

RESOLUTION 14-01-2017 (REVISED)

DIGEST

Cannabis: Removing Increased Penalties for Criminal Violations of Statute

Amends Health and Safety Code sections 11358, 11359 and 11360 to eliminate increased penalties for prior convictions of marijuana-related offenses.

RESOLUTIONS COMMITTEE COMMENTS

History:

Similar to Resolution 11-04-2002, which was withdrawn, Resolutions 09-06-2006, 09-07-2006, and 03-09-2007, which were approved in principle, and Resolution 10-03-2014, which was action unnecessary.

Reasons:

This resolution amends Health and Safety Code sections 11358, 11359 and 11360 to eliminate increased penalties for prior convictions of marijuana-related offenses.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code sections 11358, 11359 and 11360 to read as follows:

1 § 11358

2 Every person who plants, cultivates, harvests, dries, or processes marijuana plants, or any
3 part thereof, except as otherwise provided by law, shall be punished as follows:

4 (a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes
5 any marijuana plants shall be punished in the same manner provided in paragraph (1) of
6 subdivision (b) of Section 11357.

7 (b) Every person at least 18 years of age but less than 21 years of age who plants,
8 cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty
9 of an infraction and a fine of not more than one hundred dollars (\$100).

10 (c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or
11 processes more than six living marijuana plants shall be punished by imprisonment in a county
12 jail for a period of not more than six months or by a fine of not more than five hundred dollars
13 (\$500), or by both such fine and imprisonment.

14 (d) Notwithstanding subdivision (c), a person 18 years of age or over who plants,
15 cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof,
16 except as otherwise provided by law, may be punished by imprisonment pursuant to subdivision
17 (h) of Section 1170 of the Penal Code if:

18 (1) ~~The person has one or more prior convictions for an offense specified in clause (iv) of~~
19 ~~subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an~~

20 ~~offense requiring registration pursuant to subdivision (e) of Section 290 of the Penal Code;~~
21 ~~(2) The person has two or more prior convictions under subdivision (e); or~~
22 (3) The offense resulted in any of the following:
23 (A) Violation of Section 1052 of the Water Code relating to illegal diversion of water;
24 (B) Violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to
25 discharge of waste;
26 (C) Violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and
27 Game Code relating to waters of the state;
28 (D) Violation of Section 1602 of the Fish and Game Code relating to rivers, streams and
29 lakes;
30 (E) Violation of Section 374.8 of the Penal Code relating to hazardous substances or
31 Section 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;
32 (F) Violation of Section 2080 of the Fish and Game Code relating to endangered and
33 threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird
34 Treaty Act; or
35 (G) Intentionally or with gross negligence causing substantial environmental harm to
36 public lands or other public resources.

37
38 § 11359

39 Every person who possesses for sale any marijuana, except as otherwise provided by law,
40 shall be punished as follows:

41 (a) Every person under the age of 18 who possesses marijuana for sale shall be punished
42 in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

43 (b) Every person 18 years of age or over who possesses marijuana for sale shall be
44 punished by imprisonment in a county jail for a period of not more than six months or by a fine
45 of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

46 (c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses
47 marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170
48 of the Penal Code if:

49 ~~(1) The person has one or more prior convictions for an offense specified in clause (iv) of~~
50 ~~subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an~~
51 ~~offense requiring registration pursuant to subdivision (e) of Section 290 of the Penal Code;~~

52 ~~(2) The person has two or more prior convictions under subdivision (b); or~~

53 (3) The offense occurred in connection with the knowing sale or attempted sale of
54 marijuana to a person under the age of 18 years.

55 (d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses
56 marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170
57 of the Penal Code if the offense involves knowingly hiring, employing, or using a person 20
58 years of age or younger in unlawfully cultivating, transporting, carrying, selling, offering to sell,
59 giving away, preparing for sale, or peddling any marijuana.

60
61 § 11360

62 (a) Except as otherwise provided by this section or as authorized by law, every person
63 who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to
64 transport, import into this state, sell, furnish, administer, or give away, or attempts to import into
65 this state or transport any marijuana shall be punished as follows:

66 (1) Persons under the age of 18 years shall be punished in the same manner as provided
67 in paragraph (1) of subdivision (b) of Section 11357.

68 (2) Persons 18 years of age or over shall be punished by imprisonment in a county jail for
69 a period of not more than six months or by a fine of not more than five hundred dollars (\$500),
70 or by both such fine and imprisonment.

71 (3) Notwithstanding paragraph (2), a person 18 years of age or over may be punished by
72 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two,
73 three or four years if:

74 ~~(A) The person has one or more prior convictions for an offense specified in clause (iv)~~
75 ~~of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for~~
76 ~~an offense requiring registration pursuant to subdivision (e) of Section 290 of the Penal Code;~~

77 ~~(B) The person has two or more prior convictions under paragraph (2);~~

78 (C) The offense involved the knowing sale, attempted sale, or the knowing offer to sell,
79 furnish, administer or give away marijuana to a person under the age of 18 years; or

80 (D) The offense involved the import, offer to import, or attempted import into this state,
81 or the transport for sale, offer to transport for sale, or attempted transport for sale out of this
82 state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.

83 (b) Except as authorized by law, every person who gives away, offers to give away,
84 transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana,
85 other than concentrated cannabis, is guilty of an infraction and shall be punished by a fine of not
86 more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of
87 this subdivision and does not demand to be taken before a magistrate, such person shall be
88 released by the arresting officer upon presentation of satisfactory evidence of identity and giving
89 his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and
90 shall not be subjected to booking.

91 (c) For purposes of this section, “transport” means to transport for sale.

92 (d) This section does not preclude or limit prosecution for any aiding and abetting or
93 conspiracy offenses.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: This law singles out individuals with prior convictions for increased punishment based solely on their status of being previously convicted. Certain populations that have been excessively impacted by the “war on drugs,” as well as those communities that bore the brunt of the early medical marijuana fight will be unfairly and disproportionately affected by this law.

This law singles out those with prior felony convictions and treats them differently. Cannabis was only recently legalized and many of the legalization movement’s most ardent advocates were convicted of felonies during the pursuit of legalization. The modern-day cannabis legalization movement is rooted in the AIDS epidemic, which decimated the LGBT community in the early 80s. One brave advocate during this time, Mary Jane Rathburn, popularly known as Brownie Mary, was a hospital volunteer at San Francisco General Hospital, known for illegally

baking and distributing cannabis brownies to AIDS patients. Rathbun was arrested on three occasions. Her arrests generated interest in the medical community and motivated researchers to propose one of the first clinical trials to study the effects of cannabinoids in HIV-infected adults. This law punishes people like Brownie Mary, someone the LGBT community needed both to care for its sick and dying and to push the legalization of cannabis forward so that others may medicate without fear of arrest. This law overlooks the sacrifices of people like Brownie Mary and many others, many of whom are members of the LGBT community and punishes them for their early humanitarian efforts.

In addition to the excessive impact this law will have on the LGBT community, statistics show that minorities, most notably African Americans, have been unjustly affected by the war on drugs. These communities have suffered for years from disproportionate arrest rates, which take a toll on their families, community relations, and personal lives. This law furthers that inequity by allowing for increased penalties to be enforced against certain historically disproportionately impacted communities and only serves to further the United States' mass over-incarceration problem, despite the fact that the underlying harm for this victimless crime is no different, regardless of one's status as a prior felon or not.

The Solution: This resolution would allow for equal treatment for all individuals convicted under this law, regardless of the existence of any past felony conviction.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

AB 64 (Cooley, Jones-Sawyer, Lackey, and Wood) 2016 - Cannabis: medical and nonmedical: regulation and advertising – Filed with Secretary of State on December 12, 2016.

AB 266 (Bonta) - 2015- Medical Marijuana - Filed by Secretary of State on October 9, 2015

AB 243 (Wood) - 2015 - Medical Marijuana - Filed with Secretary of State on October 09, 2015.

SB 243 (McGuire) - 2016 Medical Marijuana - Filed with Secretary of State on October 09, 2015

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