

Assembly Bill No. 472

CHAPTER 338

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

[Approved by Governor September 17, 2012. Filed with
Secretary of State September 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 472, 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 seeking 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, 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, including, but not limited to, driving under the influence.

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

SECTION 1. The Legislature finds and declares all of the following:

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

(b) The State Department of Alcohol and Drug Programs reported that there were 3,102 overdose deaths in 2002, the first year the department

began tracking overdose deaths in California. By 2006, the number of overdose deaths had grown to 3,646.

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

(d) The state's network of drug treatment providers, syringe exchange programs, county public health departments, and others who work with communities at high risk of drug overdose are well positioned to disseminate educational messages on the importance of seeking emergency medical assistance to prevent overdose deaths. In implementing this act, the Legislature intends to address the drug user's reasonable fear that they, or the victim, might be arrested if they seek medical assistance.

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

(f) It is not the intent of the Legislature to protect individuals from prosecution for any offense not specifically described in subdivision (a) or (b) of Section 11376.5 of the Health and Safety Code, or to interfere with law enforcement protocols to secure the scene of an overdose.

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

11376.5. (a) Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

(b) Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

(c) This section shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will.

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

(e) For the purposes of this section, “drug-related overdose” means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. An individual’s condition shall be deemed to be a “drug-related overdose” if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury.