

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2479**

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**Introduced by Assembly Member Bradford**

February 21, 2014

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An act to amend Section ~~11352~~ of the Health and Safety Code 17 of the Penal Code, relating to ~~controlled substances felonies~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 2479, as amended, Bradford. Crimes: ~~controlled substances~~. *nonviolent felonies*.

*Existing law provides that a crime punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail for more than one year is a felony and all other offenses, except those that are classified as infractions, are misdemeanors. Existing law further provides that a crime that is punishable, in the discretion of the court, as a felony or as a misdemeanor is a misdemeanor under certain circumstances, including when the court grants a defendant probation without imposing a sentence and, at the time of granting probation or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.*

*This bill would require, upon application of a defendant, a felony offense to be deemed a misdemeanor for all purposes, except as specified, if the court finds that certain circumstances apply, including that the defendant was not imprisoned in the state prison for the offense, the offense for which the defendant was convicted was not one of several specified controlled substance offenses, and was not robbery, burglary, or possession of a firearm by a felon or person addicted to narcotics, the offense does not require registration as a sex offender, the defendant*

*is not currently charged with and has not been convicted of an offense in the preceding 5 years, except as specified, and the defendant presents clear and convincing evidence that he or she has been rehabilitated.*

~~Existing law categorizes controlled substances into 5 schedules and imposes the greatest restrictions on those contained in Schedule I. Existing law, subject to exceptions, makes it an offense to, among other things, transport, import, sell, furnish, administer, or give away specified Schedule I and II controlled substances, or any Schedule III, IV, or V controlled substance which is a narcotic drug, unless upon written prescription, as specified.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 17 of the Penal Code is amended to read:

2     17. (a) A felony is a crime that is punishable with death, by  
3 imprisonment in the state prison, or notwithstanding any other  
4 provision of law, by imprisonment in a county jail under the  
5 provisions of subdivision (h) of Section 1170. Every other crime  
6 or public offense is a misdemeanor except those offenses that are  
7 classified as infractions.

8     (b) When a crime is punishable, in the discretion of the court,  
9 either by imprisonment in the state prison or imprisonment in a  
10 county jail under the provisions of subdivision (h) of Section 1170,  
11 or by fine or imprisonment in the county jail, it is a misdemeanor  
12 for all purposes under the following circumstances:

13     (1) After a judgment imposing a punishment other than  
14 imprisonment in the state prison or imprisonment in a county jail  
15 under the provisions of subdivision (h) of Section 1170.

16     (2) When the court, upon committing the defendant to the  
17 Division of Juvenile Justice, designates the offense to be a  
18 misdemeanor.

19     (3) When the court grants probation to a defendant without  
20 imposition of sentence and at the time of granting probation, or  
21 on application of the defendant or probation officer thereafter, the  
22 court declares the offense to be a misdemeanor.

1 (4) When the prosecuting attorney files in a court having  
2 jurisdiction over misdemeanor offenses a complaint specifying  
3 that the offense is a misdemeanor, unless the defendant at the time  
4 of his or her arraignment or plea objects to the offense being made  
5 a misdemeanor, in which event the complaint shall be amended  
6 to charge the felony and the case shall proceed on the felony  
7 complaint.

8 (5) When, at or before the preliminary examination or prior to  
9 filing an order pursuant to Section 872, the magistrate determines  
10 that the offense is a misdemeanor, in which event the case shall  
11 proceed as if the defendant had been arraigned on a misdemeanor  
12 complaint.

13 (c) When a defendant is committed to the Division of Juvenile  
14 Justice for a crime punishable, in the discretion of the court, either  
15 by imprisonment in the state prison or imprisonment in a county  
16 jail under the provisions of subdivision (h) of Section 1170, or by  
17 fine or imprisonment in ~~the~~ a county jail not exceeding one year,  
18 the offense shall, upon the discharge of the defendant from the  
19 Division of Juvenile Justice, thereafter be deemed a misdemeanor  
20 for all purposes.

21 (d) (1) *When a defendant is convicted of a felony offense, the*  
22 *offense shall, on application of the defendant, thereafter be deemed*  
23 *a misdemeanor for all purposes, except as specified in paragraph*  
24 *(2), if the court finds that all of the following circumstances apply:*

25 (A) *The defendant was not imprisoned in the state prison for*  
26 *the offense.*

27 (B) *The offense for which the defendant was convicted is not a*  
28 *violation of subdivision (a) of Section 11350, or Section 11351,*  
29 *11351.5, 11358, 11359, or 11360 of the Health and Safety Code,*  
30 *or a violation of Section 211, 459, or 29800 of this code.*

31 (C) *The offense for which the defendant was convicted does not*  
32 *require him or her to register as a sex offender pursuant to Chapter*  
33 *5.5 (commencing with Section 290) of Title 9 of Part 1.*

34 (D) *The defendant is not currently charged with the commission*  
35 *of any offense, and has not been convicted of an offense in the*  
36 *preceding five years, except the offense to be deemed a*  
37 *misdemeanor pursuant to this subdivision, a misdemeanor that*  
38 *does not involve moral turpitude, a misdemeanor driving offense,*  
39 *or an infraction.*

1 (E) *The defendant presents clear and convincing evidence that*  
2 *he or she has been rehabilitated.*

3 (2) *The reduction of a conviction from a felony to a*  
4 *misdemeanor pursuant to this subdivision shall not prohibit its*  
5 *use as a prior felony conviction in any future criminal proceeding*  
6 *against the defendant, including, but not limited to, a sentencing*  
7 *hearing.*

8 (d)

9 (e) A violation of any code section listed in Section 19.8 is an  
10 infraction subject to the procedures described in Sections 19.6 and  
11 19.7 when:

12 (1) The prosecutor files a complaint charging the offense as an  
13 infraction unless the defendant, at the time he or she is arraigned,  
14 after being informed of his or her rights, elects to have the case  
15 proceed as a misdemeanor, or;

16 (2) The court, with the consent of the defendant, determines  
17 that the offense is an infraction in which event the case shall  
18 proceed as if the defendant had been arraigned on an infraction  
19 complaint.

20 (e)

21 (f) Nothing in this section authorizes a judge to relieve a  
22 defendant of the duty to register as a sex offender pursuant to  
23 Section 290 if the defendant is charged with an offense for which  
24 registration as a sex offender is required pursuant to Section 290,  
25 and for which the trier of fact has found the defendant guilty.

26 SECTION 1. ~~Section 11352 of the Health and Safety Code is~~  
27 ~~amended to read:~~

28 ~~11352. (a) Except as otherwise provided in this division, a~~  
29 ~~person who transports, imports into this state, sells, furnishes,~~  
30 ~~administers, or gives away, or offers to transport, import into this~~  
31 ~~state, sell, furnish, administer, or give away, or attempts to import~~  
32 ~~into this state or transport (1) a controlled substance specified in~~  
33 ~~subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of~~  
34 ~~Section 11054, specified in paragraph (14), (15), or (20) of~~  
35 ~~subdivision (d) of Section 11054, or specified in subdivision (b)~~  
36 ~~or (e) of Section 11055, or specified in subdivision (h) of Section~~  
37 ~~11056, or (2) a controlled substance classified in Schedule III, IV,~~  
38 ~~or V that is a narcotic drug, unless upon the written prescription~~  
39 ~~of a physician, dentist, podiatrist, or veterinarian licensed to~~  
40 ~~practice in this state, shall be punished by imprisonment pursuant~~

1 ~~to subdivision (h) of Section 1170 of the Penal Code for three,~~  
2 ~~four, or five years.~~

3 ~~(b) Notwithstanding the penalty provisions of subdivision (a),~~  
4 ~~a person who transports a controlled substance specified in~~  
5 ~~subdivision (a) within this state from one county to another~~  
6 ~~noncontiguous county shall be punished by imprisonment pursuant~~  
7 ~~to subdivision (h) of Section 1170 of the Penal Code for three, six,~~  
8 ~~or nine years.~~

9 ~~(c) For purposes of this section, “transports” means to transport~~  
10 ~~for sale.~~

11 ~~(d) This section does not preclude or limit the prosecution of~~  
12 ~~an individual for aiding and abetting the commission of, or~~  
13 ~~conspiring to commit, an act prohibited by this section.~~