



FAIRFIELD POLICE DEPARTMENT ROLL CALL TRAINING

December 26, 2017

Proposition 64 Legalization of Marijuana

PROPOSITION 64 (The Adult Use of Marijuana Act)

Voters on November 9, 2016 approved Proposition 64, the legalization of marijuana within the State of California. Proposition 64 adds sections to the general laws of California, including Health & Safety Code Section 11362.1 which decriminalizes the use of marijuana by a person 21 years of age or older. The section states in part:

“It shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:

- 1) Possess, process, transport, purchase, obtain, or give away to a person age 21 or older not more than 28.5grams (one ounce) not in the form of concentrated cannabis
- 2) Possess, process, transport, purchase obtain or give away to a person age 21 or older not more than 8 grams of concentrated cannabis
- 3) Possess, plant, cultivate, harvest, dry, or process six living plants (at one private residence)
- 4) Smoke or ingest marijuana or marijuana products
- 5) Possess, transport, purchase, obtain, or give away to a person age 21 or older marijuana accessories.

Note: All juvenile (under 18) related marijuana crimes shall be infractions.

The following laws will take effect immediately and shall be the sections used in all cases:

Simple possession under 28.5 grams

21 years of age or older - Legal

Under 18 years of age - H&S 11357(a)(1) Infraction

18 to 20 years of age - H&S 11357(a)(2) Infraction

Simple possession over 28.5 grams

18 years of age or older – H&S 11357(b)(2) Misdemeanor 6 months/\$500 fine

Under 18 years of age – H&S 11357(b)(1) Infraction

Possession K-12 School up to 28.5 grams

18 years or older – H&S 11357(c) Misdemeanor 1st offense = fine 2nd offense = 10 days/\$500 fine

Under 18 years of age - H&S 11357(d) Infraction

Possession on school grounds day care/youth center - No quantity specified - Only when children are present

18 years of age or older – H&S 11362.3(a)(5) Misdemeanor 1st offense = fine 2nd offense = 10 days/\$500 fine

Under 18 years of age – 11362.3(a)(5) Infraction

Possession of open container Driver *OR* passenger – No quantity specified.

18 years of age or older – H&S 11362.3(a)(4) Infraction

Under 18 years of age – H&S 11362.3(a)(4) Infraction

Illegal cultivation – Under 21 years of age

18, 19 or 20 years of age – Up to 6 plants: H&S 11358(b) Infraction (up to 6 plants)

18, 19 or 20 years of age – More than 6 plants: H&S 11358(c) Misdemeanor 6 months/\$500 fine

Under 18 years of age – H&S 11358(a) Infraction (any amount prohibited)

Illegal cultivation – More than 6 plants

18 or older – H&S 11358(c) Misdemeanor 6 months/\$500 fine

Illegal cultivation – Plants in unlocked space or visible from public place

18 years of age or older – H&S 11362.2(a)(2) Infraction

➤ **Felony cultivation**

18 or older – H&S 11358(d) Felony

- ❖ One or more prior “Super Strike”
- ❖ One or more prior convictions for offense requiring PC 290(c) registration
- ❖ Two or more prior H&S 11358(c) convictions after inaction of P.64, (Adult over 18 cultivating 6 or more plants)

Possession for sale

18 years of age or older – H&S 11359(b) Misdemeanor 6 months/\$500 fine

Under 18 years of age – 11359(a) Infraction

➤ **Felony possession for sale**

18 years of age or older – H&S 11359(c)

- ❖ If knowingly sold/attempted to sell to minor under 18
- ❖ If one or more “Super Strike” convictions
- ❖ One or more prior convictions for offense requiring PC 290(c) registration
- ❖ Two or more prior convictions of H&S 11359(b), (Possession for sale)

➤ **Felony possession for sale**

21 years of age or older – H&S 11359(d)

- ❖ If knowingly hires, employees or uses a person 20 or younger to unlawfully cultivate, transport, carry, sell etc. Felony conviction = 16 months, 2, 3 years county prison.

NOTE: Possession for sales of marijuana is a required pre-requisite for transportation of marijuana. Thus whenever a subject is arrested for transportation of marijuana, a possession for sales charge should be included in the charging offenses.

Transporting for purposes of sales

18 years of age or older – H&S 11360(a)(2) Misdemeanor 6 months/\$500

Under 18 years of age – H&S 11360(a)(1) Infraction

Under 18 years of age – 11359(a) Infraction

➤ **Felony Transporting for purposes of sales**

18 years of age or older – H&S 11360(a)(3)

- ❖ If knowingly sold/attempted to sell to minor under 18
- ❖ Offense involves importing, offering to import, transportation more than one ounce into or out of California
- ❖ If one or more “Super Strike” convictions
- ❖ One or more prior convictions for offense requiring PC 290(c) registration
- ❖ Two or more prior convictions of H&S 11360(a)(2) (Transportation)

Giving or offering to give away

Applies to persons 18 years of age or older who

Give away to a person under 21 years of age more than one ounce - H&S 11360(a)(2)
Misdemeanor 6 months/\$500

Giving or offering to give away

Applies to persons 18 years of age or older who

Give away to a person under 21 years of age under one ounce – H&S 11360(b)
Infraction

➤ **Felony Use of minors in Marijuana transactions**

Applies to adults 18 and over and not amended by P.64

- ❖ H&S 11361(a): Hiring, employing, using minor in transaction, selling, give to minor *under 14*. Felony 3, 5, 7 years state prison.
- ❖ H&S 11361(b): Hiring, employing, using minor in transaction, selling, give to minor *14 or older*. Felony 3, 4, 5 years state prison.

Smoking in a public place

For all ages – H&S 11362.3(a)(1) Infraction

Smoking where tobacco is prohibited

For all ages – H&S 11362.3(a)(2) Infraction

Smoking 1000 Feet school/day care etc.

H&S 11362.3(a)(2) – Infraction

Smoking on grounds of school or day care etc.

18 years of age or older – 11362.3(a)(5) 1st offense \$250/ 2nd or more 10 days/\$500

Under 18 years of age – 11362.3(a)(5) Infraction

Smoking while driving

For all ages – H&S 11362.3(a)(4), (open container) Infraction

Consider also VC 23222(b), (possession in a vehicle of any amount under age 21 or an excessive amount age 21 and older) H&S 11357, (simple possession any amount under age 21 or an excessive amount age 21 and older) and VC 23152, (DUI drugs any age).

VC 23222(b)

The section was not amended by P. 64 and there is no requirement the marijuana must be open

You should not charge this section to 21 year or older, (legal per H&S 11362.1(a))

Can charge under 21 – under oz. 11357(a)(1) over oz. 11357(b)(1)

Smoking while riding passenger

No punishment provisions – H&S 11362.3(a)(8)

Consider VC 23222(b), (possession in a vehicle) H&S 11357, (simple possession)

Drugs in Jail/prison

Proposition 64 did not amend in any way the various PC sections prohibiting bringing/possession/giving in jail/prison.

❖ PC 4573 – Felony

Asset Forfeiture

Asset forfeiture laws remain intact

H&S 11488

PROPOSITION 64 (The Adult Use of Marijuana Act)

Scenario: After a vehicle stop an officer detects the odor of marijuana emitting from within the vehicle, the driver is 21 or older and denies any medical marijuana defense. Under new state law, H&S 11362.1(c), states in part, “Marijuana and marijuana products involved in any way with conduct deemed lawful by this section shall not constitute the basis for detention, search or arrest. Probable cause based solely on the smell of marijuana is yet to be determined by the court. The safe way to proceed is to use the smell of marijuana along with other existing factors so probable cause can be based on the totality of circumstances, not odor alone. An officer generally should not search the vehicle entirely based on the odor of marijuana alone. The officer may search if probable cause is developed suggesting the driver is in unlawful possession; possession for sales, possession of more than 28.5 grams, possession of more than 8 grams of concentrated cannabis or an open container of marijuana. Consider the odor of burnt and fresh marijuana.

TIP: During a vehicle stop an officer sees in plain view one open container, (Marijuana Joint). An officer may search the vehicle for additional open containers. Additional open marijuana containers would be the scope of the search based on training and experience; the level of odor was not consistent with one marijuana joint and the likelihood of additional open containers was highly probable. This search falls under the vehicle exception rule and exigency because the vehicle is operable, *Mincey v. carter*.

Scenario: During a consensual encounter an officer speaks with an individual in a public place. The officer detects the odor of marijuana and learns the individual is 21 or older and not on probation or parole. The officer may not search the individual as no probable cause exists to suggest the individual is in unlawful possession of marijuana. Any search would be a fishing expedition.

TIP: The officer should consider the location of the encounter; ie. high crime or known drug area and establish probable cause, based on training and experience it was highly probable the individual was in possession of marijuana for sales purposes based on the totality of circumstances. You must articulate the facts which establish the probable cause suggesting the individual would likely be in unlawful possession.

PROPOSITION 215 (The Compassionate Use Act of 1996)

A Medical Marijuana defense (Doctor's Recommendation) will supersede Proposition 64 and shall be the guiding authority. An officer is not required to terminate a marijuana investigation whenever a subject produces a valid medical marijuana defense. Instead, an officer may continue the investigation and search for evidence of sales, *People v. Strasburg*. (*Officers should be cautioned that in Strasburg, the investigation deputy articulated other factors such as the suspect's admission of smoking and seeing marijuana.*)

Scenario: After a vehicle stop an officer detects the odor of marijuana emitting from the vehicle. The driver produces a valid doctor's recommendation suggesting he/she may perhaps possess 99 plants and 10 pounds of processed marijuana. *People v. Strasburg* allows for an officer to search the driver and vehicle for evidence of marijuana sales.

TIP: If an individual claims a medical marijuana defense, you do not have to terminate the investigation. If your scope is operating under Proposition 215, (Not Proposition 64) you are legally justified to continue your investigation and search for evidence of sales, *People v. Strasburg*.

Strasburg - The court pointed out that most people who have a legitimate medical need for marijuana will not be out smoking it in public with their buddies; instead they will more likely be home, "nursing an illness with the medicinal effect of marijuana." The court believed Strasburg was using the act as a facade to conceal illegal activity.

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