSSESSION (3/4 OZ. OR LESS) OF MARIJUANA

General information:

- State law provides three different procedures for annulling a charge of personal possession of 3/4 oz. or less of marijuana. The correct form and process will be determined by when the offense occurred. See RSA 651:5 and 651:5-b, RSA 318-B:2-c as well as Criminal Court Rule 31 for more information.

How to file a petition to annul personal possession of marijuana charges?

- You may request a computer case summary from the court or from the Information Center to assist if you do not have all the case information you need to complete a petition.
- You must complete and file a separate petition for each charge you seek to have annulled. Each petition must be filed with the court jurisdiction where the charge was disposed.
- Make sure you select the correct Petition form because the forms and the process are slightly different for three different time frames (see below).
- You will need to include your name, address, phone number and date of birth.
- You will need the case number, the offense, the offense date, RSA violated, date of conviction, date sentence was completed, and a full description of the sentence that was imposed (if convicted).
- You may request that any fee be waived if you can demonstrate you do not have the present ability to pay the fee. Your request to waive a fee must be made to the agency or court where the fee is owed.

Information regarding eligibility, forms, fees and process:

OFFENSE OCCURRED PRIOR TO 9-16-2017

- Form:** Petition for Annulment of Record or Arrest or Conviction – Marijuana (NHJB 3124-DS)
- Fee:** Pay court fee of \$125.00 (this fee may encompass other petitions to annul filed on additional charges in the same court jurisdiction)
- Time Frame:** You may file your petition at any time
- What happens next:** The court will send a copy of your completed petition to the prosecutor. The prosecutor has 10 days from when the petition is received to object and request a hearing.
- **Hearing:** If a hearing is requested by the prosecutor, the prosecutor must establish at that hearing that the amount of marijuana possessed by you was greater than $\frac{3}{4}$ of an ounce.
 - **Court Order:** If no hearing is requested or the prosecutor fails to prove at the hearing that you possessed more than $\frac{3}{4}$ ounce of marijuana, your petition will be granted.

Court Service Center

New Hampshire Trial Courts

OFFENSE OCCURRED BETWEEN 9-16-2017 AND 1-1-2019

A charge of personal possession of marijuana occurring within this time frame is a confidential record. Nonetheless, a record of the charge is still contained in the court case management system and may be contained at State Police Criminal Records. The following procedure applies to annul such a charge and thereby remove it from the court case management system and criminal history.

Form: Petition to Annul Record (NHJB-2317-DSe)

Fee: Pay court fee of \$125.00 (this fee may encompass other petitions to annul filed on additional charges in filed the same court jurisdiction)

- Unless the charge was dismissed, not prosecuted or found not guilty, a petition for annulment of personal possession of marijuana that occurred during this time frame requires the matter to be referred to the Department of Corrections (DOC). You will be charged an additional **\$100** for an investigation of your criminal record. That fee is paid directly to the DOC not to the court. DOC will notify you by letter when the fee is due.
- Unless the charge was dismissed, not prosecuted or found not guilty, the Department of Safety will also charge a fee of **\$100** to research and correct the criminal history if the Petition to annul is granted. This fee is paid directly to them, not to the court. They will notify you by letter when the fee is due.
- You may request that any of the above fees be waived if you can demonstrate you do not have the present ability to pay the fee. Your request to waive a fee must be made to the agency or court where the fee is owed.

Time Frames:

- No conviction (the charge was for an arrest only, was nolle prossed, dismissed or found not guilty). You may file the petition at any time.
- Conviction: You may file the petition one year after all the terms and conditions of the sentence are complete. (see RSA 651:5, III (a)(1))

What happens next:

- The petition will be mailed by the court to the DOC and to the arresting law enforcement agency for an investigation and report.
- DOC will contact you to fill out a questionnaire and to request that you pay the required fee. The court will not take action on the petition until the DOC files their report, so your prompt response will expedite the process.
- In most cases you will be notified by mail of the Court's decision. In some instances, a hearing may be scheduled prior to the court making a decision.
- This annulment process is lengthy. Do not expect an immediate answer. It can take several months for the Court to receive the information from DOC and law enforcement and rule on the petition. Plan ahead if this affects a job opportunity.

Court Service Center

New Hampshire Trial Courts

OFFENSE OCCURRED AFTER 1/1/2019:

A charge of personal possession of marijuana occurring after this date is a confidential record. Nonetheless, a record of the charge is still contained in the court case management system and may be contained at State Police Criminal Records. The following procedure applies to annul such a charge and thereby remove it from the court case management system and criminal history.

Forms:

- No conviction (the charge was an arrest only, was nolle prossed, dismissed or found not guilty) Petition of Eligibility for Annulment of Record - Non Conviction (**NHJB-3056-DSe**)
- Conviction: Petition of Eligibility for Annulment of Record - Conviction (**NHJB-3057-DSe**)

Fee: Pay court fee of \$125.00 (this fee may encompass other petitions to annul filed on additional charges in filed the same court jurisdiction)

Time Frames:

- Arrest only or the charge was nolle prossed or vacated by state: You may file at any time.
- The charge was dismissed by the court: You may file the petition after the expiration of the appeal period (on the 31st day after the judge's dismissal order)
- You were found NOT GUILTY:
 - You may file the petition after the expiration of the appeal period but ONLY if you were found not guilty on ALL charges stemming from the same incident. If found guilty of companion charges you must wait to file your petition until you are eligible to file on all companion charges.
- You were found GUILTY:
 - You must wait a minimum of 3 years from the date of conviction to file the petition to annul because this charge carries an enhanced penalty for three convictions within a 3 year time frame. (see RSA 318-B:2-c,V (a) and RSA 651:5, III (2) If there were companion charges on the date of conviction, you must wait to file a petition until all companion charges are eligible for annulment. (see RSA 651:5, I through V).

What happens next:

- Non-convictions: After any applicable appeal period has expired, the petition will be presented to the court for an order. You will receive a copy of that court order.
- Convictions: If you have met all the requirements on page 2 of Petition of Eligibility for Annulment of Record - Conviction (**NHJB-3057-DSe**), the court will review your request and either grant or deny your petition. If the court issues an order conditionally granting the petition, a notice will be sent to the prosecutor who will have 20 days from the day they receive the court notice to file an objection. The charge will not be referred to DOC for an investigation. If no objection is filed and the court granted your petition, the court will issue a certificate of annulment which will be mailed to you. Please note the Judge has discretion to grant or deny your petition. If your petition is denied you may not file again until after 3 years have lapsed.

Forms and Instructions are available at any NH District or Superior Court

Additional information can be found at:

<http://www.courts.state.nh.us/>