

RESOLUTION 09-06-06

DIGEST

Marijuana: Reduced Penalty for Smaller Sales

Amends Health and Safety Code section 11359 to reduce the sentence for possession of marijuana for sale less than 28.5 grams.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar associations recommend that legislation be sponsored to amend Health and Safety Code section 11359 to read as follows:

- 1 § 11359
- 2 (a) Every person who possesses for sale any marijuana in an amount greater than
- 3 28.5 grams, except as otherwise provided by law, shall be punished by imprisonment in the
- 4 state prison.
- 5 (b) Every person who possesses for sale not more than 28.5 grams of marijuana,
- 6 except as otherwise provided by law, shall be punished by imprisonment in the state prison
- 7 or in the county jail for a period of not more than six months.

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

PROPONENT: Bar Association of Ventura County

STATEMENT OF REASONS

Existing Law: Possession of any marijuana with the intent to sell is punishable only as a felony, while actually giving away marijuana in small amounts is punishable by a fine of \$100.00 (Health & Safety Code § 11360(b).)

This Resolution: Gives prosecutors and courts discretion to reduce the offense to a misdemeanor in appropriate cases where small amounts of marijuana are involved.

The Problem: On occasion a defendant properly finds himself charged with possession of a small amount of marijuana with the intent to sell a small quantity of that marijuana. Occasionally, factors relating to the defendant, including age, lack of prior record, and lack of drug experience, coupled with a small amount of marijuana make the court, the prosecutor, or both believe that the conduct of the defendant merits a misdemeanor. By the language of the statute as currently written courts and prosecutors find they are bound to charge and sentence defendants to a felony. A defendant will be a felon for life, as the offense may never be reduced to a misdemeanor.

This resolution would vest discretion in courts and prosecutors to charge and sentence defendants appropriately in each case. Additionally, defendants initially charged and sentenced as felons would be able to have the charges reduced to a misdemeanor at a later time if the court sees fit.

In accordance with CDCBA rules, VCBA timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

IMPACT STATEMENT

This resolution would not affect any other statute, rule, or law.

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