

RESOLUTION 10-05-2014

DIGEST

Criminal Law: Definition of Transport Means Transport for Sale

Amends Health and Safety Code sections 11360 and 11379.5 to clarify that “transport” means “transport for sale.”

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 06-02-2012, which was approved in principle.

Reasons:

This resolution amends Health and Safety Code sections 11360 and 11379.5 to clarify that “transport” means “transport for sale.” This resolution should be approved in principle because it prevents the harsher punishment for the transport of marijuana and PCP-derivative drugs for personal use than the simple possession of these substances for personal use.

Health and Safety Code section 11360 establishes a two, three, or four year prison term for those who transport marijuana and section 11379.5 mandates a three, four, or five year prison sentence for those who transport certain PCP-derivative drugs, even if the amount being transported tends to indicate an intent for personal use. However, the simple possession of these same substances results in a lesser sentence. Moreover, the appellate courts have interpreted transport to mean any type of movement. Thus, a defendant with an amount consistent with personal use of either marijuana or PCP-derivative drugs is subject to multiple year prison time when he or she is merely walking (*People v. Ormiston* (2003) 105 Cal.App.4th 676) or riding a bike (*People v. LaCross* (2009) 91 Cal.App.4th 182). Thus, this resolution solves the novel situation where an individual is sentenced to multiple years in prison for walking, cycling, or otherwise moving with a small quantity of marijuana or PCP-derivative drugs, but would receive a lesser sentence for the mere possession of the same quantity of those substances and in a home or not moving. Such a result seems inconsistent and unfair. This resolution would remedy that inconsistency.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code sections 11360 and 11379.5, to read as follows:

§ 11360

- 1 (a) Except as otherwise provided by this section or as authorized by law, every person
- 2 who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to
- 3 transport, import into this state, sell, furnish, administer, or give away, or attempts to import into
- 4 this state or transport any marijuana shall be punished by imprisonment pursuant to subdivision
- 5 (h) of Section 1170 of the Penal Code for a period of two, three or four years.
- 6 (b) Except as authorized by law, every person who gives away, offers to give away,
- 7 transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana,

8 other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of
9 not more than one hundred dollars (\$100). In any case in which a person is arrested for a
10 violation of this subdivision and does not demand to be taken before a magistrate, such person
11 shall be released by the arresting officer upon presentation of satisfactory evidence of identity
12 and giving his written promise to appear in court, as provided in Section 853.6 of the Penal
13 Code, and shall not be subjected to booking.

14 (c) For purposes of this section, "transports" means to transport for sale.

15
16 § 11379.5

17 (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with
18 Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person
19 who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to
20 transport, import into this state, sell, furnish, administer, or give away, or attempts to import into
21 this state or transport phencyclidine or any of its analogs which is specified in paragraph (21),
22 (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section
23 11055, or its precursors as specified in subparagraph (A) or (B) of paragraph (2) of subdivision
24 (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
25 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to
26 subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

27 (b) Notwithstanding the penalty provisions of subdivision (a), any person who transports
28 for sale any controlled substances specified in subdivision (a) within this state from one county
29 to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h)
30 of Section 1170 of the Penal Code for three, six, or nine years.

31 (c) For purposes of this section, "transports" means to transport for sale.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Existing law penalizes the transportation of drugs more severely than the simple possession of drugs. California courts have interpreted the term "transportation" in the drug statutes to mean simply that – moving a prohibited drug from point A to point B, regardless of intent. This means that a person riding a bicycle with drugs can be guilty of transportation (*People v. LaCross* (2001) 91 Cal.App.4th 182), as can a person simply walking with drugs (*People v. Ormiston* (2003) 105 Cal. App. 4th 676), even if those drugs are for personal use. These rulings have created problems for persons otherwise eligible for Proposition 36 drug probation, with appellate courts allowing a judge to determine whether transportation was for sale even though a jury had acquitted the defendant of possession for sale. (*People v. Dove* (2004) 124 Cal.App.4th 1.) Persons who transport drugs are punished more harshly than persons who possess drugs for personal use.

In 2012, the Conference passed LACBA resolution 06-02-2012, which amended Health and Safety Code sections 11379 and 11352 so that "transportation" of specified drugs did not include transport for personal use. In 2013, the Legislature enacted AB 721, which essentially adopted the idea contained in Resolution 06-02-2012. Transportation of drugs such as cocaine and meth now means transportation for sale.

The Legislature did not, however, consider amending two other anti-drug statutes that also more harshly punish transportation, even if the drug possession is for personal use and the

transportation is simply incidental, such as possession while walking or riding a bike or skateboard. Legislative history does not explain why Health and Safety Code sections 11360 (dealing with marijuana) and 11379.5 (dealing with PCP and other drugs) were not also amended.

The Solution: This resolution takes the language the Legislature used in AB 721 and adds it to Health and Safety Code sections 11360 and 11379.5. Simple possession remains a crime – it is not decriminalized. The only change is that a person walking down the street with drugs can only be charged with simple possession unless there is evidence the transportation is for sale.

LEGISLATIVE HISTORY

This resolution is related to AB 721 (Bradford), Chaptered 10/03/2013.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Mark Harvis, Los Angeles County Public Defender's Office, 320 W. Temple Street, Suite 590, Los Angeles, CA 90012; (213) 974-3066; mharvis@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Mark Harvis