

## RESOLUTION 16-04-2017

### DIGEST

#### Offender Registry: Elimination of Narcotic Offender Registration

Deletes Health and Safety Code Sections 11590, 11592, 11593 and 11595, and amends sections 11591, 11591.5 and 11594 relating to narcotic offender registration and reporting requirements.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution deletes Health and Safety Code sections 11590, 11592, 11593 and 11595, and amends sections 11591, 11591.5 and 11594 relating to narcotic offender registration and reporting requirements. This resolution should be approved in principle because the narcotics offender registration requirement is archaic, counterproductive, and rarely enforced.

Health and Safety Code sections 11590 et seq. requires a person convicted of certain drug offenses to register with their local police department as a “narcotics offender.” Local law enforcement is required to notify the superintendent of a school district or community college district if one of its employees has been arrested for certain drug offenses.

This resolution would eliminate the narcotics offender registration requirement and require law enforcement agencies to destroy registration records it has on narcotic offenders. The report to the school superintendents would be required only upon an employee’s conviction, rather than arrest, for certain drug offenses.

Unlike sex offender registration, which arguably serves some purpose by tracking the location of people convicted of sex offenses, registration of narcotic offenders accomplishes nothing. These registrations are simply recorded on the same criminal history printout that already lists the person’s underlying drug conviction. There is no “Megan’s Law” website for narcotics offenders, no statutory scheme to create one, and no reason to do so. Law enforcement officers already have access to a person’s criminal history; they have no need for an additional “narcotics offender” entry on the rap sheet.

In addition, California’s drug policies have shifted dramatically. The current narcotics offender registration requirement does not comport with the new focus on treatment instead of punishment. Eliminating the registration requirement would free up some of these resources, refocus priorities and end unnecessary records keeping.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to repeal Health and Safety Code sections 11590, 11592, 11593, 11595 and amend sections 11591, 11591.5 and 11594 as follows:

1 § 11590

2 (a) Except as provided in subdivisions (c) and (d), any person who is convicted in the  
3 State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353,  
4 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5,  
5 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or  
6 subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal  
7 institution where he or she was confined because of the commission of any such offense, or any  
8 person who is convicted in any other state of any offense which, if committed or attempted in  
9 this state, would have been punishable as one or more of the above mentioned offenses, shall  
10 within 30 days of his or her coming into any county or city, or city and county in which he or she  
11 resides or is temporarily domiciled for that length of time, register with the chief of police of the  
12 city in which he or she resides or the sheriff of the county if he or she resides in an  
13 unincorporated area. For persons convicted of an offense defined in Section 11377, 11378,  
14 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances  
15 specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision  
16 (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For  
17 persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not  
18 apply if the conviction was for transporting, offering to transport, or attempting to transport a  
19 controlled substance.

20 (b) Any person who is convicted in any federal court of any offense which, if committed  
21 or attempted in this state would have been punishable as one or more of the offenses enumerated  
22 in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and  
23 county in which he or she resides or is temporarily domiciled for that length of time, register  
24 with the chief of police of the city in which he or she resides or the sheriff of the county if he or  
25 she resides in an unincorporated area.

26 (c) This section does not apply to a conviction of a misdemeanor under Section 11357,  
27 11360, or 11377.

28 (d) The registration requirements imposed by this section for the conviction of offenses  
29 defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6,  
30 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and  
31 after January 1, 1990.

32  
33 § 11591

34 Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon  
35 the arrest conviction for any of the following controlled substance offenses enumerated in  
36 Section 11590, 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357,  
37 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5,  
38 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section  
39 11377 or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of  
40 Section 11054, of any school employee, shall, provided that he or she knows that the arrestee is  
41 a school employee, do one of the following:

42 (a) If the school employee is a teacher in any of the public schools of this state, the  
43 sheriff, chief of police, or Commissioner of the California Highway Patrol shall  
44 immediately notify by telephone the superintendent of schools of the school district employing  
45 the teacher and shall immediately give written notice of the arrest to the Commission on

46 Teacher Credentialing and to the superintendent of schools in the county where the person is  
47 employed. Upon receipt of the notice, the county superintendent of schools and the Commission  
48 on Teacher Credentialing shall immediately notify the governing board of the school district  
49 employing the person.

50 (b) If the school employee is a nonteacher in any of the public schools of this state, the  
51 sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately  
52 notify by telephone the superintendent of schools of the school district employing the nonteacher  
53 and shall immediately give written notice of the ~~arrest~~ conviction to the governing board of the  
54 school district employing the person.

55 (c) If the school employee is a teacher in any private school of this state, the sheriff,  
56 chief of police, or Commissioner of the California Highway Patrol shall immediately notify by  
57 telephone the private school authority employing the teacher and shall immediately give written  
58 notice of the conviction ~~arrest~~ to the private school authority employing the teacher.

59

60 § 11591.5

61 Every sheriff or chief of police, upon the ~~arrest~~ conviction for any of  
62 the following controlled substance offenses ~~enumerated in Section 11590, 11350, 11351,~~  
63 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361,  
64 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6,  
65 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377 or Section 11364, insofar  
66 as that section relates to paragraph (9) of subdivision (d) of Section 11054, of any teacher or  
67 instructor employed in any community college district shall immediately notify by telephone the  
68 superintendent of the community college district employing the teacher or instructor and shall  
69 immediately give written notice of the conviction ~~arrest~~ to the Office of the Chancellor of the  
70 California Community Colleges. Upon receipt of such notice, the district superintendent shall  
71 immediately notify the governing board of the community college district employing the person.

72

73 § 11592

74 ~~Any person who, on or after the effective date of this section is discharged or paroled~~  
75 ~~from a jail, prison, school, road camp, or other institution where he or she was confined because~~  
76 ~~of the commission or attempt to commit one of the offenses described in Section 11590 shall,~~  
77 ~~prior to such discharge, parole, or release, be informed of his or her duty to register under that~~  
78 ~~section by the official in charge of the place of confinement and the official shall require the~~  
79 ~~person to read and sign such form as may be required by the Department of Justice, stating that~~  
80 ~~the duty of the person to register under this section has been explained to him or her. The official~~  
81 ~~in charge of the place of confinement shall obtain the address where the person expects to reside~~  
82 ~~upon his or her discharge, parole, or release and shall report that address to the Department of~~  
83 ~~Justice. The official in charge of the place of confinement shall give one copy of the form to the~~  
84 ~~person, and shall send two copies to the Department of Justice, which, in turn, shall forward one~~  
85 ~~copy to the appropriate law enforcement agency having local jurisdiction where the person~~  
86 ~~expects to reside upon his or her discharge, parole, or release.~~

87

88 § 11593

89 ~~Any person who, on or after the effective date of this section is convicted in the State of~~  
90 ~~California of the commission or attempt to commit any of the above mentioned offenses and~~  
91 ~~who is released on probation or discharged upon payment of a fine shall, prior to such release or~~

92 discharge, be informed of his duty to register under Section 11590 by the court in which he has  
93 been convicted and the court shall require the person to read and sign such form as may be  
94 required by the Department of Justice, stating that the duty of the person to register under this  
95 section has been explained to him. The court shall obtain the address where the person expects to  
96 reside upon his release or discharge and shall report within three days such address to the  
97 Department of Justice. The court shall give one copy of the form to the person, and shall send  
98 two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate  
99 law enforcement agency having local jurisdiction where the person expects to reside upon his  
100 discharge, parole, or release.

101  
102 § 11594

103 The registration required by Section 11590 shall consist of (a) a statement in writing  
104 signed by such person, giving such information as may be required by the Department of Justice,  
105 and (b) the fingerprints and photograph of such person. Within three days thereafter the  
106 registering law enforcement agency shall forward such statement, fingerprints and photograph to  
107 the Department of Justice. If any person required to register hereunder changes his residence  
108 address he shall inform, in writing within 10 days, the law enforcement agency with whom he  
109 last registered of his new address. The law enforcement agency shall, within three days after  
110 receipt of such information, forward it to the Department of Justice. The Department of Justice  
111 shall forward appropriate registration data to the law enforcement agency having local  
112 jurisdiction of the new place of residence. All registration requirements set forth in this article  
113 shall are terminated immediately upon the effective date of the repeal of the registration  
114 requirement, terminate five years after the discharge from prison, release from jail or termination  
115 of probation or parole of the person convicted. Nothing in this section shall be construed to  
116 conflict with the provisions of Section 1203.4 of the Penal Code concerning termination of  
117 probation and release from penalties and disabilities of probation. Any person required to register  
118 under the provisions of this section who shall knowingly violate any of the provisions thereof is  
119 guilty of a misdemeanor. The statements, photographs and fingerprints herein required shall not  
120 be open to inspection by the public or by any person other than a regularly employed peace or  
121 other law enforcement officer. The statements, photographs and fingerprints herein required  
122 shall be destroyed not later than two years after the effective date of the repeal of the registration  
123 requirement.

124  
125 § 11595

126 The provisions of former Article 6 (commencing with Section 11850) of Chapter 7 of  
127 Division 10 of this code, which is repealed by the act that adds this article, including Section  
128 11850 as amended by Chapter 796 of the Statutes of 1972, shall remain in effect as to any person  
129 who comes within such provisions. Notwithstanding Section 9605 of the Government Code, the  
130 changes which are made in former Section 11850 by Chapter 796 of the Statutes of 1972 shall be  
131 effective and operative for the purposes of this section.

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

**PROPONENT:** Los Angeles County Bar Association

## **STATEMENT OF REASONS**

The Problem: Section 11590 is an antiquated statute which serves no useful purpose. Under current law, people convicted of drug-related offenses are required to register as “narcotics offenders” with the police. Unlike sex-offender registration (which arguably serves some purpose by tracking the location of people convicted of sex-offenses) narcotics registration accomplishes nothing, since the narcotics registration is simply recorded on the same RAP sheet that already reflects the person’s underlying drug conviction and people who register are not subsequently tracked. Worse, the current requirement wastes police resources by requiring officers to spend time and money “registering” people with drug problems instead of preventing new crime. In reality, Section 11590 is a relic of a time when the political approach to drug addiction was to demonize drug users. Fortunately, this is no longer the case. The electorate recently approved two ballot measures, Proposition 47 and 64, both of which reflect society’s recognition that drug use is the result of an illness, and recidivism is prevented with treatment rather than a revolving door of incarceration. Penal Code section 11590 is simply inconsistent with this wave of reform and is long overdue for repeal.

The Solution: Repeal of this section and let police spend their time, effort and taxpayer money preventing crime, while letting those convicted of drug offenses spend their time seeking treatment.

## **IMPACT STATEMENT**

This proposed resolution does not affect any other law, statute or rule.

## **CURRENT OR PRIOR RELATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Robin Bernstein-Lev, Los Angeles County Public Defender, 320 W. Temple Street, Suite 590, Los Angeles CA 90012, phone 213-893-2545, e-mail [rbernstein-lev@pubdef.lacounty.gov](mailto:rbernstein-lev@pubdef.lacounty.gov)

**RESPONSIBLE FLOOR DELEGATE:** Robin Bernstein-Lev