



Delaware's Decriminalization Law: An Overview

On December 18, 2015, HB 39 took effect, removing the threat of arrest and jail time for adults possessing a small amount of marijuana. The law reduced the penalty for simple possession to a \$100 civil fine. Previously, simple possession of marijuana was a criminal offense and could result in up to three months in jail, a fine of up to \$575, or both.

On July 31, 2019, Gov. John Carney signed SB 45 into law, which expanded the state's decriminalization law to those under 21.

Penalties

Under Delaware law, possession or private use of one ounce or less of marijuana no longer carries a criminal penalty. Instead, the penalty is typically a \$100 civil violation, and the marijuana may be confiscated.

Any person under the age of 21 is subject to escalating penalties. For those under 21, a first offense carries a \$100 fine, and a second offense is punishable by a civil fine of between \$200 and \$500. A third or subsequent offense by minors is a criminal misdemeanor punishable by a \$100 fine.

Fines double if they are not paid within 90 days of final adjudication.

Public use subjects a marijuana consumer to an unclassified misdemeanor, punishable by a \$200 criminal fine, imprisonment of up to five days, or both.

Paraphernalia

HB 39 replaced the criminal penalty for possession of marijuana paraphernalia with a civil violation of \$100. In addition, individuals charged with an unclassified misdemeanor or assessed a civil violation for marijuana possession or use cannot also be assessed a civil violation for possession of marijuana paraphernalia.

Expungement

Pursuant to a 2018 law — SB 197 — individuals with a single conviction for possessing up to an ounce of marijuana before decriminalization took effect on December 18, 2015 automatically qualify to clear their records. To receive an expungement, individuals must first request their certified records from the State Bureau of Identification. Then, they pay a fee and fill out a form to apply for mandatory expungement.

Individuals who were under 21 when they received a single criminal conviction for possessing up to an ounce of marijuana prior to July 31, 2019 qualify to expunge those records. Those records cannot be expunged until the individual turns 21, and the individual must have complied with the sentencing order and not have another outstanding charge.