

AMENDED IN ASSEMBLY APRIL 9, 2015
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 ~~Member 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 *add Sections 11350.5 and 11377.5* to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, Lackey. Controlled substances.

~~(1) Existing~~

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 or~~ 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.

This bill would make it a felony, punishable by imprisonment in the state prison for 16 months or 2 or 3 years, to possess Ketamine, GHB, or flunitrazepam with the intent to commit sexual assault. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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, also known by its chemical name of
14 flunitrazepam, and sometimes referred to as “roofies,” impairs
15 judgment and leaves victims drugged with Rohypnol physically
16 incapacitated. Memory loss and confusion under the influence of
17 this drug makes victims 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
21 exploitation, it is necessary and appropriate that an individual who
22 possesses one of these substances *for predatory purposes* be subject
23 to felony penalties.

24 ~~SEC. 2. Section 11350 of the Health and Safety Code is~~
25 ~~amended to read:~~

26 ~~11350. (a) (1) Except as otherwise provided in this division,~~
27 ~~every person who possesses (1) a controlled substance specified~~
28 ~~in subdivision (b) or (c) of, or paragraph (1) or (2) of subdivision~~
29 ~~(c) of, or paragraph (1) of subdivision (f) of, Section 11054,~~
30 ~~specified in paragraph (14), (15), or (20) of subdivision (d) of~~
31 ~~Section 11054, or specified in subdivision (b) or (c) of Section~~
32 ~~11055, or specified in subdivision (h) of Section 11056, or (2) a~~
33 ~~controlled substance classified in Schedule III, IV, or V which is~~
34 ~~a narcotic drug, unless upon the written prescription of a physician,~~
35 ~~dentist, podiatrist, or veterinarian licensed to practice in this state,~~
36 ~~shall be punished by imprisonment in a county jail for not more~~
37 ~~than one year, except that such person shall instead be punished~~
38 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code if~~

1 that person has one or more prior convictions for an offense
2 specified in clause (iv) of subparagraph (C) of paragraph (2) of
3 subdivision (e) of Section 667 of the Penal Code or for an offense
4 requiring registration pursuant to subdivision (e) of Section 290
5 of the Penal Code.

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

12 (B) Except as otherwise provided in this division, every person
13 who has one or more prior convictions for an offense specified in
14 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e)
15 of Section 667 of the Penal Code or for an offense requiring
16 registration pursuant to subdivision (e) of Section 290 of the Penal
17 Code who possesses a controlled substance specified in paragraph
18 (3) of subdivision (e) of Section 11054 shall be punished by
19 imprisonment pursuant to subdivision (h) of Section 1170 of the
20 Penal Code.

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

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

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

38 (2) For a second or subsequent offense under this section, a fine
39 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 ~~(d) 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 ~~(e) 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. Section 11350 of the Health and Safety Code, as~~
17 ~~amended by Section 1 of Chapter 540 of the Statutes of 2014, is~~
18 ~~repealed.~~

19 ~~SEC. 4. Section 11377 of the Health and Safety Code is~~
20 ~~amended to read:~~

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

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

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

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

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

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

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

25 ~~SEC. 5. Section 11377 of the Health and Safety Code, as~~
26 ~~amended by Section 2 of Chapter 540 of the Statutes of 2014, is~~
27 ~~repealed.~~

28 ~~SEC. 6. (a) Sections 2 and 3 of this act amend the Safe~~
29 ~~Neighborhoods and Schools Act, Proposition 47, an initiative~~
30 ~~statute that was approved by the voters at the November 4, 2014,~~
31 ~~statewide general election, and shall become effective only when~~
32 ~~submitted to and approved by the voters.~~

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

36 ~~SEC. 2. Section 11350.5 is added to the Health and Safety~~
37 ~~Code, to read:~~

38 ~~11350.5. (a) Except as otherwise provided in this division, a~~
39 ~~person who possesses a controlled substance specified in~~
40 ~~paragraph (3) of subdivision (e) of Section 11054 with the intent~~

1 to commit sexual assault shall be punished by imprisonment in the
2 state prison for 16 months, or two or three years.

3 (b) For purposes of this section, “sexual assault” includes, but
4 is not limited to, a violation of paragraph (3) of subdivision (a) of
5 Section 261 of the Penal Code, paragraph (2) of subdivision (a)
6 of Section 262 of the Penal Code, subdivision (i) of Section 286
7 of the Penal Code, subdivision (i) of Section 288a of the Penal
8 Code, or subdivision (e) of Section 289 of the Penal Code.

9 SEC. 3. Section 11377.5 is added to the Health and Safety
10 Code, to read:

11 11377.5. (a) Except as otherwise provided in this division, a
12 person who possesses a controlled substance specified in
13 paragraph (11) of subdivision (c) of, or subdivision (g) of, Section
14 11056, or paragraph (13) of subdivision (d) of Section 11057 with
15 the intent to commit sexual assault shall be punished by
16 imprisonment in the state prison for 16 months, or two or three
17 years.

18 (b) For purposes of this section, “sexual assault” includes, but
19 is not limited to, a violation of paragraph (3) of subdivision (a) of
20 Section 261 of the Penal Code, paragraph (2) of subdivision (a)
21 of Section 262 of the Penal Code, subdivision (i) of Section 286
22 of the Penal Code, subdivision (i) of Section 288a of the Penal
23 Code, or subdivision (e) of Section 289 of the Penal Code.

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.