

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 15, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Gerry F. Miller *Martin Felt For* Council File No: 13-0002-S39
Chief Legislative Analyst Assignment No: 13-03-0206

SUBJECT: Resolution (Parks - Perry) to oppose SB 649, which would grant prosecutors the ability to file misdemeanor rather than felony charges in drug possession cases where an individual is charged with possession of a hard drug such as cocaine or heroin

CLA RECOMMENDATION: Adopt Resolution (Parks – Perry) to include in the City’s 2013 – 2014 State legislative Program OPPOSITION to SB 649, which would grant prosecutors the ability to file misdemeanor rather than felony charges in drug possession cases where an individual is charged with the possession of certain narcotics.

SUMMARY

On March 19, 2013, a Resolution (Parks - Perry) was introduced in opposition to SB 649 (Leno), legislation which would grant local prosecutors the ability to charge drug possession cases involving hard drugs such as cocaine and heroin as misdemeanors as opposed to felonies. The Resolution states that illegal drug use continues to be a significant problem in the community, and poses a threat to the safety of the public. The Resolution also states that drugs like cocaine and heroin are particularly damaging to communities, and possession of these substances should continue to be charged as felonies in California.

The Resolution further states that SB 649, which would grant prosecutors discretion in charging drug possession cases as a felony or a misdemeanor, could create a situation where this discretion is abused to keep county jail populations low. The Resolution, therefore, seeks an official position of the City of Los Angeles to oppose SB 649, which would grant prosecutors the ability to file misdemeanor charges rather than felony charges in drug possession cases.

BACKGROUND

The recommendation included in this report is based on overwhelming opposition to SB 649 (Leno) by the law enforcement community. It is worth noting, however, that there are some inconsistencies in the arguments against the bill, particularly as they relate to methamphetamine possession, as explained more fully below.

Under current law, possession of certain controlled substances, including opiates, opium, opium derivatives, mescaline, peyote, cocaine and cocaine base, among others, is a felony punishable by imprisonment in a county jail for 16 months, or two or three years. Further, the law imposes probation upon release for individuals convicted of possession of these narcotics.

SB 649 would provide that possession of these substances would be an alternate felony-misdemeanor (“wobbler”), and enable local district attorneys to charge possession for personal use as either a felony or misdemeanor based on the circumstances, similar to possession cases involving methamphetamines and MDMA (ecstasy). This bill does not change the sentencing requirements for the sale of narcotics, the possession of narcotics with the intent to distribute, or the manufacture of narcotics.

SB 649 is supported by a wide variety of groups, including the ACLU, the California State NAACP, the California Public Defenders Association, the Conference of California State Bar Associations, and others. Proponents of SB 649 argue that mandatory felony charges for simple possession of these drugs are too strong a punishment to be handed out in all cases.

While proponents of SB 649 do agree that felony charges are proper in many situations, they argue that this is not the case with every instance of drug possession for personal use. Proponents of the bill argue that a felony conviction is difficult to remove from one’s record, and when applied to an individual who has no previous criminal record, felony charges could have long-term negative effects. Proponents argue that felony charges make it more likely that an individual will re-offend, as felony convictions make it difficult to gain legitimate employment, educational assistance, or public aid, making continued criminal activity an attractive option to felons. Supporters of SB 649 state that this type of legislation will enable individuals who have made a mistake to learn from it without suffering the possible long-term harms created by felony charges.

Advocates in favor of this bill also point out that SB 649 will allow prosecutors to decide what type of charge is appropriate, and does not require misdemeanor charges. Advocates also note that thirteen other states, as well as the District of Columbia and the federal government, charge all drug possession cases as misdemeanors, and there is no evidence that drug use is higher in these states than in California.

SB 649 is opposed by the California Police Chiefs’ Association, the California Narcotics Officers Association, the California District Attorneys Association, and the California State Sheriffs’ Association. A major reason for opposition to this bill is the nature of cocaine and heroin, the two major drugs that possession of would be reduced to a wobbler from an automatic felony. These types of drugs are highly addictive and damaging to the community, and reducing the penalties for drug possession of drugs like these do nothing to address addiction problems and the underlying harm caused by the use of these drugs.

In addition, there are concerns that this legislation will reduce the effectiveness of drug treatment programs created under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (Prop 36). Prop 36 allows non-violent drug offenders to undergo treatment while on probation, and avoid incarceration. Upon completion of a Prop 36 program, an individual can petition the court to dismiss their conviction, thereby eliminating any felony on their record. Opponents of SB 649 are concerned that fewer individuals will seek treatment, as felony charges for hard drug possession would no longer be mandatory. This is because the current rehabilitation system created under Prop 36 is predicated on felony charges being a motivator for seeking treatment. The Police Department (LAPD) has indicated it is opposed to SB 649 for this reason.

However, there is no evidence that a change in sentencing would have a negative effect on rehabilitation programs. Methamphetamine is currently charged as a wobbler, and is generally recognized as one of the most problematic narcotics, much like cocaine base and heroin. While possession of methamphetamine can be charged as a misdemeanor or a felony, which could theoretically reduce participation by methamphetamine users in Prop 36 treatment, methamphetamine addicts make up more than 50% of participants in these programs every year. Further, individuals charged with misdemeanor drug possession are also eligible for Prop 36 treatment.

Opponents also argue that, due to the current financial strains on the judicial system, there would be significant pressure if SB 649 passed for district attorneys to pursue more cost effective misdemeanor charges in these cases, as opposed to more expensive felony charges. However, there is no evidence of this with methamphetamine cases, and it seems likely that district attorneys would treat cases involving cocaine and heroin in a similar manner.

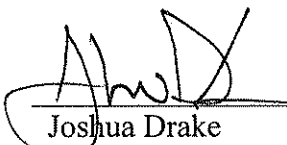
On the balance, SB 649 seeks to reduce the number of felony charges issued in drug possession cases. However, while efforts to reduce the number of individuals in jail for drug possession charges are laudable, few individuals actually go to jail for non-violent drug possession, as California grants most arrested for possession the option of being placed in drug treatment while on probation instead of jail time. The majority of those who are sentenced to jail time are repeat offenders who are no longer eligible for rehabilitation, individuals who refuse treatment, or individuals who were convicted of drug possession as well as another crime.

DEPARTMENTS NOTIFIED

Police Department
City Attorney

BILL STATUS

02/22/2013	Bill introduced, referred to Committee on Public Safety
04/24/2013	Passed in Committee
05/02/2013	Passed in Senate (23-14)
05/02/2013	Bill introduced in Assembly



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Analyst

GFM:MF:jwd

Attachment: Resolution (Parks - Perry)

MAR 19 2013

13-0002-539

RULES RELATING TO INTERGOVERNMENTAL RELATIONS

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, illegal drugs and drug use continue to be a significant problem in the community, and pose a significant threat to public safety; and

WHEREAS, current law dictates that possession of a hard drug such as heroin or cocaine be charged as a felony, in order to preserve and protect the safety of the public; and

WHEREAS, these hard drugs are particularly dangerous, and efforts to split so-called "non-violent" drug possession cases from other drug possession cases enables users to purchase these hard drugs without serious repercussions; and

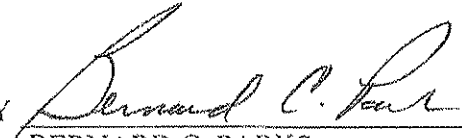
WHEREAS, SB 649 (Leno) would grant prosecutors the ability to charge individuals arrested for non-violent drug possession with a misdemeanor instead of a felony, thereby limiting the number of individuals charged with the possession of a hard drug that end up in jail; and

WHEREAS, counties burdened with overcrowded jails may abuse this leniency, and may adopt policies to charge these types of drug possession cases as misdemeanors in an effort to reduce jail populations; and

WHEREAS, this type of leniency would only serve to reinforce drug usage, which continues to be a scourge in communities throughout Los Angeles;

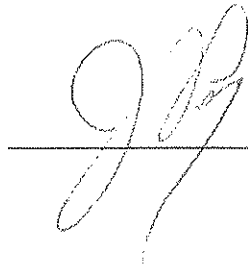
NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013 - 2014 State Legislative Program OPPOSITION to SB 649, which would grant prosecutors the ability to file misdemeanor rather than felony charges in drug possession cases where an individual is charged with possession of a hard drug.

PRESENTED BY


BERNARD C. PARKS
Councilmember, 8th District

MAR 19 2013

SECONDED BY



jvd



RECEIVED