

AMENDED IN SENATE APRIL 23, 2014

SENATE BILL

No. 1193

Introduced by Senator Evans

February 20, 2014

An act to amend ~~Section~~ *Sections 11473.5 and 11479* of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1193, as amended, Evans. Controlled substances: destruction of seized ~~substances~~; *marijuana: cause of action*.

~~Existing~~

(1) *Existing* law, the Uniform Controlled Substances Act, includes provisions authorizing the forfeiture and seizure of property involved in, or purchased with the proceeds from, a controlled substance offense. Existing law authorizes the destruction of seized substances suspected to be controlled substances in excess of 10 pounds in gross weight, subject to specified requirements.

Existing law requires that, prior to destruction of a suspected controlled substance, the law enforcement agency take at least 5 random and representative samples, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed in addition to the 10 pounds the law enforcement agency is required to retain.

Existing law requires, when the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10-pound sample (which may include stalks, branches, or leaves) and 5 representative samples consisting of leaves or buds to be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed by the law enforcement agency.

This bill would instead require that, prior to the destruction of a suspected controlled substance, including growing or harvested marijuana plants, the law enforcement agency take at least ~~10~~ *one 2-pound sample and 5* random and representative samples, and would authorize the agency to destroy the remainder of the substance in excess of those ~~10 samples~~ remainder. *The bill would require that counsel for the defendant have an opportunity to examine the evidence for 30 days from the date the growing or harvested marijuana was seized before destruction if there are criminal proceedings pending which pertain to the seized marijuana to be destroyed. By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.*

(2) Existing law requires all seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance that are in the possession of a city, county, or state official as a result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction be destroyed by order of the court unless the court finds that the controlled substances, instruments, or paraphernalia were lawfully possessed by the defendant.

This bill would require that any marijuana, instrument, or paraphernalia seized that was lawfully possessed by a defendant be returned to the defendant if the case is dismissed or the defendant is acquitted based on a defense or protection provided in the Compassionate Use Act of 1996 or the Medical Marijuana Program, as provided. If the marijuana, instrument, or paraphernalia was damaged or destroyed, the bill would entitle the defendant to receive reasonable compensation for the damage or loss.

(3) 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 these statutory provisions.

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

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

1 *SECTION 1. Section 11473.5 of the Health and Safety Code*
2 *is amended to read:*

3 11473.5. (a) All seizures of controlled substances, instruments,
4 or paraphernalia used for unlawfully using or administering a
5 controlled substance—~~which~~ *that* are in possession of—~~any~~ *a* city,
6 county, or state official as found property, or as the result of a case
7 in which no trial was had or which has been disposed of by way
8 of dismissal or otherwise than by way of conviction, shall be
9 destroyed by order of the court, unless the court finds that the
10 controlled substances, instruments, or paraphernalia were lawfully
11 possessed by the defendant.

12 *(b) In a criminal prosecution in which the defendant was*
13 *acquitted or the case dismissed based on a defense or protection*
14 *provided under Section 11362.5 or Article 2.5 (commencing with*
15 *Section 11362.7) of Chapter 6, the following shall apply:*

16 *(1) Any marijuana, instrument, or paraphernalia seized in the*
17 *case that was lawfully possessed by the defendant shall be returned*
18 *to him or her.*

19 *(2) If any marijuana, instrument, or paraphernalia was damaged*
20 *or destroyed, the defendant shall receive reasonable compensation*
21 *for the damage or loss.*

22 ~~(b)~~

23 *(3) A claim pursuant to this subdivision shall be presented not*
24 *later than six months after acquittal or dismissal in the case.*

25 *(c) If the court finds that the property was not lawfully possessed*
26 *by the defendant, law enforcement may request of the court that*
27 *certain uncontaminated instruments or paraphernalia be*
28 *relinquished to a school or school district for science classroom*
29 *education in lieu of destruction.*

30 *SEC. 2. Section 11479 of the Health and Safety Code is*
31 *amended to read:*

32 11479. Notwithstanding—~~Sections~~ *Section 11473 and*
33 *subdivisions (a) and (c) of Section 11473.5, at any time after*
34 *seizure by a law enforcement agency of a suspected controlled*
35 *substance, that amount in excess of 10 pounds in gross weight,*
36 *and in the case of growing or harvested marijuana, only that*
37 *amount in excess of two pounds, may be destroyed without a court*
38 *order by the chief of the law enforcement agency or a designated*

1 subordinate. Destruction shall not take place pursuant to this section
2 until all of the following requirements are satisfied:

3 (a) At least five random and representative samples have been
4 taken, for evidentiary purposes, from the total amount of suspected
5 controlled substances to be destroyed. These samples shall be in
6 addition to the 10 pounds required above. When the suspected
7 controlled substance consists of growing or harvested marijuana
8 plants, at least one ~~to~~ *two* pound sample (which may include stalks,
9 branches, or leaves) and five representative samples consisting of
10 leaves or buds shall be retained for evidentiary purposes from the
11 total amount of suspected controlled substances to be destroyed
12 *and counsel for the defendant shall have 30 days from the date the*
13 *growing or harvested marijuana was seized to examine the*
14 *evidence before destruction if there are criminal proceedings*
15 *pending which pertain to the seized growing or harvested*
16 *marijuana to be destroyed.*

17 (b) Photographs have been taken which reasonably demonstrate
18 the total amount of the suspected controlled substance to be
19 destroyed.

20 (c) The gross weight of the suspected controlled substance has
21 been determined, either by actually weighing the suspected
22 controlled substance or by estimating that weight after dimensional
23 measurement of the total suspected controlled substance.

24 (d) The chief of the law enforcement agency has determined
25 that it is not reasonably possible to preserve the suspected
26 controlled substance in place, or to remove the suspected controlled
27 substance to another location. In making this determination, the
28 difficulty of transporting and storing the suspected controlled
29 substance to another site and the storage facilities may be taken
30 into consideration.

31 Subsequent to any destruction of a suspected controlled substance
32 pursuant to this section, an affidavit shall be filed within 30 days
33 in the court which has jurisdiction over any pending criminal
34 proceedings pertaining to that suspected controlled substance,
35 reciting the applicable information required by subdivisions (a),
36 (b), (c), and (d) together with information establishing the location
37 of the suspected controlled substance, and specifying the date and
38 time of the destruction. In the event that there are no criminal
39 proceedings pending which pertain to that suspected controlled
40 substance, the affidavit may be filed in any court within the county

1 which would have jurisdiction over a person against whom those
2 criminal charges might be filed.

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

8 ~~SECTION 1. Section 11479 of the Health and Safety Code is~~
9 ~~amended to read:~~

10 ~~11479. Notwithstanding Sections 11473 and 11473.5, at any~~
11 ~~time after seizure by a law enforcement agency of a suspected~~
12 ~~controlled substance, that amount in excess of the 10 random and~~
13 ~~representative samples described in subdivision (a) may be~~
14 ~~destroyed without a court order by the chief of the law enforcement~~
15 ~~agency or a designated subordinate. Destruction shall not take~~
16 ~~place pursuant to this section until all of the following requirements~~
17 ~~are satisfied:~~

18 ~~(a) At least 10 random and representative samples have been~~
19 ~~taken, for evidentiary purposes, from the total amount of suspected~~
20 ~~controlled substances to be destroyed.~~

21 ~~(b) Photographs have been taken which reasonably demonstrate~~
22 ~~the total amount of the suspected controlled substance to be~~
23 ~~destroyed.~~

24 ~~(c) The gross weight of the suspected controlled substance has~~
25 ~~been determined, either by actually weighing the suspected~~
26 ~~controlled substance or by estimating that weight after dimensional~~
27 ~~measurement of the total suspected controlled substance.~~

28 ~~(d) The chief of the law enforcement agency has determined~~
29 ~~that it is not reasonably possible to preserve the suspected~~
30 ~~controlled substance in place, or to remove the suspected controlled~~
31 ~~substance to another location. In making this determination, the~~
32 ~~difficulty of transporting and storing the suspected controlled~~
33 ~~substance to another site and the storage facilities may be taken~~
34 ~~into consideration.~~

35 ~~Subsequent to any destruction of a suspected controlled substance~~
36 ~~pursuant to this section, an affidavit shall be filed within 30 days~~
37 ~~in the court which has jurisdiction over any pending criminal~~
38 ~~proceedings pertaining to that suspected controlled substance,~~
39 ~~reciting the applicable information required by subdivisions (a),~~
40 ~~(b), (c), and (d) together with information establishing the location~~

1 of the suspected controlled substance, and specifying the date and
2 time of the destruction. In the event that there are no criminal
3 proceedings pending which pertain to that suspected controlled
4 substance, the affidavit may be filed in any court within the county
5 which would have jurisdiction over a person against whom those
6 criminal charges might be filed.

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