

RESOLUTION 03-13-2007

DIGEST

Narcotics: Simple Possession of Cocaine.

Amends Health and Safety Code section 11350 to allow possession of cocaine to be punished as either a felony or a misdemeanor.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 11350 to allow possession of cocaine to be punished as either a felony or a misdemeanor. This resolution should be approved in principle because it brings the law concerning possession of cocaine into accord with the law concerning possession of other drugs.

Current law requires that possession of cocaine be punished as a felony. (Health & Saf. Code, § 11350, subd. (a); § 11055, subd. (b)(6).) On the other hand, the possession of equally or more dangerous drugs such as methamphetamine, Quaaludes, and GHB is punishable as either misdemeanors or felonies. (Health & Saf. Code, § 11350, subd. (b); § 11054, subds. (e)(2) [methaqualone, or Quaalude] and (e)(3) [GHB]; § 11056, subd. (d)(2) [meth].) There is little justification for this disparate treatment, which often results in unequal prosecution of minorities and other groups whose drug-related crimes tend to involve cocaine more often than drugs like meth or GHB. This resolution would eliminate that disparate effect by placing the possession of cocaine on the same footing as possession of other drugs.

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 11350 to read as follows:

- 1 §11350
- 2 (a) Except as otherwise provided in this division, every person who possesses (1)
- 3 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision
- 4 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section
- 5 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h)
- 6 of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which
- 7 is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
- 8 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state
- 9 prison.
- 10 (b) Except as otherwise provided in this division, every person who possesses any

11 controlled substance specified in subdivisions (b)(6) of Section 11055 or (e) of Section
12 11054 shall be punished by imprisonment in the county jail for not more than one year or in
13 the state prison.

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

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

25 (1) For a first offense under this section, a fine of at least one thousand dollars
26 (\$1,000) or community service.

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

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

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Simple possession of cocaine is a straight felony. (Health & Safety Code §11350(a).) Simple possession of other, equally harmful drugs (methamphetamine including “crystal” meth, quaaludes, and the “date rape” drug GHB, for example) is a “wobbler,” meaning the District Attorney has discretion to charge the crime as a felony or a misdemeanor. (See, for example, Health & Safety Code §11377 and §11350(b).)

This Resolution: Would give the District Attorney the discretion to charge simple possession of cocaine as either a felony or a misdemeanor. This resolution DOES NOT change the law regarding possession of cocaine base (crack cocaine), which remains a straight felony.

The Problem: There is no reason why simple possession of a small amount of cocaine is a straight felony yet simple possession of a similar amount of crystal methamphetamine may be either a misdemeanor or a felony. The disparity in the law makes absolutely no sense. A felony conviction can have serious life-long consequences that outweigh the gravity of the original crime. We trust District Attorneys to use their discretion when they file meth possession cases--sometimes it is appropriate to file a misdemeanor when, for example, the person has no other criminal record and may be considered a “first timer.” District Attorneys should have the same

discretion when it comes to simple possession of cocaine.

IMPACT STATEMENT

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

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