


GENERAL OFFICE MEMORANDUM 16-099

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: PROPOSITION 64 – THE ADULT USE OF MARIJUANA ACT

DATE: NOVEMBER 9, 2016

Proposition 64, entitled the “Adult Use of Marijuana Act” (AUMA) decriminalizes the possession, processing, purchase, transporting, obtaining, and giving away without compensation of not more than 28.5 grams of non-medical marijuana and marijuana products, and not more than eight grams of concentrated cannabis, by adults 21 years and older. The AUMA also establishes a regulatory scheme for the commercial cultivation, manufacturing and sale of non-medical marijuana and marijuana products. The new law requires drug education, counseling, and community service in lieu of fines or custody time for juvenile offenders. Local jurisdictions that elect to regulate, rather than ban non-medical marijuana, can tax cultivation and sales activities. Under the AUMA, numerous marijuana offenses have been decriminalized or reclassified, resulting in specified felonies becoming misdemeanors, and specified misdemeanors becoming infractions.

As a result, pending felony cases where all the charges have been reduced to misdemeanors will be transferred to the appropriate city prosecutor’s office unless the Office regularly handles the misdemeanors for that area. Similar to Proposition 47, the Office will release additional Proposition 64 memoranda detailing the procedures and protocols to use. The primary purpose of this Memorandum is to provide guidance pertaining to anticipated procedures, and issues related to the AUMA, which becomes effective the day after its passage.

Preempted Proposition 64 Meeting with Los Angeles County Stakeholders

In anticipation of the passage of Proposition 64, judges, prosecutors, city attorneys, public defenders, alternate public defenders, and court administrators met to discuss the new laws. The court intends to use Proposition 47 as a template. When the court receives a petition or application it will make a copy and provide it to our Office. The court will calendar a *petition* 10 days after receiving it. The court will calendar an *application* 31 days after receiving it. A *petition* refers to a defendant who is currently serving a sentence for a conviction. An *application* refers to a defendant who has completed his or her sentence for a conviction.

The court will request our prosecutors to notify the handling judge whether we have objections to any petition or application before the calendared date. These petitions and applications will be

scheduled for a hearing. During our meeting the judge stated that Proposition 47 laws were not binding but would be instructive on Proposition 64 issues.

Due to the short time period, prosecutors must work diligently to review the necessary documents and materials to determine whether we should object or not. Furthermore, if the case will become a misdemeanor, our Office must provide it to the city prosecutor in a timely manner, if applicable. This will be especially challenging for petitions which are calendared 10 days after submission.

Therefore, at a minimum, prosecutors should review the following:

1. The copy of the petition or application;
2. All pertinent case files related to the defendant;
3. Obtain the current criminal record of the defendant.

The new law creates a *presumption* that a defendant satisfies the requirements of Health and Safety Code § 11361.8 when he or she submits their petition or application, unless the prosecution can prove otherwise by *clear and convincing evidence*. As such, at a minimum, prosecutors must consider the following:

4. Does the defendant satisfy the criteria of Health and Safety Code § 11361.8?
 - a. Do all charges qualify for resentencing, re-designation, dismissal, and/or sealing?
5. Does the defendant pose an unreasonable risk of danger to public safety?
 - a. The phrase “unreasonable risk of danger to public safety” has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.
 - b. In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code:
 - (1) The petitioner’s criminal conviction history, including the type of crimes committed, the extent of injury to the victims, the length of prior prison commitments, and the remoteness of the crimes.
 - (2) The petitioner’s disciplinary record and record of rehabilitation while incarcerated.
 - (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.
6. Is there an unreasonable risk that the defendant will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667?

The court created a form entitled APPLICATION/PETITION FOR RECALL AND RESENTENCING OR DISMISSAL that defendants will use to submit their application or petition. The form contains a checkbox which states:

- ☐ The Prosecution objects to the application/petition. The matter is scheduled for a hearing on _____ at _____ in Dept. _____. The Clerk to give notice.

By checking the checkbox, our Office position is memorialized on the court records to notify the court to schedule a hearing date.

In instances where a petition or application is filed by a defendant who is a third-strike offender, deputies should review the District Attorney's Office case file and generate a current criminal history of the defendant. **If a third-strike sentence was imposed**, and the defendant either has been denied resentencing under Proposition 36 (Penal Code § 1170.126) or has a pending petition for resentencing under Proposition 36, the Prop 64 petition or application will instead be heard in Department 56 of the Foltz Criminal Justice Center. Deputies should contact the Third Strike Resentencing Unit (TSR), which operates within the Post-Conviction Litigation and Discovery Division.

On the other hand, defendants who have already been resentenced under Proposition 36 and released from prison may subsequently petition or apply for reduction of charges under Proposition 64. These applications or petitions will be handled in the courthouse where sentence was originally imposed. In such cases, deputies are encouraged to contact the TSR Unit, where the original District Attorney's Office case files on all former Proposition 36 matters are presently maintained.

Disposition Report Forms – Prosecutor's Responsibilities

The disposition report form has been modified in PIMS under the "Report of Action" section to include the following box: "Court Reduced- Prop. 64."

- When a case is impacted by Prop. 64 but still remains with the District Attorney's Office, the deputy district attorney completing the disposition report should mark the following box: 1) "Court Reduced- Prop. 64."
- When a case is impacted by Prop. 64 and the District Attorney's Office will no longer handle the case, the deputy district attorney completing the disposition report should mark the following boxes: 1) "Court Reduced- Prop. 64," 2) "Transferred to Other Prosecuting Agency," and 3) "Physical Case File Transferred." The deputy district attorney completing the disposition report must also write the name of the city prosecutor's office to which the case is transferred on the line below the "Transferred to Other Prosecuting Agency" box. The physical transfer of the file to the city prosecutor's office will follow the same protocols used for transfers pursuant to Prop. 47 and reductions pursuant to Penal Code section 17(b).

For additional guidance, see General Office Memorandum 15-026 that pertains to Proposition 47 Closing Procedures and Disposition Report Forms.

Summary of Changes to Marijuana Offenses

Proposition 64 amends existing Health and Safety Code sections 11357, 11358, 11359, and 11360 and adds new sections 11362.1, 11362.2, 11362.3, and 11362.4.¹ As a result of these statutory changes, the following activities by persons 21 years and older are no longer criminal offenses:

- Possess, process, transport, purchase, obtain or give away without compensation to another person 21 years or older, not more than 28.5 grams marijuana, or not more than eight grams of concentrated cannabis. (§ 11362.1 (a)(1) & (a)(2).)
- Possess, plant, cultivate, harvest, dry or process not more than six living marijuana plants, and possess the marijuana produced by the plants. (§ 11362.1 (a)(3).)
- Possession of marijuana produced by the plants that may exceed the 28.5 grams limitation is lawful as long as it is in a locked “place.” (§ 11362.2 (a)(2).)
- Smoke or ingest marijuana or marijuana products, subject to certain limitations. (§ 11362.1 (a)(4).)
- Possess, transport, purchase, obtain, use, manufacture or give away marijuana accessories to persons 21 years and older without compensation. (§ 11362.1 (a)(5).)

Possession of Marijuana - Amended section 11357

Possession of less than or equal to 28.5 grams of marijuana or less than or equal to four grams of concentrated cannabis by:

Defendants under 18 years old are punishable as an infraction:

- First offense: four hours of drug education or counseling and up to 10 hours of community service.
- Second or subsequent offense: six hours of drug education or counseling and up to 20 hours of community service. (§ 11357 (a)(1).)

Defendants between 18 and 20 years old are punishable as an infraction:

- Fine not exceeding \$100. (§ 11357 (a)(2).)

Possession of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis by:

Defendants under 18 years old are punishable as an infraction:

- First offense: eight hours of drug education or counseling and up to 40 hours of community service.
- Second or subsequent offense: 10 hours of drug education or counseling and up to 60 hours of community service. (§ 11357 (b)(1).)

Defendants between 18 and 20 years old are punishable as a misdemeanor:

- Up to six months in county jail and/or a fine not exceeding \$500. (§ 11357 (b)(2).)

Defendants 21 years or older who possess more than 28.5 grams of marijuana or more than eight grams of concentrated cannabis are punishable as a misdemeanor:

- Up to six months in county jail and/or a fine not exceeding \$500. (§§ 11357 (b)(2), 11362.1 (a)(1) & (2).)

¹ All undesignated statutory references are to the Health and Safety Code.

Possession of not more than 28.5 grams of marijuana or not more than four grams of concentrated cannabis on K-12 school grounds during school hours by:

Defendants under 18 years old are punishable as an infraction:

- First offense: eight hours of drug education or counseling and up to 40 hours of community service.
- Second or subsequent offense: 10 hours of drug education or counseling and up to 60 hours of community service. (§ 11357 (d).)

Defendants over 18 years old are punishable as a misdemeanor:

- First offense: fine not exceeding \$250.
- Second or subsequent offense: fine not exceeding \$500 and/or imprisonment of not more than 10 days in county jail. (§ 11357 (c).)

Personal Cultivation - Amended section 11358

Cultivation of live marijuana plants by:

Defendants under 18 years old are punishable as an infraction:

- First offense: eight hours of drug education or counseling and up to 40 hours of community service.
- Second or subsequent offense: 10 hours of drug education or counseling and up to 60 hours of community service. (§ 11358 (a).)

Defendants between 18 and 20 years old are punishable as an infraction:

- Less than six living plants: fine not exceeding \$100. (§ 11358 (b).)

Defendants 18 years or older, cultivating more than six living plants:

- Punishable as a misdemeanor with up to six months in county jail and/or a fine not exceeding \$500. (§ 11358 (c).)
- Punishable as a felony and sentenced pursuant to Penal Code section 1170 (h)² if:
 - Previously convicted of one or more registerable sex offenses or an offense under Penal Code section 667 (e)(2)(C)(iv) (sometimes referred to as a “super strike”)³; or
 - Two prior convictions of violating Health and Safety Code, section 11358 (c); or
 - Current felony offense that resulted in illegal water diversion, illegal waste discharge, or harm to public lands. (§ 11358 (d).)

Additional rules for personal cultivation include:

- Anyone 18 years or older who plants, cultivates, harvests, dries, or process marijuana who fails to comply with local ordinances are punishable as an infraction with a fine not exceeding \$250 (§§ 11362.2 (a)(1), 11362.4 (a));
- Any living marijuana plants or their produce in excess of 28.5 grams must be in a locked space and not visible from a public space; otherwise the offense is punishable as an infraction with a fine not exceeding \$250 (§§ 11362.2(a)(2), 11362.4 (b));

² In felony cases, allegations of prior convictions or aggravating circumstances must be proven at the preliminary hearing and at trial.

³ See Appendix A, attached, for a list of superseding priors.

- Planting, cultivating, and harvesting more than six living plants within a single private residence at one time are punishable as an infraction with a fine not exceeding \$250 (§§ 11362.2(a)(3), 11362.4 (b)).

Possession for Sale – Amended section 11359

Possession for sale by:

Defendants under 18 years old are punishable as an infraction:

- First offense: eight hours of drug education or counseling and up to 40 hours of community service.
- Second or subsequent offense: 10 hours of drug education or counseling and up to 60 hours of community service. (§ 11359 (a).)

Defendants 18 years or older:

- Punishable as misdemeanor with up to six months in county jail and/or a fine not exceeding \$500. (§ 11359 (b).)
- Punishable as felony and sentenced pursuant to Penal Code section 1170 (h) if:
 - Previously convicted of one or more registerable sex offenses or an offense under Penal Code, section 667, (e)(2)(C)(iv) (sometimes referred to as a “super strike”)⁴; or
 - Two prior convictions of violating Health and Safety Code, section §11359 (b); or
 - Current offense occurred in connection with the knowing sale or attempted sale of marijuana to a minor.⁵ (§ 11359 (c).)

Defendants 21 years and older who possess marijuana for sale and knowingly hire or use a person 20 years or younger to sell, transport, or cultivate marijuana are:

- Punishable as a felony and sentenced pursuant to Penal Code section 1170 (h). (§ 11359 (d).)

Unlawful Transportation, Importation, Sale, or Gift – Amended section 11360

Transportation, importation, sale, furnish, or attempts to import or transport marijuana by:

Defendants under 18 years old are punishable as an infraction:

- First offense: eight hours of drug education or counseling and up to 40 hours of community service.
- Second or subsequent offense: 10 hours of drug education or counseling and up to 60 hours of community service. (§ 11360 (a)(1).)

Defendants 18 years or older:

- Punishable as a misdemeanor with up to six months in county jail and/or a fine not exceeding \$500. (§ 11360 (a)(2).)
- Punishable as a felony (2, 3, or 4 years) pursuant to Penal Code section 1170 (h) if:

⁴ See fn. 3.

⁵ See fn. 2.

- Previously convicted of one or more registerable sex offenses or an offense under Penal Code, section 667, (e)(2)(C)(iv) (sometimes referred to as a “super strike”)⁶; or
- Two or more prior convictions for sale or attempted sale of marijuana; or
- Current offense was a sale or attempted sale to a minor or knowing offer to sell, furnish or administer marijuana to a minor,
- Current offense involves more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.⁷ (§ 11360 (a)(3).)

Anyone who transports or attempts to transport or give away not more than 28.5 grams of marijuana is guilty of an infraction and may be fined up to \$100. (§ 11360 (b).) Prosecutions for aiding and abetting or conspiracy under this section are permitted. (§11360 (d).)

Use of Marijuana – New section 11362.3

The following uses of marijuana are prohibited:

Smoking or ingesting in a public place by:

- Defendants under 18 years old are punishable as an infraction with four hours of drug education or counseling and/or up to 10 hours of community service.
- Defendants 18 years and older are punishable as an infraction with a fine not exceeding \$100. (§§ 11362.3 (a)(1), 11362.4 (a)(1).)

Smoking in a no tobacco smoking location by:

- Defendants under 18 years old are punishable as an infraction with four hours of drug education or counseling and/or up to 20 hours of community service.
- Defendants 18 years and older, punishable as an infraction with a fine not exceeding \$250. (§§ 11362.3 (a)(2), 11362.4 (b).)

Smoking within 1,000 feet of a school, day care, or youth center during school hours or while children are present by:

- Defendants under 18 years old are punishable as an infraction with four hours of drug education or counseling and/or up to 20 hours of community service.
- Defendants 18 years and older are punishable as an infraction with a fine not exceeding \$250. (§§ 11362.3 (a)(3), 11362.4 (b).)

Possessing an open container while driving, operating, or as a passenger of a car, boat, aircraft or other vehicle used for transportation by:

- Defendants under 18 years old are punishable as an infraction with four hours of drug education or counseling and/or up to 20 hours of community service.
- Defendants 18 years and older are punishable as an infraction with a fine not exceeding \$250. (§§ 11362.3 (a)(4), 11362.4 (b).)

⁶ See fn. 3.

⁷ See fn. 2.

Smoking, ingesting, or possessing, in or upon school grounds, day care center, or youth center while children are present may be punished as follows:

- Defendants under 18 years old are punishable as an infraction:
 - First offense: four hours of drug education or counseling and up to 20 hours of community service.
 - Second or subsequent offense: 10 hours drug education or counseling and up to 60 hours of community service.
- Defendants 18 years and older are punishable as a misdemeanor:
 - First offense: fine not exceeding \$250.
 - Second or subsequent offense: up to 10 days in county jail and/or a fine not exceeding \$500. (§§ 11362.3 (a)(5), 11362.4 (c).)

Driving Under the Influence

Driving under the influence of marijuana or the combined influence of marijuana and alcohol and/or other controlled substances may be prosecuted under Vehicle Code sections 23152 (e) and (f). (§ 11362.45 (a).) Vehicle Code section 23152 (e) states: It is unlawful for a person who is under the influence of any drug to drive a vehicle. Vehicle Code section (f) states: It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.

Unlike Vehicle Code section 23152 (b), where an individual is presumed to be driving under the influence of alcohol if his or her blood contains .08 percent or more of alcohol, Proposition 64 does not include a similar provision for a per se minimum of Delta 9-THC (the psychoactive component of marijuana). Instead, as noted above, cases will be filed under subsection (e) for anyone driving under the influence of marijuana, which is similar to subsection (a), but does not require a minimum of Delta 9-THC at the time of driving.

There will be a forthcoming GOM with further information on prosecuting Driving Under the Influence of Drug cases.

Resentencing

The AUMA provides for resentencing of persons previously convicted of certain marijuana related offenses. Defendants currently serving a sentence for an offense that is no longer a crime may petition the court in which he/she was sentenced to recall or dismiss the judgment or, in a case where the penalty has been reduced, to resentence in accordance with the amended provisions.⁸ Unless our Office can show, by *clear and convincing evidence*, that (1) the petitioner does not satisfy the criteria of the offense, as amended, or (2) that granting the petition would pose an *unreasonable risk of danger to public safety* (Penal Code section 1170.18), the court must grant the petition. (§ 11361.8.)

⁸ A defendant is “serving a sentence” when he or she is currently subject to judicially imposed sanctions, generally including probation, confinement, or post release community supervision. (*People v. Davis* (2016) 246 Cal.App.4th 127, 139-140 and fn.’s 5 & 6, review granted on issue of retroactivity July 13, 2016, S234324, *People v. Lewis* (2016) 2016 Cal.App. LEXIS 923.)

An offender who is resentenced will receive credit for any time already served and shall be subject to a period of parole supervision of either one year or of whatever supervision time he or she would have otherwise been subject to pursuant to the amended provision, whichever is shorter. (§ 11361.8 (c).) However, the court has discretion to release the person from supervision.

Defendants who have completed their sentences may also apply to have their conviction dismissed and sealed because the prior conviction is invalid or reduced to a misdemeanor or infraction. (§ 11361.8 (e).)

See pages 12 and 13 for Guidance Charts on newly specific charges and punishment for Adult and Juvenile defendants, respectively. Page 14 is a draft copy of the Petition the court intends to use.

Statute of Limitations

The viability of marijuana related cases after the AUMA will sometimes depend on the lapse of time between the commission of the offense and the date criminal charges were originally filed. If a felony offense is charged within one year of its commission, and that charge is subsequently reduced under the AUMA to a misdemeanor or infraction, that misdemeanor or infraction is within the statute of limitations even if more than one year has elapsed since the case was originally filed.⁹

If a felony offense is charged within one year of its commission, and available evidence supports a misdemeanor or infraction charge that involves the “same conduct” underlying the felony charge, the filing of the felony tolls the statute of limitations for the added misdemeanor or infraction, which can properly be charged even if more than one year has elapsed since the case was originally filed.¹⁰

When no charges have been brought within one year of the commission of the criminal conduct, misdemeanor or infraction charges are generally barred by the statute of limitations. (See Pen. Code, § 802.) However, felony statutes of limitations – which for most cases is three years (see Pen. Code, § 801) - continues to apply when either a felony or wobbler is charged for offenses committed (e.g. § 11358 (d), §§ 11359 (c) & (d), and § 11360 (a)(3)).

Deputies should always insist that a defendant enter a knowing waiver of the statute of limitations if a defendant enters a guilty or no contest plea to a time-barred offense, or if a defendant requests that the jury be instructed to an offense in which the statute of limitations has expired.¹¹

⁹ See *In re McCartney* (1966) 64 Cal.2d 830, 831-832; *People v. McKay* (1979) 97 Cal.App.3d Suppl. 59, 67 [an offense that is “necessarily included” in a crime that was charged within the one-year statute of limitations relates back to the original complaint, tolling the statute of limitations].

¹⁰ Pen. Code, § 803 (b); *People v. Chardon* (1999) 77 Cal.App.4th 205, 214-216.

¹¹ *Cowan v. Superior Court* (1996) 14 Cal.4th 367, 376-377; see *People v. Stanfill* (1999) 76 Cal.App.4th 1137, 1150.

Violations for Illegal Marijuana Businesses

We expect that many existing medical marijuana dispensaries (MMDs) will continue conducting business or switch to non-medical marijuana, believing that their conduct is immunized under the Medical Marijuana Regulation and Safety Act (MMRSA) and the AUMA. However, MMRSA continues to regulate MMDs. Currently, Los Angeles County has a ban (LACC 22.56.196) against MMDs in the unincorporated areas of the county, with similar bans in neighboring jurisdictions such as the City of Los Angeles (Proposition D). Until the Bureau of Marijuana Control (Bureau) begins issuing state licenses, no non-medical marijuana business will be legal in California. The AUMA does not mandate a dual licensing scheme where the Bureau can only issue a state license if the local jurisdiction issues a license. Instead, the AUMA allows local jurisdictions to ban or regulate commercial marijuana activities, which includes business licenses, zoning and land use requirements. (Bus. & Prof. Code, §§ 26200-26202.) The Bureau will not issue a state license if it would violate the provision of any local ordinance or regulation. (Bus. & Prof. Code, § 26055 (e).) Los Angeles County has not decided whether to continue its ban on MMDs, regulate MMDs and/or ban or regulate recreational marijuana.

The Bureau must implement its licensing scheme and regulations by January 1, 2018. (Bus. & Prof. Code, § 26012(c).) Since the licensing scheme and regulations have yet to be implemented, it is impossible for any non-medical marijuana business to be in compliance with the law. Therefore, criminal charges for violations of Health & Safety Code sections 11358, 11359, and 11360 remain viable (Bus. & Prof. Code, § 26038(c)), as well as misdemeanor zoning violations and civil injunctions under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.). Office prosecutors assigned to cities that contract for our services to handle misdemeanors should be aware of potential zoning regulations. In addition to criminal penalties, the AUMA provides for administrative and civil penalties for licensing violations. (Bus. & Prof. Code, §§ 26030 – 26038.) Although government entities are restricted in their ability to regulate marijuana activities within a private residence (§ 11362.2 (b)(2)), interestingly, landlords can prohibit any marijuana use on their properties, even indoor cultivation and personal use, which government entities cannot. (§ 11362.45 (h).)

Some of the business practices that are illegal under the AUMA involve activities pandering to youth. No marijuana business can be within 600-foot radius of a K-12 school, daycare center, or youth center. (Bus. & Prof. Code, § 26054.) Local jurisdictions can specify a different radius. For instance, Los Angeles County is considering a 1000-foot safety buffer where marijuana businesses could legally operate, such as colleges and universities, which are not protected under the AUMA. The new law restricts advertising and packaging that appeals to the youth. Such restrictions include the use of symbols, language, music, cartoons, or other elements that are known to attract children. (Bus. & Prof. Code, § 26152.) Marijuana products cannot be designed to be easily confused with commercially sold candy or other non-marijuana containing foods. (Bus. & Prof. Code, § 26130.)

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Attachments

APPENDIX A
[Offenses in PC 290(c) and PC 667(e)(2C)(iv)]

- Registerable sex offenses listed in Penal Code § 290(c) (including both felony and misdemeanor offenses), as well as attempts or conspiracies to commit any of the crimes enumerated in Penal Code § 290(c).
- Crimes listed within Welfare and Institutions Code § 6600, subdivision (b), including: Penal Code § 261, subdivision (a), and §§ 262, 264.1, 269, 286, 288, 288a, 288.5, 289, as well as felony violations of Penal Code § 207, 209, and 220 when the assault is committed with the intent to commit any of the above-listed sex crimes.
- Penal Code § 288a, subdivision (c) (oral copulation of a child under 14 by a person more than 10 years older), Penal Code § 286 (e) (sodomy of a child under 14 by a person more than 10 years older), Penal Code § 289 (j) (sexual penetration of a child under 14 by a person more than 10 years older), and Penal Code § 288 (a) and (b)(1) (lewd or lascivious act upon a child under 14).
- Homicide and attempted homicide offenses within the meaning of Penal Code §§ 187 through 191.5 (vehicular manslaughter while intoxicated).
- Assault upon a peace officer or firefighter with a machine gun under Penal Code § 245 (d)(3).
- Solicitation to commit murder pursuant to Penal Code § 653f.
- Assault with a machine gun on a peace officer or firefighter pursuant to Penal Code § 245 (d).
- Possession of a weapon of mass destruction pursuant to § 11418 (a)(1).
- Any serious or violent felony punishable in this state by life imprisonment or death.

SENTENCING UNDER AUMA (PROPOSITION 64) – ADULT DEFENDANTS

Pre AUMA HS Code	Title of Charge	Quantity	Age of Def.	Post AUMA Charge	Charge Level	Potential Maximum Sentence
HS 11357(a)	POSSESSION OF CONCENTRATED CANNABIS	≤ 4 grams	18-20	HS 11357(a)(2)	Infraction	\$100 fine
		> 4 grams	18-20	HS 11357(b)(2)	Misdemeanor	6 mo. CJ &/or \$500
		≤ 8 grams	21 & over	None	LEGAL	N/A
		> 8 grams	21 & over	HS 11357(b)(2) ¹	Misdemeanor	6 mo. CJ &/or \$500
HS 11357(b)	POSSESSION OF MARIJUANA	≤ 28.5 grams	18-20	HS 11357(a)(2)	Infraction	\$100 fine
		≤ 28.5 grams	21 & over	None	LEGAL	N/A
HS 11357(c)	POSSESSION OF MARIJUANA	> 28.5 grams	18-20	HS 11357(b)(2)	Misdemeanor	6 mo. CJ &/or \$500
		> 28.5 grams	21 & over	HS 11357(b)(2)	Misdemeanor	6 mo. CJ &/or \$500
HS 11357(d)	POSSESSION OF MARIJUANA/CONCENTRATED CANNABIS ON SCHOOL GROUNDS	MJ: ≤ 28.5 grams CC: ≤ 4 grams	18 & over	HS 11357(c)	Misdemeanor	1 st : \$250 fine 2 nd : \$500 fine &/or 10 days CJ
HS 11358	CULTIVATION OF MARIJUANA	≤ 6 plants	18-20	HS 11358(b)	Infraction	\$100 fine
		≤ 6 plants	21 & over	None	LEGAL*	*If visible to public, or improperly stored, \$250 fine
		> 6 plants	18-20	HS 11358(c)	Wobbler ²	Misdemeanor: 6 mo. CJ &/or \$500 Felony: 16/2/3 SP Local Custody
		> 6 plants	21 & over	HS 11358(c)	Wobbler ³	Misdemeanor: 6 mo. CJ &/or \$500 Felony: 16/2/3 SP Local Custody
HS 11359	POSSESSION OF MARIJUANA FOR SALE	N/A	18-20	HS 11359(b)	Wobbler ⁴	Misdemeanor: 6 mo. CJ &/or \$500 Felony: 16/2/3 SP Local Custody
		N/A	21 & over	HS 11359(b)	Wobbler ⁵	Misdemeanor: 6 mo. CJ &/or \$500 Felony: 16/2/3 SP Local Custody
HS 11360 (a)	SALE/TRANSPORTATION FOR SALE	N/A	18-20	HS 11360(a)	Wobbler ⁶	Misdemeanor: 6 mo. CJ &/or \$500 Felony: 2/3/4 SP Local Custody
		N/A	21 & over	HS 11360(a)	Wobbler ⁷	Misdemeanor: 6 mo. CJ &/or \$500 Felony: 2/3/4 SP Local Custody
HS 11360 (b)	TRANSPORTATION	≤ 28.5 grams	18-20	HS 11360(b)	Infraction	\$100 fine
		≤ 28.5 grams	21 & over	HS 11360(b)	Infraction	\$100 fine

¹ See HS 11362.1(a)(2) limiting the amount of concentrated cannabis that a person over 21 can possess to 8 grams.

^{2 3} Default charge is misdemeanor. May charge felony if aggravating factors from HS 11358(c) are present.

^{4 5} Default charge is misdemeanor. May charge felony if aggravating factors from HS 11359(c)(1)-(3) are present.

^{6 7} Default charge is misdemeanor. May charge felony if aggravating factors from HS 11360(a)(3)(A)-(D) are present.

SENTENCING UNDER AUMA (PROPOSITION 64) – JUVENILE

Pre AUMA HS Code	Title of Charge	Quantity	Post AUMA Charge	Charge Level	Sentence
HS 11357(a)	POSSESSION OF CONCENTRATED CANNABIS	≤4 grams	HS 11357(a)(1)	Infraction	1st: 4 hours of drug education/counseling and up to 10 hours of community service over 60 days; 2nd: 6 hours of drug education/counseling and up to 20 hours of community service over 90 days
		> 4 grams	HS 11357(b)(1)	Infraction	1st: 8 hours of drug education/counseling and up to 40 hours of community service over 60 days; 2nd: 10 hours of drug education/counseling and up to 60 hours of community service over 120 days
HS 11357(b)	POSSESSION OF MARIJUANA	≤ 28.5 grams	HS 11357(a)(1)	Infraction	1st: 4 hours of drug education/counseling and up to 10 hours of community service over 60 days; 2nd: 6 hours of drug education/counseling and up to 20 hours of community service over 90 days
HS 11357(c)	POSSESSION OF MARIJUANA	> 28.5 grams	HS 11357(b)(1)	Infraction	1st: 8 hours of drug education/counseling and up to 40 hours of community service over 60 days; 2nd: 10 hours of drug education/counseling and up to 60 hours of community service over 120 days
HS 11357(d)	POSSESSION OF MARIJUANA/CONCENTRATED CANNABIS ON SCHOOL GROUNDS	MJ: ≤ 28.5 grams CC: ≤4 grams	HS 11357(c)	Infraction	1st: 8 hours of drug education/counseling and up to 40 hours of community service over 60 days; 2nd: 10 hours of drug education/counseling and up to 60 hours of community service over 120 days
HS 11358	CULTIVATION OF MARIJUANA	N/A	HS 11358(a)	Infraction	1st: 8 hours of drug education/counseling and up to 40 hours of community service over 60 days; 2nd: 10 hours of drug education/counseling and up to 60 hours of community service over 120 days
HS 11359	POSSESSION OF MARIJUANA FOR SALE	N/A	HS 11359(a)	Infraction	1st: 8 hours of drug education/counseling and up to 40 hours of community service over 60 days; 2nd: 10 hours of drug education/counseling and up to 60 hours of community service over 120 days
HS 11360	SALE/TRANSPORTATION FOR SALE	N/A	HS 11360(a)(1)	Infraction	1st: 8 hours of drug education/counseling and up to 40 hours of community service over 60 days; 2nd: 10 hours of drug education/counseling and up to 60 hours of community service over 120 days

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

<small>ATTORNEY OR PLAINTIFF WITHOUT ATTORNEY (Please Show For Number and Address)</small>		<small>FOR COURT USE ONLY</small>
TELEPHONE NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY ITIL (Print): _____	FAX NO. (Optional): _____	
PEOPLE OF THE STATE OF CALIFORNIA VS		
DEFENDANT		
APPLICATION/PETITION FOR RECALL, RESSENTENCE OR DISMISSAL HEALTH AND SAFETY CODE §§ 11361.8 (a) or (c)		CASE NUMBER: _____

DEFENDANT'S APPLICATION/PETITION

On _____, Defendant was convicted in the above-captioned case for a violation of a crime that is subject to recall or resentence pursuant to Proposition 64. He/she was convicted of the following:

☐ H&S §11357
 ☐ H&S §11358
 ☐ H&S §11359
 ☐ H&S §11360

Applications Only

- ☐ Defendant has completed his/her sentence in the above referenced case and requests the court to dismiss the conviction of _____, for counts(s) _____ in accordance with sections 11357-11362.4 Health and Safety Code.
- ☐ Defendant requests that the conviction referenced above be re-designated as a misdemeanor/infraction as to count(s) _____.
☐ Defendant requests that the conviction be sealed pursuant to the provisions of Proposition 64.

Petition Only

- ☐ Defendant is currently serving a sentence for the above referenced offense in _____
(name of jail or prison)
- ☐ Defendant requests the Court to recall and resentence count (s) _____ in a misdemeanor/infraction in the above referenced case in accordance with sections 11357-11362.4 Health and Safety Code.
- ☐ Defendant requests the Court to dismiss count(s) _____ in the above referenced case, pursuant in sections 11357-11362.4 Health and Safety Code.

 Date Defendant or Attorney for the Defendant

ORDER

The Court has read and considered the defendant's application/petition.

- ☐ The relief requested by defendant is granted. Sentence imposed on _____ is recalled as to count(s) _____. Defendant is resentenced on count(s) _____ as follows: _____
 Said conviction is now designated as a misdemeanor/infraction as to counts _____. ☐ Conviction is ordered sealed.
- ☐ The relief requested by defendant is granted. Sentence imposed on _____ is recalled as to count(s) _____. Defendant's request for dismissal pursuant to ☐ H&S §11361.8(a) / ☐ H&S §11361.8(c) is granted as to counts _____. ☐ Conviction is ordered sealed.
- ☐ Prosecution objects to the application/petition. Matter is scheduled for hearing on _____ at _____ in Dept. _____ Clerk to give notice.
- ☐ The relief requested by the defendant is **denied**. REASON: ☐ Petitioner is an unreasonable risk of danger to public safety. ☐ Failure to satisfy criteria in H&S §11361.8(a).

 Date Judge

Accepted for Use
 Superior Court of California, County of Los Angeles
 CFM-201 Revised 9/9/2015

APPLICATION/PETITION FOR RECALL OR DISMISSAL