



8. What else do I need to know about Proposition 64’s new resentencing rules?

Under Proposition 64, certain misdemeanor convictions can be considered “priorable” offenses, meaning that additional misdemeanor convictions could be treated as felonies. So you may want to talk to a lawyer if you have *more than two* prior convictions for the *same* cannabis-offense.

More on that issue can be found on attorney Heather Burke’s blog here:

<http://hburkelegal.com/the-lawdog-blog/a-comment-on-prop-64s-criminal-resentencing-provision>

MORE RESOURCES

Sample Petition/Application:

<http://www.courts.ca.gov/documents/prop64-Sample-Form-Petition-Application.pdf>

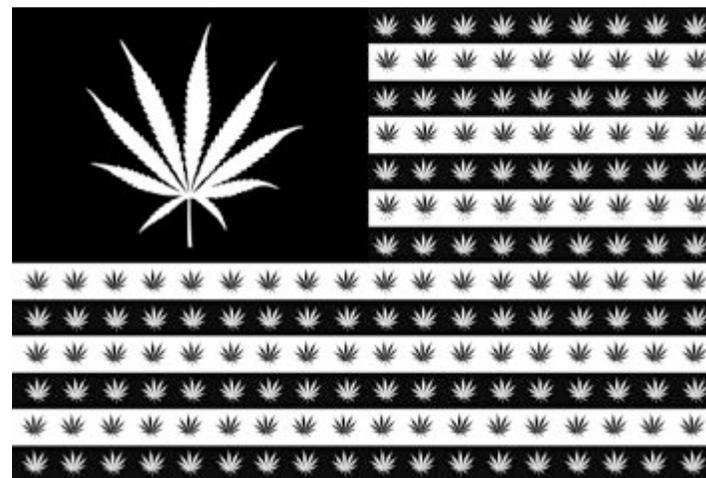
Sample Order:

<http://www.courts.ca.gov/documents/prop64-Sample-Form-Order.pdf>

Judicial Memo on Proposition 64:

<http://www.courts.ca.gov/documents/prop64-Memo-20161110.pdf>

This free handout is provided to you by the lawyers of the Strategic Alliance.



CLEARING YOUR RECORD AFTER PROPOSITION 64

*Instructions and
Frequently Asked Questions*

A free booklet by:

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**With a special shoutout to our team, Sarah Smale and Lauren Mendelsohn, for their help.*

1. What is Proposition 64?

Proposition 64 (i.e., the Adult Use of Marijuana Act or “AUMA”) was an initiative to legalize non-medical cannabis use by adults age 21 and over in the State of California that passed by a landslide in the November 2016 election.

Prop. 64 made numerous changes to California’s cannabis laws, including amending the Health & Safety Code provisions related to cannabis crimes, such as cannabis possession (*H&S §11357*), cannabis cultivation (*H&S §11358*), possession with intent to sell (*H&S §11359*), and transportation and/or sales (*H&S §11360*).

Although Prop. 64 did not totally repeal (erase) those laws, it did drastically reduce the criminal penalties for these offenses. In some cases, felonies became misdemeanors and, in other cases, misdemeanors became infractions and, in other cases, formerly prohibited conduct is now *completely legal under California law!*

You can read a great overview of Proposition 64 by California NORML online here:

http://www.canorml.org/Cal_NORML_Guide_to_AUMA



cannabis involved, what form the cannabis was in, whether the cannabis was possessed for sale or whether it was possessed for personal use, and the petitioner’s age when the crime was committed.

If the court determines the facts of your case fit the new law, then the Court is *required* to grant the petition unless it determines that doing so “would pose an unreasonable risk of danger to public safety,” which will be the rare case. If there are special circumstances in your case, like guns, violence or heavy narcotics, then you should ask a lawyer to help you through this process.

7. How do I know if my prior conviction is eligible for Proposition 64’s resentencing?

First off, you must have been convicted for a crime listed in Proposition 64, which are Health & Safety Code §§*11357*, *11358*, *11359* and/or *11360*. If you do not know what the code section is, call the Criminal Court Clerk’s Office ahead of time and just ask!

Secondly, your old conviction would either be totally legal today or a misdemeanor under the new laws, in order to get the benefit of the law. Almost everyone will be eligible for some sort of relief under these new rules.

*Note that Proposition 64 does not explicitly include priors for *H.S. §§ 11366* or *11366.5*, which was a common plea bargain in many former cannabis cases because these crimes are “wobblers” and did not require registration as a narcotics offender. If this is your case, you can still use the regular route for expungement and reduction under *P.C. §§ 1203.4/17(b)*, and discretionary relief may be made more available due to Prop 64’s passage. (Go here: <http://www.courts.ca.gov/1070.htm>.)

2. What can Proposition 64 do for my prior cannabis conviction?

Proposition 64 lets you open your old case back up so you can get the benefit of the new law. That means you can file a “petition” to ask the court to go back and change old criminal convictions to reflect Prop. 64’s changes to the law!

While the thought of “petitioning” a court may be a little daunting, you can use the sample petition form online (<http://www.courts.ca.gov/prop64.htm>) to get the process started. The petition is 3-pages and looks like this:

ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NO.:	FOR COURT USE ONLY	
NAME:				
FIRM NAME:				
STREET ADDRESS:				
CITY:		STATE:	ZIP CODE:	
TELEPHONE NO.:		FAX NO.:		
E-MAIL ADDRESS:				
ATTORNEY FOR (NAME):				
PEOPLE OF THE STATE OF CALIFORNIA				
v.				
DEFENDANT:				
PETITION/APPLICATION (Health and Safety Code, § 11361.8)			CASE NUMBER:	
ADULT CRIME(S)			FOR COURT USE ONLY	
<input type="checkbox"/> FOR RESENTENCING OR DISMISSAL (H & S § 11361.8(b))			Date:	
<input type="checkbox"/> REDESIGNATION OR DISMISSAL/SEALING (H & S § 11361.8(f))			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 petitioner is currently serving a sentence for a qualified crime, please fill out sections 1 and 2.				
*If the applicant has completed the sentence for a qualified crime, please fill out sections 1 and 3.				
*Complete sections 4 and 5 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.

5. Where and how do I file the form?

Once the forms are completed, make 4 copies (not including the original), and then take them all to the Criminal Court Clerk’s Office and tell them you want to “file” it. The Court will take the original, as well as 1 or 2 extra copies. Make sure you have 2 stamped copies for yourself too. Since the procedures in the clerk’s office can vary from county to county, you may have to roll with their particular procedures a little bit. Also, be prepared to wait. Sometimes the Court Clerks are overburdened, so please be very nice to them!

Be sure to bring 3 copies of “Order After Petition/Application” along with your petition, which is also on the state’s website (<http://www.courts.ca.gov/prop64.htm>).

So, in summary, make sure you have an original petition + 4 copies, and at least 3 copies of the Order, before you go into the Clerk’s Office. Before going to the Clerk’s Office, it can be very helpful to call in advance to make sure you know what their hours of operation are, and whether they have any unusual procedures that you need to be aware of.

6. What happens after I file the form?

The first thing you need to do is to “serve” a copy on the District Attorney’s Office. You can do this by looking up their address on the internet. Then you take a copy of the papers that you filed with the Criminal Court Clerk’s Office and give them a copy of both the stamped petition and Order. Make sure the DA’s office stamps *your* copy too, so you can prove that you gave them a copy if you need to.

After you file the forms with the court and then serve them on the DA, the court staff will screen your petition for eligibility, and if necessary, they will let you know that you need to come to court for a hearing. At that hearing, the court will be looking at the facts of your old case, like the quantity of

3. Do I need a lawyer to clean my record under Proposition 64?

Not necessarily, although a lawyer may be helpful if the petition is “contested,” which means if the prosecution opposes your petition, since that means you will likely be having a court hearing where evidence may need to be presented to the court.

Since there is a constitutional right to counsel at any resentencing proceeding, it is possible to get a public defender appointed for anyone who cannot afford counsel for those defendants currently serving a sentence.

4. How do I fill out the form?

When filling out this form, remember that *you* (assuming you are the Defendant) are the “Petitioner.” There are pretty good instructions right on the form, but you will need to know your old case number, the dates of your arrest, and how much cannabis you were caught with. In most cases, you can get this old information by calling the Criminal Court Clerk’s Office in the courthouse where you were convicted. However, here are a few notes:

Form Question 1:

This section wants to know what counts you are seeking to clear up. You will need to fill out a separate petition form for each case against you. “Conviction A” and “Conviction B” refer to different counts you were convicted of in a particular case. If you were convicted of more than two eligible counts as part of the same case, you will need to include another page listing “Conviction C,” and so on.

Note that some old misdemeanors may become “priors” under Proposition 64’s new rules.

Form Question 2:

The process differs slightly if you’re still serving your sentence (i.e. still on probation) versus if you have already served your time (or are off of probation). Either way, however, the first step is to petition the court for “Resentencing or Dismissal” (if you are still serving a sentence) or for “Redesignation or Dismissal/Sealing” (if you have completed your sentence).

If you are still in custody or on probation for a cannabis offense, check Box 2(A). If you are off of parole or probation, check Box 2(B).

Form Question 3:

You can waive your right to have the judge that sentenced you hear your petition. If that judge is retired or has passed away, you should check this box. If the judge is still around *and* they were a good judge on your case, then you may want to *not* check this box so your petition can go back to that judge. If the judge in your case was *not* a good judge, then you can check this box and will hopefully get a new judge, although there is no right to go to a new judge if your old judge is still around.

Form Question 4:

You will have the right to appear at this hearing, but Proposition 64 also allows you to waive this right. If you think the DA may fight your petition, or if the quantity of cannabis in your case was pretty high, you probably want to go to the hearing. If so, leave Section 4 on the form blank.