

ASSEMBLY BILL

No. 776

Introduced by Assembly Member Mitchell

February 17, 2011

An act to amend Section 11550 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as introduced, Mitchell. Controlled substances: unlawful use.

Existing law classifies controlled substances into 5 schedules and places the greatest restrictions and penalties on the use those substances placed in Schedule I. Existing law provides that no person shall use, or be under the influence of, specified controlled substances including a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances.

This bill would make technical, nonsubstantive changes to that provision.

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. Section 11550 of the Health and Safety Code is
- 2 amended to read:
- 3 11550. (a) No person shall use, or be under the influence of,
- 4 any controlled substance ~~which~~ *that* is (1) specified in subdivision
- 5 (b), (c), or (e) *of*, or paragraph (1) of subdivision (f) of, Section

1 11054, specified in paragraph (14), (15), (21), (22), or (23) of
2 subdivision (d) of Section 11054, specified in subdivision (b) or
3 (c) of Section 11055, or specified in paragraph (1) or (2) of
4 subdivision (d) or in paragraph (3) of subdivision (e) of Section
5 11055, or (2) a narcotic drug classified in Schedule III, IV, or V,
6 except when administered by or under the direction of a person
7 licensed by the state to dispense, prescribe, or administer controlled
8 substances. It shall be the burden of the defense to show that it
9 comes within the exception. Any person convicted of violating
10 this subdivision is guilty of a misdemeanor and shall be sentenced
11 to serve a term of not less than 90 days or more than one year in
12 a county jail. The court may place a person convicted under this
13 subdivision on probation for a period not to exceed five years and,
14 except as provided in subdivision (c), shall in all cases in which
15 probation is granted require, as a condition thereof, that the person
16 be confined in a county jail for at least 90 days. Other than as
17 provided by subdivision (c), in no event shall the court have the
18 power to absolve a person who violates this subdivision from the
19 obligation of spending at least 90 days in confinement in a county
20 jail.

21 (b) Any person who (1) is convicted of violating subdivision
22 (a) when the offense occurred within seven years of that person
23 being convicted of two or more separate violations of that
24 subdivision, and (2) refuses to complete a licensed drug
25 rehabilitation program offered by the court pursuant to subdivision
26 (c), shall be punished by imprisonment in a county jail for not less
27 than 180 days nor more than one year. In no event does the court
28 have the power to absolve a person convicted of a violation of
29 subdivision (a) that is punishable under this subdivision from the
30 obligation of spending at least 180 days in confinement in a county
31 jail unless there are no licensed drug rehabilitation programs
32 reasonably available.

33 For the purpose of this section, a drug rehabilitation program
34 shall not be considered reasonably available unless the person is
35 required to pay no more than the court determines that he or she
36 is reasonably able to pay, in order to participate in the program.

37 (c) The court may, when it would be in the interest of justice,
38 permit any person convicted of a violation of subdivision (a)
39 punishable under subdivision (a) or (b) to complete a licensed drug
40 rehabilitation program in lieu of part or all of the imprisonment in

1 the county jail. As a condition of sentencing, the court may require
2 the offender to pay all or a portion of the drug rehabilitation
3 program.

4 In order to alleviate jail overcrowding and to provide recidivist
5 offenders with a reasonable opportunity to seek rehabilitation
6 pursuant to this subdivision, counties are encouraged to include
7 provisions to augment licensed drug rehabilitation programs in
8 their substance abuse proposals and applications submitted to the
9 state for federal and state drug abuse funds.

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

18 (e) Notwithstanding subdivisions (a) and (b) or any other
19 provision of law, any person who is unlawfully under the influence
20 of cocaine, cocaine base, heroin, methamphetamine, or
21 phencyclidine while in the immediate personal possession of a
22 loaded, operable firearm is guilty of a public offense punishable
23 by imprisonment in a county jail for not exceeding one year or in
24 state prison.

25 As used in this subdivision "immediate personal possession"
26 includes, but is not limited to, the interior passenger compartment
27 of a motor vehicle.

28 (f) Every person who violates subdivision (e) is punishable upon
29 the second and each subsequent conviction by imprisonment in
30 the state prison for two, three, or four years.

31 (g) Nothing in this section prevents deferred entry of judgment
32 or a defendant's participation in a preguilty plea drug court program
33 under Chapter 2.5 (commencing with Section 1000) of Title 6 of
34 Part 2 of the Penal Code unless the person is charged with violating
35 subdivision (b) or (c) of Section 243 of the Penal Code. A person
36 charged with violating this section by being under the influence
37 of any controlled substance which is specified in paragraph (21),
38 (22), or (23) of subdivision (d) of Section 11054 or in paragraph
39 (3) of subdivision (e) of Section 11055 and with violating either
40 subdivision (b) or (c) of Section 243 of the Penal Code or with a

- 1 violation of subdivision (e) shall be ineligible for deferred entry
- 2 of judgment or a preguilty plea drug court program.

O