

LEGISLATIVE RESEARCH SERVICES

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Conviction Data for Marijuana Possession in Alaska, 2007-2019; and Laws Relating to the Expungement, Sealing, or Nondisclosure of Marijuana Convictions

Released by: Jake Quarstad, Legislative Analyst

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Released to: The Office of Senator Tom Begich

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Jake Quarstad, Legislative Analyst

How many people in Alaska were convicted for possession of less than one ounce of marijuana between 2007 and 2019? What statutes exist in the states pertaining to the expungement, sealing, or nondisclosure of marijuana-related conviction records?

In 2014, Alaska became the third state to legalize recreational marijuana.¹ Ballot Measure 2 allows Alaskans aged 21 years and older to possess up to an ounce of cannabis and grow up to six plants in their homes, with three flowering at one time. With the exception of designated retail locations, public consumption of marijuana continues to be illegal. In 2015, the Legislature established the Marijuana Control Board to regulate the new industry.

The Alaska Court System tracks cases by the statute under which defendants are convicted. For the purposes of this report, the Court System was able to provide, for the years 2007 through 2019, a count of cases in which defendants had one or more convictions *only* under the relevant statute. In its current form, AS 11.71.060 codifies possession of less than one ounce of a schedule VIA substance (marijuana) as misconduct involving a controlled substance in the sixth degree.² In other words, the number of cases reflects defendants who only had a conviction under AS 11.71.060(a)(2) or AS 11.71.060(a)(2)(A), but no other offenses. For the time frame beginning January 1, 2007, through

¹ The law became effective in February 2015. Prior to the passage of Ballot Measure 2, the possession and personal use of relatively small amounts of marijuana was permitted as the result of court decisions based on the privacy clause of the Alaska State Constitution. Beyond this judicial construct, Alaska law permitted marijuana use only for medicinal purposes (AS 17.37).

² In Alaska, marijuana is considered a “schedule VIA controlled substance,” which includes those controlled substances deemed “to have the lowest degree of danger or probable danger to a person or the public” (AS 11.71.190). Marijuana remains illegal under federal law, where it is still classified as a Schedule 1 substance under the Controlled Substances Act. Schedule 1 substances are considered to have a high potential for dependency and no accepted medical use. The conflicts presented between state and federal law make issues pertaining to marijuana use and possession particularly complex. Further, the apparent conflict between the passage of Ballot Measure 2 and the conviction of individuals based on the statutes presented here, are similarly complex.

June 30, 2011, this statute was AS 11.71.060(a)(2), and for the period beginning July 1, 2011, through December 20, 2017, the controlling statute was, and still is, AS 11.71.060(a)(2)(A).

Nancy Meade, General Counsel, Alaska Court System, emphasized that these numbers should be considered estimates rather than comprehensive. She stressed that this search query does not include cases where the charge was not filed under one of the specific subsections of AS 11.71.060 noted above. For example, relevant cases could have been charged under AS 11.71.060 or AS 11.71.060(a). Additionally, because convictions are tracked by statute number, it is unknown what specific conduct was actually at issue in a particular case.³

A further limitation to the data is that 2012 was the first year that all courts in the state were entering case information on the court system's data tracking structure, known as CourtView. Thus, prior to 2012, the number of convictions identified does not include cases from some of the smaller courts. For questions regarding the below data, we urge you to contact Ms. Meade directly.

³ Ms. Meade can be reached at 907.264.8264 or by email at NMeade@akcourts.us.

Number of Cases in Alaska with Convictions for Possession of Less Than One Ounce of Marijuana, 2007-2019		
Year	Description of Charge for the Conviction	Cases ¹
2007	AS 11.71.060(a)(2): Cntrld Subs 6 - Possess <1 oz VIA	26
2008		41
2009		73
2010		91
2011	AS 11.71.060(a)(2)(A): Cntrld Subs 6 - Possess <1 oz VIA	97
2012		112
2013		145
2014		111
2015		17
2016 ²	AS 11.71.060(a)(2)(A): Cntrld Subs 6 - Possess <1 oz VIA AS 11.71.060(a)(2)(A): MICS5 Possess <1 oz VIA	6
2017	AS 11.71.060(a)(2)(A): MICS5 Possess <1 oz VIA	2
2018		5
2019 ²	AS 11.71.060(a)(2)(A): MICS5 Possess <1 oz VIA AS 11.71.060(a)(2)(A): MICS6 Possess <1 oz VIA	9
<p>Notes: 1) The number of cases reflect only those cases with one or more convictions under the relevant statute that codifies possession of less than one ounce of marijuana as misconduct involving a controlled substance. The number of cases should be considered estimates.</p> <p>2) Amendments to AS 11.71.060 that became effective during calendar years 2016 and 2019 changed the severity of charges (CH 36, SLA 2016; and CH 4, FSSLA 2019). Case totals for these years may reflect convictions for either of the charges described.</p> <p>Source: Nancy Meade, General Counsel, Alaska Court System, 907-264-8264.</p>		

Finally, attached is a list of statutes enacted by the states and the District of Columbia pertaining to the expungement, sealing, or nondisclosure of marijuana-related conviction records. This list focuses on those statutes we believe to specifically pertain to marijuana-related records, rather than those related to expungement, sealing, or nondisclosure in a more general context. Many more general laws of this type do exist, and it possible some of these may be exercised in relation to marijuana-related convictions.

The attached list should be viewed as illustrative, rather than comprehensive, as we did not conduct a 50-state survey of applicable statutes. Each citation listed is an active hyperlink to the complete language of that statute.

We hope this is helpful. If you have questions or need additional information, please let us know.

Statutes Relating to the Expungement, Sealing, or Nondisclosure of Marijuana Convictions		
California	<i>Cal. Health & Safety Code Ann. § 11361.5</i>	Destruction of Arrest and Conviction Records; Procedure; Exceptions
	<i>Cal. Health & Safety Code Ann. § 11361.8</i>	Recall or dismissal of sentence
	<i>Cal. Health & Safety Code Ann. § 11361.9</i>	Criminal history information review by department; recall or dismissal of sentence; sealing or redesignation; notice; challenge by prosecutor; legislative intent
Colorado	<i>Colo. Rev. Stat. Ann. § 18-13-122(13)</i> <i>Sealing of record</i>	Illegal possession or consumption of ethyl alcohol or marijuana by an underage person--illegal possession of marijuana paraphernalia by an underage person--definitions--adolescent substance abuse prevention and treatment fund--legislative declaration
Connecticut	<i>Conn. Gen. Stat. Ann. § 54-142d</i>	Destruction of record of decriminalized offense
District of Columbia	<i>D.C. Code Ann. § 16-803.02</i>	Sealing of public records for decriminalized or legalized offenses
Georgia	<i>Ga. Code Ann. § 35-3-37(h)(2)(B)</i>	Criminal history record information
Illinois	<i>20 Ill. Comp. Stat. Ann. 2630/5.2</i>	Expungement, sealing, and immediate sealing
Nevada	<i>Nev. Rev. Stat. Ann. § 453.3365</i>	Sealing of record of person convicted of possession of controlled substance not for purpose of sale; conditions
	<i>Nev. Rev. Stat. Ann. § 179.271</i>	Sealing of records after decriminalization of offense: Written request; notice; hearing; no fee; exception
New Jersey	<i>N.J. Stat. Ann. § 2C:52-5</i>	Expungement of records of young drug offenders
New Mexico	<i>N.M. Stat. Ann. § 30-31-28</i>	Conditional discharge for possession as first offense
New York	<i>N.Y. Crim. Proc. Law § 160.50(3)</i>	Order upon termination of criminal action in favor of the accused
North Dakota	<i>N.D. Cent. Code Ann. § 19-03.1-23(9)</i>	Prohibited acts--Penalties
Oklahoma	<i>Okla. Stat. Ann. tit. 63, § 2-410(A)</i>	Conditional release for first offense--Effect of expungement--Persons not covered by section
Rhode Island	<i>12 R.I. Gen. Laws Ann. § 12-1.3-2 (g)</i>	Motion for expungement
Texas	<i>Tex. Gov't Code Ann. § 411.0728</i>	Procedure for Certain Victims of Trafficking of Persons or Compelling Prostitution
	<i>Tex. Gov't Code Ann. § 411.0731</i>	Procedure for Community Supervision Following Conviction; Certain Driving While Intoxicated Convictions
Sources: Thomson Reuters Westlaw, at https://www.westlaw.com/ ; National Conference of State Legislatures (NCSL), "Marijuana Overview," at https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx#Expungement ; Michael Hartman, NCSL, Research Analyst, Civil And Criminal Justice, at 419.356.4667 or michael.hartman@ncsl.org ; and Restoration of Rights Project, "50-State Comparison: Expungement, Sealing & Other Record Relief," at http://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/ .		