
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2195 **Hearing Date:** June 21, 2022
Author: Jones-Sawyer
Version: February 15, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Crimes: nuisance*

HISTORY

Source: Drug Policy Alliance
Immigrant Resource Center
Initiate Justice

Prior Legislation: AB 208 (Eggman), Ch. 778, Stats. 2017
AB 1352 (Eggman), Ch. 646, Stats. 2015
SB 1310 (Lara), Ch. 174, Stats. 2014

Support: A New Path; California Attorneys for Criminal Justice; California Immigrant Policy Center; California Public Defenders Association; California for safety and Justice; Californians United for a Responsible Budget; Coalition for Humane Immigrant Rights; Courage California; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Law Office of Public Defenders, Riverside County; Los Angeles County District Attorney's Office; National Association of Social Workers, California Chapter; Root & Rebound; Rubicon Programs; San Francisco Public Defender; Showing up for Racial Justice Bay Area; Smart Justice California; South Bay People Power

Opposition: None known

Assembly Floor Vote: 43 - 24

PURPOSE

The purpose of this bill is to allow a defendant to accept a plea agreement for committing a public nuisance, if the negotiated disposition includes the dismissal of one or more charges that allege unlawfully cultivating, manufacturing, transporting, giving away, selling, or possession or use of a drug, or possession or use of drug paraphernalia.

Existing law provides that every person who maintains or commits any public nuisance is guilty of a misdemeanor. (Pen. Code, § 372.)

Existing law defines “public nuisance” as anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary

manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway. (Pen. Code, § 370.)

Existing law defines “nuisance” as anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway. Defines “public nuisance” as one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal (Civ. Code, §§ 3479, 3480.)

Existing law defines “drug” as a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; substances (other than food) intended to affect the structure or any function of the body of man or animals; and substances intended for use as a component of any of these substances. (Health & Saf. Code, § 11014.)

This bill allows a defendant to accept a plea agreement for committing a public nuisance, if the negotiated disposition includes the dismissal of one or more charges that allege unlawfully cultivating, manufacturing, transporting, giving away, selling, or possession or use of a drug, or possession or use of drug paraphernalia.

This bill provides that, if the dismissed drug charge is an infraction, then the conviction for committing a public nuisance is an infraction, punishable by a fine not to exceed \$250.

This bill provides that, if the dismissed drug charge is a misdemeanor, then the conviction for committing a public nuisance is a misdemeanor, punishable by a fine of not to exceed \$1,000, or imprisonment in a county jail for not more than one year, or both, or as an infraction punishable by a fine not to exceed \$250.

This bill provides that, if the dismissed drug charge is a felony, then the conviction for committing a public nuisance is a felony, punishable by a period of 16 months, or two or three years, or by imprisonment in a county jail for not more than one year.

COMMENTS

1. Need For This Bill

According to the author:

AB 2195 disrupts the legacy of the drug war by protecting individuals from the draconian collateral consequences that flow from any drug conviction, and that have a disproportionate impact on economically disadvantaged communities of color. This issue affects an enormous number of Californians. In 2019, one in four California misdemeanor arrests (190,958 arrests) and one in ten felony arrests (26,854 arrests) were for drug offenses. A single drug conviction can cause a person to end up homeless, limit their employment opportunities and for immigrants the consequences are far worse, a drug conviction can subject non-

citizens to mandatory ICE detention and deportation, regardless of their ties to the U.S.

In 2021, *Pereida v. Wilkinson* (2021) 141 S.Ct. 754, eliminated the last defense strategy that had enabled Californians charged with drug offenses to avoid or lessen the collateral consequences of the conviction. Now a defendant's only options are either to persuade the prosecutor to dismiss the drug charges or offer pretrial diversion, or to go to trial. Since dismissals and pretrial diversion are often unavailable options, these drug cases will result in the destruction of thousands of California families, will further clog an overburdened criminal system and result in the unnecessary deportation of immigrants for mostly minor drug convictions. A 2015 report by Human Rights Watch found that between 2007 and 2012, deportations for drug convictions increased significantly. It is estimated that almost 266,000 deported non-citizens had a drug conviction as their most serious conviction—they constituted one out of four removals, with possession being the most common form of conviction.

In order to address these issues, AB 2195 will create an alternate plea for those charged with drug offenses. It gives the prosecution the discretion of offering an alternate public nuisance plea, on a case by case basis, as a substitute for a drug charge including possession and drug sales. Public nuisance would carry the same criminal penalty but without triggering the collateral consequences for both immigrants and non-citizens. As a safeguard for defendants, the bill does not permit this alternate plea to be affirmatively charged. This bill will provide a plea option that preserves the ability of a person from resuming their life after incarceration, keeping families together while preserving court resources.

2. Immigration Consequences of Drug Convictions

There are numerous collateral consequences for criminal convictions. For non-U.S. citizens, the federal immigration consequences of a drug conviction are severe. For example, upon a drug conviction, a non-citizen may become automatically deportable and inadmissible, and the conviction may subject the defendant to mandatory immigration detention, without bond. (8 U.S.C. § 1227(a)(2)(B); 8 U.S.C. § 1182(a)(2)(A)(i)(II); 8 U.S.C. § 1226(c)(1).) However, a defendant can avoid negative immigration consequences of a drug conviction by accepting a plea to a non-drug offense. (Immigrant Legal Resource Center, *Controlled Substances* (Jan. 2019), p. 13 <https://www.ilrc.org/sites/default/files/resources/chart-note_08-controlled_substances.pdf> [as of Jun. 14, 2022].)

AB 2195 creates an alternate plea scheme for defendants charged with drug offenses. Specifically, this bill gives the prosecution the discretion to offer a defendant a negotiated disposition, on a case by case basis, whereby the defendant can plead to a charge of committing a public nuisance, in lieu of a drug charge. Generally, a conviction for maintaining or committing public nuisance will not result in harmful immigration consequences such as mandatory immigration detention. Under the provisions of the bill, the public nuisance conviction would carry the same criminal penalty as the “dropped” drug charge, without triggering the collateral consequences for non-citizens.

3. Argument in Support

The Los Angeles County District Attorney's Office writes:

AB 2195 gives the prosecution the ability to offer an alternative plea to a defendant charged with unlawfully cultivating, manufacturing, transporting, giving away, selling, or possession or use of a drug, or possession or use of drug paraphernalia.

Under current federal law, a conviction for a drug offense carries wildly disproportionate collateral consequences for non-citizen defendants. ...

Recognizing that these consequences may be undesirable for the community at large, as well as being wildly disproportionate to the offense itself, many prosecuting agencies are willing to consider a non-drug charge as an alternative disposition. The problem, up until now, is that the Penal Code does not contain a readily available alternative charge for the parties to agree upon.

AB 2195 addresses this issue by creating a non-drug offense that with the prosecution's consent can be substituted for a charged drug offense. ...

Additionally, defendants obtaining relief from the public nuisance conviction would still be required to perform all conditions typical of the "dropped" drug charge. For example, AB 2195 would not prohibit a court from imposing drug-related conditions or penalties. Courts would still hold wide discretion in sentencing defendants appropriately.

AB 2195 would save money by allowing defendants to plead guilty without risking draconian immigration consequences and would promote just and fair outcomes by allowing prosecutors to tailor the consequences of a plea to the individual defendant.

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