

# Proposition 64:

## A Guide To Resentencing & Reclassification

*Updated February 2017*

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### PROPOSITION 64: OVERVIEW

On November 8, 2016, California voters passed Proposition 64 (“Prop. 64”) into law. Prop. 64 legalizes the possession, transport, purchase, consumption and sharing of up to one ounce of marijuana and up to eight grams of marijuana concentrates for adults aged 21 and older. Adults may also grow up to six plants at home. The ballot measure also provides for a strict system to regulate and tax the nonmedical use of marijuana, which will not begin until 2018.

Prop. 64 also reduces or eliminates criminal penalties for most marijuana offenses, in addition to the conduct it legalizes. Building on the transformative work of Prop. 47, which passed in 2014, Prop. 64 provides a mechanism for people with prior qualifying marijuana convictions to petition a court to have their convictions reduced or dismissed.

The purpose of this guide is to provide information about the requirements and procedure for seeking resentencing and reclassification of qualifying convictions for people who have already completed their sentence. Although an attorney is not required for reclassification, it is always useful to get help from an attorney to ensure the Prop. 64 process is completed accurately.

### TYPES OF RELIEF AVAILABLE

The criminal penalty changes apply to pending and future charges and past convictions. The changes went into effect on November 9, 2016, the day after the election . People who are currently serving sentences or who have completed their sentences for a Prop. 64 qualifying offense can benefit by applying to a court for relief to reduce or dismiss their prior conviction. Prop. 64 created a new law, Health and Safety Code § 11361.8, to facilitate this process. The law models the one created by Prop. 47, with a few differences that are noted in a box below.

Persons who are currently serving a sentence in prison or county jail, or who are on probation, post-release community supervision, or parole, may petition the superior court for **resentencing**. The court must resentence the petitioner, unless the court determines that the petitioner is “an unreasonable risk of danger to public safety.” As used in Prop. 64, “unreasonable risk to public safety” has the same meaning as it does in Prop. 47. In other words, a petitioner is only “an unreasonable risk of danger to public safety” if they are at risk of committing a “super strike” as defined in Penal Code § 667(e)(2)(C)(iv). If resentenced, the petitioner will be ordered to serve one year on parole or post-release community supervision, unless the court, in its discretion, releases the petitioner from this requirement.

Persons who have completed their sentences and are no longer in custody or under supervision may petition the superior court for **reclassification**. Some courts also refer to this process as “redesignation.” When evaluating a petition for reclassification, the court makes no determination about risk to public safety and has no discretion to withhold resentencing. Instead, as long as a petitioner was convicted of an offense changed by Prop. 64, the court *must* reclassify the conviction.

## QUALIFYING OFFENSES AND ELIGIBILITY

Prop. 64 amended the penalties for four criminal offenses:<sup>1</sup>

- ◇ Possession of marijuana or concentrated marijuana (H&S Code § 11357)
- ◇ Cultivation of marijuana (H&S Code § 11358)
- ◇ Possession with intent to sell marijuana (H&S Code § 11359)
- ◇ Sales or transport of marijuana (H&S Code § 11360)

The new penalty (i.e. misdemeanor, infraction, or dismissal) attached to each offense will depend on the specific offense. For example, some offenses became outright legal (such as possession of up to 28.5 grams of marijuana or up to 8 grams of concentrated marijuana) and some offenses that were reduced to misdemeanors (such as sales of marijuana). See Appendices A and B or how specific offenses are affected by Prop. 64.

### ELIGIBILITY.

Any person with a prior conviction for one of the four offenses listed above may apply for reclassification. Prop. 64 does not disqualify a petitioner from resentencing or reclassification because of any particular prior criminal offense, such as a “super strike.” In other words, as long as the petitioner was (1) convicted of an offense listed above, (2) is serving or completed a sentence for one of those offenses, and (3) would have been guilty of a lesser offense under Prop. 64, the petitioner is eligible. If the District Attorney objects to resentencing for any reason, they must prove the petitioner ineligible by clear and convincing evidence.

### SPECIAL NOTE FOR NONCITIZENS:

Immigration officials still consider the possession of marijuana to be illegal and any admission of use or possession of marijuana is a danger for noncitizens. Immigration officers are increasingly asking noncitizens if they have ever used marijuana, especially in states that have legalized marijuana. A noncitizen should refrain from admitting use to any immigration official. For purposes of resentencing, try to secure an order that specifies that the prior conviction is reduced or dismissed because it is “legally invalid” as H&S Code § 11361.8 requires. The resentencing relief in Prop. 64 might not be accepted for immigration purposes, so noncitizens should consider other forms of post-conviction relief as well.

## WHAT ARE THE DIFFERENCES BETWEEN PROP. 64 AND PROP. 47?

- ◇ Prop. 64 does not disqualify persons from resentencing if they have a prior “super strike” or prior conviction requiring registration under Penal Code § 290(c).
- ◇ The text of Prop. 64 makes clear that the resentencing and reclassification provisions of Prop. 64 apply equally to juvenile delinquency adjudications . H&S Code § 11361.8(m).
- ◇ There is no time limit by when Prop. 64 petitions must be filed.
- ◇ A prior conviction reduced or dismissed under Prop. 64 is deemed “legally invalid.” H&S Code § 11361.8(b)&(f).
- ◇ The District Attorney must prove a petitioner ineligible by clear and convincing evidence.<sup>2</sup> H&S Code § 11361.8(b)&(f).
- ◇ A felony that is reduced under Prop. 64 becomes a misdemeanor or infraction for all purposes with no specified exceptions.

### JUVENILES.

Youth under the age of 18 may **only** be charged with **infractions** for the offenses listed above. All juvenile records for qualifying marijuana offenses listed above will now be destroyed and sealed two years from the date of conviction or when a youth turns 18. See H&S Code § 11361.5(a). It’s as if the arrest or conviction never occurred and the record never existed. Youth currently serving a sentence for a qualifying offense may apply to a juvenile court to have their conviction reduced to an infraction and their sentence changed to drug education and community service. See Appendix B for the specific penalties. A youth who has turned 18 may still want to apply for reclassification, rather than rely on the Department of Justice to destroy the record because it may take some time for the expanded expungement process to be fully operational.

### PROCEDURE FOR RESENTENCING

This guide does not provide information about resentencing for those who are still serving sentences for a qualifying Prop. 64 offense and persons seeking resentencing are strongly urged to talk to an attorney. The procedure for resentencing—for petitioners who are serving a sentence in jail or prison, or who are on parole, probation, or post-release community supervision—is somewhat different than reclassification, but still similar to the process created in Prop. 47. If a person qualifies for resentencing, the court must resentence the person unless they pose “an unreasonable risk of danger to public safety,” which is defined as the same as it is in Prop. 47. The process may require a hearing and an attorney to represent the petitioner. If a person believes they are eligible, they should contact the Public Defender’s office or the attorney who represented them in their original case.

### PROCEDURE FOR RECLASSIFICATION

People who are not in custody and not on probation, post-release community supervision, or parole may apply for reclassification, or in some cases, dismissal, of a Prop. 64 qualifying offense. The steps below outline the reclassification record change process, which is the same process created in Prop. 47. It’s likely that each county will use the same or similar process as they did for Prop. 47. While each county’s process may be slightly different, these steps can serve as a general guideline.

### **STEP 1. GET A COPY OF THE RAP SHEET**

A copy of a “RAP sheet,” or criminal record, is needed to determine eligibility. If the applicant only has convictions from one county, they can visit the court where the conviction occurred to obtain their record. If the person has multiple convictions from different counties, they must obtain a copy of their record from each court where a conviction occurred. Alternatively, they can obtain their complete California RAP sheet from the Department of Justice by filling out an application and visiting a Live Scan provider who will fingerprint them and submit their request to DOJ. (Visit [www.oag.ca.gov/fingerprints/locations](http://www.oag.ca.gov/fingerprints/locations) to obtain a list of locations by county.) The results will be mailed to the applicant. There is a fee charged by both DOJ (\$25) and the Live Scan provider (\$15-25), but a person may qualify for a waiver from the DOJ fee with proof of indigence. See Appendix C for a step-by-step guide to obtaining DOJ RAP sheets.

### **STEP 2. COMPLETE PETITION FOR RECLASSIFICATION**

Although many courts have not yet adopted a finalized process for Prop. 64, most courts will likely use a uniform form, which can be obtained from the clerk of court (or county website) where the conviction took place. A list of forms used by each county will be provided at [www.myprop64.org](http://www.myprop64.org) as they are adopted and made available. A copy of the forms proposed by Judicial Council—for both adults and juveniles—are attached as Appendices D and E.<sup>2</sup> While these forms are optional, California Rules of Court require courts to accept this form even if the court has created its own form. Complete the form, including checking the box for reclassification or dismissal.

### **3. SERVE COPY OF PETITION AND FILE RECLASSIFICATION PACKET**

In most counties, a Proof of Service form will also need to be completed that indicates a person 18 and older, besides the applicant, mailed or personally delivered a copy of the application to the District Attorney’s office. The Judicial Council form includes a Proof of Service form. A separate reclassification packet may need to be submitted for each conviction depending on the county. Some counties allow an applicant to apply to reclassify multiple convictions on one form. The packet will contain the application and the Proof of Service. Make two copies of each packet for a total of three packets: (1) original packet to be filed with the court; (2) one copy to be mailed to the District Attorney; and (3) one copy for your records. Filing instructions may be slightly different for juvenile petitions.

### **STEP 4. WAIT FOR APPROVAL**

A judge will review the petition once it is filed to make sure the applicant qualifies for reclassification. Since there are no disqualifying convictions, a judge must reclassify the conviction if the applicant was convicted of a qualifying offense. However, a judge will need to determine how the conviction should be reclassified according to the law—to an infraction or a misdemeanor or to dismiss the conviction entirely. The burden is on the District Attorney to prove by clear and convincing evidence that a petitioner is ineligible. A hearing is generally not necessary, but it is possible a hearing may be needed to determine whether the amount of marijuana falls under a certain threshold that changes the penalty—e.g. whether the marijuana weighed more than 28.5 grams or whether more than six plants were cultivated—or if the District Attorney objects to the petition for any reason. In most counties, the applicant will be notified by mail once the court has recorded the change to the conviction. Some counties may require the person to return to court to learn the status of the petition. Be sure to check with the clerk when the petition is filed how the petitioner will be notified.

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## PRACTICE NOTES FOR ADVOCATES:

Some provisions of Prop. 64 may be interpreted differently throughout the state. A few such examples are listed below.

1. Two other offenses not specifically mentioned in the text of Prop. 64 may be subject to dismissal or reduction. Prior to Prop. 64, Health and Safety Code sections 11366 and 11366.5 criminalized the use of a house for the purpose of *furnishing* or using marijuana, acts that, under many circumstances, are now lawful in California. See §§ 11360 and 11362.1 (permitting adults age 21 and up to furnish some amounts of marijuana to one another). It is not clear yet whether or how courts will resentence people convicted of these offenses. The resentencing statute does *not* limit its applicability to specific offenses for clients currently serving a marijuana related sentence. See § 11368.1(a) (“A person currently serving a sentence for a conviction...who would not have been guilty of an offense or who would have been of a lesser offense under the [Act] may petition for a recall or dismissal of sentence.”) However, it does restrict how someone who has completed a sentence may be resentenced. See § 11368.1(e) (“A person who has completed his or her sentence for a conviction under sections 11357, 11358, 11359, and 11360” may apply for reclassification.) These are novel issues that will ultimately be resolved in litigation.

2. The proposed Judicial Council forms require the petitioner to assert facts to establish eligibility for resentencing or reclassification. For example, in order to complete the form, a petitioner must state their age at the time of the offense, the amount of marijuana the petitioner possessed (or cultivated), and the type of marijuana possessed. These forms, as proposed, place the burden on the petitioner instead of on the District Attorney as the law requires. See H&S Code § 11361.8(f). Some advocates and counties are not using this form for that reason because it wrongly shifts the burden to the petitioner. The form does not, however, require a petitioner to assert this information under penalty of perjury or suggest that there is any penalty to petitioners for wrongly or mistakenly asserting this information.

# Appendix A

## PROPOSITION 64:

### CHANGES TO CRIMINAL PENALTIES (ADULTS)

CRIMINAL OFFENSE <sup>1</sup>	PENALTY BEFORE PROP. 64 <sup>2</sup>	CURRENT PENALTY (beginning 11/9/16) <sup>2,3</sup>
<b>POSSESSION OF MARIJUANA OR CONCENTRATED MARIJUANA - H&amp;S Code § 11357</b>		
Possession of ≤ 28.5 g marijuana	Infraction (max \$100 fine)	21 +: Legal
		18 to 20: Infraction (max \$100 fine)
Possession of > 28.5 g marijuana	Misdemeanor (max 6 months jail and/or \$500 fine)	Misdemeanor (max 6 months jail and/or \$500 fine)
Possession of concentrated cannabis	Any amount = Misdemeanor (max 1 year jail and/or \$500)	21 +: Up to 8 grams is legal; more than 8 grams is a misdemeanor (max 6 months jail and/or \$500 fine)
		18 to 20: less than 4 grams is an infraction (max \$100 fine); more than 4 grams is a misdemeanor (max 6 months jail and/or \$500)
Possession of ≤ 28.5 g marijuana and/or ≤ 4g concentrates on school grounds	Misdemeanor (max 10 days jail and/or \$500 fine)	1st offense : Misdemeanor (max. \$250 fine)
		2nd + offense : Misdemeanor (max 10 days jail and/or \$500 fine)
<b>POSSESSION WITH INTENT TO SELL MARIJUANA - H&amp;S Code § 11359</b>		
Possession with intent to sell	Felony (16 months/2 years/3 years)	Misdemeanor (max 6 months jail and/or \$500 fine)
		<p><i>*If amount is less than 28.5 grams and intent is to share, not sell, it is legal per H&amp;S Code § 11362.1</i></p> <p>Wobbler if (1) prior super strike, (2) a registered sex offender, (3) two prior convictions under this subsection, (4) offense occurred in connection with knowing sale or attempted sale of marijuana to a person under 18, or (5) knowingly hired, employed, or used a persons under 21 in unlawfully cultivating, selling, etc. any marijuana</p>

Notes:

1. Penalties refer to all adults 18 and older, unless noted otherwise.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.

# Appendix A

## PROPOSITION 64:

### CHANGES TO CRIMINAL PENALTIES (ADULTS)

CRIMINAL OFFENSE <sup>1</sup>	PENALTY BEFORE PROP. 64 <sup>2</sup>	CURRENT PENALTY (beginning 11/9/16) <sup>2,3</sup>
<b>SALES OF MARIJUANA - H&amp;S Code § 11360</b>		
Sales / giving away / transportation for sale of marijuana	Felony (2/3/4 years)  <i>*If amount is less than 28.5 g and it is given away (i.e. no sale), it is a misdemeanor (max fine of \$100)</i>	Misdemeanor (max 6 months jail and/or \$500 fine)  <i>*If amount is less than 28.5 grams and it is given away or transported (not for sale), it is legal for adults 21 and older. H&amp;S Code § 11362.1. The same conduct is an infraction (max fine of \$100) for adults aged 18 to 20. H&amp;S Code § 11360(b)</i>
		Wobbler (2/3/4 yrs) if (1) prior super strike, (2) a registered sex offender, (3) two prior convictions under this subsection, (4) involved sale to person under 18, or (5) involved import into this state or transport out of this state of more than 28.5 grams
Sales / giving away marijuana to a MINOR (H&S Code § 11361)	Felony (3/5/7 years) for sales to a minor under 14 or (3/4/5 years) to a minor over 14	No change
<b>MANUFACTURING: H&amp;S Code § 11379.6</b>		
Manufacturing concentrates by chemical synthesis	Felony (3/5/7 years)	No change
<b>CULTIVATION OF MARIJUANA - H&amp;S Code §11358</b>		
Cultivation	Felony (16 months/2 years/3 years)	6 plants or less 21+: Legal 18 to 20: Infraction (max \$100 fine)
		More than 6 plants (18 +) Misdemeanor (max 6 months jail and/or \$500 fine)  Wobbler if (1) prior super strike, (2) a registered sex offender, (3) two prior convictions under this subsection, or (4) offense resulted in intentional diversion of public waters, introduction of harmful chemical into waters or otherwise caused substantial environmental harm to public lands
Cultivation restrictions on growing at home	None, it was all illegal	Infraction (max \$250 fine) if adult cultivates up to 6 plants but (1) plants are visible to public or (2) not kept in a locked space

Notes:

1. Penalties refer to all adults 18 and older, unless noted otherwise.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.

# Appendix A

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### CHANGES TO CRIMINAL PENALTIES (ADULTS)

CRIMINAL OFFENSE <sup>1</sup>	PENALTY BEFORE		CURRENT PENALTY (beginning 11/9/16) <sup>2,3</sup>
	PROP. 64 <sup>2</sup>	OTHER	
Opening or maintaining place for unlawfully selling, giving away or using drugs (§ 11366)	Wobbler		This conduct may be legal in some circumstances. For example, a person solely maintaining a place for the purpose of giving away or using legal amounts of marijuana by adults 21 and older may be operating in accordance with Prop. 64
Renting, leasing, or making building/ room/ space available for unlawful manufacturing or storing of drugs (§ 11366.5)	1st offense : Wobbler 2nd + offense: Felony (2/3/4 years)		This conduct may be legal in some circumstances. For example, a person solely using a place for the purpose of storing legal amounts of marijuana by adults 21 and older may be operating in accordance with Prop. 64
PUBLIC USE INFRACTIONS CREATED BY PROP. 64: H&S Code § 11362.3			
Smoking or ingesting in public	No specific penalty for marijuana. Charged with possession or same as tobacco		Infraction (max fine of \$100)
Smoking where tobacco prohibited	No specific penalty for marijuana. Charged with possession or same as tobacco		Infraction (max fine of \$250)
Smoking within 1,000 feet of a school, day care or youth center while children are present	No specific penalty for marijuana. Charged with possession or same as tobacco		Infraction (max fine of \$250)
Possess open container or package of marijuana while driving, operating, or riding in vehicle	No specific penalty. Charged with possession		Infraction (max fine of \$250)

Notes:

1. Penalties refer to all adults 18 and older, unless noted otherwise.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.



# Appendix B

## PROPOSITION 64:

### CHANGES TO CRIMINAL PENALTIES (JUVENILES)

CRIMINAL OFFENSE <sup>1</sup>	PENALTY BEFORE PROP. 64 CURRENT LAW <sup>2</sup>	CURRENT PENALTY (beg. 11/9/16) <sup>2,3</sup>
<b>POSSESSION OF MARIJUANA OR CONCENTRATED MARIJUANA - H&amp;S Code § 11357</b>		
Possession of ≤ 28.5 g marijuana	Infraction (max \$100 fine)	<i>1st offense</i> : 4 hours drug education + up to 10 hours community service
		<i>2nd + offense</i> : 6 hours drug education + up to 20 hours community service
Possession of > 28.5 g marijuana	Misdemeanor (max 6 months jail)	<i>1st offense</i> : 8 hours drug education + up to 40 hours community service
		<i>2nd + offense</i> : 10 hours drug education + up to 60 hours community service
Possession of concentrated cannabis	Misdemeanor (max 1 year jail and/or \$500)	≤ 4 grams: <i>1st offense</i> : 4 hours drug education + up to 10 hours community service; <i>2nd + offense</i> : 6 hours drug education + up to 20 hours community service
		> 4 grams: <i>1st offense</i> : 8 hours drug education + up to 40 hours community service; <i>2nd + offense</i> : 10 hours drug education + up to 60 hours community service
Possession of ≤ 28.5 g marijuana and/or ≤ 4g concentrates on school grounds	<i>1st offense</i> : Misdemeanor (max \$250 fine)	<i>1st offense</i> : 8 hours drug education + up to 40 hours community service
	<i>2nd + offense</i> : Misdemeanor with \$500 fine and/or 10 days juvenile hall/camp/group home	<i>2nd + offense</i> : 10 hours drug education + up to 60 hours community service
<b>POSSESSION WITH INTENT TO SELL MARIJUANA - H&amp;S Code § 11359</b>		
Possession with intent to sell	Felony (16 months/2 years/3 years)	<i>1st offense</i> : 8 hours drug education + up to 40 hours community service
		<i>2nd + offense</i> : 10 hours drug education + up to 60 hours community service
<b>SALES OF MARIJUANA - H&amp;S Code § 11360</b>		
Sales / giving away of marijuana to adults	Felony (2/3/4 years)	<i>1st offense</i> : 8 hours drug education + up to 40 hours community service
	If amount is < 28.5 g and it is given away (i.e. no sale) = Misdemeanor with max fine of \$100	<i>2nd + offense</i> : 10 hours drug education + up to 60 hours community service

Notes:

1. Penalties refer to all juveniles under the age of 18.

2. Prop. 215 protections remain in effect.

3. All offenses that include drug education and community service are infractions.

# Appendix B

## PROPOSITION 64:

### CHANGES TO CRIMINAL PENALTIES (JUVENILES)

CRIMINAL OFFENSE <sup>1</sup>	PENALTY BEFORE PROP. 64 CURRENT LAW <sup>2</sup>	CURRENT PENALTY (beg. 11/9/16) <sup>2,3</sup>
<b>CULTIVATION OF MARIJUANA - H&amp;S Code §11358</b>		
<b>Cultivation</b>	Felony (16 months/2 years/3years)	<i>1st offense</i> : 8 hours drug education + up to 40 hours community service <hr/> <i>2nd + offense</i> : 10 hours drug education + up to 60 hours community service
<b>NUISANCE PENALTIES</b>		
<b>Opening or maintaining place for unlawfully selling, giving away or using drugs (§ 11366)</b>	For marijuana = wobbler	No change to current law
<b>Renting, leasing, or making building/room/ space available for unlawful manufacturing or storing of drugs (§ 11366.5)</b>	<i>1st offense</i> : wobbler <i>2nd + offense</i> : felony (2/3/4 years)	No change to current law
<b>MANUFACTURING: H&amp;S Code § 11379.6</b>		
<b>Manufacturing concentrates by chemical synthesis</b>	Felony (3/5/7 years)	No change to current law
<b>PUBLIC USE INFRACTIONS CREATED BY PROP. 64: H&amp;S Code § 11362.3</b>		
<b>Smoking or ingesting in public</b>	No specific penalty for marijuana. Charged with possession or same as tobacco	4 hours of drug education and up to 10 hours of community service
<b>Smoking where tobacco prohibited</b>	No specific penalty for marijuana. Charged with possession or same as tobacco	4 hours of drug education and up to 20 hours of community service
<b>Smoking within 1,000 feet of a school, day care or youth center while children are present</b>	No specific penalty for marijuana. Charged with possession or same as tobacco	4 hours of drug education and up to 20 hours of community service
<b>Possess open container or package of marijuana while driving, operating, or riding in vehicle</b>	No specific penalty for marijuana. Charged with possession	4 hours of drug education and up to 20 hours of community service

Notes:

1. Penalties refer to all juveniles under the age of 18.
2. Prop. 215 protections remain in effect.
3. All offenses that include drug education and community service are infractions.



## RECORD REVIEW (Live Scan)

California Penal Code sections 11120 through 11127 afford a person an opportunity to obtain a copy of his or her record, if any, contained in the files of the California Department of Justice’s (DOJ) Bureau of Criminal Information and Analysis (BCIA). Pursuant to California Penal Code section 11121 an individual who submits for a record review may refute any erroneous or inaccurate information contained therein. Pursuant to California Penal Code section 11124, the purpose of a record review is to provide an individual or designee indicated on the background check request with a copy of the individual’s record or notice of a no record existence.

The applicant may use the information received to answer questions regarding past criminal history, or to complete an application or questionnaire. Pursuant to California Penal Code sections 11125, 11142, and 11143 this process is not to be used to obtain a copy of criminal history information to furnish to a person or agency for purposes such as certification, employment, licensing, immigration, or visa. A violation of these sections is a misdemeanor.

The DOJ will only mail a response to the applicant and to the designee as identified by the applicant on the BCIA 8016RR form.

The following items are necessary to insure the processing of your request. Failure to follow the procedures may result in a delay in processing or rejection of your application.

### GUIDELINES FOR COMPLETING “REQUEST FOR LIVE SCAN SERVICE” (BCIA 8016RR)

CATEGORY	INSTRUCTION	COMMENT
1) Type of Application	Place a check mark or “x” in the Record Review box.	Check only “Record Review” DO NOT check the “Foreign Adoption” box.
2) Reason for Application	Write a brief explanation of why you need a copy of your criminal history record.	Examples of explanation: personal use, verify accuracy of record, update FBI record, prison visit, or to fill out an application.
3) Applicant Information	Enter your full name, any known alias, date of birth, sex, height, weight, eye and hair color, place of birth, social security number, and California driver’s license number.	<b>Name, date of birth, and sex are Mandatory fields and must be provided.</b>  All others are optional.
4) Applicant Address	Enter your street address or P.O. Box.	<b>This is a mandatory field and must be completed.</b>
5) Daytime Telephone Number	Enter a telephone number you can be reached at from 8:00 am to 5:00 pm. Please include area code.	A telephone number is useful in helping resolve problems, which could result in a delay in the processing of your request.
6) Designee	Enter the name, address, and city of the designee for a copy of the response to be mailed to.	<b>This is an Optional field if the applicant designates an individual.</b>

The following link is a listing where Live Scan fingerprinting services are available to the public, which includes the fee charged by the agency for the fingerprinting service, the types of payment accepted, and the hours of operation.  
<http://ag.ca.gov/fingerprints/publications/contact.php>

Go to your selected Live Scan agency, and have your fingerprint impressions taken. Your total cost will include the \$25.00 Record Review background check fee, plus the fingerprint service fee determined by the Live Scan agency. If you have any questions regarding your record review, please contact the Record Review Unit at (916) 227-3835.



### REQUEST FOR LIVE SCAN SERVICE (Record Review or Foreign Adoption)

#### Applicant Submission

**CA0349435** Type of Application (Check One Only)  Record Review  Foreign Adoption

ORI (Code assigned by DOJ)

Reason for Application

#### Contributing Agency Information:

**DEPARTMENT OF JUSTICE**

Agency Authorized to Receive Criminal Record Information

**P.O. BOX 903417**

Street Address or P.O. Box

**SACRAMENTO**

City

**CA 94203-4170**

State ZIP Code

**07041**

Mail Code (five-digit code assigned by DOJ)

**RECORD REVIEW UNIT**

Contact Name (mandatory for all school submissions)

**(916) 227-3835**

Contact Telephone Number

#### Applicant Information:

Last Name

Other Name

(AKA or Alias)

Last

First Name

Middle Initial Suffix

First

Suffix

Date of Birth

Sex  Male  Female

Driver's License Number

Height

Weight

Eye Color

Hair Color

Misc. Number (Other Identification Number)

Place of Birth (State or Country)

Social Security Number

Telephone Number

Street Address or P.O. Box

City

State

ZIP Code

Level of Service:  DOJ Only

If re-submission, list original ATI number (Must provide proof of rejection):

Original ATI Number

Foreign Government Embassy: (Mandatory for Foreign Adoption requests pursuant to Penal Code section 11105(c)(12))

Designee -- Do not include Employer: (Optional for individual designated by applicant to Penal Code section 11124)

Designee or Embassy Name

Street Address or P.O. Box

City

State

Country

ZIP Code

Telephone Number

#### Live Scan Transaction Completed By:

Name of Operator

Date

Transmitting Agency

LSID

ATI Number

Amount Collected/Billed

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
<b>PETITION/APPLICATION (Health and Safety Code, § 11361.8)                  ADULT CRIME(S)</b>	CASE NUMBER: _____
<input type="checkbox"/> FOR RESENTENCING OR DISMISSAL (Health & Saf. Code, § 11361.8(b) ) <input type="checkbox"/> REDESIGNATION OR DISMISSAL/SEALING (Health & Saf. Code, § 11361.8(f) )	<b>FOR COURT USE ONLY</b> Date: _____ Time: _____ Department: _____

**INSTRUCTIONS**

- Before filing this form, petitioner/applicant should consult local court rules and court staff to determine if a formal hearing on the petition/application will be scheduled.
- If the petitioner is currently serving a sentence for a qualified crime, please fill out sections 1 and 2(a).
- If the applicant has completed the sentence for a qualified crime, please fill out sections 1 and 2(b).
- Complete sections 3 and 4 as necessary.
- Upon the filing of the petition/application, the petitioner/applicant is required to immediately serve the office of the prosecuting agency (the district attorney or city attorney, as appropriate) with a copy of the petition/application. It may be served personally or by mail; the signed Proof of Service, attached to this form, must be filed with the court.

**1. CONVICTION INFORMATION**

**CONVICTION A:**

On (date): \_\_\_\_\_, Petitioner/Applicant, the defendant in the above-entitled criminal action, was convicted of the following Health and Safety Code section  11357  11358  11359  11360 which has been reclassified under Proposition 64.

Petitioner/Applicant further states that when committing the conduct resulting in the conviction he/she was:

18 to 20 years of age;  21 years old or older. Date of birth: \_\_\_\_\_

Petitioner/Applicant further states that the nature of the substance which resulted in the conviction was:

marijuana not in the form of concentrated cannabis;  concentrated cannabis;  marijuana plants;  
 Other:

Petitioner/Applicant further states that the quantity of the substance which resulted in the conviction was:

not more than 28.5 grams of marijuana not in the form of concentrated cannabis;  not more than 4 grams of marijuana in the form of concentrated cannabis;  not more than 8 grams of marijuana in the form of concentrated cannabis;  
 not more than 6 marijuana plants.

**CONVICTION B:**

On (date): \_\_\_\_\_, Petitioner/Applicant, the defendant in the above-entitled criminal action, was convicted of the following Health and Safety Code section  11357  11358  11359  11360 which has been reclassified under Proposition 64.

Petitioner/Applicant further states that when committing the conduct resulting in the conviction he/she was:

18 to 20 years of age;  21 years old or older. Date of birth: \_\_\_\_\_

Petitioner/Applicant further states that the nature of the substance which resulted in the conviction was:

marijuana not in the form of concentrated cannabis;  concentrated cannabis;  marijuana plants;  
 Other:

Petitioner/Applicant further states that the quantity of the substance which resulted in the conviction was:

not more than 28.5 grams of marijuana not in the form of concentrated cannabis;  not more than 4 grams of marijuana in the form of concentrated cannabis;  not more than 8 grams of marijuana in the form of concentrated cannabis;  
 not more than 6 marijuana plants.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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**2. REQUEST FOR RELIEF**

a.  **RESENTENCING/DISMISSAL**

Petitioner is currently serving the sentence for the crime noted above, and requests the sentence be recalled and that he/she be resentenced or the charge be dismissed as required by law.

Other:

b.  **REDESIGNATION/DISMISSAL/SEALING**

Applicant has completed the sentence for the crime noted above, and requests the sentence be recalled and the conviction be redesignated or dismissed. If the conviction is dismissed, applicant requests the court's record of conviction be sealed.

Other:

**3. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. The presiding judge of the court may designate any judge to rule on this matter.

**4. WAIVER OF APPEARANCE**

Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without his/her appearance.

Dated:

\_\_\_\_\_  
 Signature of petitioner/applicant

**PROSECUTING AGENCY RESPONSE**

The prosecuting agency has no objection to this petition/application. Petitioner/applicant is entitled to the requested relief without a hearing.

The prosecuting agency requests a hearing and objects to the granting of the petition/application because:

Petitioner/applicant was not convicted of an eligible offense.

Other:

Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.

The prosecuting agency does not object to the petitioner's/applicant's eligibility for relief, but requests a hearing on the issue of resentencing.

Dated:

\_\_\_\_\_  
 Signature of prosecuting attorney


ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	CASE NUMBER: _____
<b>PROOF OF SERVICE</b> Check Method of Service (only one):  <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail	<b>FOR COURT USE ONLY</b>  Date: _____ Time: _____ Department: _____

1. Person serving: I am over the age of 18 and not a party to this action.
  - a. Name: \_\_\_\_\_
  - b. Residence or Business Address: \_\_\_\_\_
  - c. Telephone: \_\_\_\_\_
  
2. I served a copy of the Petition/Application for Resentencing or Reduction to Infraction on the person or persons listed below as follows:
  - a. Name of person served: \_\_\_\_\_
  - b. Address where served: \_\_\_\_\_
  - c. Date Served: \_\_\_\_\_
  - c. Time Served:                             AM       PM
  
3. The documents were served by the following means (*specify*):
  - a.  **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 2. Delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening.
  - b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 2 and (*specify one*):
    - (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
    - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Date: \_\_\_\_\_

  
 \_\_\_\_\_  
 Signature of Declarant

\_\_\_\_\_  
 (Printed Name of Declarant)

# Appendix E

JV-744

PARTY WITHOUT AN ATTORNEY OR ATTORNEY: STATE BAR NO. (if applicable):		<b>FOR COURT USE ONLY</b>
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CASE NAME:		
<b>REQUEST TO REDUCE JUVENILE MARIJUANA OFFENSE</b> <b>(Prop. 64—Health and Safety Code, § 11361.8(m))</b>		CASE NUMBER:
		Date: Time: Department:

## INSTRUCTIONS

- Use this form if you went to court for a marijuana-related offense when you were under the age of 18 and you want your record changed. You need to use a different form if you were 18 or older at the time of the offense.
  - You need to use a separate form for each juvenile marijuana offense on your record.
  - If this form asks for information that you do not have, you can contact your attorney. If you don't have an attorney, the public defender's office or the court in the county where you went to court can probably help you get these records.
  - How to fill out the form without an attorney:
    - A. Put your name and contact information in the box at the top of the form and in item 1 below.
    - B. Put the address of the court from your court papers here. This form must be filed in the county where you went to court for this offense.
    - C. Fill out number 2 about the marijuana offense.
    - D. If you are on probation now for the marijuana offense, also check number 3 to ask the judge to make new dispositional orders (a new sentence) based on the new law. The new orders cannot be more severe than your original sentence.
    - E. If you have completed probation for the marijuana offense, check number 4 to ask the judge to redesignate your offense to an infraction. So, if it was a misdemeanor or a felony, it will now be classified like a traffic ticket.
    - F. You can check number 5 if you are willing to have any available judge hear your request. If you check that box the presiding judge may have a different judge hear your request.
    - G. A hearing is not required unless you request it. You can check one of the boxes in number 6 if you want the court to set a hearing.
    - H. You can check number 7 if you do not want to come to court if there is a hearing.
- For more information about Proposition 64 and filling out this form, go to [www.courts.ca.gov/prop64.htm](http://www.courts.ca.gov/prop64.htm).

### 1. MY INFORMATION

My name is:

I was born on (date):

### 2. OFFENSE INFORMATION

On (date): I was found to come within the jurisdiction of the court under Welfare and Institutions Code section 602 for a violation of Health and Safety Code section (check one)

- 11357—Possession of Marijuana
- 11358—Cultivation of Marijuana
- 11359—Possession of Marijuana for Sale
- 11360—Transportation, Distribution, or Importation of Marijuana

This offense has been reclassified as an infraction when committed by a person under the age of 18 under Proposition 64.

At the time of the offense, I was under the age of 18.

Page 1 of 2



CASE NAME:	CASE NUMBER:
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**3. REQUEST FOR A NEW DISPOSITIONAL ORDER (RESENTENCING)**

I am currently subject to a dispositional order (on probation) for the marijuana offense in number 2. I request that the order be recalled and relief be granted in accordance with Health and Safety Code section 11361.8(b) so that I will be resentenced.

**4. REQUEST FOR REDESIGNATION**

I am no longer a ward of the court (probation completed) for the marijuana-related offense in number 2. I request the court's dispositional order be recalled and relief be granted in accordance with Health and Safety Code section 11361.8(f) so that the offense will be redesignated as an infraction.

**5. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

I know that I have the right to have this matter heard by the judge who originally sentenced me. I am willing to have any available judge hear the case.

**6. REQUEST FOR HEARING**

I request a hearing if the prosecuting agency opposes my application. I understand that by checking this box, the court will set a hearing only if it is opposed by the Prosecution/Prosecution Agency.

I request that the court set a hearing even if my application is not opposed by the Prosecution/Prosecution Agency.

**7. WAIVER OF APPEARANCE**

I understand that I have a right to personally attend any hearing held in this matter and argue on my behalf. I give up that right. The case may be heard without my appearance.

Date: \_\_\_\_\_



\_\_\_\_\_  
SIGNATURE OF PETITIONER

**File this form with the court. The court will send a copy to the probation department and to the prosecuting agency to respond.**

**TO BE FILLED OUT BY THE PROSECUTING AGENCY**

**8. PROSECUTING AGENCY RESPONSE**

The prosecuting agency has no objection to this petition. Petitioner is entitled to the requested relief without a hearing.

The prosecuting agency does not object to the petitioner's eligibility for relief, but requests a hearing on the issue of a new dispositional order.

The prosecuting agency requests a hearing and objects to the granting of the petition because:

The prosecuting agency does not agree that the petition should be granted because the offense for which petitioner was found to be within the jurisdiction of the court under Welfare and Institutions Code section 602 is not eligible for the requested relief under Health and Safety Code section 11361.8.

Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.

Other: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF PROSECUTING AGENCY