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Councilmember Dan Kalb

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmembers Dan Kalb, Rebecca Kaplan, & Lynette Gibson McElhaney

Date: March 15, 2018

Subject: Resolution urging DA to Proactively Apply Prop 64 Retroactively

Colleagues on the City Council and Members of the Public,

We are submitting the following for your consideration:

1. A copy of the Resolution with minor revisions (review clean copy and track changes copy);
2. The San Francisco District Attorney's Office's "Providing Relief Under Proposition 64;"
3. "ACLU of Northern California Statement in Response to SF District Attorney's Marijuana Conviction Review Program;"
4. The Alameda District Attorney's Office's "Policy Regarding Cannabis Convictions and Proposition 64," which their office requested we distribute at committee.

Respectfully submitted,

A handwritten signature in black ink that reads "Dan Kalb".

Dan Kalb, Councilmember

A handwritten signature in black ink that reads "Rebecca Kaplan".

Rebecca Kaplan, Councilmember

Lynette Gibson McElhaney, Councilmember

18 MAR 15 PM 12:01


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS DAN KALB AND REBECCA KAPLAN

RESOLUTION URGING THE ALAMEDA COUNTY DISTRICT ATTORNEY TO PROACTIVELY APPLY PROPOSITION 64 RETROACTIVELY TO REDUCE OR DISMISS APPLICABLE MARIJUANA SENTENCES

WHEREAS, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters by the passage of Proposition 64 on the November 8, 2016 election, immediately legalized recreational cannabis use for adults of 21 or more years of age, including possession, obtaining, giving away to other adults, and cultivating up to six plants per residence; and

WHEREAS, AUMA allows for the reduction or dismissal of convictions for marijuana offenses that are no longer illegal under California law if a petition is filed by the convicted individual, placing the burden of correcting the record on those that have been harmed by outdated laws; and

WHEREAS, between 1915 and 2016, California law enforcement made an estimated over 2.7 million cannabis arrests; and

WHEREAS, as of January 2018, only 4,885 Californians have petitioned state courts to have their cannabis convictions expunged, according to Drug Policy Alliance; and

WHEREAS, on January 31, 2018, District Attorney George Gascón announced that the San Francisco District Attorney's office would retroactively apply AUMA without requiring action for those eligible to file petitions, which will result in thousands of marijuana felony convictions being reviewed and resentenced and thousands of misdemeanors dismissed and sealed; and

WHEREAS, Assembly Member Rob Bonta has introduced Assembly Bill 1793 with the intent of automatically facilitating reduction or expungement of prior cannabis offenses for acts that are no longer crimes; and

WHEREAS, while the Alameda County District Attorney's office's Policy Regarding Marijuana Convictions and Proposition 64 from January 2017 established a protocol for review and granting of petitions authorized by AUMA, including making public awareness announcements and working the Community Law Center and Public Defender's office to inform community members of their petition rights and states "It is the intention of the Alameda County District Attorney's Office to remove any past convictions involved (sic) H&S [Health & Safety] Sections 11357, 11359 and/or 11360 from the official criminal history record of those individuals who qualify under the new law," the policy notes that reduction, dismissal, and/or sealing of eligible past convictions without the initiative of the convicted person would be phased in at an unspecified date; and

WHEREAS, at its regular meeting of February 20, 2018, the Emeryville City Council approved the issuance of a letter signed by Mayor John Bauters to Alameda County District Attorney Nancy O'Malley urging retroactive application of Proposition 64 to eligible sentences; now, therefore, be it

RESOLVED: That the Oakland City Council respectfully urges that the Alameda County District Attorney immediately or as soon as possible implement cannabis conviction review to alleviate the necessity of petitioning in order to reduce, dismiss and/or seal eligible past convictions; and be it

FURTHER RESOLVED: That the Council President, on behalf of the City Council and City of Oakland, shall send a copy of this Resolution to Alameda County District Attorney Nancy O'Malley, Assembly Member Rob Bonta, Senator Nancy Skinner, the Alameda County Board of Supervisors, and the Office of Alameda County Public Defender.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

18 MAR 15 PM 12:01

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

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FURTHER RESOLVED: That the Council President, on behalf of the City Council and City of Oakland, City Administrator shall send a copy of this Resolution to Alameda County District Attorney Nancy O'Malley, Assembly Member Rob Bonta, Senator Nancy Skinner, the Alameda County Board of Supervisors, and the Office of Alameda County Public Defender~~the Mayors of the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Piedmont, Pleasanton, San Leandro, and Union City.~~

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS

City Clerk and Clerk of the Council of
the City of Oakland, California

San Francisco Leads the Way: Providing Relief Under Proposition 64

FILED
OFFICE OF THE CITY CLERK
OAKLAND
18 MAR 15 PM 12:02

Proactively identified stand-alone marijuana convictions **since 1975**

3,038 marijuana misdemeanors will be dismissed and sealed

Up to 4,940 felony marijuana convictions will be reviewed, recalled, and resentenced

Individuals affected by Prop. 64 in San Francisco will not **need to retain an attorney** to file expungement papers or attend a court hearing

Retroactively applying Prop. 64 means restoring **restoring** voting, housing, and employment opportunities for people

Retroactively applying Prop. 64 will reduce **racial and ethnic disparities** in SF's criminal justice system

“While drug policy on the federal level is going backwards, San Francisco is once again taking the lead to undo the damage that this country’s disastrous, failed drug war has had on our nation and on communities of color in particular.”

-George Gascón

The San Francisco District Attorney’s Office is proactively applying Proposition 64, which legalized recreational use of marijuana for adults ages 21 years or older, to all eligible misdemeanor and felony marijuana convictions.

Reviewed 43 Years of Eligible Convictions

The office identified all eligible misdemeanor and felony convictions dating back to 1975.

Dismissing Misdemeanors and Reviewing Felonies

The office is proactively dismissing and sealing 3,038 marijuana misdemeanors and reviewing, recalling and resentencing up to 4,940 felony marijuana convictions which were sentenced prior to Proposition 64’s passage in November 2016. In San Francisco, individuals eligible under Prop. 64 do not have to file a petition or appear in court to initiate the dismissal or declassification of their prior marijuana convictions.

How can other DA’s offices do the same?

The San Francisco District Attorney's Office is taking a multi-step approach.

First, we requested the San Francisco Superior Court run a list of every stand-alone marijuana misdemeanor and felony conviction for Health and Safety Code Sections 11357, 11358, and 11359. The database reflected the names, docket numbers, conviction status, level of conviction, and date of birth for every individual with a qualifying conviction since 1975, as far back as the court management system holds.

We determined, based on Prop. 64., that it was appropriate to dismiss and seal all marijuana-related misdemeanors and infractions on our own motion. In order to facilitate this process, we are utilizing a previous process established with the court under Proposition 47 in which:

- If parties stipulate to the motion, there is no need to calendar the request
- We can complete the motion and file it with the court
- The court will sign and process the motion, sending petitions for dismissal and any relevant information to state actors, without the need for any court appearance

Such a system expedites the process and saves the court the time and resources involved in having to calendar cases, and ensures all entitled to the remedy receive it.

In regards to marijuana-related felony convictions under Prop. 64, we will conduct a case-by-case review, considering an individual's criminal history to rule out any disqualifying prior convictions, the conduct involved in the case under review, and the results of a lab analysis to determine the quantity of marijuana seized in the given case. If a felony conviction qualifies for resentencing, then our office will create a motion to reduce and utilize the same court process described above

How does a person know if they are affected by the policy?

If a member of the public believes that his/her prior marijuana conviction should be dismissed or reclassified by our office, they are encouraged to contact us by phone (415-553-1751) or via [email](#). Our office will only provide information to those who are calling about themselves. The caller will have to provide his/her name and date of birth before any information can be provided.

If the person's name appears on the list of individuals whose prior convictions have been dismissed, they will be sent an electronic copy of dismissal documents via email if they would like.

If the person's name does not appear on the list but they believe they are eligible for dismissal or reclassification under Prop. 64, their name, date of birth, and a court

number (if they have it) will be taken. Our office will further inquire about the person's eligibility and take additional steps to dismiss or reclassify the individual's conviction if appropriate.

What if a person does not want their conviction dismissed?

For those who would like to opt out of having their past conviction(s) automatically dismissed or reclassified, they should contact our office and provide their name, date of birth, and contact information. This information will be processed and the individual will be contacted when appropriate.

For individuals applying to equity programs for cannabis permits, we will make the appropriate documentation available upon request.

Who's affected?

Consistent with Proposition 64, the office's new policy will affect individuals who have suffered a misdemeanor conviction for:

- Possession of 28.5 grams or less of Marijuana pursuant to Health and Safety Code Section 11357; or
- Possession of 8 grams or less of Concentrated Cannabis pursuant to Health and Safety Code Section 11357, when he/she was 21 years or older, may have their record of conviction dismissed.

And individuals who have suffered a felony conviction for:

- Possession with Intent to Sell Marijuana pursuant to Health and Safety Code Section 11359;
- Sales, Furnishing or Transportation of Marijuana pursuant to Health and Safety Code Section 11360; or
- Cultivation of More than 6 Marijuana Plants pursuant to Health and Safety Code Section 11358;

What types of felony convictions can be reclassified?

Individuals may have their felony reclassified as a misdemeanor if:

1. He/she has not suffered a conviction pursuant to Penal Code Section 667(e)(2)(c)(4);
2. He/she is not required to register as a sex offender pursuant to Penal Code Section 290;

3. He/she does not have two or more prior convictions under the same Health and Safety Code Sections of 11358, 1139, or 11360;
4. The conviction did not involve the sale or attempted sale to a person under the age of 18;
5. The conviction did not involve a person under the age of 21 in possessing for sale, selling or cultivating marijuana; and,
6. The conviction did not involve the importation or exportation over state lines of more than 28.5 grams of marijuana.

Home » News » ACLU of Northern California Statement in Response to SF District Attorney's Marijuana Conviction Review Program

ACLU of Northern California Statement in Response to SF District Attorney's Marijuana Conviction Review Program

For Immediate Release : January 31, 2018



Media Contact: (415) 621-2493 (press@aclunc.org)

SAN FRANCISCO, Calif. — Today, San Francisco District Attorney George Gascón announced a new program to automatically review past marijuana convictions.

The following is a statement from Ana Zamora, Criminal Justice Director at the ACLU of Northern California.

We applaud District Attorney Gascón for upholding the will of Californians who voted to legalize the adult use of recreational marijuana and for using his discretion as the elected district attorney of San Francisco County to proactively help people with past marijuana convictions.

A past marijuana-related conviction can be a lifelong barrier to housing, employment, or recovery, depending on what you look like, how much money you have, and where you are from. Although Proposition 64 provided a way for people to petition the court to get relief from past marijuana convictions, the process is not automatic and depends upon the person learning of their rights under the new law and initiating the court process.

By committing to proactively review, resentence, and dismiss past marijuana convictions, the San Francisco District Attorney's office has demonstrated its commitment to repairing some of the harm done by the twin failures of mass incarceration and the war on drugs. Both disproportionately affect young people, people of color, and people suffering from untreated mental illness.

It is 2018: The other 57 elected district attorneys in California have a golden opportunity before them to undo the harm inflicted by harsh and unjust sentencing and drug laws. Gascón is an example of how our elected DAs have the power and discretion to charge or dismiss,

incarcerate or treat, neglect or review convictions. We urge district attorneys across California to follow his lead.

File Under : Criminal Justice and Drug Policy, Racial Justice

The Truth About Life
Without Parole:
Condemned to Die in
Prison

A Plug-and-Play Model
Policy for Police Body
Cameras

Saravia v. Sessions
(Due Process for
Immigrant Youth)



POLICY REGARDING CANNABIS CONVICTIONS AND PROPOSITION 64
Alameda County District Attorney's Office

January, 2017
February, 2018 (*updated*)

Background

On Tuesday, November 8, 2016, the voters passed Proposition 64, the Medicinal and Adult-Use Cannabis Regulation and Safety Act. The Act legalizes adult use Cannabis as well and establishes regulations that will control and oversee the industry. The Act further establishes protocols for reducing, dismissing and sealing old convictions for Health & Safety Code Sections 11357, 11359 and 11360.

The Proposition includes the ability for individuals to have their prior marijuana convictions redesignated from felony to misdemeanor or infraction, for misdemeanors to be redesignated to infraction, all convictions to be dismissed and the records sealed.

Procedure

Beginning January 1, 2017, the Alameda County District Attorney's Office will begin responding to petitions to reduce or petitions to dismiss convictions of H&S Sections 11357, 11359 and/or 11360 (Hereafter referred to as "Petitions"). It is estimated that there *may be as many as* 6,000 cases, some with multiple convictions, dating back as far as our data systems go. Absent an unusual circumstance or a unique set of facts, it is anticipated that all felony cases will be reduced to misdemeanor and all misdemeanor cases, including those reduced by the Court, will be dismissed.

There will be three phases to our procedure that will enable us to systematically and efficiently review, reduce, dismiss and/or have sealed, any convictions of H&S Code Sections 11357, 11359 and/or 11360.

Phase One: The District Attorney's Office will immediately establish a protocol with the court and the defense bar, including the Public Defender, for the timely review, filing and granting of Petitions. As with Proposition 47 Petitions, upon review of the request and examining the record of conviction, the District Attorney's Office will join in the petition to reduce, dismiss and/or seal the conviction. While the Court is challenged by managing more than 30 Petitions per week, under Propositions 47 and 64, the District Attorney's Office will receive up to 100

case names and numbers per week. The District Attorney staff will conduct background reviews and meet with the Petitioner and/or his or her attorney at which an informal review and discussion of the Petitions will occur. Assuming both parties agree to those cases that fit the criteria, both parties sign the Petition, and it will be submitted for Order by the Court. Those Petitions to where there may be disagreement, the Petition shall be filed and a hearing requested. It is anticipated that the latter process will be rare.

As part of Phase One, we will make public awareness announcements and work with the attorneys from various organizations, such as the Community Law Center and the Public Defenders' Office to inform members of the community of his or her right to have a Petition filed that could result in a dismissal of the old conviction and removal of the conviction from his or her record. Individuals may submit Petitions without counsel. The District Attorney's Office will engage in the same process as if the individual was represented by counsel.

Phase Two: Create a report from DALITE listing all convictions of these code sections by docket number and date. Teams of administrative staff will continue to run the cases by docket number from which we can list the defendant's name and his or her PFN (Personal File Number). Since DALITE only goes back to 1974, the District Attorney's Office will request the County's Criminal Justice System to prepare its own report, going back as far as the date of the system.

Phase Three: Once the individual is identified by case, the District Attorney's Office will review the record. For those cases that are eligible, the District Attorney's Office will make efforts to contact the individual. In any case, the District Attorney's Office will submit Petitions to the Court to reduce, dismiss, and/or seal any convictions that are deemed eligible.

It is the intention of the Alameda County District Attorney's Office to remove any past convictions involved H&S Sections 11357, 11359 and/or 11360 from the official criminal history record of those individuals who qualify under the new law. It is the intention of the District Attorney's Office to ensure equal treatment in terms of dismissal and/or sealing irrespective of whether we are able to contact the individual. If an individual is eligible, the matter will move forward to the Court for action. In other words, the District Attorney can request the Court, through a Petition on behalf of individuals *in absentia*, to dismiss eligible convictions.

Below is the new law in its entirety:

SECTION 8. CRIMINAL OFFENSES, RECORDS, AND RESENTENCING.

Sections 11357, 11358, 11359, 11360 and 11361.5 of the Health and Safety Code are amended, and Sections 11361.1 and 11361.8 are added to read as follows:

11357. Possession (a) Except as authorized by law, possession of not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, or both, shall be

punished or adjudicated as follows:

(1) Persons under the age of 18 shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.

(B) Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.

(2) Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars (\$100).

(b) Except as authorized by law, possession of more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, shall be punished as follows:

(1) Persons under the age of 18 who possess more than 28.5 grams of marijuana or more than four grams of concentrated cannabis, or both, shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.

(B) Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.

(2) Persons 18 years of age or over who possess more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, or both, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(c) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished as follows:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(d) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of an infraction and shall be punished in the same manner provided in paragraph (1) of subdivision (b) of this section.

11358. Planting, harvesting, or processing

Every person who plants, cultivates, harvests, dries, or processes any marijuana plants, or any part thereof, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes any marijuana plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of section 11357.

(b) Every person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty of an infraction and a fine of not more than one hundred dollars (\$100).

(c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof, except as otherwise provided by law, shall may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:

(1) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) the person has two or more prior convictions under subdivision (c); or

(3) the offense resulted in any of the following:

(A) violation of Section 1052 of the Water Code relating to illegal diversion of water;

(B) violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;

(C) violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and Game Code relating to waters of the state;

(D) violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;

(E) violation of Section 374.8 of the Penal Code relating to hazardous substances or Sections 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;

(F) violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or (G) intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

11359. Possession for sale Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who possesses marijuana for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of section 11357.

(b) Every person 18 years of age or over who possesses marijuana for sale shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:

(1) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) the person has two or more prior convictions under subdivision (b); or

(3) the offense occurred in connection with the knowing sale or attempted sale of marijuana to a person under the age of 18 years.

(d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves knowingly hiring, employing, or using a person 20 years of age or younger in unlawfully cultivating, transporting, carrying, selling, offering to sell, giving away, preparing for sale, or peddling any marijuana.

11360. Unlawful transportation, importation, sale, or gift

(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished as follows:

(1) Persons under the age of 18 years shall be punished in the same manner as provided in paragraph (1) of subdivision (b) of section 11357.

(2) Persons 18 years of age or over shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(3) Notwithstanding paragraph (2), a person 18 years of age or over may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period two, three, or four years if:

(A) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(B) the person has two or more prior convictions under paragraph (2);

(C) the offense involved the knowing sale, attempted sale, or the knowing offer to sell,

furnish, administer or give away marijuana to a person under the age of 18 years; or (D) the offense involved the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) For purposes of this section, "transport" means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

11361.1.

(a) The drug education and counseling requirements under sections 11357, 11358, 11359, and 11360 shall be:

(1) mandatory, unless the court finds that such drug education or counseling is unnecessary for the person, or that a drug education or counseling program is unavailable;
(2) free to participants, and the drug education provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.

(b) For good cause, the court may grant an extension of time not to exceed 30 days for a person to complete the drug education and counseling required under sections 11357, 11358, 11359, and 11360.

Subdivision (a) of Section 11361.5 of the Health and Safety Code is amended to read:

11361.5. Destruction of arrest and conviction records; Procedure; Exceptions

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of **Section 11357 or subdivision (b) of Section 11360**, or pertaining to the arrest or conviction of any person under the age of 18 for a violation of any provision of this article except

Section 11357.5, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (ed) of Section 11357, or any other violation by a person under the age of 18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs, the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records, including the statewide criminal databases, shall provide for the timely destruction of the records in accordance with subdivision (c), and such records must also be purged from the statewide criminal databases. As used in this subdivision, "records pertaining to the arrest or conviction" shall include records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is released from custody. The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date, or records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section 667.5 of the Penal Code.

Section 11361.8 is added to the Health and Safety Code to read:

11361.8

(a) A person **currently serving a sentence for a conviction**, whether by trial or by open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that Act been in effect at the time of the offense **may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by this Act.**

(b) Upon receiving a petition under subdivision (a), the court **shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria.** If the petitioner satisfies the criteria in subdivision (a), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(1) 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.

(2) As used in this section, “unreasonable risk of danger to public safety” has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.

(c) A person who is serving a sentence and resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Penal Code Section 3000.08 or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has **completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360**, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that Act been in effect at the time of the offense, **may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by this Act.**

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.

(i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.

(l) A resentencing hearing ordered under this act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.

(n) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.