

ASSEMBLY BILL

No. 1706

Introduced by Assembly Member Mia Bonta

January 26, 2022

An act to amend Section 11361.9 of, and to add Section 11361.6 to, the Health and Safety Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 1706, as introduced, Mia Bonta. Cannabis crimes: resentencing.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, and use of cannabis for nonmedical purposes by individuals 21 years of age and older. Under AUMA, a person 21 years of age or older may, among other things, possess, process, transport, purchase, obtain, or give away, as specified, up to 28.5 grams of cannabis and up to 8 grams of concentrated cannabis. Existing law authorizes a person to petition for the recall or dismissal of a sentence, dismissal and sealing of a conviction, or redesignation of a conviction of an offense for which a lesser offense or no offense would be imposed under AUMA.

Existing law, on or before July 1, 2019, requires the Department of Justice to review the records in the state summary criminal history information database to identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation. Existing law gives the prosecution until July 1, 2020, to review all cases and determine whether to challenge the recall, dismissal, or sealing. Existing law requires the court to reduce or dismiss a sentence that has not been challenged by July 1, 2020.

This bill would deem a case to have been reduced or dismissed as of January 1, 2023, if the case has been reviewed and the prosecution has not challenged or if the case has not been reviewed and would require the court to update its records accordingly and to notify the Department of Justice. The bill would require the Department of Justice, on or before July 1, 2023, to complete the update of the state summary criminal history information database, and notify all third parties that access that data to ensure that inaccurate criminal history is not reported. The bill would require the department to conduct a broad public awareness campaign so that individuals impacted by this process become aware of updates to their criminal history. The bill would require the Judicial Council to monitor the process and produce a monthly report to the Legislature, as specified.

Existing law makes it a crime to rent, lease, or make available a space for the purpose of unlawfully manufacturing, storing, or distributing a controlled substance, or to conspire to commit specified crimes.

This bill would authorize a person to petition for the reduction of a felony conviction for the above crimes, when the underlying crime involved cannabis, to a misdemeanor. The bill would require the Department of Justice, no later than July 1, 2023, to review the records in the state summary criminal history information database and to identify past convictions that are potentially eligible for redesignation and notify the prosecution that those convictions are eligible for reduction. The bill would require the prosecution to determine whether to challenge the reduction on or before January 1, 2024, and would require the court to reduce the unchallenged conviction on or before July 1, 2024, and to resolve the challenged convictions on or before January 1, 2025. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11361.6 is added to the Health and Safety
2 Code, to read:

3 11361.6. (a) A person currently serving a felony sentence in
4 state prison or pursuant to subdivision (h) of Section 1170 of the
5 Penal Code for a conviction, whether by trial or by open or
6 negotiated plea, for a violation of Section 11366.5 or Section 182
7 of the Penal Code may petition for a recall of the sentence and
8 resentencing as a misdemeanor before the trial court that entered
9 the judgment of conviction if the offense involved cannabis and
10 no other controlled substance.

11 (b) Upon receiving a petition under subdivision (a), the court
12 shall presume the petitioner satisfies the criteria in subdivision (a)
13 unless the party opposing the petition proves by clear and
14 convincing evidence that the petitioner does not satisfy the criteria.
15 If the petitioner satisfies the criteria in subdivision (a), the court
16 shall grant the petition to recall the sentence because it is legally
17 invalid unless the court determines that granting the petition would
18 pose an unreasonable risk of danger to public safety.

19 (1) In exercising its discretion, the court may consider, but shall
20 not be limited to, evidence provided for in subdivision (b) of
21 Section 1170.18 of the Penal Code.

22 (2) As used in this section, “unreasonable risk of danger to
23 public safety” has the same meaning as provided in subdivision
24 (c) of Section 1170.18 of the Penal Code.

25 (c) A person who is serving a sentence and is resentenced
26 pursuant to subdivision (b) shall be given credit for any time
27 already served.

28 (d) Resentencing under this section shall not result in the
29 imposition of a term longer than the original sentence, or the
30 reinstatement of charges dismissed pursuant to a negotiated plea
31 agreement.

32 (e) A person who has completed their sentence for a felony
33 violation of Section 11366.5 or Section 182 of the Penal Code,
34 may file an application before the trial court that entered the
35 judgment of conviction in their case to have the conviction
36 redesignated as a misdemeanor.

37 (1) The court shall presume the petitioner satisfies the criteria
38 in subdivision (e) unless the party opposing the application proves

1 by clear and convincing evidence that the petitioner does not satisfy
2 the criteria in this subdivision. Once the applicant satisfies the
3 criteria in this subdivision, the court shall redesignate the
4 conviction as a misdemeanor.

5 (2) Unless requested by the applicant, no hearing is necessary
6 to grant or deny an application filed under this subdivision.

7 (f) A felony conviction that is recalled and resentenced under
8 subdivision (b) or redesignated as a misdemeanor under subdivision
9 (e) shall be considered a misdemeanor for all purposes.

10 (g) (1) On or before July 1, 2023, the Department of Justice
11 shall review the records in the state summary criminal history
12 information database and shall identify past convictions that are
13 potentially eligible for redesignation pursuant to this section. The
14 department shall notify the prosecution of all cases in their
15 jurisdiction that are eligible for redesignation.

16 (2) The prosecution shall have until January 1, 2024, to review
17 all cases and determine whether to challenge the redesignation.
18 The prosecution may challenge the redesignation when the person
19 does not meet the criteria for redesignation or presents an
20 unreasonable risk to public safety, as defined in Section 1170.18
21 of the Penal Code.

22 (3) On or before January 1, 2024, the prosecution shall inform
23 the court and the public defender's office in their county when
24 they are challenging a particular redesignation. The public
25 defender's office, upon receiving notice from the prosecution, shall
26 make a reasonable effort to notify the person whose redesignation
27 is being challenged. Redesignations that are challenged by the
28 prosecution shall be resolved and either the application dismissed
29 or the redesignation granted on or before January 1, 2025.

30 (4) A redesignation that is not challenged as of January 1, 2024,
31 shall be deemed redesignated as a misdemeanor pursuant to this
32 section and the court shall, on or before July 1, 2024, update its
33 records and inform the Department of Justice of the redesignation.

34 (h) If the court that originally sentenced the petitioner is not
35 available, the presiding judge shall designate another judge to rule
36 on the petition or application.

37 (i) (1) This section does not diminish or abrogate any rights or
38 remedies otherwise available to the petitioner or applicant.

39 (2) A resentencing hearing pursuant to this section shall
40 constitute a "post-conviction release proceeding" under paragraph

1 (7) of subdivision (b) of Section 28 of Article I of the California
2 Constitution (Marsy’s Law).

3 (j) The provisions of this section shall apply equally to juvenile
4 delinquency adjudications and dispositions under Section 602 of
5 the Welfare and Institutions Code.

6 (k) The department shall post general information on its internet
7 website about the redesignation authorized in this section.

8 (l) The Judicial Council shall promulgate and make available
9 all necessary forms to enable the filing of the petitions and
10 applications provided in this section.

11 SEC. 2. Section 11361.9 of the Health and Safety Code is
12 amended to read:

13 11361.9. (a) On or before July 1, 2019, the Department of
14 Justice shall review the records in the state summary criminal
15 history information database and shall identify past convictions
16 that are potentially eligible for recall or dismissal of sentence,
17 dismissal and sealing, or redesignation pursuant to Section 11361.8.
18 The department shall notify the prosecution of all cases in their
19 jurisdiction that are eligible for recall or dismissal of sentence,
20 dismissal and sealing, or redesignation.

21 (b) The prosecution shall have until July 1, 2020, to review all
22 cases and determine whether to challenge the recall or dismissal
23 of sentence, dismissal and sealing, or redesignation.

24 (c) (1) The prosecution may challenge the resentencing of a
25 person *who is still serving a sentence* pursuant to this section when
26 the person does not meet the criteria established in Section ~~11361.8~~
27 ~~or presents an unreasonable risk to public safety.~~ *11361.8.*

28 ~~(2) The prosecution may challenge the dismissal and sealing or~~
29 ~~redesignation of a person pursuant to this section who has~~
30 ~~completed his or her sentence for a conviction when the person~~
31 ~~does not meet the criteria established in Section 11361.8.~~

32 ~~(3)~~

33 (2) On or before July 1, 2020, the prosecution shall ~~inform~~ *do*
34 *both of the following:*

35 (A) *Inform* the court and the public defender’s office in their
36 county when they are challenging a particular recall or dismissal
37 of sentence, dismissal and sealing, or redesignation. ~~The~~
38 ~~prosecution shall inform~~

1 (B) Inform the court when they are not challenging a particular
 2 recall or dismissal of sentence, dismissal and sealing, or
 3 redesignation.

4 ~~(4)~~

5 (3) The public defender’s office, upon receiving notice from
 6 the prosecution pursuant to paragraph~~(3)~~, (2), shall make a
 7 reasonable effort to notify the person whose ~~resentencing or~~
 8 ~~dismissal~~ *resentencing, dismissal, or sealing* is being challenged.

9 (d) (1) If the prosecution does not challenge the recall or
 10 dismissal of sentence, dismissal and sealing, or redesignation by
 11 July 1, 2020, the court shall reduce or dismiss the conviction
 12 pursuant to Section 11361.8.

13 (2) *As of January 1, 2023, the sentence shall be deemed to have*
 14 *been reduced or dismissed pursuant to this section if either of the*
 15 *following apply:*

16 (A) *The case has been reviewed and the prosecution has not*
 17 *challenged the resentencing, dismissal, or sealing.*

18 (B) *The case is eligible for relief pursuant to this section, but*
 19 *has not been reviewed.*

20 (3) *On or before January 1, 2023, the court shall update its*
 21 *records in accordance with paragraph (2) and shall report all*
 22 *cases where the sentence has been reduced, dismissed, or sealed*
 23 *pursuant to that paragraph to the Department of Justice for*
 24 *adjustment of the state summary criminal history information*
 25 *database. On or before July 1, 2023, the Department of Justice*
 26 *shall complete the update of the state summary criminal history*
 27 *information database, and shall notify all third parties that access*
 28 *the data to ensure that inaccurate criminal history is not reported.*

29 (4) (A) *For cases that have been reviewed and the prosecution*
 30 *has challenged the sealing but the court has not proceeded, the*
 31 *sentence shall be deemed to have been sealed pursuant to Section*
 32 *11361.8.*

33 (B) *For cases that have been reviewed and the prosecution has*
 34 *challenged the reduction or dismissal, the court shall hear and*
 35 *decide on the case on or before July 1, 2023.*

36 ~~(f)~~

37 (e) The department shall post general information on its ~~Internet~~
 38 ~~Web site~~ *internet website* about the recall or dismissal of sentences,
 39 dismissal and sealing, or redesignation authorized in this section.
 40 *The department shall conduct a broad public awareness campaign*

1 *so that individuals impacted by this process become aware of*
2 *updates to their criminal history. If an individual has a case sealed*
3 *pursuant to this section, they may treat it as though the case never*
4 *occurred, without penalty.*

5 *(f) The Judicial Council shall monitor the process and produce*
6 *a monthly report to the Legislature that includes, but is not limited*
7 *to, tracking of the following metrics:*

8 *(1) Status of cases reduced, dismissed, or sealed.*

9 *(2) Status of cases challenged by the prosecution and*
10 *presumptively sealed or heard by a court for dismissal or*
11 *reduction.*

12 *(3) The status of the Department of Justice's update to the state*
13 *summary criminal history database.*

14 *(4) The status of the public awareness campaign to provide*
15 *notification to impacted individuals.*

16 *(g) It is the intent of the Legislature that persons who are*
17 *currently serving a sentence or who proactively petition for a recall*
18 *or dismissal of sentence, dismissal and sealing, or redesignation*
19 *pursuant to Section 11361.8 be prioritized for review.*

20 SEC. 3. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.