

RESOLUTION 09-07-06

DIGEST

Marijuana: Reduced Penalties for Transportation and Non-Sale Distributions

Amends Health and Safety Code section 11360 to impose a lesser sentence for giving away or transporting marijuana than for sales.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar associations recommend that legislation be sponsored to amend Health and Safety Code Section 11360 to read as follows:

- 1 § 11360.
2 (a) Except as otherwise provided by this section or as authorized by law, every
3 person who sells, or offers to sell, or attempts to sell any marijuana shall be punished by
4 imprisonment in the state prison for two, three or four years.
5 (b) Except as otherwise provided by this section or as authorized by law, every
6 person who transports, imports into this state, ~~sells~~, furnishes, administers, or gives away, or
7 offers to transport, import into this state, ~~sell~~, furnish, administer, or give away, or attempts
8 to import into this state or transport any marijuana in an amount greater than or equal to
9 28.5 grams shall be punished by imprisonment in the state prison ~~for a period of two, three~~
10 ~~or four years~~ or by imprisonment in the county jail not exceeding one year.
11 (c) Except as authorized by law, every person who gives away, offers to give away,
12 transports, offers to transport, or attempts to transport not more than 28.5 grams of
13 marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be
14 punished by a fine of not more than one hundred dollars (\$ 100). In any case in which a
15 person is arrested for a violation of this subdivision and does not demand to be taken before
16 a magistrate, such person shall be released by the arresting officer upon presentation of
17 satisfactory evidence of identity and giving his written promise to appear in court, as
18 provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Ventura County

STATEMENT OF REASONS

Existing Law: Unlawful transportation, importation, sale, or gift (furnishing) of marijuana of any amount is punishable only as a felony, while actually giving away marijuana in small amounts is punishable by a fine of \$100.00 (Health and Safety Code Section 11360 subd. (b).)

This resolution: Harmonizes subdivisions (a) and (b) of Section 11360 with newly added section (c). Sales of marijuana would remain subject to subdivision (a) and be punishable only as a felony. Large amounts of marijuana transported or furnished to others remains punishable as a felony or a misdemeanor. Subdivision (c), formerly (b), remains unchanged.

The Problem: While subdivision (b) of the current law states an amount that is deemed by law to be punished as a misdemeanor, subdivision (a) does not, thus allowing amounts described in subdivision (b) to be charged under the felony section, subdivision (a)

This resolution would correct that anomaly and vest discretion in prosecutors and judges as to the punishment for different types of violations.

In accordance with CDCBA rules, VCBA timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

IMPACT STATEMENT

This resolution would not affect any other statute, rule, or law.

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