

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**W17-01**

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| Title   | Action Requested   |
| Criminal Procedure and Juvenile Law:<br>Judicial Council Forms Under Proposition 64 | Review and submit comments by February 14,<br>2017   |
| Proposed Rules, Forms, Standards, or Statutes                                       | Proposed Effective Date  |
| Approve forms CR-187, CR-188, JV-744, and<br>JV-745.                                | September 1, 2017  |
| Proposed by   | Contact  |
| Criminal Law Advisory Committee<br>Hon. Tricia Ann Bigelow, Chair                   | Kimberly DaSilva, 415-865-4534<br><a href="mailto:Kimberly.DaSilva@jud.ca.gov">Kimberly.DaSilva@jud.ca.gov</a> |
| Family and Juvenile Law Advisory<br>Committee                                       | Tracy Kenny, 916-263-2838<br><a href="mailto:Tracy.Kenny@jud.ca.gov">Tracy.Kenny@jud.ca.gov</a>                |
| Hon. Jerilyn Borack, Cochair<br>Hon. Mark Juhas, Cochair                            |  |

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### **Executive Summary and Origin**

On November 8, 2016, the people of the state of California voted to enact Proposition 64, the “Control, Regulate and Tax Adult Use of Marijuana Act” (“Proposition 64”). To implement Proposition 64, the Criminal Law and the Family and Juvenile Law Advisory Committees are proposing four optional forms to be used to petition the court for relief and make the appropriate orders under Health and Safety Code section 11361.8.

### **Background**

Proposition 64, which became effective on November 9, 2017, includes resentencing and dismissal provisions which permit persons previously convicted of designated marijuana-related offenses to obtain a reduced conviction or sentence, if they would have received the benefits of the law had it been in effect when the crime was committed. As discussed below, juvenile offenders are also eligible for retroactive relief under Proposition 64 based on the reclassification of juvenile marijuana offenses as infractions. The proposition specifically directs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of the petitions and applications” provided for in the initiative.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

### **Provisions for resentencing, dismissal, and sealing**

Proposition 64 includes resentencing and dismissal provisions set forth in newly added Health and Safety Code section 11361.8. This section permits persons previously convicted of designated marijuana-related offenses to obtain a reduced conviction or sentence, if they would have received the benefits of Proposition 64 had it been in effect when the crime was committed. If the conviction was for conduct now legal, Proposition 64 provides for dismissals of those convictions and for the sealing of dismissed convictions for persons who have completed their sentences.

Proposition 64 provides relief to persons convicted of the following marijuana-related offenses:

- Possession under Health and Safety Code section 11357;
- Cultivation under Health and Safety Code section 11358;
- Possession for sale under Health and Safety Code section 11359; and
- Unlawful transport under Health and Safety Code section 11360.

(See Health & Saf. Code, § 11361.8(a), (e).)

The adult resentencing and dismissal provisions of Proposition 64 apply to persons currently serving a sentence for an eligible offense and for those who have completed their sentence. (See Health & Saf. Code, § 11361.8(b), (f).)

The request must be made before the trial court that entered the judgment of conviction in the case. (See Health & Saf. Code, § 11361.8(a), (e).) Unless the prosecution proves by clear and convincing evidence that the petitioner/applicant does not satisfy the criteria for relief, the court must presume that the petitioner/applicant does satisfy the criteria and grant relief. However, for persons currently serving a sentence, the court may deny a petition/application if it determines that granting the relief would pose an unreasonable risk of danger to public safety. (Health & Saf. Code, § 11361.8(b).)

If the court grants a request to redesignate an eligible offense as a misdemeanor or an infraction, the conviction is to be treated as a misdemeanor or an infraction for all purposes. (See Health & Saf. Code, § 11361.8(h).)

Proposition 64 also provides for the sealing of records of convictions dismissed under the proposition of persons who have completed their sentence. The court must “*seal the conviction as legally invalid as now established under [Proposition 64].*” (Health & Saf. Code, § 11361.8(f).)

### **Resentencing and redesignation of offense provisions apply to juvenile adjudications**

Proposition 64 expressly provides that the provisions of Health and Safety Code section 11361.8 for resentencing and redesignation of offenses apply equally to juvenile delinquency adjudications and dispositions. Proposition 64 does not entirely decriminalize marijuana offenses

for minors, but rather provides that they are all infractions that can only be sanctioned with court-ordered drug education or counseling and community service. Because juvenile offenses will remain as infractions, application of the adult resentencing and redesignation provisions to juveniles will not require dismissal or sealing.

### **Forms to be considered by the Judicial Council while they circulate for public comment**

In order to assist the trial courts with implementation of the new law, working groups of the Criminal Law and Family and Juvenile Law Advisory Committees developed sample forms that were made available on November 9, 2016, on the California Courts website for courts to begin implementing the provisions of section 11361.8. This immediate action was taken because Proposition 64 specifically directs the Judicial Council to promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in newly added Health and Safety Code section 11361.8. The forms in this proposal reflect some refinement of those sample forms that the committees have undertaken in the period since the election. At the same time that these forms are circulating for comment, the two committees are also jointly recommending to the Judicial Council that the forms in this proposal be approved by the council at its January 20, 2017 meeting without circulation for comment with an effective date of January 23, 2017. This action will ensure that official council forms are available on a more expedited basis while the committees simultaneously gather feedback on the forms during the public comment period so that the council can consider revised forms to become effective on September 1, 2017.

### **The Proposal**

The proposal recommends approval of four optional forms (two criminal and two juvenile) to allow for requests for resentencing and dismissal/redesignation and sealing of offenses to be made in criminal and juvenile marijuana matters. The criminal forms would be available to anyone convicted of an eligible offense at age 18 or older, while the juvenile forms are for those offenses adjudicated when the offender was under the age of 18. Each form set includes a form to request relief and an order form to make relevant orders. As discussed in more detail below, there are some differences between the proposed criminal and juvenile forms, some, but not all, of which are based on differences in the applicable statutes or proceedings. Input would particularly be appreciated on whether the forms should more closely parallel each other where possible.

### **Criminal forms**

***Petition/Application.*** Optional *Petition/Application (Health and Safety Code, § 11361.8)* (form CR-187) may be used by both persons currently serving eligible sentences and persons who have completed eligible sentences. The form allows the petitioner/applicant to:

- Identify one or two eligible convictions;
- Identify his or her age at the time of the conduct that gave rise to the conviction;
- Identify the nature of the substance that resulted in the conviction;
- Identify the quantity of the substance that resulted in the conviction;
- Request the desired relief;

- Waive the statutory requirement under section 11361.8 that the matter be heard by the original sentencing judge; and
- Waive his/her appearance.

It also requires the petitioner/applicant to serve the prosecuting agency with a copy of the petition/application, which contains an area for that agency to object to the request and/or to request a hearing on the matter. Because Prop. 64 appears to assume that the prosecuting agency has been served, by providing that the “party opposing the” petition/ application may put forth evidence that the petitioner/applicant does not satisfy the criteria for relief, an integrated proof of service is included to help petitioners/applicants document their service of the petition/application on the prosecuting agency as well as to provide the court with information as to whether the prosecuting agency has been made aware of the petition/application.

**Order form.** *Optional Order After Petition/Application (Health and Safety Code, § 11361.8)* (form CR-188) provides the court with the ability to:

- Grant the relief;
- Deny the relief and to state the reasons for the denial;
- Provide notice that any redesignation to a misdemeanor or an infraction shall thereafter be a misdemeanor or an infraction for all purposes;
- Relieve the petitioner from any applicable registration requirements for narcotics offenders; and
- Seal the conviction.

### **Juvenile forms**

**Petition/Application form.** *Optional Request to Reduce Juvenile Marijuana Offense (Prop. 64 – Health and Safety Code, § 11361.8(m))* (form JV-744) is designed to make it possible for a self-represented party to prepare and file the request to obtain a new juvenile disposition and/or to redesignate eligible offenses under Proposition 64. It is modeled on the adult petition/application form described above, but because the users of this form will primarily be either minors or young adults, it is written in plain language and streamlined to obtain only information that the offender is likely to be able to obtain. Thus, it does not ask for the nature or quantity of the substance involved. It also structured so that a separate form must be completed for each eligible offense a person is requesting be redesignated under Proposition 64. It includes one additional item not on the adult petition/application to allow the petitioner to request a hearing in the event that the prosecution does not make such a request. This item was added because section 11361.8 provides that a hearing is required if requested by the petitioner. In addition, consistent with juvenile court practice in other contexts, the form is designed to be routed by the court clerk to the probation department and prosecuting attorney after filing, rather than requiring the petitioner to serve the request on the prosecuting agency.

**Order form.** *Optional Juvenile Order After Request to Reduce Marijuana Offense (Prop. 64 – Health and Safety Code, § 11361.8(m))* (form JV-745) is for courts to make the relevant orders

on the requests under section 11361.8 for juvenile offenses. This form is very consistent with the adult order form described above, but has some additional content that is specifically relevant to juvenile offenders including a place to order drug education or counseling and community service as required by Proposition 64. It does not provide for dismissal or sealing as all juvenile offenses remain as infractions.

### **Alternatives Considered**

The committees considered making the forms mandatory but determined that optional forms would allow courts the flexibility of developing their own forms to fit their own unique needs, while still providing the convenience of a standard form for those courts which choose to use them. Courts will still be required to accept petitions/applications submitted on the proposed optional Judicial Council forms even if they develop their own forms, under California Rules of Court, rule 1.35(a).

The committees considered proposing these forms through the regular cycle for Judicial Council approval, which would have meant circulation for public comment prior to council review. However, due to the immediate need, the committees determined that approval of the forms under the regular cycle—which would have taken an entire year—would not be soon enough to satisfy the needs of the courts under the new law.

The committees considered creating dual-use forms for criminal and juvenile matters but concluded that the terminology and the legal provisions were sufficiently distinct that it would be preferable to create separate forms for criminal and juvenile courts. The committees considered enacting rules of court to set forth uniform timelines and procedures for carrying out the requirements of section 11361.8 but determined that such rules superior court's efforts to implement the law, which would be well under way by the time the rules went into effect.

The committees considered creating an attachment form to allow petitioners to include multiple offenses but concluded that such a form might create problems for the courts issuing the orders, as the relief that is allowed under Prop 64 is tied to the nature of the offense and whether the offender is currently subject to a sentence/disposition or has completed that sentence or disposition.

### **Implementation Requirements, Costs, and Operational Impacts**

The requirements of section 11361.8 will impose significant workload burdens on the court to process and act upon the requests for relief by those who are eligible for retroactive relief under Proposition 64. The optional forms proposed here are intended to mitigate those burdens by providing courts with forms that can streamline this process. The total volume of these requests is unknown, but it is anticipated that Proposition 64 will result in far fewer petitions than the courts have been required to consider under Proposition 47.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the criminal and juvenile forms should more closely parallel each other where possible, including but not limited to:
  - Should form CR-187, the application/petition form for adults be in more plain language format like form JV-744 to make it easier for self-represented individuals to complete the form?
  - Does section 2 of form JV-744 provide the court with sufficient information to take action on the request or should it be modified to be more like form CR-187 in terms of requesting information on the quantity of marijuana involved in the offense?
  - Is it preferable for the juvenile court to route filed JV-744 requests for relief to the other stakeholders (probation and the prosecuting agency), or, similar to CR-187, should juvenile petitioners be required to serve the petition on those entities?
  - Should form CR-187 and form JV-744 be that same in terms of whether they allow for a request for relief for multiple eligible convictions/offenses on a single petition/application or require separate petitions/applications for each conviction/offense?
- Should there be an attachment form for additional cases?
- Should form CR-187 retain an integrated proof of service? If not, why?
- Should forms CR-187 and JV-744 include the prosecuting agency response, or should the response be on a separate form?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Proposed new forms CR-187, CR-188, JV-744, and JV-745 at pages 7–15.
2. Proposition 64: [https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)\\_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf).

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|---|--|
| 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><br><br><b>DRAFT</b><br><b>Not Approved by</b><br><b>the Judicial Council</b> |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT: _____   | CASE NUMBER: _____   |
| <b>PETITION/APPLICATION (Health and Safety Code, § 11361.8)</b><br><b>ADULT CRIME(S)</b><br><input type="checkbox"/> <b>FOR RESENTENCING OR DISMISSAL</b> <input type="checkbox"/> <b>REDESIGNATION OR DISMISSAL/SEALING</b><br><input type="checkbox"/> <b>(Health &amp; Saf. Code, § 11361.8(b) )</b> <input type="checkbox"/> <b>(Health &amp; Saf. Code, § 11361.8(f) )</b> | <b>FOR COURT USE ONLY</b><br><br>Date: _____<br>Time: _____<br>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 the petitioner is currently serving a sentence for a qualified crime, please fill out sections 1 and 2(a).
- If the applicant has completed the sentence for a qualified crime, please fill out sections 1 and 2(b).
- Complete sections 3 and 4 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.

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| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: | CASE NUMBER: |
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2. REQUEST FOR RELIEF

a.  RESENTENCING/DISMISSAL

Petitioner is currently serving the sentence for the crime noted above, and requests the sentence be recalled and that he/she be resentenced or the charge be dismissed as required by law.

Other: \_\_\_\_\_

b.  REDESIGNATION/DISMISSAL/SEALING

Applicant has completed the sentence for the crime noted above, and requests the sentence be recalled and the conviction be redesignated or dismissed. If the conviction is dismissed, applicant requests the court's record of conviction be sealed.

Other: \_\_\_\_\_

3. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE

Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. The presiding judge of the court may designate any judge to rule on this matter.

4. WAIVER OF APPEARANCE

Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without his/her appearance.

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



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

PROSECUTING AGENCY RESPONSE

The prosecuting agency has no objection to this petition/application. Petitioner/applicant is entitled to the requested relief without a hearing.

The prosecuting agency requests a hearing and objects to the granting of the petition/application because:

Petitioner/applicant was not convicted of an eligible offense.

Other: \_\_\_\_\_

Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.

The prosecuting agency does not object to the petitioner's/applicant's eligibility for relief, but requests a hearing on the issue of resentencing.

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

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



|   |                |  |
|---|----------------|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY:<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): | STATE BAR NO.: | <b>FOR COURT USE ONLY</b><br><br><b>DRAFT</b><br><b>Not Approved by</b><br><b>the Judicial Council</b> |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT:   |                | CASE NUMBER:   |
| <b>PROOF OF SERVICE</b><br>Check Method of Service (only one):  |                | <b>FOR COURT USE ONLY</b><br><br>Date:<br>Time:<br>Department:   |
| <input type="checkbox"/> <b>By Personal Service</b>   |                | <input type="checkbox"/> <b>By Mail</b>  |

1. Person serving: I am over the age of 18 and not a party to this action.
  - (1) Name: \_\_\_\_\_
  - (2) Residence or Business Address: \_\_\_\_\_
  - (3) Telephone: \_\_\_\_\_
  
2. I served a copy of the Petition/Application for Resentencing or Reduction to Infraction on the person or persons listed below as follows:
  - (1) Name of person served: \_\_\_\_\_
  - (2) Address where served: \_\_\_\_\_
  - (3) Date Served: \_\_\_\_\_
  - (4) Time Served: \_\_\_\_\_  AM  PM
  
3. The documents were served by the following means (*specify*):
  - a.  **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 2. Delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening.
  - b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 2 and (*specify one*):
    - (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
    - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

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



\_\_\_\_\_

(Signature of Declarant)

\_\_\_\_\_

(Printed Name of Declarant)

|  |  |
|--|--|
| 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><br><br><b>DRAFT</b><br><b>Not Approved by</b><br><b>the Judicial Council</b> |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT: _____  | CASE NUMBER: _____   |
| <b>ORDER AFTER PETITION/APPLICATION (Health and Safety Code, § 11361.8)</b><br><b>ADULT CRIME(S)</b><br><br><input type="checkbox"/> <b>FOR RESENTENCING OR DISMISSAL</b><br><b>(Health &amp; Saf. Code, § 11361.8(b))</b>   | <b>FOR COURT USE ONLY</b><br><br>Date: _____<br>Time: _____<br>Department: _____                       |
| <input type="checkbox"/> <b>REDESIGNATION OR DISMISSAL/SEALING</b><br><b>(Health &amp; Saf. Code, § 11361.8(f) )</b>   |  |

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

**1. RESENTENCING GRANTED**

- The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court hereby recalls the sentence imposed on the designated crime(s) and enters the following additional orders:
  - The following crime(s) is/are resentenced as  misdemeanor(s)  infraction(s):  
(indicate crime(s)) \_\_\_\_\_
  - The following sentence is imposed for the commission of the crime(s):  
\_\_\_\_\_
- The petitioner is given credit for time served of (days): \_\_\_\_\_
- Petitioner is required to complete a period of supervision of \_\_\_\_\_ months/days on
  - parole  postrelease community supervision  mandatory supervision (Pen. Code, § 1170(h))
  - formal probation  informal probation
- The court releases the petitioner from any form of post conviction supervision.
- The court **DISMISSES** the following crime(s) for the reason that the conviction is legally invalid: \_\_\_\_\_
- Other: \_\_\_\_\_

**2. REDESIGNATION GRANTED**

- The applicant is eligible for the requested relief. The application is **GRANTED**. The court hereby recalls the sentence imposed on the designated crime(s) and enters the following additional orders:
  - The following crime(s) is/are redesignated as  misdemeanor(s)  infraction(s): (indicate crime(s))  
\_\_\_\_\_
- The court **DISMISSES** the following crime(s) for the reason that the conviction is legally invalid:  
(specify): \_\_\_\_\_
- Other: \_\_\_\_\_

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**3. RESENTENCING/REDESIGNATION DENIED**

- The petitioner/applicant is ineligible for the requested relief. The request for resentencing/redesignation/dismissal/sealing is **DENIED** as to crime(s): \_\_\_\_\_ for the following reasons:
- The petitioner/applicant was convicted of an offense that is not eligible for the requested relief.
- The petitioner's/applicant's age at the time the crime(s) was/were committed makes petitioner/applicant ineligible for the requested relief.
- The nature of the marijuana substance constituting the basis of the crime(s) makes petitioner/applicant ineligible for the requested relief.
- The quantity of the marijuana substance constituting the basis of the crime(s) makes petitioner/applicant ineligible for the requested relief.
- Although petitioner is eligible for relief, for reasons set forth on the record, the court finds that resentencing of petitioner would pose an unreasonable risk of danger to public safety.
- Other: \_\_\_\_\_

**4. MISDEMEANOR/INFRACTION FOR ALL PURPOSES**

Any misdemeanor resentenced as an infraction as a result of this order shall thereafter be an infraction for all purposes. Any felony conviction resentenced as a result of this order as a misdemeanor or infraction shall be a misdemeanor or infraction for all purposes.

**5. REGISTRATION**

- The petitioner/applicant is relieved from the requirement to register as a narcotics offender under Health and Safety Code, §11590.

**6. SEALING OF CONVICTION**

- The court's record of conviction is ordered sealed. No access to the information shall be permitted without court order.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDICIAL OFFICER

|   |   |
|---|---|
| PARTY WITHOUT AN ATTORNEY OR ATTORNEY: STATE BAR NO. (if applicable):<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): | FOR COURT USE ONLY<br><br><b>DRAFT</b><br>Not Approved by the<br>Judicial Council |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b><br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:   |   |
| CASE NAME:  |   |
| <b>REQUEST TO REDUCE JUVENILE MARIJUANA OFFENSE</b><br><b>(Prop. 64–Health and Safety Code, § 11361.8(m))</b>   | CASE NUMBER:<br><br>Date:<br>Time:<br>Department:                                 |

**INSTRUCTIONS**

- Use this form if you went to court for a marijuana-related offense when you were under the age of 18 and you want your record changed. You need to use a different form if you were 18 or older at the time of the offense.
- You need to use a separate form for each juvenile marijuana offense on your record.
- If this form asks for information that you do not have, you can contact your attorney. If you don't have an attorney, the public defender's office or the court in the county where you went to court can probably help you get these records.
- How to fill out the form without an attorney:
  - A. Put your name and contact information in the box at the top of the form and in item 1 below.
  - B. Put the address of the court from your court papers here. This form must be filed in the county where you went to court for this offense.
  - C. Fill out number 2 about the marijuana offense.
  - D. If you are on probation now for the marijuana offense, also check number 3 to ask the judge to make new dispositional orders (a new sentence) based on the new law. The new orders cannot be more severe than your original sentence.
  - E. If you have completed probation for the marijuana offense, check number 4 to ask the judge to redesignate your offense to an infraction. So, if it was a misdemeanor or a felony, it will now be classified like a traffic ticket.
  - F. You can check number 5 if you are willing to have any available judge hear your request. If you check that box the presiding judge may have a different judge hear your request.
  - G. A hearing is not required unless you request it. You can check one of the boxes in number 6 if you want the court to set a hearing.
  - H. You can check number 7 if you do not want to come to court if there is a hearing.

For more information about Proposition 64 and filling out this form, go to [www.courts.ca.gov/prop64.htm](http://www.courts.ca.gov/prop64.htm).

**1. MY INFORMATION**

My name is:

I was born on (date):

**2. OFFENSE INFORMATION**

On (date): I was found to come within the jurisdiction of the court under Welfare and Institutions Code section 602 for a violation of Health and Safety Code section (check one)

- 11357—Possession of Marijuana
- 11358—Cultivation of Marijuana
- 11359—Possession of Marijuana for Sale
- 11360—Transportation, Distribution, or Importation of Marijuana

This offense has been reclassified as an infraction when committed by a person under the age of 18 under Proposition 64. At the time of the offense, I was under the age of 18.

|            |              |
|------------|--------------|
| CASE NAME: | CASE NUMBER: |
|------------|--------------|

**3. REQUEST FOR A NEW DISPOSITIONAL ORDER (RESENTENCING)**

I am currently subject to a dispositional order (on probation) for the marijuana offense in number 2. I request that the order be recalled and relief be granted in accordance with Health and Safety Code section 11361.8(b) so that I will be resentenced.

**4. REQUEST FOR REDESIGNATION**

I am no longer a ward of the court (probation completed) for the marijuana-related offense in number 2. I request the court's dispositional order be recalled and relief be granted in accordance with Health and Safety Code section 11361.8(f) so that the offense will be redesignated as an infraction.

**5. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

I know that I have the right to have this matter heard by the judge who originally sentenced me. I am willing to have any available judge hear the case.

**6. REQUEST FOR HEARING**

I request a hearing if the prosecuting agency opposes my application. I understand that by checking this box, the court will set a hearing only if it is opposed by the Prosecution/Prosecution Agency.

I request that the court set a hearing even if my application is not opposed by the Prosecution/Prosecution Agency.

**7. WAIVER OF APPEARANCE**

I understand that I have a right to personally attend any hearing held in this matter and argue on my behalf. I give up that right. The case may be heard without my appearance.

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



\_\_\_\_\_  
SIGNATURE OF PETITIONER

**File this form with the court. The court will send a copy to the probation department and to the prosecuting agency to respond.**

**TO BE FILLED OUT BY THE PROSECUTING AGENCY**

**8. PROSECUTING AGENCY RESPONSE**

The prosecuting agency has no objection to this petition. Petitioner is entitled to the requested relief without a hearing.

The prosecuting agency does not object to the petitioner's eligibility for relief, but requests a hearing on the issue of a new dispositional order.

The prosecuting agency requests a hearing and objects to the granting of the petition because:

The prosecuting agency does not agree that the petition should be granted because the offense for which petitioner was found to be within the jurisdiction of the court under Welfare and Institutions Code section 602 is not eligible for the requested relief under Health and Safety Code section 11361.8.

Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.

Other : \_\_\_\_\_

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

\_\_\_\_\_  
SIGNATURE OF PROSECUTING AGENCY

|  |  |
|--|--|
| 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><br><br><br><b>DRAFT</b><br><b>Not Approved by the</b><br><b>Judicial Council</b> |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b><br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: _____  |  |
| CASE NAME: _____   |  |
| <b>JUVENILE ORDER AFTER REQUEST TO REDUCE MARIJUANA OFFENSE</b><br><b>(Prop. 64–Health and Safety Code, § 11361.8(m))</b><br><br><input type="checkbox"/> <b>FOR NEW DISPOSITION</b><br><b>(Health &amp; Saf. code 11361.8(b))</b>           | CASE NUMBER: _____<br><br>Date: _____<br>Time: _____<br>Department: _____                                  |
| <input type="checkbox"/> <b>REDESIGNATION</b><br><b>(Health &amp; Saf. code 11361.8(f))</b>  |  |

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

**1. NEW DISPOSITION GRANTED**

- The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court hereby recalls its disposition for the designated offense and makes the following additional orders:
  - The following offense is redesignated as an infraction (indicate offense): \_\_\_\_\_
  - Petitioner is required to complete:
    - \_\_\_\_\_ hours of drug education and counseling and/or
    - \_\_\_\_\_ hours of community service, within \_\_\_\_\_ days from the date of this order.
  - Wardship and delinquency jurisdiction for this offense is terminated.
  - Other: \_\_\_\_\_

**2. REDESIGNATION GRANTED**

- The petitioner is eligible for the requested relief. The application is **GRANTED**. The court hereby redesignates the following offense for which the child was found to be within the jurisdiction of the court under Welfare and Institutions Code section 602 as an infraction (indicate offense): \_\_\_\_\_.

**3. NEW DISPOSITION/REDESIGNATION DENIED**

- The petitioner is ineligible for the requested relief. The request for a new dispositional order/redesignation is **DENIED** for the following reasons:
  - The offense for which petitioner was found to be within the jurisdiction of the court under Welfare and Institutions Code section 602 is not eligible for the requested relief under Health and Safety Code section 11361.8.
  - Although petitioner is eligible for relief, for reasons set forth on the record, the court finds that modifying the petitioner's disposition would pose an unreasonable risk of danger to public safety.
  - Other: \_\_\_\_\_

|            |              |
|------------|--------------|
| CASE NAME: | CASE NUMBER: |
|------------|--------------|

**4. INFRACTION FOR ALL PURPOSES**

Any offense redesignated as an infraction as a result of this order shall thereafter be an infraction for all purposes.

**IT IS SO ORDERED.**

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

\_\_\_\_\_

JUDICIAL OFFICER