

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2515

Introduced by Assembly Member Donnelly

February 21, 2014

An act to amend Section ~~11500~~ 11550 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2515, as amended, Donnelly. ~~Controlled substances: prosecutions for violations.~~ *Controlled substances: sentencing.*

Existing law prohibits a person from using or being under the influence of specified controlled substances except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. 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 authorize the court to grant

probation for not more than 5 years in addition to any jail sentence imposed.

~~Existing law, the California Uniform Controlled Substances Act, classifies controlled substances into 5 designated schedules, with the most restrictive limitations generally placed on controlled substances classified in Schedule I, and the least restrictive limitations generally placed on controlled substances classified in Schedule V. Existing law generally provides punishment for the unauthorized use, possession, and sale of controlled substances. Existing law requires, except as provided, the district attorney, or his or her designee, of the county in which a violation is committed to conduct all actions and prosecutions for the violation.~~

~~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 11550 of the Health and Safety Code is
2 amended to read:
3 11550. (a) No person shall use, or be under the influence of
4 any controlled substance which is (1) specified in subdivision (b),
5 (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
6 specified in paragraph (14), (15), (21), (22), or (23) of subdivision
7 (d) of Section 11054, specified in subdivision (b) or (c) of Section
8 11055, or specified in paragraph (1) or (2) of subdivision (d) or in
9 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic
10 drug classified in Schedule III, IV, or V, except when administered
11 by or under the direction of a person licensed by the state to
12 dispense, prescribe, or administer controlled substances. It shall
13 be the burden of the defense to show that it comes within the
14 exception. Any person convicted of violating this subdivision is
15 guilty of a misdemeanor and shall be sentenced to serve a term of
16 ~~not less than 90 days or more than one year in a county jail. The~~
17 ~~court may also place a person convicted under this subdivision on~~
18 ~~probation for a period not to exceed five years and, except as~~
19 ~~provided in subdivision (e), shall in all cases in which probation~~
20 ~~is granted require, as a condition thereof, that the person be~~
21 ~~confined in a county jail for at least 90 days. Other than as provided~~

1 ~~by subdivision (c), in no event shall the court have the power to~~
2 ~~absolve a person who violates this subdivision from the obligation~~
3 ~~of spending at least 90 days in confinement in a county jail.~~

4 (b) Any person who ~~(1)~~ is convicted of violating subdivision
5 (a) when the offense occurred within seven years of that person
6 being convicted of two or more separate violations of that
7 subdivision, and ~~(2)~~ refuses to complete a licensed drug
8 rehabilitation program offered by the court pursuant to subdivision
9 (c), shall be punished by imprisonment in a county jail for not less
10 than 180 days nor more than one year. In no event does the court
11 have the power to absolve a person convicted of a violation of
12 subdivision (a) that is punishable under this subdivision from the
13 obligation of spending at least 180 days in confinement in a county
14 jail unless there are no licensed drug rehabilitation programs
15 reasonably available.

16 For the purpose of this section, a drug rehabilitation program
17 shall not be considered reasonably available unless the person is
18 required to pay no more than the court determines that he or she
19 is reasonably able to pay, in order to participate in the program.

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

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

33 (d) In addition to any fine assessed under this section, the judge
34 may assess a fine not to exceed seventy dollars (\$70) against any
35 person who violates this section, with the proceeds of this fine to
36 be used in accordance with Section 1463.23 of the Penal Code.
37 The court shall, however, take into consideration the defendant's
38 ability to pay, and no defendant shall be denied probation because
39 of his or her inability to pay the fine permitted under this
40 subdivision.

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

8 As used in this subdivision “immediate personal possession”
9 includes, but is not limited to, the interior passenger compartment
10 of a motor vehicle.

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

14 (g) Nothing in this section prevents deferred entry of judgment
15 or a defendant’s participation in a preguilty plea drug court program
16 under Chapter 2.5 (commencing with Section 1000) of Title 6 of
17 Part 2 of the Penal Code unless the person is charged with violating
18 subdivision (b) or (c) of Section 243 of the Penal Code. A person
19 charged with violating this section by being under the influence
20 of any controlled substance which is specified in paragraph (21),
21 (22), or (23) of subdivision (d) of Section 11054 or in paragraph
22 (3) of subdivision (e) of Section 11055 and with violating either
23 subdivision (b) or (c) of Section 243 of the Penal Code or with a
24 violation of subdivision (e) shall be ineligible for deferred entry
25 of judgment or a preguilty plea drug court program.

26 ~~SECTION 1. Section 11500 of the Health and Safety Code is~~
27 ~~amended to read:~~

28 ~~11500. (a) Subject to subdivision (b), the district attorney, or~~
29 ~~his or her designee, of the county in which any violation of this~~
30 ~~division is committed shall conduct all actions and prosecutions~~
31 ~~for the violation.~~

32 ~~(b) The Attorney General, or special counsel employed by the~~
33 ~~Attorney General for that purpose, may take complete charge of~~
34 ~~the conduct of such actions or prosecutions. The Attorney General~~
35 ~~may fix the compensation to be paid for the service and may incur~~
36 ~~other expenses in connection with the conduct of the actions or~~
37 ~~prosecutions as he or she may deem necessary. An attorney~~
38 ~~employed as special counsel shall not receive as compensation~~
39 ~~more than three thousand five hundred dollars (\$3,500) in any one~~
40 ~~year.~~

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