

GENERAL OFFICE MEMORANDUM 20-028

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: DISMISSAL OF CANNABIS CONVICTIONS

DATE: FEBRUARY 13, 2020

Proposition 64 and Assembly Bill 1793

On November 8, 2016, California voters passed the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64) which became effective on November 9, 2016. Proposition 64 made numerous changes to the status of cannabis, including the opportunity for individuals to have their cannabis convictions reviewed for possible resentencing or dismissal. As codified, Health and Safety Code (H&S) § 11361.8 requires people to proactively seek review of their cannabis convictions. In order to eliminate this burden and expedite the review process, Assembly Bill 1793 (codified in H&S § 11361.9) was crafted to make resentencing or dismissal *automatic* for individuals without necessitating the filing of an application or petition.

H&S § 11361.9 required the California Department of Justice (DOJ) to review state summary criminal history information in order to identify potentially eligible cannabis convictions. DOJ was required to notify the prosecution of all cases in their jurisdiction eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation on or before July 1, 2019. The prosecution has until July 1, 2020 to review and determine whether to challenge convictions and inform the court and public defender in their county. If the prosecution does not challenge the resentencing of any cannabis conviction by July 1, 2020, that conviction is to be automatically resentenced.

Collaboration with Code for America, Los Angeles County Superior Court, Public Defender, Alternate Public Defender, and City Attorneys/Prosecutors

The Office collaborated with Code for America and used its technology to review thousands of convictions within the DOJ data. The Office also partnered with the Los Angeles County Superior Court (Superior Court), Public Defender, Alternate Public Defender, and City Attorneys to streamline the process. Rather than waiting until July 1, 2020, the Office proactively dismissed over 62,000 felony cannabis convictions and over 3,500 misdemeanor cannabis convictions.

Office Request to Dismiss and Seal Over 62,000 Felony and Over 3,500 Misdemeanor Cannabis Convictions

Under Proposition 64, nearly all felony cannabis convictions would be resentenced as misdemeanors. Notwithstanding the requirements of Proposition 64, the Office went beyond those requirements and requested that the Superior Court dismiss and seal rather than resentence over 62,000 felony convictions and dismiss over 3,500 misdemeanor cannabis convictions. By doing so, individuals increase their opportunities for employment, housing, health, and education.

Office Request to Seal Identifying Data of Individuals

On February 11, 2020, the Office submitted the motion to dismiss and seal over 65,000 cannabis convictions to the Superior Court. A digital file containing identifying data of individuals and convictions was attached to the motion to dismiss. Since this data contains local summary criminal history information pursuant to Penal Code § 13300 et seq., the Office requested that the Superior Court seal the attached digital file to protect privacy rights.

How Will People Know Whether Their Cannabis Conviction Was Dismissed?

Office personnel will likely receive calls from individuals asking whether their felony or misdemeanor cannabis conviction was included in the motion to dismiss. Before providing any information, all Office personnel should review Legal Policies Manual § 11.18¹.

¹ LPM 11.18 Criminal Case Information Security

The daily flow of confidential information is critical for the Office to operate successfully. Any policy on the disclosure of information must balance the need for security and the need for the efficient exchange of information within the Office, from the Office to law enforcement agencies, and to members of the public. Information on criminal cases being handled by the Office shall be disclosed, over the telephone, only as follows:

- If the caller is a deputy district attorney, member of law enforcement, or probation officer personally known to the employee possessing the requested information, and the caller has a need to know the information, the information should be disclosed;
- If the caller is not personally known to the employee possessing the requested information, and claims to be a deputy district attorney, member of law enforcement, or probation officer, the employee possessing the information must request and receive a callback verification number from the caller. If the number is verified, and there is a need to know the information, the information should be disclosed;
- If the caller is seeking information which is generally available to the public (e.g., time and location of a court appearance), that information should be given;
- Under no circumstances should the names, addresses, or telephone numbers of witnesses be disclosed over the telephone; and
- Detailed information or prosecution strategy on a case should never be discussed over the telephone. Only the bare minimum facts, on a verified need-to-know basis, should be disclosed telephonically.

In the case of cannabis convictions inquiries, Office personnel should refer callers to the Public Defender's Office. The Public Defender's Office has created a phone number and webpage to receive these inquiries. Therefore, Office personnel should refer the public to the Los Angeles County Public Defender at 323-760-6763 or their website, pubdef.lacounty.gov.

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