


GENERAL OFFICE MEMORANDUM 16-116

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: REDUCTION OF MISDEMEANOR SENTENCES PURSUANT TO  
PENAL CODE SECTION 18.5(b)

DATE: DECEMBER 22, 2016

Several misdemeanor crimes are punishable by imprisonment for not more than “one year.” As of January 1, 2015, the maximum punishment for such misdemeanors became imprisonment for not more than 364 days, which aligned our misdemeanor punishments with federal immigration law. (Pen. Code, § 18.5.) To make this change fully retroactive, effective January 1, 2017, new Penal Code section 18.5, subdivision (b), will permit a court, on the defendant’s application, to modify a 365-day misdemeanor sentence to a 364-day sentence, regardless of when the sentence was originally imposed. For example, many defendants facing unexpected consequences because of a prior 365-day sentence may apply for this relief.

The superior court has prepared a suggested application form (see attached); however, its use is not mandatory in making the application. Defendants should file their applications in the original sentencing court. Deputies should note any sentence modification in the DA file, if the file is available.

Deputies should also be aware of some potential issues. First, a sentence modification only becomes effective from that point forward; it is not an order nunc pro tunc (though the new sentence does replace the original). Second, Penal Code section 18.5(b) does not allow the court to make any other changes beyond modifying a 365-day sentence to 364 days. **Third, Penal Code section 18.5(b) only applies to misdemeanor sentences, not terms of felony probation.** Deputies should oppose applications seeking relief other than that expressly authorized in Penal Code section 18.5(b).

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Attachment

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO.:<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (name):                                                                                                                                                                                                                                                                                                                                                                                            | <b>FOR COURT USE ONLY</b>                       |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | CASE NUMBER:                                    |
| <b>MODIFICATION OF SENTENCE<br/>(Penal Code § 18.5(b) )</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>FOR COURT USE ONLY</b><br><br>Date:<br>Time: |
| <p style="text-align: center;"><b>INSTRUCTIONS</b></p> <p>•Before filing this form, applicant should consult local court rules and court staff to determine if a formal hearing on the application will be scheduled.</p> <p>•Upon the filing of the 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 application. It may be served personally or by mail; the signed Proof of Service, attached to this form, must be filed with the court.</p> |                                                 |

### 1. CONVICTION INFORMATION

#### CONVICTION A:

On \_\_\_\_\_, Applicant states that he/she was convicted of: \_\_\_\_\_ in the above entitled case.

Applicant further states that as a result of the conviction, he/she was sentenced to 365 days in county jail on count \_\_\_\_\_ in the above entitled case.

#### CONVICTION B:

On \_\_\_\_\_, Applicant states that he/she was convicted of: \_\_\_\_\_ in the above entitled case.

Applicant further states that as a result of the conviction, he/she was sentenced to 365 days in county jail on count \_\_\_\_\_ in the above entitled case.

### 2. REQUEST FOR RELIEF

#### a. ☐ MODIFICATION OF SENTENCE

Applicant requests the sentence be modified to a term of 364 as provided in Penal Code Section 18.5(b) as to count(s): \_\_\_\_\_.

#### b. WAIVER OF APPEARANCE

☐ Applicant waives the right to be present and agrees that the matter may be heard without his/her appearance.

Dated: \_\_\_\_\_

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

MODIFICATION OF SENTENCE

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

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**PROSECUTING AGENCY RESPONSE**

- ☐ The prosecuting agency has no objection to this application. Applicant is entitled to the requested relief without a hearing.
- ☐ The prosecuting agency requests a hearing and objects to the granting of the application because:
- ☐ Petitioner/applicant was not convicted of an eligible offense.
- ☐ Other : \_\_\_\_\_

Dated: \_\_\_\_\_

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

PROOF OF SERVICE

☐ Personal Service

☐ Service by Mail

1. Person serving: I am over the age of 18 and not a party to this action.

(1) Name: \_\_\_\_\_

(2) Address: \_\_\_\_\_

(3) Telephone: \_\_\_\_\_

2. I served a copy of the application for Resentencing as follows (*check one*):

☐ a. Personal Service I personally delivered the Application for Resentencing to the person at the address listed below:

(1) Name of person served: \_\_\_\_\_

(2) Address where served: \_\_\_\_\_

(3) Date Served: \_\_\_\_\_

(4) Time Served: \_\_\_\_\_ ☐ AM ☐ PM

☐ b. Service by Mail: I deposited the Application for Resentencing in the United States mail, in a sealed envelope with first class postage fully prepaid. The envelope was addressed as follows:

(1) Name of person served: \_\_\_\_\_

(2) Address: \_\_\_\_\_

(3) Date of Mailing: \_\_\_\_\_

(4) Place of Mailing (city and state): \_\_\_\_\_

I declare to the best of my information and belief that the foregoing is true and correct.

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

\_\_\_\_\_  
(Signature of Declarant)

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