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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 1261                      **Hearing Date:** June 18, 2019  
**Author:** Jones-Sawyer  
**Version:** February 21, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Controlled Substances: Narcotics Registry*

### HISTORY

**Source:** Conference of California Bar Associations

**Prior Legislation:** AB 2513 (Jones-Sawyer), held in Assembly Appropriations in 2018

**Support:** ACLU of California; California Attorneys for Criminal Justice; National Association of Social Workers, California Chapter

**Opposition:** None known

**Assembly Floor Vote:** 71 - 0

### PURPOSE

***The purpose of this bill is to eliminate the requirement that individuals convicted of specified drug offenses register with local law enforcement.***

*Existing law* requires a person who is convicted of a specified drug offense to register with the chief of police in the city in which they reside, or with the sheriff of the county if the person resides in an unincorporated area within 30 days of arrival. (Health & Saf. Code, § 11590, subd. (a).)

*Existing law* requires a person who is convicted in the court of another state or in federal court for an offense that, if committed in California, would have been punishable as one of the drug offenses requiring registration, to register in the city or county in which he or she resides within 30 days of arrival. (Health & Saf. Code, § 11590, subds. (a)-(b).)

*Existing law* states that registration consists of a written statement signed by the registrant, the registrant's fingerprints, and the registrant's photograph. (Health & Saf. Code, § 11594.)

*Existing law* requires the law enforcement agency, after receipt of the registrant's statement, fingerprints, and photograph, to forward the information to the Department of Justice (DOJ) within 3 days. (Health & Saf. Code, § 11594.)

*Existing law* requires registrants who change their place of residence to inform the law enforcement agency with whom they last registered of their new address within 10 days. Requires the agency to forward the new address and information to the DOJ within 3 days of

receipt of the new address. Requires the DOJ to forward the registrant's information to the law enforcement agency with jurisdiction over the registrant's new place of residence. (Health & Saf. Code, § 11594.)

*Existing law* terminates a drug offender's registration requirements five years after discharge from prison, release from jail, or termination of probation or parole. (Health & Saf. Code, § 11594.)

*Existing law* prohibits the public and persons other than a regularly employed peace or other law enforcement officer from inspecting the statements, photographs, and fingerprints. (Health & Saf. Code, § 11594.)

*Existing law* states that any person required to register who knowingly violates any of the provisions relating to registration is guilty of a misdemeanor. (Health & Saf. Code, § 11594.)

*Existing law* requires any person who is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit a specified controlled substance offense to be informed of his or her duty to register by the official in charge of the place of confinement prior to such discharge, parole, or release. Requires the official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. (Health & Saf. Code, § 11592.)

*Existing law* requires any person who is released on probation or discharged upon payment of a fine to be informed of his duty to register by the court in which he has been convicted prior to such release or discharge. (Health & Saf. Code, § 11593.)

*Existing law* requires every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest of any school employee for a specified controlled substance offense, to do one of the following:

- If the person is a teacher in a public school, immediately notify by telephone the superintendent of the school district employing the teacher, and immediately give written notice of the arrest to the Commission on Teacher Credentialing in the county where the person is employed. Requires the county superintendent of schools and the Commission on Teacher Credentialing to immediately notify the governing board of the school district employing the person upon receiving notice of the arrest.
- If the person is a school employee at a public school but not a teacher, immediately notify by telephone the superintendent of school district and give written notice of the arrest to the governing board of the school district employing the person.
- If the person is a teacher in a private school, immediately notify by telephone and give written notice of the arrest to the private school authority employing the teacher. (Health & Saf. Code, § 11591, subds. (a)-(c).)

*Existing law* requires every sheriff or chief of police, upon the arrest of any teacher or instructor employed by a community college district for a specified controlled-substance offense, to immediately notify the superintendent of the community college district by telephone and give

written notice of the arrest to the Office of the Chancellor of the California Community Colleges. Requires superintendent of the community college district to immediately notify the governing board of the community college district employing the person upon receiving notice of the arrest. (Health & Saf. Code, § 11591.5, subd. (a).)

*This bill* repeals all provisions of law requiring persons convicted of specified drug offenses to register with local law enforcement.

*This bill* maintains law enforcement duties regarding the reporting of school employees who are arrested for specified controlled substances currently requiring registration upon conviction.

*This bill* provides that all statements, photographs, and fingerprints obtained under previous provisions of law requiring registration for controlled substances offenses are not open to the public and are only subject to inspection by law enforcement officers.

## COMMENTS

### 1. Need for This Bill

According to the author:

AB 1261 is a common-sense bill that will save law enforcement time and resources by deleting the narcotics registry. This registry imposes additional steps for former offenders by requiring them to register with local law enforcement even though all of the information requested is in the criminal record. In addition, punitive actions can be taken against the person required to register which then adds to the excessive workload of our strained court system. It is time to recognize the narcotics registry is unnecessary, costly and represents yet another barrier to successful reentry.

### 2. Narcotics Registry

The narcotics registry is intended to assist law enforcement in tracking individuals convicted of specified drug offenses. Individuals convicted of any of the following drug offenses are required to register with local law enforcement:

- HSC § 11350- Possession for personal use of opiates, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V
- HSC § 11351- Possession for sale of opiates, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V
- HSC § 11351.5- Possession for sale or purchase for sale of cocaine base
- HSC § 11352- Transporting, importing, or selling opiates, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V
- HSC § 11353- Inducing a minor to violate any controlled substance offense
- HSC § 11353.5- Preparing for sale a controlled substance on school grounds or a public playground, a child day care facility, a church, or a synagogue; sale of a controlled substance to a minor at a school, child day care facility, public playground, church, or synagogue

- HSC § 11353.7- Preparing for sale a controlled substance in a public park; sale of a controlled substance to a minor under the age of 14 years in a public park
- HSC § 11354- Sale of a controlled substance by a minor to a minor; use of a minor, by a minor, to violate any controlled substance offense
- HSC § 11355- Agreeing, consenting, or offering to unlawfully sell, furnish, transport, administer, or give away opiates, cannabis, synthetic cannabis, peyote, any narcotic drug listed in Schedule III, IV, or V, or any other liquid, substance, or material in lieu of any such controlled substance
- HSC § 11357- Possession of more than 28.5 grams of cannabis or more than eight grams of concentrated cannabis
- HSC § 11358- Planting, cultivating, harvesting, drying, or processing cannabis plants.
- HSC § 11359- Possession of cannabis for sale.
- HSC § 11360- Transporting, importing, or selling cannabis.
- HSC § 11361- Hiring, employing, or using a minor to transport cannabis; selling cannabis to a minor
- HSC § 11363- Planting, cultivating, harvesting, or drying peyote
- HSC § 11366- Opening or maintaining a place for the purpose of unlawfully selling, giving away, or using opiates, cannabis, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V
- HSC § 11366.5- Managing or controlling a building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale
- HSC § 11366.6- Using a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to sell, manufacture, or possess for sale any amount of cocaine base, cocaine, heroin, phencyclidine, amphetamine, methamphetamine, or LSD
- HSC § 11368- Forging or altering a prescription; issuing an altered prescription; possessing any narcotic drug secured by a forged, fictitious, or altered prescription
- HSC § 11377- Possession of any non-narcotic substance listed in Schedule III, IV, or V, hallucinogenic substances, with specified exceptions
- HSC § 11378- Possession for sale any substance that is an opiate or a non-narcotic substance listed in Schedule III, IV, or V
- HSC § 11378.5- Possession for sale PCP or its analogs or precursors
- HSC § 11379- Transporting, importing, selling, furnishing, administering, or giving away opiates and any non-narcotic substance listed in Schedule III, IV, or V
- HSC § 11379.5- Transport, import into the state, sale, furnish, administer, or give away PCP or any of its analogs or precursors
- HSC § 11379.6- Manufacturing, compounding, converting, producing, deriving, processing, or preparing a controlled substance
- HSC § 11380- Use of a minor to violate any provision involving opiates and non-narcotic substances listed in Schedule III, IV, or V
- HSC § 11383- Possession of specified chemicals, or any compound or mixture containing specified chemicals, with the intent to manufacture PCP or its analogs
- HSC § 11550- Using or being under the influence of opiates and a narcotic substances listed in Schedule III, IV, or V

Additionally, a person who has been convicted of a similar offense in another state or in federal court must register with their local law enforcement agency within 30 days of moving into the state.

To comply with the registration requirement, an individual must give personal information to their local law enforcement official, including a signed written statement, fingerprints, a picture, and address. (Health & Saf. Code, § 11594.) A person is obligated to notify the local law enforcement agency if he or she moves, which then triggers a duty for the agency to notify the DOJ, and, in turn, the DOJ to notify the agency where the registrant will now reside. (*Ibid.*)

The duty to register lasts five years after release from incarceration or probation or parole supervision, whichever is later. (Health & Saf. Code, § 11594.) Failure to knowingly comply with registration requirements is a misdemeanor. (*Ibid.*) Nothing in statute requires that the registrant's information be removed from the registry once the obligation to register ends.

This bill would repeal the provisions of law requiring people convicted of drug offenses to register with their local law enforcement official.

### **3. Use of the Narcotics Registry is Inconsistent with the Current Approach to Drug Offenses**

The purpose of the requirement that certain drug offenders register with local authorities is comparable to that of the sex offender registry, namely to assure that persons convicted of the enumerated crimes are readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. (*People v. Kun* (1987) 195 Cal.App.3d 370, 374.)

Courts have upheld the drug offender registration requirements on the grounds that there is a rational basis for tracking dangerous offenders. For example, in *People v. Hove* (1992) 7 Cal.App.4th 1003, the court held that even though the registration requirement intrudes on defendants' privacy rights, it is not an unconstitutional intrusion of privacy because there is a rational basis for collecting and managing information concerning the whereabouts of drug offenders convicted of more serious drug offenses such as possessing marijuana for sale. The court stated that the defendant, who was convicted for possession of six pounds of marijuana, presented a significant danger to society. (*Id.* at p. 1007.)

In *People v. Kun*, supra, 195 Cal.App.3d 370, the court considered whether the registration requirement is grossly disproportionate to the defendant's individual culpability. The court rejected constitutional challenges to the narcotics registry of a defendant, who was honorably discharged from the military, had been steadily employed, had no history of prior arrests, and was convicted of a felony possession of 18 pounds of marijuana after admitting to working on a marijuana farm. (*Id.* at p. 375.) The court stated that the defendant could not "be compared with the minor sexual transgressions" in two cases where misdemeanor sex offenders were not required to register on the sex offender registry. (*Id.* at p. 376.) The court determined that the registration requirements are constitutional form of punishment, because the Legislature "determined that cultivation of marijuana is a serious offense." (*Id.* at p. 375)

The philosophy behind the creation of the narcotics registry is inconsistent with the current approach to the treatment of drug offenses as demonstrated by recent voter-approved initiatives and legislative measures that have decreased the penalties for drug offenses and focused

resources on providing treatment. In 2000, voters approved Proposition 36, which allows courts to divert non-violent defendants, probationers, and parolees charged with simple drug possession or drug use from incarceration into community-based substance abuse treatment programs. More recently, the voters approved Proposition 47 in 2014, which reduced possession of heroin, methamphetamine, and other drugs to a misdemeanor, and, in 2016, the voters approved Proposition 64, which permits adults 21 years of age and over to possess and grow specified amounts of cannabis for recreational use.

In addition to these voter initiatives, the Legislature passed legislation in 2017 that limited the three-year prior-conviction sentence enhancement for people convicted of specified drug crimes, and established a pre-trial drug diversion program for many drug offenses. (See SB 180 (Mitchell), Chapter 677, Statutes of 2017, and AB 208 (Eggman), Chapter 778, Statutes of 2017.) Taking these drug reform measures into account, the rationale for continuing drug offender registration is questionable, especially considering that law enforcement has other methods at its disposal to monitor drug offenders, including access to arrest and conviction records.

**-- END --**