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**AB-1706 Cannabis crimes: resentencing.** (2021-2022)

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**Assembly Bill No. 1706**

**CHAPTER 387**

An act to amend Section 11361.9 of the Health and Safety Code, relating to cannabis.

[ Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1706, Mia Bonta. Cannabis crimes: resentencing.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, and use of cannabis for nonmedical purposes by individuals 21 years of age and older. Under AUMA, a person 21 years of age or older may, among other things, possess, process, transport, purchase, obtain, or give away, as specified, up to 28.5 grams of cannabis and up to 8 grams of concentrated cannabis. Existing law authorizes a person to petition for the recall or dismissal of a sentence, dismissal and sealing of a conviction, or redesignation of a conviction of an offense for which a lesser offense or no offense would be imposed under AUMA.

Existing law, on or before July 1, 2019, requires the Department of Justice to review the records in the state summary criminal history information database to identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation. Existing law gives the prosecution until July 1, 2020, to review all cases and determine whether to challenge the recall, dismissal, or sealing. Existing law requires the court to reduce or dismiss a sentence that has not been challenged by July 1, 2020.

This bill would, if a sentence was not challenged by July 1, 2020, require the court to issue an order recalling or dismissing the sentence, dismissing and sealing, or redesignating the conviction no later than March 1, 2023, and would require the court to update its records accordingly and to notify the Department of Justice. The bill would require the Department of Justice, on or before July 1, 2023, to complete the update of the state summary criminal history information database, and ensure that inaccurate state summary criminal history is not reported, as specified. The bill would require the department to conduct an awareness campaign so that individuals that may be impacted by this process become aware of methods to verify updates to their criminal history. The bill would make a conviction, arrest, or other proceeding that has been sealed pursuant to these provisions deemed never to have occurred, as specified. The bill would, until June 1, 2024, require the department, in consultation with the Judicial Council, to produce a quarterly joint progress report to the Legislature, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 11361.9 of the Health and Safety Code is amended to read:

- 11361.9.** (a) On or before July 1, 2019, the Department of Justice shall 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 Section 11361.8. The department shall notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.
- (b) 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.
- (c) (1) 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 the criteria established in Section 11361.8.
- (2) The prosecution may challenge the dismissal and sealing or redesignation of a person pursuant to this section who has completed their sentence for a conviction when the person does not meet the criteria established in Section 11361.8.
- (3) On or before July 1, 2020, the prosecution shall 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.
- (4) The public defender's office, upon receiving notice from the prosecution pursuant to paragraph (3), shall make a reasonable effort to notify the person whose resentencing or dismissal is being challenged.
- (d) (1) If the prosecution did not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation of a 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 sentence, dismissing and sealing, or redesignating the conviction in each case pursuant to Section 11361.8 no later than March 1, 2023.
- (2) On or before March 1, 2023, the court shall update its records in accordance with this section, and shall report all convictions that have been recalled, dismissed, redesignated, or sealed to the Department of Justice for adjustment of the state summary criminal history information database.
- (3) On or before July 1, 2023, the Department of Justice shall ensure that all of the records in the state summary criminal history information database that have been recalled, dismissed, sealed, or redesignated pursuant to this section have been updated, and shall ensure that inaccurate state summary criminal history is not disseminated. For those individuals whose state summary criminal history information was disseminated pursuant to Section 11105 of the Penal Code in the 30 days prior to an update based on this section, and the requesting entity is still entitled to receive the state summary criminal history information, the Department of Justice shall provide a subsequent notice to the entity.
- (e) The Department of Justice shall post general information on its internet website about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized in this section. The department shall conduct an awareness campaign about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized in this section, so that individuals that may be impacted by this process are informed of the process pursuant to Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4 of the Penal Code, 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. If an individual requests their criminal history information to verify updates to their criminal history made pursuant to this section, the department may provide a one-time fee waiver of its fees under Section 11123 of the Penal Code for processing and responding to the request.
- (f) A conviction, arrest, or other proceeding that has been ordered sealed pursuant to Section 11361.8, is deemed never to have occurred, and the person may reply accordingly to any inquiry about the events.
- (g) Courts that have previously eliminated court records covered by this article pursuant to Sections 68152 and 68153 of the Government Code are compliant with the provisions of subdivision (c) of Section 11361.5. Courts that have previously eliminated court records covered by this article pursuant to Sections 68152 and 68153 of the Government Code shall report to the Department of Justice, in a manner prescribed by the Department of Justice, that the relevant records have been destroyed and that the record are otherwise reduced, dismissed, or sealed in accordance with this section.
- (h) Beginning March 1, 2023, and until June 1, 2024, the Department of Justice, in consultation with the Judicial Council, shall submit quarterly joint progress reports to the Legislature that include, but are not limited to, all of following information:
- (1) Total number of cases recalled, dismissed, resentenced, sealed, and redesignated in each county, and the status of the department's update to the state summary criminal history database.
- (2) Status of cases challenged by the prosecution, and all relevant statistical information regarding the disposition of the challenged cases in each county.

(3) 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 pursuant to Section 11361.8.

(4) The status of the department's public awareness campaign to provide notification to impacted individuals.

(i) It is the intent of the Legislature that persons who are currently serving a sentence or who proactively petition for a recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to Section 11361.8 be prioritized for review.