

Assembly Bill No. 2492

CHAPTER 819

An act to amend Section 11550 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 2014. Filed with Secretary of State September 29, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2492, Jones-Sawyer. Controlled substances: sentencing.

Existing law prohibits a person from using or being under the influence of certain controlled substances, except as specified. A person convicted of violating this prohibition is guilty of a misdemeanor and the court is required to sentence the person to not less than 90 days or more than one year in a county jail. The court is authorized to place a person convicted under this provision on probation for not more than 5 years, and the court is required, as a condition of granting probation, to order the person to serve at least 90 days in a county jail. The court is prohibited, except with regards to specified drug treatment provisions, from absolving a person convicted under this provision from serving at least 90 days in a county jail.

This bill would delete the requirement that a person convicted under this provision serve at least 90 days in a county jail, and would delete the requirement that, as a condition of granting probation, the person serve at least 90 days in a county jail. The bill would make additional conforming changes. The bill would also authorize the court to grant probation for not more than 5 years in addition to any jail sentence imposed.

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

SECTION 1. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) A person shall not use, or be under the influence of any controlled substance that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. A person convicted of violating this subdivision is guilty of a misdemeanor and shall

be sentenced to serve a term of not more than one year in a county jail. The court may also place a person convicted under this subdivision on probation for a period not to exceed five years.

(b) (1) A person who is convicted of violating subdivision (a) when the offense occurred within seven years of that person being convicted of two or more separate violations of that subdivision, and refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subdivision (c), shall be punished by imprisonment in a county jail for not less than 180 days nor more than one year. In no event does the court have the power to absolve a person convicted of a violation of subdivision (a) who is punishable under this subdivision from the obligation of spending at least 180 days in confinement in a county jail unless there are no licensed drug rehabilitation programs reasonably available.

(2) For the purpose of this section, a drug rehabilitation program is not reasonably available unless the person is not required to pay more than the court determines that he or she is reasonably able to pay in order to participate in the program.

(c) (1) The court may, when it would be in the interest of justice, permit a person convicted of a violation of subdivision (a) punishable under subdivision (a) or (b) to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in a county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program.

(2) In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subdivision, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(d) In addition to any fine assessed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against a person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and a defendant shall not be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(e) (1) Notwithstanding subdivisions (a) and (b) or any other law, a person who is unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense punishable by imprisonment in a county jail for not exceeding one year or in state prison.

(2) As used in this subdivision "immediate personal possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subdivision (e) is punishable upon the second and each subsequent conviction by imprisonment in the state prison for two, three, or four years.

(g) This section does not prevent deferred entry of judgment or a defendant's participation in a preguilty plea drug court program under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision (b) or (c) of Section 243 of the Penal Code or with a violation of subdivision (e) shall be ineligible for deferred entry of judgment or a preguilty plea drug court program.