
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1706 **Hearing Date:** June 21, 2022
Author: Mia Bonta
Version: May 19, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Cannabis crimes: resentencing*

HISTORY

Source: Last Prisoner Project

Prior Legislation: AB 1793 (R. Bonta), Ch. 993, Stats. 2018

Support: Amazon; Attorney General Rob Bonta; Big Sur Farmers Association; Black Leadership Kitchen Cabinet of Silicon Valley; California Cannabis Industry Association; California NORML (National Organization for the Reform of Marijuana Laws); California Public Defenders Association; Californians for Safety and Justice; Cannabis Equity Policy Council; Disability Rights California; Drug Policy Alliance; Ella Baker Center for Human Rights; Essie Justice Group; Friends Committee on Legislation of California; Humboldt County Growers Alliance; Initiate Justice; Los Angeles County District Attorneys Office; Mendocino Cannabis Alliance; Nevada County Cannabis Alliance; Origins Council; Prosecutors Alliance of California; Root and Rebound; San Francisco Public Defender's Office; San Jose University Human Rights Institute; Smart Justice California; The Parent Company ("Caliva"); Trinity County Agricultural Alliance; United Cannabis Business Association; United Core Alliance; Weedmaps

Opposition: None known

Assembly Floor Vote: 67 - 0

PURPOSE

The purpose of this bill is to require the court to recall or redesignate specified cannabis convictions, as authorized by Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, on or before March 1, 2023.

Existing law authorizes a person who is currently serving a sentence for a cannabis conviction, who would not have been guilty of the offence had Proposition 64 been in effect at the time of the offence, to file petition the trial court to recall and resentence or dismiss the sentence. (Health & Saf. Code, § 11361.8, subd. (a).)

Existing law authorizes a person who has completed their sentence, who would not have been guilty of the offence had Proposition 64 been in effect at the time of the offence, to file an

application before the trial court to have the conviction dismissed and sealed or redesignated as a misdemeanor or infraction. (Health & Saf. Code, § 11361.8, subd. (e).)

Existing law requires, on or before July 1, 2019, the Department of Justice (DOJ) to review the records in the state summary criminal history information database and shall identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to the Control, Regulate and Tax Adult Use of Marijuana Act. (Health & Saf. Code, § 11361.9, subd. (a).)

Existing law requires DOJ to notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.

Existing law provides that the prosecution shall have until July 1, 2020 to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation. (Health & Saf. Code, § 11361.9, subd. (b).)

Existing law specifies that the prosecution may challenge the resentencing of a person who is still serving a sentence pursuant to this section when the person does not meet specified criteria. (Health & Saf. Code, § 11361.9, subd. (c)(2).)

Existing law requires, on or before July 1, 2020, the prosecution to inform the court and the public defender's office in their county when they are challenging a particular recall or dismissal of sentence, dismissal and sealing, or redesignation; the prosecution shall inform the court when they are not challenging a particular recall or dismissal of sentence, dismissal and sealing, or redesignation. (Health & Saf. Code, § 11361.9, subd. (c)(3).)

Existing law requires the court to reduce or dismiss the conviction if the prosecution does not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation by July 1, 2020. (Health & Saf. Code, § 11361.9, subd. (d).)

Existing law requires the court to notify the DOJ of the recall or dismissal of sentence, dismissal and sealing, or redesignation and the DOJ to modify the state summary criminal history information database accordingly. (Health & Saf. Code, § 11361.9, subd. (e).)

This bill provides that if the prosecution did not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation of the conviction on or before July 1, 2020, the conviction shall be deemed unchallenged, recalled, dismissed, and redesignated, as applicable, and the court shall issue an order recalling or dismissing the sentencing, dismissing and sealing, or redesignating the conviction in each case no later than March 1, 2023.

This bill requires the court, on or before March 1, 2023, to update its records and report all convictions that have been recalled, dismissed, redesignated, or sealed to the Department of Justice (DOJ) for adjustment of the state summary criminal history information database.

This bill requires DOJ, on or before July 1, 2023, to ensure that all of the records in the state summary criminal history information database that have been recalled, dismissed, sealed or redesignated have been updated and ensure that inaccurate state summary criminal history is not disseminated.

This bill provides that for those individuals whose state summary criminal history information was disseminated by DOJ as part of a statutorily authorized background check in the 30 days prior to an update based on this bill's provisions, DOJ shall provide a subsequent notice to the requesting entity provided that the entity is still entitled to receive the state summary criminal history information.

This bill requires DOJ to conduct an awareness campaign about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized pursuant to existing law so that individuals that may be impacted by this process are informed of the process, to request their criminal history information to verify the updates or how to contact the courts, prosecution or public defenders' offices to assist in verifying the updates.

This bill authorizes DOJ to provide a one-time fee waiver of its applicable fees if an individual requests their criminal history information to verify updates to their criminal history information made based on the provisions of this bill.

This bill states that a cannabis-related conviction, arrest, or other proceeding that has been ordered sealed is deemed never to have occurred and the person may reply accordingly to an inquiry about the events.

This bill requires courts that have previously eliminated court records of cannabis-related arrests and convictions shall report to DOJ, in a manner prescribed by DOJ, that the relevant records have been destroyed and that the records are otherwise reduced, dismissed, or sealed.

This bill requires, beginning March 1, 2023 and until June 30, 2024, the Judicial Council and DOJ to submit monthly joint progress reports to the Legislature that include, but are not limited to, all of the following information:

- Total number of cases recalled, dismissed, resentenced, sealed, and redesignated in each county, and the status of DOJ's update to the state summary criminal history database;
- Status of cases challenged by the prosecution, and all relevant statistical information regarding the disposition of the challenged cases in each county;
- The number of past convictions in the state summary criminal history database that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation; and,
- The status of DOJ's public awareness campaign to provide notification to impacted individuals.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Proposition 64 created a process whereby individuals could petition for the reduction, dismissal, and sealing of their prior cannabis convictions for acts that

now are legal under state law. However, the process was vastly underutilized because individuals with prior convictions were not aware it existed. In 2018, on the heels of cannabis legalization in the State, California passed groundbreaking legislation that provides for automatic sealing of cannabis criminal records for old offenses that are no longer illegal. Authored by current Attorney General Rob Bonta, AB 1793 was a nation-leading step forward in correcting the harms of the war on drugs in that it did not involve a petition process, which is a tremendous barrier for individuals in need of record relief.

The implementation of AB 1793 has been inconsistent across the State. While some counties were proactive in implementing the bill, others were not, and the statute lacks certain deadlines to ensure completion of the process. Though the legislation contains a now-passed deadline of July 1, 2020 for county district attorneys to provide necessary data to the courts (and object to any record sealing they felt would harm public safety), there was no deadline by which local courts needed to process these cases. It is clear in researching this issue—as well as in the Judicial Council’s own survey data—that there is wide variance in county compliance with the law, resulting in many Californians not receiving the relief for which they are eligible (the Department of Justice has yet to seal approximately 10,000 eligible cases).

AB 1706, the Automatic Resentencing, Dismissal, and Sealing of Past Cannabis Convictions Act, directs county district attorneys, local courts, and the DOJ to complete the work of processing past cannabis convictions deemed eligible for automatic sealing.

AB 1706 establishes a hard deadline by which local courts—who are by now supposed to have all relevant information related to these cases—must process these cases. Proposition 64 passed in 2016 and AB 1793 was signed into law in 2018, with a July 2020 deadline for DAs to comply. The bill will require the Judicial Council to monitor the process and produce joint monthly reports with the DOJ to the Legislature to ensure compliance with deadlines and data transparency. AB 1706 will require the DOJ to conduct a public awareness campaign so that individuals impacted by the sealing process become aware of updates to their criminal history. Lastly, AB 1706 directs the Attorney General to declare records as resentenced, sealed and dismissed in the absence of local action. There is no reason that in 2022, Californians are still waiting for the legal relief to which they are already entitled, and it should not matter which part of the state they live in as to whether that relief is timely granted.

2. Proposition 64

Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, was adopted by the voters on November 8, 2016, and became effective the following day. (*Statement of the Vote*, California Secretary of State, at p. 12. Available at: <https://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf> [as of June 13, 2022].) Proposition 64 made several major changes including: decriminalizing the possession of up to one ounce of cannabis, and up to 8 grams of cannabis concentrates; decriminalizing the cultivation of up to six cannabis plants;

reducing the penalties for specified cannabis offenses from felonies to misdemeanors, and from misdemeanors to infractions; and creating a statutory framework to regulate the cultivation, distribution, sale and tax of cannabis products. (*Voter Guide*, California Secretary of State, Proposition 64, at pp. 178-210. Available at: <http://voterguide.sos.ca.gov/pdf/complete-vig.pdf> [as of February 22, 2022].)

Proposition 64 also included a provision which permits persons previously convicted of designated cannabis offences that were reduced by the initiative to obtain a reduced conviction or sentence, and to dismiss and seal their record of conviction if the conviction was for conduct legalized by Proposition 64. Specifically, Proposition 64 authorized persons currently serving a sentence for a specified cannabis conviction, who would not have been guilty of an offense or who would have been guilty of a lesser offense had Proposition 64 been in effect at the time of the offense, to petition for a recall or dismissal of sentence. (Health & Saf. Code, § 11361.8, subd. (a).) The initiative also authorized a person who has completed their sentence of a specified cannabis conviction, who would not have been guilty of an offense or who would have been guilty of a lesser offense had Proposition 64 been in effect at the time of the offense, to apply to the court for designation of the offense as a misdemeanor or infraction, or dismissal. (Health & Saf. Code, § 11361.8, subd. (e).)

Proposition 64 required individuals to initiate the resentencing and redesignation process by filing a petition or application in the trial court. Nothing in Proposition 64 suggests that the court has any *sua sponte* obligation to provide such relief without the request of the petitioner and/or applicant, and the initiative did not have a deadline for filing for relief. (*PROPOSITION 64: "Adult Use of Marijuana Act" Resentencing Procedures and Other Selected Provisions*, at pp. 15, 37. Available at: <https://www.courts.ca.gov/documents/prop64-Memo-20161110.pdf> [as of February 22, 2022].) Though Proposition 64 allows a party to oppose the petition or application for relief, nothing in the initiative requires the prosecution to review, challenge, or oppose the resentencing and redesignation. (See, generally Health & Saf. Code, § 11361.8.)

3. Automatic Resentencing and Redesignation of Cannabis-Related Convictions

After the passage of Proposition 64, AB 1793 (Bonta) Chapter 993, Statutes of 2018 was enacted to expedite the identification, review, and notification of individuals who may be eligible for recall or dismissal, dismissal and sealing, or redesignation of specified cannabis-related convictions under Proposition 64.

AB 1793 created an automatic resentencing and redesignation process for specified cannabis convictions, and established the following deadlines:

- July 1, 2019 – for the DOJ to review the records in the state summary criminal history information database and to identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant Proposition 64;
- July 1, 2020 – for the prosecution to review all cases identified by the DOJ and to determine whether to challenge the resentencing, dismissal and sealing, or redesignation in each particular case;

- July 1, 2020 – for the prosecution to inform the public defender and the court when they are challenging a particular resentencing, dismissal and sealing, or redesignation; and
- July 1, 2020 – for the court to automatically reduce or dismiss the conviction pursuant to Proposition 64, if there is no challenge from the prosecution by July 1, 2020.

Although AB 1793 contained a now-passed deadline of July 1, 2020 for prosecutors to inform the court and public defendants of their challenge to a particular resentencing, dismissal or redesignation, neither Proposition 64 nor AB 1793 set forth a deadline by which local courts needed to process the challenges, nor did they include a deadline for the DOJ to update its criminal record database.

According to an investigation by the Los Angeles Times, as of January of this year, there were at least 34,000 cannabis-related records that still have not been fully processed by the courts according to data provided by court officials throughout the state. (*The Truth About California's Promise To Clear Marijuana Convictions*, Los Angeles Times, <https://www.latimes.com/california/newsletter/2022-01-18/california-cannabis-convictions-marijuana-essential-california> [as of June 13, 2022].) The delays are not for lack of funding since the courts got \$16.83 million from the state budget to pay for the costs of processing records, such as staffing and development of information technology. (*California Was Supposed To Clear Cannabis Convictions. Tens Of Thousands Are Still Languishing*, Los Angeles Times, <https://www.latimes.com/california/story/2022-01-13/california-was-supposed-to-clear-weed-convictions-tens-of-thousands-are-still-languishing> [as of June 13, 2022].) Although several counties have moved aggressively to clear records, some courts – including in Riverside and San Bernardino – had not fully processed a single case. Also, at the time of reporting, DOJ had yet to seal approximately 10,000 cases that have been cleared by the counties. (*Ibid.*)

This bill deems all convictions eligible for relief under Proposition 64 that have not been challenged by the prosecution by the July 1, 2020 deadline as unchallenged, recalled, dismissed and redesignated, as applicable. This bill establishes a deadline of March 1, 2023 for the courts to automatically resentence or redesignate all eligible convictions, in cases where the prosecution did not file a challenge by the original deadline. This bill further requires the courts to update their records and report all convictions that have been recalled and redesignated to DOJ by March 1, 2023, and requires DOJ update its records in the state summary criminal history database no later than July 1, 2023.

This bill also requires the Judicial Council and the DOJ to submit joint monthly progress reports to the Legislature regarding the status of the record clearance process, as specified. In addition, this bill requires DOJ to conduct a public awareness campaign so that individuals impacted by the process can be made aware of the updates to their criminal records and how to contact courts, prosecution, or public defenders' offices to assist in verifying the updates. DOJ is also authorized to waive applicable fees for individuals requesting their criminal history information to verify updates to their criminal history based on changes made by this bill and requires DOJ to provide subsequent criminal history information updates to requesting entities, as specified.

4. Argument in Support

According to California NORML:

California has always been leaders in cannabis reform, but we are falling short on our promise to redress some of the most egregious harms caused by the War on Drugs. In 2018, we passed groundbreaking legislation that mandated the automatic sealing of cannabis criminal records for offenses that are no longer illegal. Authored by current Attorney General Rob Bonta, AB 1793 was a nation-leading step not just in cannabis reform, but also in criminal justice reform, and has been modeled in many states since. Its automatic process ensured that the individual with the eligible record would not have to petition the court for relief; rather, that relief would be automatically provided in light of the state's repeal of cannabis prohibition. This evidence-based policy is aligned with the growing body of research showing that the petition process does not effectively provide relief to individuals who most need it, due to the numerous barriers involved.

Unfortunately, the implementation of AB 1793 has been inconsistent across the state. While some counties were proactive in implementing the legislation, others were not, and the statute lacks certain deadlines to ensure completion of the process. Though the legislation contains a now-passed deadline of July 1, 2020 for county district attorneys to provide necessary data to the courts, there was no deadline by which local courts needed to process these cases, and no oversight to ensure timely processing of records occurred. It is clear in studying this issue—as well as in the Judicial Council's own survey data—that there is wide variance in county compliance with the law, resulting in thousands of Californians not receiving the relief for which they are eligible. According to an investigation by the *Los Angeles Times*, there are at least 34,000 cannabis-related records that still have not been fully processed by the courts.

These implementation gaps have created a system of justice by geography, and a solution is urgently needed. By adopting AB 1706, we can ensure that California finally lives up to our overdue promise to remove these erroneous criminal records and allow individuals criminalized by prohibition to move on with their lives.

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