

AMENDED IN SENATE MAY 14, 2014

AMENDED IN SENATE APRIL 23, 2014

**SENATE BILL**

**No. 1193**

---

---

**Introduced by Senator Evans**

February 20, 2014

---

---

An act to amend 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 marijuana: cause of action.

(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 growing or harvested marijuana plants, the law enforcement agency take at least one 2-pound sample and 5 random and representative samples, and would authorize the agency to destroy the remainder. The bill would require that counsel for the defendant have an opportunity to examine the evidence *2-pound sample and 5 representative samples* 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: 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 that are in possession of a city, county, or  
6 state official as found property, or as the result of a case in which  
7 no trial was had or which has been disposed of by way of dismissal  
8 or otherwise than by way of conviction, shall be destroyed by order  
9 of the court, unless the court finds that the controlled substances,  
10 instruments, or paraphernalia were lawfully possessed by the  
11 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 (3) A claim pursuant to this subdivision shall be presented not  
23 later than six months after acquittal or dismissal in the case.

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

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

31 11479. Notwithstanding Section 11473 and subdivisions (a)  
32 and (c) of Section 11473.5, at any time after seizure by a law  
33 enforcement agency of a suspected controlled substance, that  
34 amount in excess of 10 pounds in gross weight, and in the case of  
35 growing or harvested marijuana, only that amount in excess of two  
36 pounds, may be destroyed without a court order by the chief of  
37 the law enforcement agency or a designated subordinate.

1 Destruction shall not take place pursuant to this section until all  
2 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 ~~two-pound~~ *two-pound* sample (which may  
9 include stalks, branches, or leaves) and five representative samples  
10 consisting of leaves or buds shall be retained for evidentiary  
11 purposes from the total amount of suspected controlled substances  
12 to be destroyed and counsel for the defendant shall have 30 days  
13 from the date the growing or harvested marijuana was seized to  
14 examine the ~~evidence before destruction~~ *two-pound sample and*  
15 *five representative samples* if there are criminal proceedings  
16 pending which pertain to the seized growing or harvested marijuana  
17 to be destroyed.

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

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

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

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

1 substance, the affidavit may be filed in any court within the county  
2 which would have jurisdiction over a person against whom those  
3 criminal charges might be filed.

4 SEC. 3. If the Commission on State Mandates determines that  
5 this act contains costs mandated by the state, reimbursement to  
6 local agencies and school districts for those costs shall be made  
7 pursuant to Part 7 (commencing with Section 17500) of Division  
8 4 of Title 2 of the Government Code.

O