

RESOLUTION 11-04-2002

DIGEST

Legalization of Marijuana.

Repeals Health & Safety Code sections 11357, 11358, 11359, 11360, 11361.5, 11361.7, and 11362.5 and amends Health and Safety Code section 11470 and Vehicle Code section 23222 to legalize marijuana.

RESOLUTION COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution repeals Health & Safety Code sections 11357, 11358, 11359, 11360, 11361.5, 11361.7, and 11362.5 and amends Health and Safety Code section 11470 and Vehicle Code section 23222 to legalize marijuana. This resolution should be disapproved because it is overly broad, premature, and at least partially pre-empted by federal law.

Although this resolution recognizes society’s hypocritical stance allowing alcohol and tobacco use despite known health risks, it goes too far. For example, it would not prohibit marijuana use by minors or by operators of vehicles. If the criminal prohibitions were to be repealed as proposed, substantial administrative regulations would first need to be adopted in their place, comparable to the Alcoholic Beverage Control Board regulations governing the use of alcohol. Even if enacted, the resolution’s impact would be questionable, because pre-emptive federal laws would still prohibit marijuana use.

Finally, people who have a medically documented need for marijuana are still protected by the Compassionate Use Act (Health and Saf. Code, § 11362.5), which allows a patient to possess or cultivate marijuana for personal medical purposes upon the recommendation or approval of a physician.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to repeal Health & Safety Code sections 11357, 11358, 11359, 11360, 11361.5, 11361.7, 11362.5 and amend Health and Safety Code section 11470 and Vehicle Code section 23222 to read as follows:

- 1 §11357
- 2 ~~(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be~~
- 3 ~~punished by imprisonment in the county jail for a period of not more than one year or by a fine~~
- 4 ~~of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be~~
- 5 ~~punished by imprisonment in the state prison.~~
- 6 (b) Except as authorized by law, every person who possesses not more than 28.5 grams of
- 7 marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished
- 8 by a fine of not more than one hundred dollars (\$100). ~~Notwithstanding other provisions of~~
- 9 ~~law, if such person has been previously convicted three or more times of an offense described in~~

10 this subdivision during the two-year period immediately preceding the date of commission of
11 the violation to be charged, the previous convictions shall also be charged in the accusatory
12 pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or
13 if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall
14 be applicable to him, and the court shall divert and refer him for education, treatment, or
15 rehabilitation, without a court hearing or determination or the concurrence of the district
16 attorney, to an appropriate community program which will accept him. If the person is so
17 diverted and referred he shall not be subject to the fine specified in this subdivision. If no
18 community program will accept him, the person shall be subject to the fine specified in this
19 subdivision. In any case in which a person is arrested for a violation of this subdivision and
20 does not demand to be taken before a magistrate, such person shall be released by the
21 arresting officer upon presentation of satisfactory evidence of identity and giving his written
22 promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be
23 subjected to booking.

24 (e) Except as authorized by law, every person who possesses more than 28.5 grams of
25 marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county
26 jail for a period of not more than six months or by a fine of not more than five hundred dollars
27 (\$500), or by both such fine and imprisonment.

28 (d) Except as authorized by law, every person 18 years of age or over who possesses not more
29 than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within,
30 any school providing instruction in kindergarten or any of grades 1 through 12 during hours the
31 school is open for classes or school-related programs is guilty of a misdemeanor and shall be
32 punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the
33 county jail for a period of not more than 10 days, or both.

34 (e) Except as authorized by law, every person under the age of 18 who possesses not more than
35 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any
36 school providing instruction in kindergarten or any of grades 1 through 12 during hours the
37 school is open for classes or school-related programs is guilty of a misdemeanor and shall be
38 subject to the following dispositions:

39 (1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense
40 has been committed.

41 (2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch,
42 camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both,
43 upon a finding that a second or subsequent offense has been committed.

44
45 §11358

46 Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part
47 thereof, except as otherwise provided by law, shall be punished by imprisonment in the state
48 prison.

49
50 §11359

51 Every person who possesses for sale any marijuana, except as otherwise provided by law, shall
52 be punished by imprisonment in the state prison.

53
54 §11360

55 (a) Except as otherwise provided by this section or as authorized by law, every person who
56 transports, imports into this state, sells, furnishes, administers, or gives away, or offers to
57 transport, import into this state, sell, furnish, administer, or give away, or attempts to import

58 into this state or transport any marijuana shall be punished by imprisonment in the state prison
59 for a period of two, three or four years.

60 (b) Except as authorized by law, every person who gives away, offers to give away, transports,
61 offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than
62 concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more
63 than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this
64 subdivision and does not demand to be taken before a magistrate, such person shall be released
65 by the arresting officer upon presentation of satisfactory evidence of identity and giving his
66 written promise to appear in court, as provided in Section 853.6 of the Penal Code,
67 and shall not be subjected to booking.

68

69 §11361.5

70 (a) Records of any court of this state, any public or private agency that provides services upon
71 referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the
72 arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section
73 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of
74 the conviction, or from the date of the arrest if there was no conviction, except with respect to a
75 violation of subdivision (e) of Section 11357 the records shall be retained until the offender
76 attains the age of 18 years at which time the records shall be destroyed as provided in this
77 section. Any court or agency having custody of the records shall provide for the timely
78 destruction of the records in accordance with subdivision (e). The requirements of this
79 subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or
80 records of any arrest not followed by a conviction occurring prior to that date.

81 (b) This subdivision applies only to records of convictions and arrests not followed by
82 conviction occurring prior to January 1, 1976, for any of the following offenses:

83 (1) Any violation of Section 11357 or a statutory predecessor thereof.

84 (2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for
85 unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1,
86 1976, or a statutory predecessor thereof.

87 (3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully
88 smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a
89 statutory predecessor thereof.

90 (4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550,
91 as it existed prior to January 1, 1976, or a statutory predecessor thereof.

92 Any person subject to an arrest or conviction for those offenses may apply to the Department of
93 Justice for destruction of records pertaining to the arrest or conviction if two or more years have
94 elapsed since the date of the conviction, or since the date of the arrest if not followed by a
95 conviction. The application shall be submitted upon a form supplied by the Department of
96 Justice and shall be accompanied by a fee, which shall be established by the department in an
97 amount which will defray the cost of administering this subdivision and costs incurred by the
98 state under subdivision (e), but which shall not exceed thirty-seven dollars and fifty cents
99 (\$37.50). The application form may be made available at every local police or sheriff's
100 department and from the Department of Justice and may require that information which the
101 department determines is necessary for purposes of identification.

102 The department may request, but not require, the applicant to include a self-administered
103 fingerprint upon the application. If the department is unable to sufficiently identify the applicant
104 for purposes of this subdivision without the fingerprint or without additional fingerprints, it
105 shall so notify the applicant and shall request the applicant to submit any fingerprints which

106 may be required to effect identification, including a complete set if necessary, or, alternatively,
107 to abandon the application and request a refund of all or a portion of the fee submitted with the
108 application, as provided in this section. If the applicant fails or refuses to submit fingerprints in
109 accordance with the department's request within a reasonable time which shall be established by
110 the department, or if the applicant requests a refund of the fee, the department shall promptly
111 mail a refund to the applicant at the address specified in the application or at any other address
112 which may be specified by the applicant. However, if the department has notified the applicant
113 that election to abandon the application will result in forfeiture of a specified amount which is a
114 portion of the fee, the department may retain a portion of the fee which the department
115 determines will defray the actual costs of processing the application, provided the amount of the
116 portion retained shall not exceed ten dollars (\$10).—

117 Upon receipt of a sufficient application, the Department of Justice shall destroy records of the
118 department, if any, pertaining to the arrest or conviction in the manner prescribed by
119 subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency
120 which arrested the applicant, and, if the applicant was convicted, the probation department
121 which investigated the applicant and the Department of Motor Vehicles, of the application.

122 (e) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be
123 accomplished by permanent obliteration of all entries or notations upon the records pertaining
124 to the arrest or conviction, and the record shall be prepared again so that it appears that the
125 arrest or conviction never occurred. However, where (1) the only entries upon the record
126 pertain to the arrest or conviction and (2) the record can be destroyed without necessarily
127 effecting the destruction of other records, then the document constituting the record shall be
128 physically destroyed.

129 (d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court
130 proceedings and published judicial appellate reports are not subject to this section.—

131 Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a
132 codefendant has filed a civil action against the peace officers or law enforcement jurisdiction
133 which made the arrest or instituted the prosecution and if the agency which is the custodian of
134 those records has received a certified copy of the complaint in the civil action, until the civil
135 action has finally been resolved. Immediately following the final resolution of the civil action,
136 records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two
137 years have elapsed from the date of the conviction or arrest without conviction.

138
139 §11361.7

140 (a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or
141 more than two years of age, or a record of a conviction for an offense specified in subdivision
142 (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be
143 considered to be accurate, relevant, timely, or complete for any purposes by any agency or
144 person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of
145 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information
146 or record subject to destruction or permanent obliteration under Section 11361.5 was obtained
147 by any state agency, local public agency, or any public or private agency that provides services
148 upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or
149 disseminated to any agency of the federal government.

150 (b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify,
151 revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity,
152 permit, privilege, right, or title of any person because of an arrest or conviction for an offense
153 specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading

154 to such an arrest or conviction, on or after the date the records of such arrest or conviction are
155 required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of
156 such conviction or arrest without conviction with respect to arrests and convictions occurring
157 prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not
158 limited to, any state, county, city and county, city, public or constitutional corporation or
159 entity, district, local or regional political subdivision, or any department, division, bureau,
160 office, board, commission or other agency thereof.

161 (e) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section
162 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there
163 was no conviction, indicate in response to any question concerning his prior criminal record that
164 he was not arrested or convicted for such offense.

165 (d) The provisions of this section shall be applicable without regard to whether destruction or
166 obliteration of records has actually been implemented pursuant to Section 11361.5.

167

168 §11362.5

169 (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

170 (b) (1) The people of the State of California hereby find and declare that the purposes of the
171 Compassionate Use Act of 1996 are as follows:

172 (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for
173 medical purposes where that medical use is deemed appropriate and has been recommended by
174 a physician who has determined that the person's health would benefit from the use of
175 marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma,
176 arthritis, migraine, or any other illness for which marijuana provides relief.

177 (B) To ensure that patients and their primary caregivers who obtain and use marijuana for
178 medical purposes upon the recommendation of a physician are not subject to criminal
179 prosecution or sanction.

180 (C) To encourage the federal and state governments to implement a plan to provide for the safe
181 and affordable distribution of marijuana to all patients in medical need of marijuana.

182 (2) Nothing in this section shall be construed to supersede legislation prohibiting persons from
183 engaging in conduct that endangers others, nor to condone the diversion of marijuana for
184 nonmedical purposes.

185 (e) Notwithstanding any other provision of law, no physician in this state shall be punished, or
186 denied any right or privilege, for having recommended marijuana to a patient for medical
187 purposes.

188 (d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the
189 cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who
190 possesses or cultivates marijuana for the personal medical purposes of the patient upon the
191 written or oral recommendation or approval of a physician.

192 (e) For the purposes of this section, "primary caregiver" means the individual designated by the
193 person exempted under this section who has consistently assumed responsibility for the
194 housing, health, or safety of that person.

195

196 §11470

197 The following are subject to forfeiture:

198 (a) All controlled substances which have been manufactured, distributed, dispensed, or acquired
199 in violation of this division.

200 (b) All raw materials, products, and equipment of any kind which are used, or intended for use,
201 in manufacturing, compounding, processing, delivering, importing, or exporting any controlled

202 substance in violation of this division.

203 (c) All property except real property or a boat, airplane, or any vehicle which is used, or
204 intended for use, as a container for property described in subdivision (a) or (b).

205 (d) All books, records, and research products and materials, including formulas, microfilm,
206 tapes, and data which are used, or intended for use, in violation of this division.

207 (e) The interest of any registered owner of a boat, airplane, or any vehicle other than an
208 implement of husbandry, as defined in Section 36000 of the Vehicle Code, which has been used
209 as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or
210 more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054,
211 or a substance containing 14.25 grams or more of heroin or cocaine base as specified in
212 paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance
213 containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section
214 11054, or 28.5 grams or more of Schedule I controlled substances except ~~marijuana~~, peyote, or
215 psilocybin; 10 pounds dry weight or more of ~~marijuana~~, peyote, or psilocybin; or 28.5 grams or
216 more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or
217 methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in
218 paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of
219 a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section
220 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No
221 interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or
222 class M2 license, as prescribed in Section 12804 of the Vehicle Code, may be forfeited under
223 this subdivision if there is a community property interest in the vehicle by a person other than
224 the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the
225 defendant's immediate family.

226

227 (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended
228 to be furnished by any person in exchange for a controlled substance, all proceeds traceable to
229 such an exchange, and all moneys, negotiable instruments, or securities used or intended to be
230 used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, ~~11359, 11360~~, 11378,
231 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the
232 Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense
233 involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or
234 conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct
235 which is the basis for the forfeiture occurred within five years of the seizure of the property, or
236 the filing of a petition under this chapter, or the issuance of an order of forfeiture of the
237 property, whichever comes first.

238 (g) The real property of any property owner who is convicted of violating Section 11366,
239 11366.5, or 11366.6 with respect to that property. However, property which is used as a family
240 residence or for other lawful purposes, or which is owned by two or more persons,
241 one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

242 (h) Subject to the requirements of Section 11488.5 and except as further limited by this
243 subdivision to protect innocent parties who claim a property interest acquired from a defendant,
244 all right, title, and interest in any personal property described in this section shall vest in the
245 state upon commission of the act giving rise to forfeiture under this chapter, if the state or local
246 governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, ~~11359, 11360~~,
247 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182
248 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense
249 involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or

250 conspiracy to commit at least one of those offenses, in accordance with the burden of proof set
251 forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable
252 instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4) of subdivision (i)
253 of Section 11488.4. The operation of the special vesting rule established by this subdivision
254 shall be limited to circumstances where its application will not defeat the claim of any person,
255 including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or
256 11489, claims an interest in the property seized, notwithstanding that the interest in the property
257 being claimed was acquired from a defendant whose property interest would otherwise have
258 been subject to divestment pursuant to this subdivision.

259

260 Vehicle Code §23222

261 (a) No person shall have in his or her possession on his or her person, while driving a motor
262 vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any
263 bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a
264 seal broken, or the contents of which have been partially removed.

265 ~~(b) Except as authorized by law, every person who possesses, while driving a motor vehicle~~
266 ~~upon a highway or on lands, as described in subdivision (b) of Section 23220, not more than~~
267 ~~one avoirdupois ounce of marijuana, other than concentrated cannabis as defined by Section~~
268 ~~11006.5 of the Health and Safety Code, is guilty of a misdemeanor and shall be punished by a~~
269 ~~fine of not more than one hundred dollars (\$100). Notwithstanding any other provision of law,~~
270 ~~if the person has been previously convicted three or more times of an offense described in this~~
271 ~~subdivision during the two-year period immediately preceding the date of commission of the~~
272 ~~violation to be charged, the previous convictions shall also be charged in the accusatory~~
273 ~~pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or~~
274 ~~if admitted by the person, Sections 1000.1 and 1000.2 of the Penal Code are applicable to the~~
275 ~~person, and the court shall divert and refer the person for education, treatment, or rehabilitation,~~
276 ~~without a court hearing or determination or the concurrence of the district attorney, to an~~
277 ~~appropriate community program which will accept the person. If the person is so diverted and~~
278 ~~referred, the person is not subject to the fine specified in this subdivision. In any case in which~~
279 ~~a person is arrested for a violation of this subdivision and does not demand to be taken before a~~
280 ~~magistrate, the person shall be released by the arresting officer upon presentation of satisfactory~~
281 ~~evidence of identity and giving his or her written promise to appear in court, as provided in~~
282 ~~Section 40500, and shall not be subjected to booking.~~

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: These sections make almost anything connected with marijuana illegal.

This Resolution: This resolution, which involves many statutes, is designed to legalize marijuana.

The Problem: Not only are we losing the war on drugs, any focus on the illegality of marijuana makes very little sense. A very large portion of the country especially those in California want the legalization of marijuana. We are wasting millions of dollars prosecuting and imprisoning those with marijuana. We are putting nonviolent individuals in jail or prison, and legalization would reduce the

crime associated with marijuana. Marijuana is not at the level of cocaine or heroine, and this should be recognized.

IMPACT STATEMENT

The proposed resolution would not affect other statutes.

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RESPONSIBLE FLOOR DELEGATE:

COUNTERARGUMENT

SANTA CLARA COUNTY BAR ASSOCIATION

One does not have to agree with all aspects of the so-called “war on drugs” to oppose this resolution. The statement of reasons is long on conclusions but short on facts to support them. (E.g., “losing the war on drugs,” “a very large portion of the country especially those in California want the legislation,” “wasting millions of dollars,” “putting nonviolent individuals in jail or prison,” “legalization would reduce the crime.”)

The proponents final request is that “Marijuana is not at the level of cocaine or heroin, and this should be recognized.” In fact, this difference has been recognized in California law for decades. Possession of less than an ounce of marijuana has been a special kind of misdemeanor (not subject to arrest, maximum penalty is a fine of \$100) since the mid-seventies. Possession of heroin or cocaine is an alternate felony-misdemeanor (“wobbler”). Health & Safety Code sections 11350, 11357(b), 11377.

Passing this resolution would mean there are no state limits on anyone possessing, using, cultivating, transporting or selling marijuana. No limits on the age of the person who could engage in any of these acts. No limits on the amount of marijuana involved. Even NORML, in its 1996 policy statement, favors limiting use of cannabis to adults acting responsibly.

Then there's that pesky “Supremacy Clause” of the United States Constitution to deal with because many of these acts are also illegal under the Federal Controlled Substances Act, 21 U.S.C. Section 2101 et. seq. Recently, the United States Supreme Court enforced those laws, even in what appeared to be a compelling case for a “medical necessity” defense. See *U.S. v. Oakland Cannabis Buyers' Cooperatives*, 532 U.S. 483; 149 L.Ed.2d 722; 121 S. Ct. 1711 (2001)

Our delegation supports reasonable changes in the California drug laws but we cannot support this one.