

RESOLUTION 03-05-2007

DIGEST

Controlled Substances: Transportation for Personal Use

Amends Health and Safety Code section 11379 to allow transportation of a controlled substance for personal use to be punished as either a felony or a misdemeanor.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 11379 to allow transportation of controlled substances for personal use to be punished as either a felony or a misdemeanor. This resolution should be approved in principle because it would bring the law into harmony with possession statutes.

Presently, the possession of small amounts of controlled substances in amounts for personal use is a “wobbler” offense, punishable as either a felony or a misdemeanor. (Health & Saf. Code, § 11377.) However, transportation of the same substance in the same amount (for example, in a personal vehicle) must be prosecuted as a felony. (Health & Saf. Code, § 11379, subd. (a).) This resolution removes an inequity in the law by placing the transportation of small amounts of drugs for personal use on the same footing as possession.

Section 11379 was intended to prevent and punish the importation and trafficking of large amounts of controlled substances. The proposed amendment to section 11379 would remove the inequity between the penalties for simple possession of drugs for personal use and the transportation of those same drugs, without affecting the objective of preventing and punishing large-scale trafficking.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 11379 as follows:

- 1 §11379
- 2 (a) Except as otherwise provided in subdivision (b) and (c) and in Article 7
- 3 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions
- 4 Code, every person who transports, imports into this state, sells, furnishes, administers, or
- 5 gives away, or offers to transport, import into this state, sell, furnish, administer, or give
- 6 away, or attempts to import into this state or transport any controlled substance which is (1)
- 7 classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g)
- 8 of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13),
- 9 (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of

10 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of
11 Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision
12 (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055,
13 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
14 practice in this state, shall be punished by imprisonment in the state prison for a period of
15 two, three, or four years.

16 (b) Notwithstanding the penalty provisions of subdivision (a), any person who
17 transports for sale any controlled substances specified in subdivision (a) within this state
18 from one county to another noncontiguous county shall be punished by imprisonment in the
19 state prison for three, six, or nine years.

20 (c) Notwithstanding the penalty provisions of subdivision (a) and (b), any person
21 who transports or offers to transport, any controlled substance specified in subdivision (a)
22 intended for the personal use of the defendant shall be punished by imprisonment the county
23 jail for a period not to exceed one year or in the state prison. Any person convicted of this
24 subdivision is not subject to the punishment described in section 11370.2 subd (c).

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

PROPONENT: National Lawyers Guild—L.A. Chapter

STATEMENT OF REASONS:

Existing Law: Unlawful transportation, importation, sale, or gift (furnishing) of various types of controlled substances, in any amount or of any of the multiplicity of types specified, is punishable only as a felony, no matter the type of substance or the amount thereof. The punishment scheme, as presently constituted, does not distinguish between a person driving with a single Valium (without a lawful prescription) or a pound of methamphetamine. Furthermore, those convicted under this section may be excluded from drug treatment pursuant to Penal Code section 1210.1. The law was intended to prevent the importation and trafficking of large amounts of controlled substances. This draft leaves those protections unchanged.

This Resolution: What this amendment to the statute would do was harmonize the possession of small amounts of controlled substances intended for the personal use of the defendant (Health and Safety Code section 11377) with the transportation for the personal use of the defendant of those same substances. In essence, this change recognizes three things. First, those that buy or use drugs have are no more or less criminal when they drive their drugs home than they are by possessing them at home or in other stationary locations. Second, persons who transport their own illegal drugs intended solely for their personal use should not be subject to the 3 year enhancement that drug dealers and large scale traffickers are subject to (Health and Safety Code section 11370.2(c)). Third, homeless drug users living out of their cars, or transporting drugs from location to location via shopping cart, are always subject to greater potential punishment and collateral consequences than those that have non-mobile locations to place controlled substances.

The Problem: Defendants found with small amounts of controlled substances in their car are potentially subject to greater punishment than similarly situated defendants arrested while not in

transit, even when there is no nexus between the transportation and a greater harm to the community. This resolution recognizes the difference between those that transport substances for their personal use and large scale drug traffickers, and fixes a punishment accordingly.

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In accordance with CDCBA rules, the National Lawyers Guild--L.A. Chapter 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 does not affect any other statute, rule, or law.

AUTHOR AND/OR PERMANENT CONTACT: Jay Leiderman, Law Offices of Jay Leiderman, 35 West Main Street, #B320, Ventura, CA 93001, telephone (805) 648-5700, facsimile (805) 641-1341, e-mail jayleiderman@peoplepc.com

RESPONSIBLE FLOOR DELEGATE: Jay Leiderman