

## CHECKLIST

Make sure you are eligible (see next page).

Complete the whole application.

Make two copies of your application.

“Serve” the prosecutor.

Before you file your application with the court, a copy of your full application must either be mailed or hand-delivered to the prosecutor’s office. This is called “serving” them.

**NOTE:** If the application is hand-delivered in person, bring the original and both copies of the completed application. Give one copy to the clerk at the prosecutor’s office and ask the clerk to stamp both your copy and the original application that you will file with the clerk of the court as “received.” This proves the application was served, and you will not need to submit an Affirmation of Service form.

**OR**

If the application is not stamped “received” at the prosecutor’s office or if it is served by mail, then you must submit the Affirmation of Service form with your application. The Affirmation of Service must be completed and signed by the person who mailed or hand-delivered the application to the prosecutor’s office.

File your original application with the clerk of the court where you were convicted of the marihuana charge.

**NOTE:** Make sure that your original application is either stamped “received” by the prosecutor’s office, or if it is not stamped “received” by the prosecutor’s office, that you have attached a completed and signed Affirmation of Service to prove it was served. The clerk of the court should also stamp your copy of the papers “received.”

Keep copies of all the papers you filed with the court for your records.

## C.P.L. §440.46-a APPLICATION

PLEASE READ THESE INSTRUCTIONS COMPLETELY BEFORE STARTING THE APPLICATION

**You do not need to file this form to receive automatic expungement.**

If you were convicted of violating Sections 221.05, 221.10, 221.15, 221.20, 221.35, or 221.40 of the Penal Law, you are entitled to automatic expungement and sealing. These convictions currently will not appear in a criminal history search requested through the Courts or the Division of Criminal Justice Services. Automatic expungement of these charges will be completed on or before March 31, 2023.

**You may wish to speak with an immigration attorney before submitting this form**  
if you have **any** concerns about the impact that this motion may have on your immigration status.

### ARE YOU ELIGIBLE?

**WERE YOU CONVICTED OF A MARIHUANA OFFENSE UNDER ARTICLE 221 OF THE PENAL LAW AND EXPERIENCING SEVERE OR ONGOING CONSEQUENCES RELATED TO EITHER THE CONVICTION OR THE SENTENCE? Yes No**

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If you answered **NO**, you are not eligible to have your conviction vacated under section 440.46-a of the Criminal Procedure Law. Your application will be DENIED.

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If you answered **YES**, COMPLETE THE ATTACHED APPLICATION, serve a complete copy on the prosecutor's office (see *link to the statewide address list for all prosecutor's offices below*), and then file the original with the clerk of the court.

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### WHAT DO I NEED TO DO?

1. **COMPLETE and SIGN** your application.
2. **MAKE 2 FULL COPIES** (for a total of three, the original plus two copies) of your application, including any supporting documents.
3. **SERVE THE PROSECUTOR.** Before you file your application with the court, a copy of your full application must either be mailed or hand-delivered to the prosecutor's office. This is called "serving" them. A list of prosecutors' offices can be found online at:

[http://www.nycourts.gov/FORMS/cpl\\_160.59\\_sealing\\_application/pdfs/List\\_of\\_District\\_Attorneys\\_Offices.pdf](http://www.nycourts.gov/FORMS/cpl_160.59_sealing_application/pdfs/List_of_District_Attorneys_Offices.pdf)

**NOTE:** If you want to vacate a marihuana conviction in more than one case, you must complete, serve, and file a separate application for each case. You must serve each application on the appropriate prosecutor's office. The prosecutor is usually the District Attorney of the county where the court is located, but, if your case was prosecuted by the New York State Attorney General or a Special Narcotics Prosecutor, serve them instead.

- **If serving the application on the prosecutor in person:**
    1. Bring the original and both copies of the application, including any supporting documents, to the appropriate prosecutor's office.
    2. Give one copy to the prosecutor's office.
    3. Ask the prosecutor's office to stamp your copy and the original that you will file with the court as "received."
  - **If serving by mail:**

Mail one copy of your full application, including copies of any supporting documents, to the appropriate prosecutor's office. Certified mail is recommended so that you have proof of mailing.
- 4. GET PROOF OF SERVICE.** If the application was hand-delivered and time-stamped "received" by the prosecutor's office, this is proof of service, and you do not need to submit an Affirmation of Service form. If your application was not time-stamped "received" by the prosecutor's office, you must attach the Affirmation of Service form (at the end of this application). The Affirmation of Service must be completed and signed by the person who served (mailed or hand-delivered) the application to the prosecutor's office.
- 5. WHERE TO FILE:** File your full application with the clerk of the court where you were convicted of the marihuana charge.
- 6. FILE YOUR APPLICATION.**
- File your complete original application with the clerk of the court where you were convicted of the marihuana charge.
  - Attach the original Affirmation of Service (if served on the prosecutor by mail or if hand-delivered but not stamped "received").
  - Attach any supporting documents that you think will help the judge decide the application in your favor.
  - You may file your application by mail or in person at the court clerk's office. You can find court addresses online at: <https://ww2.nycourts.gov/courtlocator>
- 7. KEEP PROOF OF FILING.**
1. Save one copy of the application for your records.
  2. If you file your application in person, ask the court clerk to time stamp your copy "received."
  3. If you file your application by mail, it is best to use certified mail so that you will have a receipt showing that mailing occurred. Save the receipt.
- 8. HEARING OR DECISION.** If the prosecutor opposes your application, the court may contact you to schedule a hearing. At the hearing, the court will consider any evidence offered by you or by the prosecutor that would help the court to decide whether to vacate your conviction. If the prosecutor does not oppose your application, the court will mail a decision to you. If you provide your email address, the court will also email the decision to you.

## FORM INSTRUCTIONS

### **Application to Vacate Penal Law Article 221 Marihuana Conviction [CPL §440.46-a]**

The instruction for each number below refers to the corresponding field number in the “Application to Vacate and Expunge Marihuana Conviction [CPL §440.46-a]” form. The form and instructions can be downloaded and printed from the Unified Court System’s website at:

<https://www.nycourts.gov/forms/criminal/index.shtml>

- 1** Enter the name of the court where you were convicted and sentenced. For example, Albany City Court, Colonie Town Court, Altamont Village Court, Orange County Court, Queens Supreme Court, etc.
- 2** Enter the county in which the court is located. For example, Albany County, Orange County, Monroe County, Kings County, etc.
- 3** Enter the address of the court where you were convicted and sentenced. You can find court addresses online at: <https://ww2.nycourts.gov/courtlocator>.
- 4** Enter your full legal name.
- 5** If you used a name other than your legal name in this case, enter that name here.
- 6** Enter your current mailing address.
- 7** Enter your phone number. (NOTE: This is optional, but if there is a problem with your application, it will make it easier for the court to contact you.)
- 8** Enter your email address. (NOTE: This is optional, but if there is a problem with your application, it will make it easier for the court to contact you. Also, if you provide your email address, the court will email the decision to you.)
- 9** Enter your date of birth.
- 10** Enter the case docket number if you were convicted and sentenced in a city, town or village court, or enter the indictment/SCI number if you were convicted and sentenced in a supreme or county court.
- 11** Enter your New York State Identification Number (NYSID) if known. This number may be found in your court paperwork or on your rap sheet.
- 12** If you are currently incarcerated, enter your Department Identification Number (DIN). If you are not currently incarcerated, leave this blank.
- 13** Check YES or NO to indicate if you were a Youthful Offender for this case.
- 14** Check this box only if you have finished serving your sentence for this case.
- 15** Check this box only if you are still serving your sentence for this case. This includes sentences of incarceration, probation, conditional discharge and unconditional discharge.
- 16** If you are still serving your sentence for this case, and you are incarcerated, check the box to indicate which department or institution has custody over you.

- 17** If you were convicted of a crime under Penal Law Article 221 that is no longer a crime under Penal Law Article 222, check the specific charge(s) for which you were convicted in the first table.

**AND/OR**

If you were convicted of a crime under Penal Law Article 221 that is now a lesser crime under Penal Law Article 222, check the specific charge(s) for which you were convicted in the second table.

- 18** You may write an additional statement explaining any other legal reasons why the court should grant your application. For example, the sale of marihuana did not involve payment of any kind, and you got nothing in return for it. **Writing something in this section is completely optional.**

- 19** Explain how your conviction or sentence has negatively affected your life – for example, having possible or actual immigration problems or having a felony conviction on your criminal record – and explain how it continues to negatively affect you, your family, or others who are dependent upon you.

- 20** List any supporting documents attached to your application. An Affidavit of Service (line 1) is required only if the original application you are filing with the court was not stamped “received” by the prosecutor’s office when it was served. If you attach other documents that you think will help the court decide the application in your favor, list them on lines 2 and 3.

1. Affirmation of Service. *BEFORE* you file your application with the clerk of the court, a copy of your application and any supporting papers must be mailed or hand-delivered to the prosecutor’s office in the county where you were convicted and sentenced. This is called “serving” them. A list of prosecutors’ offices can be found online at:

[http://www.nycourts.gov/FORMS/cpl\\_160.59\\_sealing\\_application/pdfs/List\\_of\\_District\\_Attorneys\\_Offices.pdf](http://www.nycourts.gov/FORMS/cpl_160.59_sealing_application/pdfs/List_of_District_Attorneys_Offices.pdf).

- **If serving the application on the prosecutor in person:**
  - Bring the original and both copies of the application, including any supporting documents, to the appropriate prosecutor’s office.
  - Give one copy to the prosecutor’s office.
  - Ask the prosecutor’s office to stamp your copy and the original that you will file with the court as “received.”
- **If serving by mail:**

Mail one copy of your full application, including copies of any supporting documents, to the appropriate prosecutor’s office. Certified mail is recommended so that you have proof of mailing.

If the application was hand-delivered and time-stamped “received” by the prosecutor’s office, this is proof of service, and you do not need to submit an Affirmation of Service form. If the application was not time-stamped “received” by the prosecutor’s office, you must attach the Affirmation of Service form (at the end of this application). The Affirmation of Service must be completed and signed by the person who served (mailed or hand-delivered) the application to the prosecutor’s office.

- 2-3. You are not required to submit additional supporting documents, but if you do have additional documents list them on these lines.

- 21** Enter the day, month, and year that you are signing the application, and then sign the affirmation.

## **Affidavit of Service for CPL §440.46-a Application**

The instruction for each number below refers to the corresponding field number in the “Affirmation of Service for CPL §440.46-a Application” form. The form and instructions can be downloaded and printed from the Unified Court System’s website at: <https://www.nycourts.gov/forms/criminal/index.shtml>

- 1** Enter the name of the court where the application will be filed. For example, Albany City Court, Colonie Town Court, Altamont Village Court, Orange County Court, Queens Supreme Court, etc.
- 2** Enter the county in which the court is located. For example, Albany County, Orange County, Monroe County, Kings County, etc.
- 3** Enter the applicant’s full legal name.
- 4** Enter the case docket number if convicted and sentenced in a city, town or village court, or enter the indictment/SCI number if convicted and sentenced in a supreme or county court.
- 5** Enter the name of the court where convicted and sentenced. For example, Albany City Court, Colonie Town Court, Altamont Village Court, Orange County Court, Queens Supreme Court, etc.
- 6** Enter the full legal name of the person who served (mailed or hand-delivered) the application to the prosecutor’s office.
- 7** Enter the address of the person who served (mailed or hand-delivered) the application to the prosecutor’s office.
- 8** Enter the date that the application was served (mailed or hand-delivered).
- 9** Enter the county where the prosecutor’s office is located.
- 10** Enter the address of the prosecutor’s office where the application was mailed or hand-delivered.
- 11** Check the box to indicate if the application was mailed to the prosecutor’s office or if the application was hand-delivered to the prosecutor’s office.
- 12** Enter the day, month, and year that the person who served (mailed or hand-delivered) the application is signing, and then the person who served (mailed or hand-delivered) the application must sign the affirmation.



## STATE OF NEW YORK

UCS-446

① \_\_\_\_\_

COURT, COUNTY OF ② \_\_\_\_\_

③ COURT ADDRESS: \_\_\_\_\_

The People of the State of New York  
vs.Application to Vacate Penal Law Article 221 Marihuana Conviction  
[CPL §440.46-a]

④ Name: \_\_\_\_\_

⑩ Docket/Indictment/SCI Number: \_\_\_\_\_

⑤ AKA(s): \_\_\_\_\_

⑪ NYSID: \_\_\_\_\_

⑥ Address: \_\_\_\_\_

⑫ DIN (if applicable): \_\_\_\_\_

⑦ Phone: \_\_\_\_\_ ⑧ Email: \_\_\_\_\_

⑬ Youthful Offender: \_\_\_\_\_

⑨ DOB: \_\_\_\_\_

YES NO

This is a Notice of Motion to vacate the marihuana conviction in the above-captioned case pursuant to section 440.46-a of the Criminal Procedure Law. This motion is based upon the foregoing Affidavit in Support of Vacatur of PL Article 221 Marihuana Conviction and, if applicable, the attached supporting documents.

**Affirmation in Support of Vacatur of Penal Law Article 221 Marihuana Conviction**

The applicant states that, to my knowledge, the following facts are true:

I was convicted of an offense under former Article 221 of the Penal Law in this court in the above-captioned case.

- ⑭ I have completed my sentence for this conviction; or  
⑮ I am currently serving my sentence for this conviction.

⑯ (Check if applicable) I am currently committed to the custody of:

Department of Corrections and Community Supervision (DOCCS)

Office of Children and Family Services (OCFS)

Office of Mental Health (OMH)

Local Correctional Institution (specify): \_\_\_\_\_

⑰ The conduct alleged in the accusatory instrument and/or shown by the guilty plea or trial verdict, or shown by other information would not have been a crime under Article 222 of the Penal Law as follows (check any charge(s) for which you were convicted):

Penal Law Article 221 Conviction Charge	Equivalent Penal Law Article 222 Charge
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that you possessed 3 ounces or less of cannabis/marijuana.</p> <p><b>PL § 221.05 – Unlawful possession of marihuana in the second degree.</b> (Violation) Elements: Knowingly and unlawfully possesses marihuana.</p>	<p>No comparable offense exists under Article 222 of the Penal Law.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that you possessed 3 ounces or less of cannabis/marijuana.</p> <p><b>PL § 221.10 – Unlawful possession of marihuana in the first degree.</b> (Violation) Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 1 ounce.</p>	<p>No comparable offense exists under Article 222 of the Penal Law.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that you possessed 3 ounces or less of cannabis/marijuana.</p> <p><b>PL § 221.15 – Criminal possession of marihuana in the fourth degree.</b> (Class A Misdemeanor) Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 2 ounces.</p>	<p>No comparable offense exists under Article 222 of the Penal Law.</p>

Penal Law Article 221 Conviction Charge	Equivalent Penal Law Article 222 Charge
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are acknowledging that you possessed more than 3 ounces of cannabis/marijuana.</p> <p><b>PL § 221.15 – Criminal possession of marihuana in the fourth degree.</b> (Class A Misdemeanor)</p> <p>Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 2 ounces.</p>	<p><b>PL §222.25 – Unlawful possession of cannabis.</b> (Violation)</p> <p>Elements: Knowingly and unlawfully possesses cannabis and such cannabis weighs more than 3 ounces or concentrated cannabis and such concentrated cannabis weighs more than 24 grams.</p>
<p><b>PL § 221.20 – Criminal possession of marihuana in the third degree.</b> (Class E Felony)</p> <p>Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 8 ounces.</p>	<p><b>PL §222.25 – Unlawful possession of cannabis.</b> (Violation)</p> <p>Elements: Knowingly and unlawfully possesses cannabis and such cannabis weighs more than 3 ounces or concentrated cannabis and such concentrated cannabis weighs more than 24 grams.</p>
<p><b>PL § 221.35 – Criminal sale of marihuana in the fifth degree.</b> (Class B Misdemeanor)</p> <p>Elements: Knowingly and unlawfully sells, without consideration, one or more preparations, compounds, mixtures, or substances containing marihuana weighing 2 grams or less; or one cigarette containing marihuana.</p>	<p>No comparable offense exists under Article 222 of the Penal Law.</p>
<p><b>PL § 221.40 – Criminal sale of marihuana in the fourth degree.</b> (Class A Misdemeanor)</p> <p>Elements: Knowingly and unlawfully sells marihuana except as provided in PL § 221.35.</p>	<p><b>PL § 222.45 – Unlawful sale of cannabis.</b> (Violation)</p> <p>Elements: Knowingly and unlawfully sells cannabis or concentrated cannabis.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that the sale involved 3 ounces or less of cannabis/marijuana.</p> <p><b>PL § 221.45 – Criminal sale of marihuana in the third degree.</b> (Class E Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 25 grams.</p>	<p><b>PL § 222.45 – Unlawful sale of cannabis.</b> (Violation)</p> <p>Elements: Knowingly and unlawfully sells cannabis or concentrated cannabis.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that the sale involved 3 ounces or less of cannabis/marijuana AND you were less than 21 years of age at the time of the sale.</p> <p><b>PL § 221.50 – Criminal sale of marihuana in the second degree.</b> (Class D Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 4 ounces, or to a person less than 18 years of age.</p>	<p><b>PL § 222.45 – Unlawful sale of cannabis.</b> (Violation)</p> <p>Elements: Knowingly and unlawfully sells cannabis or concentrated cannabis.</p>

The conduct alleged in the accusatory instrument and/or shown by the guilty plea or trial verdict, or shown by other information would have been a lesser or potentially less onerous offense under Article 222 of the Penal Law as follows (check any charge(s) for which you were convicted):

Penal Law Article 221 Conviction Charge	Equivalent Penal Law Article 222 Charge
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that you possessed 5 pounds or less of cannabis/marijuana.</p> <p><b>PL § 221.25 – Criminal possession of marihuana in the second degree.</b> (Class D Felony)</p> <p>Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 16 ounces.</p>	<p><b>PL § 222.30 – Criminal possession of cannabis in the third degree.</b> (A misdemeanor)</p> <p>Elements: Knowingly and unlawfully possesses more than 16 ounces of cannabis; or more than 5 ounces of concentrated cannabis.</p>

Penal Law Article 221 Conviction Charge	Equivalent Penal Law Article 222 Charge
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are acknowledging that you possessed more than 5 pounds of cannabis/marijuana.</p> <p><b>PL § 221.25 – Criminal possession of marihuana in the second degree.</b> (Class D Felony)</p> <p>Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 16 ounces.</p>	<p><b>PL § 222.35 – Criminal possession of cannabis in the second degree.</b> (E Felony)</p> <p>Elements: Knowingly and unlawfully possesses more than 5 pounds of cannabis; or more than 2 pounds of concentrated cannabis.</p>
<p><b>PL § 221.30 – Criminal possession of marihuana in the first degree.</b> (Class C Felony)</p> <p>Elements: Knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing more than 10 pounds of marihuana.</p>	<p><b>PL § 222.40 – Criminal possession of cannabis in the first degree.</b> (D felony)</p> <p>Elements: Knowingly and unlawfully possesses more than 10 pounds of cannabis; or more than 4 pounds of concentrated cannabis.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are acknowledging that the sale involved more than 3 ounces of cannabis/marijuana.</p> <p><b>PL § 221.45 – Criminal sale of marihuana in the third degree.</b> (Class E Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 25 grams.</p>	<p><b>PL § 222.50 (1) – Criminal sale of cannabis in the third degree.</b> (Class A misdemeanor)</p> <p>Elements: Knowingly and unlawfully sells more than 3 ounces of cannabis or more than 24 grams of concentrated cannabis.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that the sale did not involve a person under 18 years of age.</p> <p><b>PL § 221.50 – Criminal sale of marihuana in the second degree.</b> (Class D Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 4 ounces, or to a person less than 18 years of age.</p>	<p><b>PL § 222.50(1) – Criminal sale of cannabis in the third degree.</b> (Class A misdemeanor)</p> <p>Elements: Knowingly and unlawfully sells more than 3 ounces of cannabis or more than 24 grams of concentrated cannabis.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are acknowledging that you were at least 21 years of age at the time of the sale AND you are asserting that the sale involved 3 ounces or less of cannabis/marijuana.</p> <p><b>PL § 221.50 – Criminal sale of marihuana in the second degree.</b> (Class D Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 4 ounces, or to a person less than 18 years of age.</p>	<p><b>PL § 222.50 (2) – Criminal sale of cannabis in the third degree.</b> (Class A misdemeanor)</p> <p>Elements: 1) Knowingly and unlawfully sells more than 3 ounces of cannabis or more than 24 grams of concentrated cannabis. 2) Being 21 years of age or older, knowingly and unlawfully sells or gives, or causes to be given or sold, cannabis or concentrated cannabis to a person less than 21 years of age—unless the defendant was less than 3 years older than the person under 21 years of age.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are acknowledging that the sale involved a person less than 18 years of age AND you were at least 21 years of age at the time of the sale AND the sale involved more than 3 ounces of cannabis/marijuana.</p> <p><b>PL § 221.50 – Criminal sale of marihuana in the second degree.</b> (Class D Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures, or substances containing marihuana weighing more than 4 ounces, or to a person less than 18 years of age.</p>	<p><b>PL § 222.55 – Criminal sale of cannabis in the second degree.</b> (Class E felony)</p> <p>Elements: 1) Knowingly and unlawfully sells more than 16 ounces of cannabis or more than 5 ounces of concentrated cannabis; or 2) being 21 years of age or older, knowingly and unlawfully sells or gives, or causes to be given or sold, more than 3 ounces of cannabis or more than 24 grams of concentrated cannabis to a person less than 18 years of age.</p>
<p><b>NOTE:</b> Check if you were convicted of this charge, and you are asserting that the sale involved more than 5 but less than 100 pounds of cannabis/marijuana.</p> <p><b>PL § 221.55 – Criminal sale of marihuana in the first degree.</b> (Class C Felony)</p> <p>Elements: Knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana weighing more than 16 ounces.</p>	<p><b>PL § 222.60 – Criminal sale of cannabis in the first degree.</b> (Class D felony)</p> <p>Elements: Knowingly and unlawfully sells more than five pounds of cannabis or two pounds of concentrated cannabis.</p>

#### **⑯ ADDITIONAL STATEMENT SUPPORTING YOUR APPLICATION (OPTIONAL)**

You may write a statement based upon the facts and law of your case explaining why the court should grant your application. For example, the sale of marihuana did not involve payment of any kind, and you got nothing in return for it. (*This section is optional. You are not required to write anything.*)

#### **⑰ STATEMENT REGARDING SEVERE AND ONGOING CONSEQUENCES**

Briefly explain below how your conviction or sentence has severe or ongoing consequences – for example, having possible or actual immigration problems or having a felony conviction on your criminal record – and explain how it continues to negatively affect you, your family, or others who are dependent upon you.

#### **⑱ SUPPORTING DOCUMENTS**

I attach the following document(s) to support my application to vacate my marihuana conviction:

(*NOTE: You may list and attach additional supporting documents, but this is optional.*)

1. Affidavit of Service upon the Prosecutor. (*NOTE: This is required only if the copy of the application you are filing with the court was not stamped "received" by the prosecutor's office or if the prosecutor was served by mail.*)
2. \_\_\_\_\_
3. \_\_\_\_\_

I hereby petition the Court to grant my application to vacate my conviction in the above-captioned case. In accordance with CPL § 440.46-a(4)(d), I assert my right to such relief irrespective of any other remedies otherwise available—including, but not limited to, expungement pursuant to CPL §§ 160.50(3)(k)(iii) and 160.50(5).

#### **㉑ DEFENDANT'S AFFIRMATION**

I affirm this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

\_\_\_\_\_  
Defendant Signature

**Affirmation of Service for CPL §440.46-a Application**

**STATE OF NEW YORK**

**①** \_\_\_\_\_ **COURT, COUNTY OF ②** \_\_\_\_\_  
(Name of the court where you are filing) (County where the court is located)

**③** \_\_\_\_\_ is asking the court to vacate the Penal Law Article 221  
(Name of Applicant)  
marihuana conviction in the following case:

**④** Case Number (Docket, Indictment, or SCI Number): \_\_\_\_\_

The undersigned (deponent), being sworn, says:

I, **⑥** \_\_\_\_\_ am over 18 years of age and reside at:  
(Name of Person Serving/Mailing)

**⑦** \_\_\_\_\_.  
(Address of Person Serving/Mailing)

That on **⑧** \_\_\_\_\_, I served the attached Application to Vacate PL Article 221 Marihuana  
(Date of Service/Mailing)  
Conviction [CPL §440.46-a], including any supporting documents, upon the District Attorney as listed  
below:

The District Attorney of **⑨** \_\_\_\_\_ County, at the following address:  
(Name of County)

**⑩** \_\_\_\_\_.  
(Address)

**⑪ Select one:**

by mailing a complete copy in a properly stamped and addressed envelope at the post office or  
official depository of the United States Postal Service (i.e., a post office or mailbox).

by personally delivering a complete copy to the above District Attorney's Office.

**⑫ Server's Affirmation**

I affirm this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, under the penalties of perjury under the laws of New  
York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this  
document may be filed in an action or proceeding in a court of law.

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\_\_\_\_\_  
**Server Signature**

**NOTE: IF THE PROSECUTOR'S OFFICE DID NOT STAMP THE COURT'S COPY "RECEIVED" WHEN THE  
APPLICATION WAS SERVED ON THEM, THEN YOU MUST ATTACH THIS AFFIRMATION TO YOUR  
APPLICATION WHEN IT IS FILED WITH THE COURT AS PROOF THAT THE APPLICATION WAS SERVED.**