

Senate Bill No. 303

CHAPTER 713

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

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 303, Hueso. Controlled substances: destruction of seized marijuana.

Existing law, the California 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. Under existing law, prior to destruction of a suspected controlled substance, the law enforcement agency is required to take photographs reasonably demonstrating the total amount of the substance to be destroyed and 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.

This bill would authorize the law enforcement agency to destroy seized substances suspected to be growing or harvested marijuana in excess of 2 pounds, or the amount of marijuana a medical marijuana patient or designated caregiver is authorized to possess by ordinance in the city or county where the marijuana was seized, whichever is greater, subject to specified requirements. The bill would also require the law enforcement agency to retain at least one 2-pound sample and 5 random and representative samples consisting of leaves or buds, for evidentiary purposes, from the total amount to be destroyed. The bill would additionally require that the law enforcement agency take videos that reasonably and accurately demonstrate the total amount of the suspected controlled substance to be destroyed.

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

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

11479. Notwithstanding Sections 11473 and 11473.5, at any time after seizure by a law enforcement agency of a suspected controlled substance, except in the case of growing or harvested marijuana, that amount in excess

of 10 pounds in gross weight may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. In the case of growing or harvested marijuana, that amount in excess of two pounds, or the amount of marijuana a medical marijuana patient or designated caregiver is authorized to possess by ordinance in the city or county where the marijuana was seized, whichever is greater, may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. These samples shall be in addition to the 10 pounds required above. When the suspected controlled substance consists of growing or harvested marijuana plants, at least one 2-pound sample or a sample in the amount of medical marijuana a medical marijuana patient or designated caregiver is authorized to possess by ordinance in the city or county where the marijuana was seized, whichever is greater, shall be retained. This sample may include stalks, branches, or leaves. In addition, five representative samples of leaves or buds shall be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed.

(b) Photographs and videos have been taken that reasonably and accurately demonstrate the total amount of the suspected controlled substance to be destroyed.

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

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

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court that has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d) together with information establishing the location of the suspected controlled substance, and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending that pertain to that suspected controlled substance, the affidavit may be filed in any court within the county that would have jurisdiction over a person against whom those criminal charges might be filed.