

Proposed Changes to Criminal Penalties Under Prop. 64

CRIMINAL OFFENSE ¹	PENALTY UNDER CURRENT LAW ²	PROPOSED PENALTY UNDER PROP. 64 ^{2,3}
POSSESSION OF MARIJUANA - H&S Code § 11357		
Possession of ≤ 28.5 g marijuana (adults)	Infraction with \$100 fine	21 + = Legal 18 to 20 = Infraction with \$100 fine
Possession of ≤ 28.5 g marijuana (under 18)	Infraction with \$100 fine	1 st offense: 4 hours drug education + up to 10 hours community service 2 nd offense (or more): 6 hours drug education + up to 20 hours community service
Possession of > 28.5 g marijuana (adults)	Misdemeanor (max 6 months jail and/or \$500 fine)	18 + = Misdemeanor (max 6 months jail and/or \$500 fine)
Possession of > 28.5 g marijuana (under 18)	Misdemeanor (max 6 months jail)	1st offense: infraction with 8 hours drug education + up to 40 hours community service 2nd or more: infraction with 10 hours drug education + up to 60 hours community service
POSSESSION OF CONCENTRATED MARIJUANA - H&S Code § 11357		
Possession of concentrated cannabis (adults)	Any amount = Misdemeanor (max 1 year jail and/or \$500)	21 + = Up to 8 grams is legal; more than 8 grams is a misdemeanor (max 6 months jail and/or \$500 fine) 18 to 20 = ≤ 4 grams is an infraction with \$100 fine; more than 4 grams is an misdemeanor (max 6 months jail and/or \$500)
Possession of concentrated cannabis (under 18)	Any amount = Misdemeanor (max 1 year jail and/or \$500)	≤ 4 grams: 1 st offense: 4 hours drug education + up to 10 hours CS; 2nd offense: 6 hours drug education + up to 20 hours CS > 4 grams: 1 st offense: 8 hours drug education + up to 40 hours CS; 2nd offense: 10 hours drug education + up to 60 hours CS
POSSESSION ON SCHOOL GROUNDS - H&S Code § 11357		
Possession of ≤ 28.5 g marijuana and/or ≤ 4g concentrates on school grounds (18 and older)	Misdemeanor (max 10 days jail and/or \$500 fine)	1 st offense: Misdemeanor (max. \$250 fine) 2 nd (or more) offense: Misdemeanor (max 10 days jail and/or \$500 fine)
Possession of ≤ 28.5 g marijuana and/or ≤ 4g concentrates on school grounds (under 18)	1 st offense: Misd. (max \$250 fine) 2 nd (or more) offense: Misd. with \$500 fine and/or 10 days juvenile hall/camp/group home	1st offense: infraction with 8 hours drug education + up to 40 hours community service 2nd or more: infraction with 10 hours drug education + up to 60 hours community service

Notes:

1. Shaded cells represent penalties for juveniles under age 18.
2. Prop. 215 protections remain in effect.
3. Licensed activity in accordance with state law will not be subject to these penalties.

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POSSESSION WITH INTENT TO SELL MARIJUANA - H&S Code § 11359		
Possession with intent to sell (adults)	Felony (16 mos / 2 yrs / 3 yrs)	Misdemeanor (max 6 months jail and/or \$500 fine).
		Wobbler if (1) prior super strike, (2) if a registered sex offender under 290(c), (3) two prior convictions under this subsection, (4) offense occurred in connection with knowing sale or attempted sale of marijuana to a person under 18, or (5) adult 21 + if knowingly hire, employ, or use a persons under 21 in unlawfully cultivating, selling, etc. any marijuana
Possession with intent to sell (by someone under 18)	Felony (16 mos / 2 yrs / 3 yrs)	1st offense: infraction with 8 hours drug education + up to 40 hours community service
		2nd or more: infraction with 10 hours drug education + up to 60 hours community service
SALES OF MARIJUANA - H&S Code § 11360		
Sales/ giving away of marijuana to adults (by adults 18 and over)	Felony (2/3/4 years) If amount is < 28.5 g and it is given away (i.e. no sale) = Misdemeanor with max fine of \$100	Misdemeanor (max 6 months jail and/or \$500 fine).
		It becomes a wobbler (2/3/4 yrs) IF (1) prior super strike (2) a registered sex offender, (3) two prior convictions under this subsection, (4) involved sale to person under 18; OR (5) involved import into this state or transport out of this state of more than 28.5 grams.
		**The section providing that if amount is < 28.5 g and it is given away (i.e. not sold) is an infraction with max fine of \$100. This will likely apply to adults aged 18 to 20 who share marijuana.
Sales/ giving away of marijuana to adults (by someone under 18)	Felony (2/3/4 years) If amount is < 28.5 g and it is given away (i.e. no sale) = Misdemeanor with max fine of \$100	1st offense: infraction with 8 hours drug education + up to 40 hours community service
		2nd or more: infraction with 10 hours drug education + up to 60 hours community service
Sales to a minor (adults 18 and over) § 11361	Felony (3/5/7 years) for sales to a minor under 14 if the adult is over 18. Felony (3/4/5 years) for sales to a minor over 14 if the adult is over 18.	No change to current law.

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CULTIVATION OF MARIJUANA - H&S Code §11358		
Cultivation (adults)	Felony (16 mos/2 yrs/3 yrs)	<u>6 plants or less</u> 21+ = Legal 18 to 20 = Infraction with \$100 fine
		<u>More than 6 plants (18 +)</u> Misdemeanor (max 6 months jail and/or \$500 fine). BUT it is a wobbler if (1) prior super strike or if a registered sex offender, (2) two prior convictions under this subsection, OR (3) offense resulted in intentional division of public waters, introduction of harmful chemical into waters or otherwise caused substantial environmental harm to public lands.
Cultivation (under 18)	Felony (16 mos/2 yrs/3 yrs)	1st offense: infraction with 8 hours drug education + up to 40 hours community service
		2nd or more: infraction with 10 hours drug education + up to 60 hours community service
Cultivation restrictions on growing at home	All non-medical cultivation is illegal and charged as a felony.	If adult cultivates no more than 6 plants for personal use but (1) plants are visible to public or (2) not kept in a locked space = infraction with \$250 fine
NUISANCE PENALTIES		
Opening or maintaining place for unlawfully selling, giving away or using drugs (§ 11366)	For marijuana = wobbler	No change to current law.
Renting, leasing, or making building/room/space available for unlawful manufacturing or storing of drugs (§ 11366.5)	For marijuana = wobbler Second offense is a felony punishable by 2, 3, or 4 years.	No change to current law.
MANUFACTURING: H&S Code § 11379.6		
Manufacturing concentrates by chemical synthesis	Felony (3/5/7 years)	No change to current law.

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PUBLIC USE INFRACTIONS CREATED BY PROP. 64: H&S Code § 11362.3		
Smoking or ingesting in public	No specific penalty for marijuana. Charged with possession or same as tobacco.	Infraction with max fine of \$100
		Under 18 = 4 hours of drug education and up to 10 hours of community service
Smoking where tobacco prohibited	No specific penalty for marijuana. Charged with possession or same as tobacco.	Infraction with max fine of \$250
		Under 18 = 4 hours of drug education and up to 20 hours of community service
Smoking within 1,000 feet of a school, day care or youth center while children are present	No specific penalty for marijuana. Charged with possession or same as tobacco.	Infraction with max fine of \$250
		Under 18 = 4 hours of drug education and up to 20 hours of community service
Possess open container or package of marijuana while driving, operating, or riding in vehicle	No specific penalty. Charged with possession.	Infraction with max fine of \$250
		Under 18 = 4 hours of drug education and up to 20 hours of community service
RETROACTIVITY		
<p>The reductions in criminal penalties in Prop. 64 will be retroactive. Prop. 64 establishes a judicial process for people to ask a court to reduce or remove--depending on how the measure treats the relevant conduct--convictions on their records. This applies to both people currently in jail, prison, or on probation, and to people who have completed their sentences. The legal standard is the same as in Prop. 47 and weighs heavily in favor of reducing convictions. There is no time limit on when to apply.</p>		
EXPUNGEMENT OF RECORDS		
<p>Prop. 64 amends § 11361.5 to include expungement for concentrated marijuana and to include expungement for all marijuana offenses for minors under the age of 18, except for synthetic marijuana.</p>		

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