
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 250 **Hearing Date:** April 25, 2023
Author: Umberg
Version: March 9, 2023
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Controlled substances: punishment*

HISTORY

Source: Author

Prior Legislation: AB 1598 (Davies), Ch. 201, Stats. 2022
AB 472 (Ammiano), Ch. 338, Stats. 2012
AB 2460 (Ammiano), vetoed in 2010
AB 1999 (Portantino), Ch. 245, Stats. 2010

Support: Attorney General Rob Bonta; California Youth Empowerment Network; Govern for California; Mental Health America of California

Opposition: None known

PURPOSE

The purpose of this bill is to prohibit the use of a statement made by a person who is immune from prosecution for being under the influence of a controlled substance or in possession of a controlled substance, controlled substance analog, or drug paraphernalia, as specified, as evidence in a criminal proceeding against the person for being under the influence of, or possessing for personal use, a controlled substance, controlled substance analog, or drug paraphernalia.

Existing law prohibits the possession of several specified controlled substances. (Health & Saf. Code, §§ 11350, 11377.)

Existing law provides that it is unlawful to be under the influence of specified controlled substances. (Health & Saf. Code, § 11550, subd. (a).)

Existing law defines “drug paraphernalia” as all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of existing law. (Health & Saf. Code, § 11041.5, subd. (a).)

Existing law specifies that “drug paraphernalia” does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl,

ketamine, gamma hydroxybutyric acid, or any analog of fentanyl. (Health & Saf. Code, § 11041.5, subd. (d).)

Existing law provides that it is not a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. Provides that no other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred. (Health & Saf. Code, § 11376.5, subd. (a).)

Existing law provides that it is not a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. Provides that no other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred. (Health & Saf. Code, § 11376.5, subd. (b).)

Existing law provides that the above provisions pertaining to immunity do not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will. (Health & Saf. Code, § 11376.5, subd. (c).)

Existing law provides defines “drug-related overdose” as an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. Provides that an individual's condition is deemed to be a “drug-related overdose” if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury. (Health & Saf. Code, § 11376.5, subd. (e).)

Existing law provides immunity from criminal prosecution for possession of alcohol or purchasing alcohol when under 21 years of age to any person under the age of 21 years, where the person establishes all of the following:

- The underage person called 911 and reported that either himself or herself or another person was in need of medical assistance due to alcohol consumption.
- The underage person was the first person to make the 911 report.
- The underage person, who reported that another person was in need of medical assistance, remained on the scene with the other person until that medical assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

(Bus. & Prof. Code, § 25667, subd. (a).)

This bill prohibits a statement provided by a person who is immune from prosecution for being under the influence of a controlled substance or in possession of a controlled substance, controlled substance analog, or drug paraphernalia, and which is made in connection with the acts giving rise to that immunity, from being used as evidence in a criminal proceeding against

the person for the crime of being under the influence of, or possessing for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if all of the following are satisfied:

- One of the immunity provisions is used as an affirmative defense against the charge.
- The statement was made by the person in the course of seeking medical assistance for another person experiencing a drug-related overdose.
- The drug-related overdose of the other person is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia by the person seeking medical assistance.

This bill provides that its provisions do not apply to a criminal charge of the person where none of the existing immunity provisions is a viable affirmative defense.

This bill provides that no other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

COMMENTS

1. Need For This Bill

According to the author:

The fentanyl crisis continues to get worse. Of the approximately 107,477 people dying from drug overdoses from August 2021 to August 2022, around 66% of these deaths are caused by illicit synthetic drugs such as fentanyl and methamphetamine. Fentanyl testing strips (FTS) serve as a low-cost method to prevent drug overdoses and further reduce harm. While California's Good Samaritan Law does protect those who call 911 during drug-related overdoses from prosecution, it does not include similar provisions for individuals who utilize fentanyl testing strips to test their drugs, find them to be contaminated with fentanyl, and choose to report their product and their source to law enforcement. Under California's 911 Good Samaritan law, individuals are criminally protected from prosecution when seeking medical assistance for drug-related overdoses when self-reporting or reporting as a third party bystander. SB 250 aims to expand this law to include the self-reporting of fentanyl poisonings and opioid overdoses to law enforcement through use of fentanyl testing strips or medical devices such as smart watches.

2. Existing Criminal Immunity for Drug-Related Acts

In 2012, the Legislature enacted AB 472 (Ammiano, Chapter 338, Statutes of 2012) which established immunity from criminal prosecution for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person, in good faith, sought medical assistance for another person experiencing a drug-related overdose that was related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. AB 472 was introduced following an increase in drug overdoses in the state with the intent of encouraging drug overdose

victims and witnesses to seek emergency assistance by providing those seeking medical attention with limited immunity for conducted related to drug use (i.e., being under the influence of a controlled substance and possession of a controlled substance, controlled substance analog, or drug paraphernalia).

This bill prohibits statements related to the conduct that is immune from prosecution under existing law from being used as evidence in a criminal proceeding against the person for being under the influence of, or possessing for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if all of the following are satisfied: (1) one of the immunity provisions is used as an affirmative defense against the charge; (2) the statement was made by the person in the course of seeking medical assistance for another person experiencing a drug-related overdose; and (3) the drug-related overdose of the other person is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia by the person seeking medical assistance.

Given that a person enjoys immunity from prosecution for being under the influence of a drug or in possession of a drug or drug paraphernalia under the specific circumstances delineated above, it follows that the person's statements related to the conduct giving rise to that immunity would not be used as evidence to prosecute for those crimes under current law because there is no criminal case to charge. In other words, this bill appears to codify what is likely already the case in practice given the immunity from prosecution that individuals who meet the conditions in Health and Safety Code section 11376.5 enjoy.

3. Argument in Support

Attorney General Bonta writes:

SB 250 expands California's 911 Good Samaritan law to include self-reporting of fentanyl poisonings and opioid overdoses to law enforcement and medical assistance through fentanyl testing strips (FTS) and other medical devices such as smart watches.

While California's Good Samaritan Law does protect those who call 911 during an overdose from prosecution, it does not include similar provisions for people who use medical devices like FTS to test their drugs, find them to be contaminated, and choose to report their product to law enforcement. SB 250 would extend immunity not only for individuals reporting opioid-related overdoses in cases of medical assistance, but also for individuals reporting substances that test positive for fentanyl to law enforcement. Providing this immunity will encourage reporting to law enforcement, which will assist law enforcement efforts in tracking down dealers and getting fentanyl off the streets.

In California, there were 7,175 deaths related to an opioid overdose in 2021, and 5,961 of those deaths were specifically attributed to Fentanyl. This opioid crisis is a multifaceted public health and safety issue — and addressing this crisis requires a thoughtful and strategic approach. ...

Opioid addiction, abuse, and overdose deaths have torn families apart, damaged relationships, and eroded the social fabric of communities. SB 250 is an important part of a legislative approach needed to address this ongoing crisis

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