

Proposition 36

In November of 1996, California Voters enacted Proposition 215^[1] which changed the enforcement of marijuana possession and cultivation laws to California's ill. Now, the Voters passed Proposition 36, which will protect another class of California's ill, individuals that are unfortunate enough to have drug addictions.

WHICH CONTROLLED SUBSTANCES ARE COVERED BY THE NEW LAW?

The law covers every Schedule I, II, III, IV, and V controlled substance.^[2]

WHAT TYPE OF DRUG OFFENSES ARE COVERED BY THE NEW LAW?

The law creates a special new class of drug offenses entitled "*Nonviolent Drug Possession Offense*"^[3] Anyone who is arrested and charged with violating a controlled substance law may seek relief if the offense and the individual are protected by the statute.

Anyone who is charged with an under the influence offense^[4], simple possession offense^[5], or transportation for personal use^[6], may qualify for the statute's application. Currently, transportation for personal use is not a defense to transportation offenses unless enumerated by statute.^[7]

WHICH INDIVIDUALS ARE ELIGIBLE TO BE COVERED BY THE NEW LAW?

All individuals that are convicted of a nonviolent drug possession offense as described above are eligible except those that are specifically excluded in the enumerated section of the statute.^[8]

PERSONS WHO ARE EXCLUDED:

1. Any person previously convicted of one or more serious or violent felonies.^[9]

EXCEPTION TO THE VIOLENT FELONY EXCLUSION

A. If a five year period elapses from the last time the defendant was in custody and the commission of a felony offense other than a *nonviolent drug possession offense*, then a person is eligible for the benefits of the new law.

B. The five-year “no crime period” also applies to any misdemeanor conviction involving threats of or actual physical injury of another person.^[10]

2. Any person who is convicted of any misdemeanor not related to the use of drugs or any felony.^[11] An example of this would be possession of cocaine with a loaded firearm in the vehicle. If the defendant was convicted of the firearm offense, they would be ineligible for the benefit of the statute.
3. Any person who uses a firearm while possessing cocaine, PCP, Methamphetamine, or Heroin is ineligible.^[12]
4. Any person who is under the influence of cocaine, PCP, Methamphetamine, or Heroin is ineligible.^[13]
5. Any person who refuses treatment as a condition of probation.^[14]
6. Any person who has two separate convictions for nonviolent drug offense and has twice participated in the drug treatment programs and who the court finds by clear and convincing evidence is unamenable to any and all forms of drug treatment.^[15]

WHAT BENEFITS ARE GIVEN TO THE PERSONS TAKING ADVANTAGE OF THE ACT?

The individual who successfully completes the program has the case dismissed except that they are still prevented from owning a firearm, as are all convicted felon’s. Also applicants for state licenses and peace officers must still disclose the conviction.^[16] Since they have to be disclosed, they may be used against the applicant. However, to all other employer’s the matter may be hidden from them and does not need to be reported by the applicant.

Parolees who more or less meet the nonviolent standards for non-parolee defendants may seek protection as well.^[17] This will obviously decrease the number of parol revocations due to nonviolent drug offenses committed by nonviolent parolees.

Obviously, the persons who will benefit most from this statute are individuals who are currently ineligible for diversion and persons who have fallen off diversion.

End Notes

[1]. Codified in 11362.5 of the Health and Safety Code

[2]. See 11054 through 11058 of the Health and Safety Code

[3]. Codified in newly added Penal Code section 1210(a)

[4]. See 11550 of the Health and Safety Code

[5]. See IE: §§ 11350, 11358, 11377 of the Health and Safety Code

[6]. See IE: §§ 11352, 11360, 11379, 11379.5 of the Health and Safety Code

[7]. 11360(b) of the Health and Safety Code provides for a \$100.00 fine if the marijuana is under an ounce. However, for other controlled substances, transportation for personal use is no defense. The offense of illegal transportation of heroin (Health & Saf. Code, §§ 11352), does not require a specific intent to transport contraband for the purpose of sale or distribution, rather than personal use. Absent any legislative intent to the contrary, §§ 11352 requires only a knowing transportation of heroin, whether for personal use, sale, distribution, or otherwise. See *People v Cortez* (1985, 5th Dist) 166 Cal App 3d 994, 212 Cal Rptr 692.

[8]. See newly enacted Penal Code section 1210.1 (a) & (b).

[9]. The violent felonies are enumerated in Penal Code section 667.5 and/or Penal Code section 1192.7.

[10]. See newly enacted Penal Code section 1210.1 (b)(1)(B)

[11]. See newly enacted Penal Code section 1210.1 (b)(2)

[12]. See newly enacted Penal Code section 1210.1 (b)(3)(A)

[13]. See newly enacted Penal Code section 1210.1 (b)(3)(B)

[14]. See newly enacted Penal Code section 1210.1 (b)(4)

[15]. See newly enacted Penal Code section 1210.1 (b)(5)

[\[16\]](#). See newly enacted Penal Code section 1210.1 (d)(3)

[\[17\]](#). See newly enacted Penal Code section 3063.1

-----7d71a5274168e Content-Disposition: form-data; name="section" Video