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*Your Responsibility When Using the Information Provided Below:*

*When we wrote this information we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to the information we send every time the law changes. If you use this information it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the information you need should be available in your institution law library.*

**Proposition 64: Marijuana Legalization; Petitions for Resentencing or Dismissal**

*Updated November 16, 2016*

This letter provides information about Proposition 64, which was approved by a majority of the voters on November 8, 2016. We are unable to write individual responses to everyone who has contacted us about this new law. We also cannot send you copies of the initiative; the full text is available on the California Secretary of State's website at <http://voterguide.sos.ca.gov/en/propositions/>. We hope that the information in this letter will help answer your questions.

Proposition 64 legalizes possession and sale of marijuana for nonmedical use by adults over the age of 21, regulates and taxes marijuana sales, and allows people who were previously convicted of marijuana offenses to petition for resentencing in accord with the new laws. The new laws took effect on November 9, 2016. Please be aware that there may be legal disputes about how new laws are interpreted and applied.

**I. It is Still Forbidden for State Prisoners or County Jail Inmates to Possess or Use Marijuana**

Marijuana is still a "controlled substance" (Health & Safety Code § 11054(d)(13)). It is still a serious violation of CDCR rules for a prisoner to possess, distribute, or use any controlled substance -- including marijuana. (See 15 CCR § 3315(a)(2)(D) and (a)(3)(E)-(F).) Also, Proposition 64 does NOT change the laws that make it a FELONY for state prisoners and county jail inmates to possess alcoholic beverages, drugs other than controlled substances, and controlled substances, without authorization by the prison or jail rules, the warden, superintendent, or other person in charge. (Penal Code § 4573.6 and § 4573.8.) Proposition 64 does NOT change the laws that make it a FELONY for people to bring alcoholic beverages, drugs other than controlled substances, and controlled substances into state prisons and county jails without authorization. (Penal Code § 4573 and § 4573.5.) Also, it is almost certain that officials may still impose parole, PRCs, and probation conditions barring use or possession of marijuana on a case-by-case basis, similar to conditions that may be imposed barring alcohol use.

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**II. Some Marijuana Activities are Now Lawful and the Penalties for Some Marijuana Crimes are Less Severe.**

Proposition 64 creates Health & Safety Code § 11362, which makes it lawful for an adult 21 years of age or older (except for a prisoner or jail inmate) to use marijuana or marijuana products, to possess up to six marijuana plants, and to possess, process, transport, purchase, obtain or give away to adults age 21 and older not more than 28.5 grams of marijuana, 8 grams of cannabis concentrates, and marijuana paraphernalia. Health and Safety Code §§ 11362.2-11362.3 place restrictions on the time, place and manner of these activities.

Health & Safety Code §§ 11357-11360 have been amended to reduce juvenile and criminal penalties for many of the acts that still remain a crime under the new laws. Most juvenile and adult offenses related to marijuana and concentrated cannabis - possession, planting, harvesting, processing, possession for sale, transportation, importation, gifts, and sales - are now infractions or misdemeanors. Some crimes for planting, harvesting, processing, possession for sale, transportation, importation, gifts, and sales remain felonies; generally, felony punishment applies to these crimes if a person has one, two, or more prior convictions for the same type of offense, for any offense that requires sex offender registration, for any “super strike” offense as defined in the current Three Strikes Law, or in a few other circumstances. Proposition 64 does not change the penalties for driving a vehicle while under the influence of marijuana.

**III. People Who Were Previously Convicted of Some Marijuana Crimes Can Petition for Re-sentencing, Re-designation, or Dismissal in Accord with the New Laws.**

Under Proposition 64, a person who was convicted of violating Health & Safety Code §§ 11357, 11358, 11359, or 1160, and who is serving a criminal or juvenile sentence for activities that are legal or subject to lesser penalties under the new laws can petition for re-sentencing or for dismissal. Also, a person who has already completed the sentence for marijuana activities that are now legal or subject to lesser penalties can petition to have the old conviction dismissed or re-designated as a misdemeanor or infraction.

The rules are set forth in Health & Safety Code § 11631.8. To start the process, the person must file a petition in the court in which conviction occurred; the state Judicial Council is supposed to develop forms for these petitions. There is no deadline for filing a petition. The court shall presume the petitioner is eligible for resentencing or dismissal unless the state presents clear and convincing evidence otherwise. If the prisoner is eligible, the court must grant the petition unless the person is still serving the sentence and the court decides that resentencing would pose an unreasonable risk of danger to public safety. An unreasonable risk of danger to public safety means an unreasonable risk that the person will commit a “super strike” felony as defined in the current Three Strikes Law. A person who is currently in prison or jail and who is resentenced will get credit for time already served, but will be subject to either parole, PRCS, or probation for up to one year following release, unless the court decides not to impose a supervision requirement.

Any person who may be eligible for re-sentencing, dismissal, or re-designation of a marijuana-related conviction should contact the trial attorney who handled the case or the Public Defender’s office in the county of conviction to request forms, advice, and/or representation.