

ASSEMBLY BILL

No. 46

**Introduced by Assembly Members Lackey and Melendez
(Coauthors: Assembly Members Baker and Steinorth)**

December 1, 2014

An act to amend Sections 11350 and 11377 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as introduced, Lackey. Controlled substances.

(1) Existing law, as amended by the Safe Neighborhoods and Schools Act, a measure approved by the voters at the November 4, 2014, statewide general election, generally provides that the possession of Ketamine, gamma hydroxybutyric acid (GHB), and flunitrazepam is a misdemeanor, punishable by imprisonment in the county jail for not more than one year. Existing law also provides that when a person has one or more prior convictions for certain enumerated crimes, his or her possession of GHB is a felony, punishable by imprisonment in a county jail for 16 months, or 2 or 3 years, and his or her possession of Ketamine and flunitrazepam is either a misdemeanor, punishable by imprisonment in the county jail for not more than one year, or a felony, punishable by imprisonment in a county jail for 16 months, or 2 or 3 years.

This bill would instead provide, without regard for a person's prior convictions, that possession of Ketamine and flunitrazepam is either a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or a felony, punishable by imprisonment in a county jail for 16 months, or 2 or 3 years. The bill would also provide that the possession of GHB by a person who does not have a prior conviction for those certain enumerated crimes is either a misdemeanor, punishable

by imprisonment in a county jail for not more than one year, or a felony, punishable in a county jail for 16 months, or 2 or 3 years.

(2) Proposition 47 provides that its provisions may be amended by a statute that is consistent with and furthers its intent and that is passed by a $\frac{2}{3}$ vote of each house of the Legislature and is signed by the Governor. Proposition 47 also provides that the Legislature may, by majority vote, amend, add, or repeal provisions to further reduce the penalties for offenses it addresses.

The California Constitution authorizes the Legislature to amend or repeal an initiative statute by another statute that becomes effective when approved by the electors.

This bill would provide that its provisions become effective only upon approval of the voters at the next statewide election, and would provide for the submission of this measure to the voters for approval at that election.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Ketamine, gamma hydroxybutyric acid (GHB), and
- 4 Rohypnol are drugs often characterized as “date rape” drugs.
- 5 (b) GHB is a central nervous system depressant that was
- 6 approved for the treatment of narcolepsy. GHB has no color or
- 7 taste, and is frequently combined with alcohol to commit sexual
- 8 assault.
- 9 (c) Ketamine causes unconsciousness, hallucinations, loss of
- 10 body control, and numbing. Ketamine works very quickly, so
- 11 victims drugged with Ketamine only have a few seconds to react
- 12 before losing consciousness.
- 13 (d) Rohypnol, commonly known as flunitrazepam, and
- 14 sometimes referred to as “roofies,” impairs judgment and leaves
- 15 victims drugged with Rohypnol physically incapacitated. Memory
- 16 loss and confusion under the influence of this drug makes victims
- 17 more vulnerable to rape.
- 18 (e) In order to deter the possession of Ketamine, GHB, and
- 19 Rohypnol by sexual predators and to take steps to prevent the use
- 20 of these drugs to incapacitate victims for purposes of sexual

1 exploitation, it is necessary and appropriate that an individual who
2 possesses one of these substances be subject to felony penalties.

3 SEC. 2. Section 11350 of the Health and Safety Code is
4 amended to read:

5 11350. (a) (1) Except as otherwise provided in this division,
6 every person who possesses (1)~~any~~ a controlled substance
7 specified in subdivision ~~(b), (e), (e), (b) or (c) of, or paragraph~~
8 *(1) or (2) of subdivision (e) of, or paragraph (1) of subdivision (f)*
9 of, Section 11054, specified in paragraph (14), (15), or (20) of
10 subdivision (d) of Section 11054, or specified in subdivision (b)
11 or (c) of Section 11055, or specified in subdivision (h) of Section
12 11056, or (2)~~any~~ a controlled substance classified in Schedule III,
13 IV, or V which is a narcotic drug, unless upon the written
14 prescription of a physician, dentist, podiatrist, or veterinarian
15 licensed to practice in this state, shall be punished by imprisonment
16 in a county jail for not more than one year, except that such person
17 shall instead be punished pursuant to subdivision (h) of Section
18 1170 of the Penal Code if that person has one or more prior
19 convictions for an offense specified in clause (iv) of subparagraph
20 (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal
21 Code or for an offense requiring registration pursuant to
22 subdivision (c) of Section 290 of the Penal Code.

23 (2) (A) *Except as otherwise provided in subparagraph (B) and*
24 *this division, every person who possesses a controlled substance*
25 *specified in paragraph (3) of subdivision (e) of Section 11054 shall*
26 *be punished by imprisonment in a county jail for not more than*
27 *one year or pursuant to subdivision (h) of Section 1170 of the*
28 *Penal Code.*

29 (B) *Except as otherwise provided in this division, every person*
30 *who has one or more prior convictions for an offense specified in*
31 *clause (iv) of subparagraph (C) of paragraph (2) of subdivision*
32 *(e) of Section 667 of the Penal Code or for an offense requiring*
33 *registration pursuant to subdivision (c) of Section 290 of the Penal*
34 *Code who possesses a controlled substance specified in paragraph*
35 *(3) of subdivision (e) of Section 11054 shall be punished by*
36 *imprisonment pursuant to subdivision (h) of Section 1170 of the*
37 *Penal Code.*

38 (b) Except as otherwise provided in this division, whenever a
39 person who possesses any of the controlled substances specified
40 in subdivision (a), the judge may, in addition to any punishment

1 provided for pursuant to subdivision (a), assess against that person
2 a fine not to exceed seventy dollars (\$70) with proceeds of this
3 fine to be used in accordance with Section 1463.23 of the Penal
4 Code. The court shall, however, take into consideration the
5 defendant's ability to pay, and no defendant shall be denied
6 probation because of his or her inability to pay the fine permitted
7 under this subdivision.

8 (c) Except in unusual cases in which it would not serve the
9 interest of justice to do so, whenever a court grants probation
10 pursuant to a felony conviction under this section, in addition to
11 any other conditions of probation which may be imposed, the
12 following conditions of probation shall be ordered:

13 (1) For a first offense under this section, a fine of at least one
14 thousand dollars (\$1,000) or community service.

15 (2) For a second or subsequent offense under this section, a fine
16 of at least two thousand dollars (\$2,000) or community service.

17 (3) If a defendant does not have the ability to pay the minimum
18 fines specified in paragraphs (1) and (2), community service shall
19 be ordered in lieu of the fine.

20 SEC. 3. Section 11377 of the Health and Safety Code is
21 amended to read:

22 11377. (a) Except as authorized by law and as otherwise
23 provided in subdivision (b) or Section 11375, or in Article ~~7~~ 3
24 (commencing with Section ~~4211~~ 4050) of Chapter 9 of Division
25 2 of the Business and Professions Code, every person who
26 possesses ~~any~~ a controlled substance which is (1) classified in
27 Schedule III, IV, or V, and which is not a narcotic drug, (2)
28 specified in subdivision (d) of Section 11054, except paragraphs
29 (13), (14), (15), and (20) of subdivision (d), (3) specified in
30 paragraph (11) of subdivision (c) of Section 11056, (4) specified
31 in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5)
32 specified in subdivision (d), (e), or (f) of Section 11055, unless
33 upon the prescription of a physician, dentist, podiatrist, or
34 veterinarian, licensed to practice in this state, shall be punished by
35 imprisonment in a county jail for a period of not more than one
36 year, except that such person may instead be punished pursuant
37 to subdivision (h) of Section 1170 of the Penal Code if that person
38 has one or more prior convictions for an offense specified in clause
39 (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of
40 Section 667 of the Penal Code or for an offense requiring

1 registration pursuant to subdivision (c) of Section 290 of the Penal
2 Code.

3 *(b) Every person who possesses a controlled substance specified*
4 *in subdivision (g) of Section 11056 or specified in paragraph (13)*
5 *of subdivision (d) of Section 11057 shall be punished by*
6 *imprisonment in a county jail for not more than one year or*
7 *pursuant to subdivision (h) of Section 1170 of the Penal Code.*

8 ~~(b)~~

9 (c) The judge may assess a fine not to exceed seventy dollars
10 (\$70) against any person who violates subdivision (a), with the
11 proceeds of this fine to be used in accordance with Section 1463.23
12 of the Penal Code. The court shall, however, take into consideration
13 the defendant's ability to pay, and no defendant shall be denied
14 probation because of his or her inability to pay the fine permitted
15 under this subdivision.

16 SEC. 4. (a) Sections 2 and 3 of this act amend the Safe
17 Neighborhoods and Schools Act, Proposition 47, an initiative
18 statute that was approved by the voters at the November 4, 2014,
19 statewide general election, and shall become effective only when
20 submitted to and approved by the voters.

21 (b) The Secretary of State shall submit Sections 2 and 3 of this
22 act for approval by the voters at the next statewide election
23 pursuant to Section 9040 of the Election Code.