

**RESOLUTION 03-07-2018**

**DIGEST**

Cannabis Law: Resentencing for Conspiracy and Accessory to Marijuana Offenses  
Amends Health and Safety Code section 11361.8 to allow resentencing for conspiracy and accessory to marijuana-related offenses.

**STATEMENT OF REASONS**

The Problem: Under Prop. 64, people who were previously convicted of marijuana related offenses for conduct that is now legal (such as growing marijuana) can apply for relief from their old convictions. Because such convictions are bars to many forms of employment, housing, licensure, and even legal residency, this relief can be life changing and help the formerly convicted reintegrate back into society. Unfortunately, the offenses listed in Prop. 64 do not take into account common alternative charges that were previously offered to less culpable defendants who wanted to avoid drug convictions. For example, defendants charged with marijuana cultivation might plead to a felony accessory charge (PC 32) or to a felony conspiracy charge (PC 182) in lieu of the marijuana offense. Because these alternative charges are not specifically listed in Prop. 64, even the most deserving of these defendants is currently ineligible for relief.

The Solution: This resolution would allow defendants whose conviction for PC 32 or 182 was based on an underlying qualifying marijuana offense to apply for relief under Prop. 64.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 11361.8 to read as follows:

1 § 11361.8

2       (a) A person currently serving a sentence for a conviction, whether by trial or by  
3 open or negotiated plea, who would not have been guilty of an offense, or who would  
4 have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of  
5 Marijuana Act had that act been in effect at the time of the offense may petition for a  
6 recall or dismissal of sentence before the trial court that entered the judgment of  
7 conviction in his or her case to request resentencing or dismissal in accordance with  
8 Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those  
9 sections have been amended or added by that act. A defendant currently serving a  
10 sentence for conspiracy to commit an offense eligible for dismissal or reduction under  
11 this section, pursuant to Penal Code section 182, or as an accessory to an offense eligible  
12 for dismissal or reduction, pursuant to Penal Code section 32, may petition for recall or  
13 dismissal of that sentence, and is entitled to be resentenced as if he or she had originally  
14 been charged with the underlying marijuana offense.

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

21 safety.

22 (1) In exercising its discretion, the court may consider, but shall not be limited to  
23 evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.

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

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

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

40 (e) A person who has completed his or her sentence for a conviction under  
41 Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea,  
42 who would not have been guilty of an offense or who would have been guilty of a lesser  
43 offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act  
44 been in effect at the time of the offense, may file an application before the trial court that  
45 entered the judgment of conviction in his or her case to have the conviction dismissed  
46 and sealed because the prior conviction is now legally invalid or redesignated as a  
47 misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360,  
48 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added  
49 by that act. A defendant who has completed a sentence for a conspiracy to commit an  
50 offense eligible for dismissal or reduction under this section, pursuant to Penal Code  
51 section 182, or as an accessory to an offense eligible for dismissal or reduction, pursuant  
52 to Penal Code section 32, may petition for recall or dismissal of that sentence, and is  
53 entitled to be resentenced as if he or she had originally been charged with the underlying  
54 marijuana offense.

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

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

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

- 67 shall be considered an infraction for all purposes.
- 68 (i) If the court that originally sentenced the petitioner is not available, the
- 69 presiding judge shall designate another judge to rule on the petition or application.
- 70 (j) Nothing in this section is intended to diminish or abrogate any rights or
- 71 remedies otherwise available to the petitioner or applicant.
- 72 (k) Nothing in this and related sections is intended to diminish or abrogate the
- 73 finality of judgments in any case not falling within the purview of the Control, Regulate
- 74 and Tax Adult Use of Marijuana Act.
- 75 (l) A resentencing hearing ordered under the Control, Regulate and Tax Adult Use
- 76 of Marijuana Act shall constitute a “post-conviction release proceeding” under paragraph
- 77 (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s
- 78 Law).
- 79 (m) The provisions of this section shall apply equally to juvenile delinquency
- 80 adjudications and dispositions under Section 602 of the Welfare and Institutions Code if
- 81 the juvenile would not have been guilty of an offense or would have been guilty of a
- 82 lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.
- 83 (n) The Judicial Council shall promulgate and make available all necessary forms
- 84 to enable the filing of the petitions and applications provided in this section.

(Proposed new language underlined; language to be deleted stricken)

**PROponent:** Los Angeles County Bar Association

**IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule other than expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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