



Penal Code § 17(b) and Prop 47 Reductions for Immigrants: How to take Advantage of Cal. Penal Code § 18.5

As of January 1, 2015, all one-year misdemeanor convictions will carry a potential sentence of 364 days, down one day from the prior maximum of 365. *See* Cal. Pen. C. § 18.5. The legislature specifically enacted the new 364-day maximum to eliminate certain grounds of deportability and open up potential pathways for immigration relief.¹

Though Penal Code § 18.5 will apply to all misdemeanor offenses prospectively from the date of enactment, it did not include specific language making it retroactive. Those who have already been convicted of a felony, and who now seek to reduce that felony to a misdemeanor under either Penal Code § 17(b) or Proposition 47, may still get the benefit of the new misdemeanor maximum. To do so, the reduction order, or the minute order, must specify that the sentence on the newly reduced misdemeanor carries a “maximum potential sentence of 364 days” or, alternatively, “carries a maximum potential sentence pursuant to Penal Code § 18.5.”

All felony to misdemeanor reduction orders must specify that the newly reduced misdemeanor carries a “maximum potential sentence of 364 days” or, alternatively, “carries a maximum potential sentence pursuant to Penal Code § 18.5.”

It is essential that public defender offices work with the courts and prosecutors to enact new forms that declare the maximum on the new misdemeanor, or, in lieu of that, manually annotate the order to indicate the new misdemeanor maximum. The majority of immigrants are unassisted by counsel in removal proceedings. To avoid sentence-based grounds of removability, immigrants need criminal court documents that clearly delineate the potential maximum sentence a conviction carries.

Any questions can be directed to Rose Cahn, Senior Soros Justice Fellow, Director, Immigrant Post-Conviction Relief Clinic, Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, rcahn@lccr.com.

Attached, San Francisco Prop 47 Order specifying 18.5.

¹ Among the potential immigration benefits, or new pathways to relief, that are opened up from the 1-day change: (1) A lawful permanent resident is deportable for a conviction of a crime involving moral turpitude (CMT) committed within 5 years of admission, if it has a potential sentence of 365 days or more – but *not* 364 days; (2) An undocumented person is barred from relief from deportation if convicted of CMT with potential sentence of 365 days or more – but *not* 364 days; (3) Some offenses are aggravated felonies only if a sentence of 365 days or more is imposed, including suspended sentence.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

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(COURT USE ONLY)

PEOPLE OF THE STATE OF CALIFORNIA
2T
PETITIONER

SUPERIOR COURT CASE NUMBER

2T

PETITION FOR RESENTENCING – RESPONSE AND ORDER
PETITION FOR RECLASSIFICATION – RESPONSE AND ORDER
ORDER PENAL CODE §1170.18

DATE
TIME
DEPARTMENT #

Petitioner in the above-entitled case hereby files a petition for resentencing reclassification of the felony count(s) of _____ pursuant to Penal Code §1170.18. Petitioner does not request a hearing unless the court intends to deny the relief sought.

Petitioner:

- Has completed his/her sentence and petitions to have the felony count(s) designated as a misdemeanor(s).
- Has a pending case and/or is still serving a sentence on the felony count(s) and petitions for resentencing.

Executed on: 2T _____

SIGNATURE OF ATTORNEY

District Attorney Response:

- Petitioner has completed his/her sentence and is entitled to have the felony count/s designated as misdemeanors.
- Petitioner has a pending case and/or is still serving a sentence and is entitled to resentencing.
- Petitioner is not entitled to the relief requested. Reason: _____
- A Hearing should be held to determine whether petitioner poses an unreasonable risk of danger to public safety.

Executed on: _____

SIGNATURE OF ASSISTANT DISTRICT ATTORNEY

ORDER

- The court denies the petition.
- The court grants the petition. The court finds that the petitioner is eligible for the following relief: The court reduces count/s _____ a felony offense of _____ to a misdemeanor.
- Formal probation is converted to court probation, same terms and conditions.
- Formal probation is converted to court probation, modified as follows: _____
- Formal probation continues as ordered, same terms and conditions.
- Formal probation is modified as follows: _____
- Petitioner faces a maximum potential sentence of 364 days or less. Petitioner has completed a sentence of 364 days or less.
- Probation is hereby terminated successful unsuccessful.
- The restitution fine is reduced to \$150.
- Other: _____
- Having been convicted of a misdemeanor, and having completed the sentence for this conviction, Petitioner is therefore not subject to supervision by the California Department of Corrections and Rehabilitation.
- The matter is ordered set for hearing on _____ at _____ in Dept. _____

This Order shall be set aside upon request of Petitioner.

Any felony conviction that is recalled and resentenced under §1170.18 subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Executed on: _____

JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE

The foregoing document, consisting of _____ page(s), is a full, true and correct copy of the original copy on file in this office.

Date: _____

Clerk of the Superior Court

By _____