

AMENDED IN ASSEMBLY MARCH 17, 2015

AMENDED IN ASSEMBLY MARCH 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 46

Introduced by Assembly Members Lackey and Melendez

(Principal coauthors: Senators Galgiani, Nielsen, and Vidak)

**(Coauthors: Assembly Members Travis Allen, Baker, Brough,
Gallagher, Gonzalez, Hadley, Kim, Linder, Patterson, Rodriguez,
Steinorth, Waldron, and Wilk)**

(Coauthors: Senators Anderson, *Bates*, Huff, and Stone)

December 1, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, 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. *This bill would make other technical, clarifying changes.*

(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.

1 (d) Rohypnol, also known by its chemical name of
2 flunitrazepam, and sometimes referred to as “roofies,” impairs
3 judgment and leaves victims drugged with Rohypnol physically
4 incapacitated. Memory loss and confusion under the influence of
5 this drug makes victims more vulnerable to rape.

6 (e) In order to deter the possession of Ketamine, GHB, and
7 Rohypnol by sexual predators and to take steps to prevent the use
8 of these drugs to incapacitate victims for purposes of sexual
9 exploitation, it is necessary and appropriate that an individual who
10 possesses one of these substances be subject to felony penalties.

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

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

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

37 (B) Except as otherwise provided in this division, every person
38 who has one or more prior convictions for an offense specified in
39 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e)
40 of 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 who possesses a controlled substance specified in paragraph
3 (3) of subdivision (e) of Section 11054 shall be punished by
4 imprisonment pursuant to subdivision (h) of Section 1170 of the
5 Penal Code.

6 (b) Except as otherwise provided in this division, whenever a
7 person who possesses any of the controlled substances specified
8 in subdivision (a), the judge may, in addition to any punishment
9 provided for pursuant to subdivision (a), assess against that person
10 a fine not to exceed seventy dollars (\$70) with proceeds of this
11 fine to be used in accordance with Section 1463.23 of the Penal
12 Code. The court shall, however, take into consideration the
13 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 (c) Except in unusual cases in which it would not serve the
17 interest of justice to do so, whenever a court grants probation
18 pursuant to a felony conviction under this section, in addition to
19 any other conditions of probation which may be imposed, the
20 following conditions of probation shall be ordered:

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

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

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

28 (d) *It is not unlawful for a person other than the prescription*
29 *holder to possess a controlled substance described in subdivision*
30 *(a) if both of the following apply:*

31 (1) *The possession of the controlled substance is at the direction*
32 *or with the express authorization of the prescription holder.*

33 (2) *The sole intent of the possessor is to deliver the prescription*
34 *to the prescription holder for its prescribed use or to discard the*
35 *substance in a lawful manner.*

36 (e) *This section does not permit the use of a controlled substance*
37 *by a person other than the prescription holder or permit the*
38 *distribution or sale of a controlled substance that is otherwise*
39 *inconsistent with the prescription.*

1 *SEC. 3. Section 11350 of the Health and Safety Code, as*
2 *amended by Section 1 of Chapter 540 of the Statutes of 2014, is*
3 *repealed.*

4 ~~11350. (a) Except as otherwise provided in this division, every~~
5 ~~person who possesses (1) any controlled substance specified in~~
6 ~~subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section~~
7 ~~11054, specified in paragraph (14), (15), or (20) of subdivision (d)~~
8 ~~of Section 11054, or specified in subdivision (b) or (c) of Section~~
9 ~~11055, or specified in subdivision (h) of Section 11056, or (2) any~~
10 ~~controlled substance classified in Schedule III, IV, or V which is~~
11 ~~a narcotic drug, unless upon the written prescription of a physician,~~
12 ~~dentist, podiatrist, or veterinarian licensed to practice in this state,~~
13 ~~shall be punished by imprisonment pursuant to subdivision (h) of~~
14 ~~Section 1170 of the Penal Code.~~

15 ~~(b) Except as otherwise provided in this division, every person~~
16 ~~who possesses any controlled substance specified in subdivision~~
17 ~~(e) of Section 11054 shall be punished by imprisonment in a county~~
18 ~~jail for not more than one year or pursuant to subdivision (h) of~~
19 ~~Section 1170 of the Penal Code.~~

20 ~~(c) Except as otherwise provided in this division, whenever a~~
21 ~~person who possesses any of the controlled substances specified~~
22 ~~in subdivision (a) or (b), the judge may, in addition to any~~
23 ~~punishment provided for pursuant to subdivision (a) or (b), assess~~
24 ~~against that person a fine not to exceed seventy dollars (\$70) with~~
25 ~~proceeds of this fine to be used in accordance with Section 1463.23~~
26 ~~of the Penal Code. The court shall, however, take into consideration~~
27 ~~the defendant's ability to pay, and no defendant shall be denied~~
28 ~~probation because of his or her inability to pay the fine permitted~~
29 ~~under this subdivision.~~

30 ~~(d) Except in unusual cases in which it would not serve the~~
31 ~~interest of justice to do so, whenever a court grants probation~~
32 ~~pursuant to a felony conviction under this section, in addition to~~
33 ~~any other conditions of probation which may be imposed, the~~
34 ~~following conditions of probation shall be ordered:~~

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

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

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

4 ~~(e) It is not unlawful for a person other than the prescription~~
5 ~~holder to possess a controlled substance described in subdivision~~
6 ~~(a) if both of the following apply:~~

7 ~~(1) The possession of the controlled substance is at the direction~~
8 ~~or with the express authorization of the prescription holder.~~

9 ~~(2) The sole intent of the possessor is to deliver the prescription~~
10 ~~to the prescription holder for its prescribed use or to discard the~~
11 ~~substance in a lawful manner.~~

12 ~~(f) This section does not permit the use of a controlled substance~~
13 ~~by a person other than the prescription holder or permit the~~
14 ~~distribution or sale of a controlled substance that is otherwise~~
15 ~~inconsistent with the prescription.~~

16 ~~SEC. 3.~~

17 *SEC. 4.* Section 11377 of the Health and Safety Code is
18 amended to read:

19 11377. (a) Except as authorized by law and as otherwise
20 provided in subdivision (b) or Section 11375, or in Article 3
21 (commencing with Section 4050) of Chapter 9 of Division 2 of
22 the Business and Professions Code, every person who possesses
23 a controlled substance which is (1) classified in Schedule III, IV,
24 or V, and which is not a narcotic drug, (2) specified in subdivision
25 (d) of Section 11054, except paragraphs (13), (14), (15), and (20)
26 of subdivision (d), (3) specified in paragraph (11) of subdivision
27 (c) of Section 11056, (4) specified in paragraph (2) or (3) of
28 subdivision (f) of Section 11054, or (5) specified in subdivision
29 (d), (e), or (f) of Section 11055, unless upon the prescription of a
30 physician, dentist, podiatrist, or veterinarian, licensed to practice
31 in this state, shall be punished by imprisonment in a county jail
32 for a period of not more than one year, except that such person
33 may instead be punished pursuant to subdivision (h) of Section
34 1170 of the Penal Code if that person has one or more prior
35 convictions for an offense specified in clause (iv) of subparagraph
36 (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal
37 Code or for an offense requiring registration pursuant to
38 subdivision (c) of Section 290 of the Penal Code.

39 (b) Every person who possesses a controlled substance specified
40 in subdivision (g) of Section 11056 or specified in paragraph (13)

1 of subdivision (d) of Section 11057 shall be punished by
2 imprisonment in a county jail for not more than one year or
3 pursuant to subdivision (h) of Section 1170 of the Penal Code.

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

11 (d) *It is not unlawful for a person other than the prescription*
12 *holder to possess a controlled substance described in subdivision*
13 *(a) if both of the following apply:*

14 (1) *The possession of the controlled substance is at the direction*
15 *or with the express authorization of the prescription holder.*

16 (2) *The sole intent of the possessor is to deliver the prescription*
17 *to the prescription holder for its prescribed use or to discard the*
18 *substance in a lawful manner.*

19 (e) *This section does not permit the use of a controlled substance*
20 *by a person other than the prescription holder or permit the*
21 *distribution or sale of a controlled substance that is otherwise*
22 *inconsistent with the prescription.*

23 SEC. 5. *Section 11377 of the Health and Safety Code, as*
24 *amended by Section 2 of Chapter 540 of the Statutes of 2014, is*
25 *repealed.*

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

1 ~~(b) (1) Any person who violates subdivision (a) by unlawfully~~
2 ~~possessing a controlled substance specified in subdivision (f) of~~
3 ~~Section 11056, and who has not previously been convicted of a~~
4 ~~violation involving a controlled substance specified in subdivision~~
5 ~~(f) of Section 11056, is guilty of a misdemeanor.~~

6 ~~(2) Any person who violates subdivision (a) by unlawfully~~
7 ~~possessing a controlled substance specified in subdivision (g) of~~
8 ~~Section 11056 is guilty of a misdemeanor.~~

9 ~~(3) Any person who violates subdivision (a) by unlawfully~~
10 ~~possessing a controlled substance specified in paragraph (7) or (8)~~
11 ~~of subdivision (d) of Section 11055 is guilty of a misdemeanor.~~

12 ~~(4) Any person who violates subdivision (a) by unlawfully~~
13 ~~possessing a controlled substance specified in paragraph (8) of~~
14 ~~subdivision (f) of Section 11057 is guilty of a misdemeanor.~~

15 ~~(e) In addition to any fine assessed under subdivision (b), the~~
16 ~~judge may assess a fine not to exceed seventy dollars (\$70) against~~
17 ~~any person who violates subdivision (a), with the proceeds of this~~
18 ~~fine to be used in accordance with Section 1463.23 of the Penal~~
19 ~~Code. The court shall, however, take into consideration the~~
20 ~~defendant's ability to pay, and no defendant shall be denied~~
21 ~~probation because of his or her inability to pay the fine permitted~~
22 ~~under this subdivision.~~

23 ~~(d) It is not unlawful for a person other than the prescription~~
24 ~~holder to possess a controlled substance described in subdivision~~
25 ~~(a) if both of the following apply:~~

26 ~~(1) The possession of the controlled substance is at the direction~~
27 ~~or with the express authorization of the prescription holder.~~

28 ~~(2) The sole intent of the possessor is to deliver the prescription~~
29 ~~to the prescription holder for its prescribed use or to discard the~~
30 ~~substance in a lawful manner.~~

31 ~~(e) This section does not permit the use of a controlled substance~~
32 ~~by a person other than the prescription holder or permit the~~
33 ~~distribution or sale of a controlled substance that is otherwise~~
34 ~~inconsistent with the prescription.~~

35 ~~SEC. 4.~~

36 *SEC. 6.* (a) Sections 2 and 3 of this act amend the Safe
37 Neighborhoods and Schools Act, Proposition 47, an initiative
38 statute that was approved by the voters at the November 4, 2014,
39 statewide general election, and shall become effective only when
40 submitted to and approved by the voters.

1 (b) The Secretary of State shall submit Sections 1, 2, and 3 of
2 this act for approval by the voters at the next statewide election
3 pursuant to Section 9040 of the Election Code.

O