

ASSEMBLY BILL

No. 472

Introduced by Assembly Member Ammiano

February 15, 2011

An act to add Section 11376.5 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 472, as introduced, Ammiano. Controlled substances: overdose: punishment.

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.

This bill would provide that it shall not be a crime for any person who experiences a drug-related overdose, as defined, who, in good faith, seeks medical assistance, or any other person who, in good faith, seeks medical assistance for the person experiencing a drug-related overdose, to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, under certain circumstances related to a drug-related overdose that prompted the seeking of medical assistance if that person does not obstruct medical or law enforcement personnel. The bill would provide that its provisions shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs for money, goods, or services, or laws prohibiting the forcible administration of drugs against a

person’s will. The bill would provide that it shall not affect liability for any offense that involves activities made dangerous by the consumption of controlled substances, as specified.

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. The Legislature finds and declares all of the
2 following:

3 (a) Drug overdose is the second leading cause of injury death
4 in the United States, behind only motor vehicle accidents and ahead
5 of firearms. California has the greatest number of overdose deaths
6 in the country per year. Moreover, drug and alcohol overdose
7 morbidity and mortality are not confined to adults but also
8 devastate California’s youth.

9 (b) The State Department of Alcohol and Drug Programs
10 reported that there were 3,102 overdose deaths in 2002, the first
11 year the department began tracking overdose deaths in California.
12 By 2006, the number of overdose deaths had grown to 3,646.

13 (c) Many overdose fatalities occur because peers delay or forgo
14 calling 911 or seeking emergency assistance for fear of arrest or
15 police involvement, which researchers continually identify as the
16 most significant barrier to the ideal first response of calling
17 emergency services. Furthermore, if criminal punishment is
18 intended to deter drug abuse, it is clearly too late to deter such
19 abuse when a person is already suffering from an overdose.

20 (d) It is the intent of the Legislature to encourage a witness of
21 a drug-related overdose to call 911 or seek other emergency
22 assistance in a timely manner in order to save the life of an
23 overdose victim by establishing a state policy exempting drug
24 possession or drug paraphernalia possession from criminal
25 prosecution in situations involving medical emergencies.

26 (e) It is not the intent of the Legislature to protect individuals
27 from prosecution for other offenses, or to interfere with law
28 enforcement protocols to secure the scene of an overdose.

29 SEC. 2. Section 11376.5 is added to the Health and Safety
30 Code, to read:

31 11376.5. (a) Notwithstanding any other law, it shall not be a
32 crime for a person to be under the influence of, or to possess for

1 personal use, a controlled substance, controlled substance analog,
2 or drug paraphernalia, if that person, in good faith, seeks medical
3 assistance for another person experiencing a drug-related overdose
4 that is related to the possession of a controlled substance, controlled
5 substance analog, or drug paraphernalia of the person seeking
6 medical assistance, and that person does not obstruct medical or
7 law enforcement personnel.

8 (b) Notwithstanding any other law, it shall not be a crime for a
9 person who experiences a drug-related overdose and who is in
10 need of medical assistance to be under the influence of, or to
11 possess for personal use, a controlled substance, controlled
12 substance analog, or drug paraphernalia if the person or one or
13 more other persons at the scene of the overdose, in good faith, seek
14 medical assistance for the person experiencing the overdose.

15 (c) This section shall not affect laws prohibiting the selling,
16 providing, giving, or exchanging of drugs for money, goods, or
17 services, or laws prohibiting the forcible administration of drugs
18 against a person's will.

19 (d) Nothing in this section shall affect liability for any offense
20 that involves activities made dangerous by the consumption of a
21 controlled substance or controlled substance analog, including,
22 but not limited to, violations of Section 23103 of the Vehicle Code
23 as specified in Section 23103.5 of the Vehicle Code, or violations
24 of Section 23152 or 23153 of the Vehicle Code.

25 (e) For the purposes of this section, "drug-related overdose"
26 means an acute medical condition that is the result of the ingestion
27 or use by an individual of one or more controlled substances or
28 one or more controlled substances in combination with alcohol,
29 in quantities that are excessive for that individual. An individual's
30 condition shall be deemed to be a "drug-related overdose" if a
31 reasonable person of ordinary knowledge would believe the
32 condition to be a drug-related overdose.