

AMENDED IN SENATE APRIL 20, 2015

**SENATE BILL**

**No. 333**

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**Introduced by Senator Galgiani**

**(Principal coauthors: Senators Anderson and Vidak)**

(Principal coauthors: Assembly Members Cooper and Lackey)

**(Coauthors: Senators Bates, Nguyen, and Stone)**

(Coauthors: Assembly Members Dodd, Gonzalez, and Maienschein)

February 23, 2015

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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

SB 333, as amended, Galgiani. 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, law 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.~~

~~*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, flunitrazepam, or GHB, with the intent to commit sexual assault, as defined for these purposes to include, among other acts, rape, sodomy, and oral copulation. By creating a new crime, this bill would impose a state-mandated local program.*~~

~~(2) *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:

1 (a) Ketamine, gamma hydroxybutyric acid (GHB), and  
2 Rohypnol are drugs often characterized as “date rape” drugs.

3 (b) GHB is a central nervous system depressant that was  
4 approved for the treatment of narcolepsy. GHB has no color or  
5 taste, and is frequently combined with alcohol to commit sexual  
6 assault.

7 (c) Ketamine causes unconsciousness, hallucinations, loss of  
8 body control, and numbing. Ketamine works very quickly, so  
9 victims drugged with Ketamine only have a few seconds to react  
10 before losing consciousness.

11 (d) Rohypnol, commonly known as flunitrazepam, and  
12 sometimes referred to as “roofies,” impairs judgment and leaves  
13 victims drugged with Rohypnol physically incapacitated. Memory  
14 loss and confusion under the influence of this drug makes victims  
15 more vulnerable to rape.

16 (e) In order to deter the possession of Ketamine, GHB, and  
17 Rohypnol by sexual predators and to take steps to prevent the use  
18 of these drugs to incapacitate victims for purposes of sexual  
19 exploitation, it is necessary and appropriate that an individual who  
20 possesses one of these substances *for predatory purposes* be subject  
21 to felony penalties.

22 *SEC. 2. Section 11350.5 is added to the Health and Safety*  
23 *Code, to read:*

24 *11350.5. (a) Except as otherwise provided in this division,*  
25 *every person who possesses a controlled substance specified in*  
26 *paragraph (3) of subdivision (e) of Section 11054 with the intent*  
27 *to commit sexual assault shall be punished by imprisonment in the*  
28 *state prison for 16 months, or two or three years.*

29 *(b) For purposes of this section, “sexual assault” means conduct*  
30 *in violation of Section 243.1, 261, 262, 286, 288a, or 289.*

31 *SEC. 3. Section 11377.5 is added to the Health and Safety*  
32 *Code, to read:*

33 *11377.5. (a) Except as otherwise provided in this division,*  
34 *every person who possesses any controlled substance specified in*  
35 *paragraph (11) of subdivision (c) of, or subdivision (g) of, Section*  
36 *11056, or paragraph (13) of subdivision (d) of Section 11057, with*  
37 *the intent to commit sexual assault, shall be punished by*  
38 *imprisonment in the state prison for 16 months, or two or three*  
39 *years.*

1 (b) For purposes of this section, “sexual assault” means conduct  
2 in violation of Section 243.1, 261, 262, 286, 288a, or 289.

3 SEC. 4. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

12 SEC. 2. ~~Section 11350 of the Health and Safety Code, as~~  
13 ~~amended by November 4, 2014, by initiative Proposition 47,~~  
14 ~~Section 11, is amended to read:~~

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

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

39 ~~(B) Except as otherwise provided in this division, every person~~  
40 ~~who has one or more prior convictions for an offense specified in~~

1 ~~clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e)~~  
2 ~~of Section 667 of the Penal Code or for an offense requiring~~  
3 ~~registration pursuant to subdivision (c) of Section 290 of the Penal~~  
4 ~~Code who possesses a controlled substance specified in paragraph~~  
5 ~~(3) of subdivision (e) of Section 11054 shall be punished by~~  
6 ~~imprisonment pursuant to subdivision (h) of Section 1170 of the~~  
7 ~~Penal Code.~~

8 ~~(b) Except as otherwise provided in this division, whenever a~~  
9 ~~person who possesses any of the controlled substances specified~~  
10 ~~in subdivision (a), the judge may, in addition to any punishment~~  
11 ~~provided for pursuant to subdivision (a), assess against that person~~  
12 ~~a fine not to exceed seventy dollars (\$70) with proceeds of this~~  
13 ~~fine to be used in accordance with Section 1463.23 of the Penal~~  
14 ~~Code. The court shall, however, take into consideration the~~  
15 ~~defendant's ability to pay, and no defendant shall be denied~~  
16 ~~probation because of his or her inability to pay the fine permitted~~  
17 ~~under this subdivision.~~

18 ~~(c) Except in unusual cases in which it would not serve the~~  
19 ~~interest of justice to do so, whenever a court grants probation~~  
20 ~~pursuant to a felony conviction under this section, in addition to~~  
21 ~~any other conditions of probation which may be imposed, the~~  
22 ~~following conditions of probation shall be ordered:~~

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

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

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

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

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

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

38 ~~(e) This section does not permit the use of a controlled substance~~  
39 ~~by a person other than the prescription holder or permit the~~

1 distribution or sale of a controlled substance that is otherwise  
2 inconsistent with the prescription.

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

6 ~~SEC. 4. Section 11377 of the Health and Safety Code, as~~  
7 ~~amended by November 4, 2014, by initiative Proposition 47,~~  
8 ~~Section 13, is amended to read:~~

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

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

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

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

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

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

9 ~~(e) This section does not permit the use of a controlled substance~~  
10 ~~by a person other than the prescription holder or permit the~~  
11 ~~distribution or sale of a controlled substance that is otherwise~~  
12 ~~inconsistent with the prescription.~~

13 ~~SEC. 5. Section 11377 of the Health and Safety Code, as~~  
14 ~~amended by Section 2 of Chapter 540 of the Statutes of 2014, is~~  
15 ~~repealed.~~

16 ~~SEC. 6. (a) Sections 2 and 4 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 4 of this~~  
22 ~~act for approval by the voters at the next statewide election~~  
23 ~~pursuant to Section 9040 of the Election Code.~~