

SB 649: Local Control in Sentencing Act

Senator Mark Leno (D – 11)

BACKGROUND

SB 649 will give counties greater flexibility and control over their public safety spending by granting prosecutors discretion in charging for possession of a controlled substance for personal use.

The Criminal Justice Realignment Act of 2011 transferred authority from the state to the county over most people convicted of a low-level, non-violent offense. However, the state did not adjust its sentencing laws.

Counties therefore have limited flexibility in managing their scarce public safety resources, including jail space, court dockets and crime-prevention programs including drug treatment.

Since implementation in October 2011, a significant percentage of all people sentenced under Realignment were convicted of a drug offense. In San Diego, for example, 43% of all individuals sentenced under Realignment have been convicted of a drug offense.

According to the Legislative Analyst's Office, counties spend about \$160 million statewide each year on felony drug possession convictions. Courts are also burdened by preliminary hearings for these felony charges (which are not required by misdemeanor charges).

EXISTING LAW

California's drug sentencing laws are confounding and confusing. Under current law, being *under the influence* of a controlled substance is a misdemeanor offense, and being *in possession of methamphetamine* for personal use is an

alternate felony/ misdemeanor offense (also known as a "wobbler"). However, *being in possession of heroin or cocaine* for personal use is always a felony offense. (The penalty for being *in possession of less than an ounce of marijuana* for personal use is an infraction, a fine-only offense.)

A felony is punishable by up to three years behind bars. A misdemeanor is punishable by up to one year in jail, three (sometimes five) years on probation, or a combination of the two. Participation in drug treatment and/or other programs may be ordered as a condition of probation.

THIS BILL

SB 649 will give counties greater flexibility to implement the Criminal Justice Realignment Act of 2011 by expanding prosecutorial discretion in charging under Health and Safety Code Section 11350 (possession of a controlled substance for personal use). This bill will not change the penalties for sale, transportation, manufacture, or possession for sale.

SB 649 will provide counties more control to manage their criminal justice populations and more freedom to allocate limited resources according to local needs, including jail space, court dockets (misdemeanor charges do not require a preliminary hearing), and recidivism-reduction services like drug treatment.

SB 649 will allow local prosecutors to make judgments that can help safely reduce the amount of jail space taken by those serving time for personal drug possession and preserve jail space for people who pose a risk to the community.

SB 649 will equalize the penalties for possession of methamphetamine, heroin and cocaine for personal use by giving the prosecutor the discretion to charge a felony or a misdemeanor as the case warrants.

SB 649 will support reentry and reduce recidivism. Those convicted of a misdemeanor will be spared the lifelong barriers that follow a felony conviction, including obstacles to housing, employment, and even public support. Those convicted of a felony will be able to ask a court to reduce the conviction on their record to a misdemeanor after they have successfully completed probation.

If the reduction is granted, a prospective employer or landlord will see the original conviction but also that a court had reduced the conviction to a misdemeanor following successful completion of probation. This signals rehabilitation to an employer and can increase a person's employment prospects.

SB 649 will reduce disproportionate impact. Despite similar levels of drug use across racial and ethnic lines, people of color are vastly disproportionately arrested, prosecuted and incarcerated for drug offenses. SB 649 will have a tremendous positive impact for families and communities of color.

SB 649 is supported by public opinion. In 2012, Tulchin Research found that 75% of Californians surveyed favor alternatives to incarceration for non-violent offenses; 62% support revising the penalty for low-level drug possession to a misdemeanor.

PREVIOUS LEGISLATION

SB 1506 (Leno), of the 2011-2012 Legislative Session, would have revised the penalty for drug possession for personal use to a straight misdemeanor.

SB 649 differs from SB 1506 in a very significant way: SB 649 grants prosecutors complete discretion to charge drug possession for personal use as a felony or a misdemeanor.

CO-AUTHORS

- Senator Loni Hancock
- Senator Hannah-Beth Jackson

KEY SUPPORT

- American Civil Liberties Union
- Drug Policy Alliance
- California State NAACP
- California Public Defenders Association
- Californians for Safety & Justice
- Friends Committee on Legislation – California
- William C. Velásquez Institute
- National Council of La Raza
- Right on Crime
- California Judges Association
- California Society of Addiction Medicine
- Conference of California State Bar Associations
- California Civil Rights Coalition
- Women's Foundation of California

OPPOSITION

CDA, Police Chiefs, and Narcotics Officers

STATUS

In the State Assembly; awaiting referral to Assembly Committee on Public Safety.

FOR MORE INFORMATION

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