

**DESTRUCTION OR REDACTION OF JUVENILE RECORDS
PURSUANT TO HEALTH AND SAFETY CODE 11361.5**

- AUTHORITY:** Health and Safety (H&S) Code Sections 11357, 11357.5, 11360(b), 11361.5, and 11361.7
Penal Code (PC) Section 1000.2
- RESCINDS:** Procedure Manual Item 2-6-008, dated 11/20/19
- FORM:** Destruction or Redaction of Juvenile Records (F057-4207.1/Attachment)
- PURPOSE:** To outline methods for the uniform destruction of certain marijuana arrest records of youth referred to the Probation Department, as mandated by H&S 11361.5.

I. GENERAL INFORMATION

- A. Pursuant to H&S 11361.5, all records of the arrest or conviction for any violation of H&S 11357 or H&S 11360 (b), or pertaining to the arrest or conviction of any person under the age of eighteen (18) for a violation of any section of H&S 11361.5 except H&S 1357.5, shall not be kept beyond two (2) years from the date of the conviction, or from the date of the arrest if there was no conviction.
- B. The two exceptions to the above pertains to a violation of H&S 11357(d), or any other violation by a person under the age of eighteen (18) occurring upon the grounds of, or within, any school providing instruction in kindergarten through grade twelve (12) during school hours. In such instances, the record must be retained until the youth attains the age of eighteen (18), at which time the records must be destroyed.
1. The above requirements apply only to records of convictions, as well as arrests not followed by convictions, occurring on or after January 1, 1976. Records of convictions and arrests not followed by convictions occurring prior to January 1, 1976, can be destroyed only if the offender makes application to the California Department of Justice pursuant to H&S 11361.5(b).
 2. Destruction of records involves redaction of all entries or notations in records, including electronic records, regarding the arrest or conviction. Where the only entries in the record pertain to the arrest or conviction, physically destroy the entire record pursuant to H&S 11361.5(c).
 3. Do not destroy records if:

The youth, or a companion, has filed a civil action against the peace officers or law enforcement jurisdiction making arrest or instituting the prosecution and the Probation Department has received a certified copy of the complaint in the civil action. This record must be retained until the civil action has finally been resolved as indicated in H&S 11361.5(d).

II. PROCEDURE

The following process ensures compliance with the law for the destruction of case files or redaction of records:

- A. **The assigned Custody Intake deputy probation officer (DPO) (for in-custody Applications for Petitions) and the Juvenile Assessment DPO (for out-of-custody Applications for Petition)** will screen all applications for petition received in order to identify which referrals fall within the provisions of H&S 11361.5.
- B. Cases are limited to marijuana-related offenses referred pursuant to H&S 11357(a) and (b), as well as H&S 11358(a), 11359(a), and 11360(a) and (b).
- C. When an H&S 11361.5 referral is identified, the **assigned Custody Intake DPO or Juvenile Assessment DPO** will complete the attached "DESTRUCTION OR REDACTION OF JUVENILE RECORDS" Memo including:
 1. The youth's name, J/DL# (if available)
 2. Date of birth
 3. Date of arrest
 4. Date the file is to be destroyed or portions redacted
 - a. The destruction/redaction date occurs two (2) years after the arrest date.
 - b. With respect to H&S 11357(d) referrals, the file can only be destroyed or redacted after the youth is eighteen (18) years old, even if this is beyond the two (2) year period.
- D. After the memo is completed, it is routed to the [REDACTED].
- E. [REDACTED] personnel will place the memo in the appropriate "tickler" file.
- F. A few days prior to the destruction/redaction date, [REDACTED] personnel will pull the file (if available) and the "tickler" file memo and send them together to the Juvenile Administrative Unit supervising probation officer (SPO), or to the assigned field DPO via their SPO.
- G. The SPO will review the memo and the file, if available.

If the case is active, the SPO will route the memo to the assigned DPO for further processing. All inactive/terminated cases are processed by Juvenile Administrative Unit.

1. **The Juvenile Administrative Unit DPO** or the assigned field DPO determines from the file whether or not there was a conviction (or "finding") on the H&S 11361.5 matter following the arrest date of the referral as recorded on the "tickler" file memo.

2. If there was a conviction following the arrest date, the Juvenile Administrative Unit **DPO** or the assigned **field DPO** will change the destruction/redaction date, calculating the two (2) year period from the conviction date, not from the arrest date.
3. Return the file and "tickler" file memo to the [REDACTED] noting the new destruction/redaction date.
4. If it is determined that there has not been a conviction on the H&S 11361.5 referral following the arrest date, the Juvenile Administrative Unit **DPO** or the assigned **field DPO** will redact all references to the H&S 11361.5 referral from the case file.
 - a. Use liquid paper or permanent black felt marking pen for redaction of police reports, court reports, court documents and probation documents. The assigned DPO is responsible for checking and redacting all documents including [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] which reference the code section, as well as the actual title of the offense.
 - b. If a report or document references *only* the single H&S 11361.5 offense, the entire document is destroyed.
 - (1) Caution: If any other additional offense is referenced, the document is redacted, not destroyed.
 - (2) Orange County Department of Education (OCDE) referrals/records remain in the file for **five (5) years**, at **which point they can be destroyed**. However, do not destroy the file.
 - c. Indicate clearly on the Chrono History all references to the arrest and/or conviction which are to be deleted electronically the unit clerk from the Integrated Case Management System (ICMS) record.
 - (1) The simplest method is to circle in red exactly what the unit clerk is to delete.
 - (2) Following electronic redaction from ICMS, the unit clerk will reprint the Chrono History if any portion of the file is to be retained.
 - d. The unit clerk will return the file to [REDACTED] following the processing of the file.
5. If the H&S 11361.5 referral is the only matter in the file, send the file to the [REDACTED] with a notation that the entire file must be destroyed.

REFERENCES:

Procedure:	1-5-305	Retention and Destruction of Case Files
Policy:	A-1	Policy, Procedure, and the Law
	B-3	Case File Management and Security
	F-11	Sealing of Juvenile Court Records

Attachment

C. Ronald

APPROVED BY:

DESTRUCTION OR REDACTION OF JUVENILE RECORDS

TO: [REDACTED]

FROM: Custody Intake/**Juvenile Assessment DPO** (Circle One)

DATE: _____

RE: Name _____ J/DL# _____ DOB _____

Youth was arrested for violation of H&S 11357(a), 11357(b), 11357(d), 11360 (a), or 11360 (b) (circle one) on _____. On or before _____, file must be pulled and all references to that matter must be redacted, or if that matter is the only one on file, the entire file must be destroyed. Refer to Procedure Manual Item (PMI) 2-6-008 (Destruction or Redaction of Juvenile Records Pursuant to Health and Safety Code 11361.5) and H&S 11361.5.

If probation/wardship has been terminated, send file, if available, and this memo to the Juvenile Administrative Unit Supervising Probation Officer (SPO) for Destruction/Redaction. If the case is active, forward this memo to the assigned Deputy Probation Officer via their SPO for destruction or redaction of file.

In all H&S 11357(d) cases, the file must not be destroyed/redacted before the youth's 18th birthday, which occurs on _____. Pursuant to H&S 11357 (a) and (b), records must not be kept beyond two (2) years from the date of the conviction. If there was a conviction, complete the following, which indicates the new destruction/obliteration date. On or before _____ the file must be pulled and all references to the matter must be redacted/destroyed.