

TABLE 1: HEALTH AND SAFETY CODE SECTIONS
 11350, 11351, 11351.5, 11352, 11353, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11550
 (last revised 12/30/2013)

CRIME	Schedule	Elements	CALCRIM	Triad	PC 1170(h)?	Register (§11590)?
11350	I (1)(b),(c), (d)(14)(14)(20), (f)(1); II (b), (c), (e) III, IV & V	1. Possession (actual or constructive); 2. Knowledge of presence and nature as controlled substance; 3. Useable amount ²	2304	16, 2, 3 11350(b) - wobbler	yes	yes
11351	I(b), (c), (d)(14)(15)(20), (e) II(b), (c) III (h), "narcotic drug" IV: "narcotic drug" V: "narcotic drug"	1. Possession (actual or constructive) 2. knowledge of presence and 3. nature as a controlled substance 4. specific intent to sell 5. <i>useable amount</i> ? ³	2302	2, 3, 4	yes	yes
11351.5	I(f)(1)	1. Possession (actual or constructive) 2. knowledge of presence and 3. nature as a controlled substance 3. specific intent to sell 4. cocaine base 5. <i>useable amount</i> ? ⁴	2302	3, 4, 5	yes	yes

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
11352	I (d) (14), (15), (20), (f) (1) (b), (c), (e) II (b), (c) III (h) III, IV, V "narcotic drug"	1. offers or actually transports for sale ⁵ /imports into CA/sells/furnishes/administer s/gives away; 2. attempts to import/transport; 3. Useable amount; 4. Knowledge of presence and 5. Illegal character ^{6, 7, 8}	2300 2301	3, 4, 5 11352(b) transport w/in CA from one county to noncontiguous other county 3, 6, 9	yes	yes

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
11353	I (b), (c), (d) (14), (15), (20), (e), (f) (1) II (b), (c) III (h) Any narcotic drug in III, IV, or V	1. Δ 18+ years 2. Specific intent to solicit/induce/encourage/intimidate any minor; 3.to violate any provision of this chapter or HS 11550 or 4 hires/employs/uses a minor to unlawfully transport/carry/sell/giveaway/prepare for sale/peddle named drugs or 5. Unlawfully sells/furnishes/administers/gives or 6. Offers to sell/furnish/administer/give named drugs to a minor	2380 2381 2382 2384	3, 6, 9	no	yes
11377	III, IV, or V not a narcotic drug	1. Exercise dominion and control; 2. Knowledge of presence and 3. Nature as controlled substance 4. Useable amount	2304	wobbler or misd. depends on drug (see 11377(a), (b) (1), (2), (3) and (4)	Yes	yes if 11377(a) or if drug is LSD or methamphetamine

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
11378	I(d) <i>except</i> (13), (14), (15), (20), (21), (22), and (23); (f)(2), (3); II(d),(e) <i>except</i> (f)(2)(3)(A)(B); III(c)(11) III, IV or V, but not narcotic drugs listed in those schedules <i>except</i> III (g);	1.Possession (actual or constructive) 2. Knowledge of presence and 3. Nature as a controlled substance 4. Specific intent to sell 5. Cocaine base 6. Useable amount ⁹	2302	16, 2, 3	Yes	Yes
11378.5	I(d)(21), (22), (23) II (e)(3), (f) (except (f)(1)(A))	1..Possession (actual or constructive) 2. Knowledge of presence and 3. Nature as a controlled substance 4. For sale 5. <i>Useable amount?</i> ¹⁰	2302	3, 4, 5	yes	yes

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
11379	I(d) except (13), (14), (15), (20), (21), (22), (23), (f) (2), (3) II (d), (e), [except (e)(3)-Phencyclidines], (f)(1)(A) III (c)(11) Gamma hydroxybutyric acid III, IV and IV drugs “not narcotics” except III(g) (Ketamine)	1. Offers or actually transports for sale ¹¹ /imports into CA/sells/furnishes/administers/gives away 2. Attempts to import/transport 3. With knowledge of presence and 4. Nature as controlled substance 5. Useable amount ¹²	2300 2301	2, 3, 4 11379.5(b) for transport controlled substance for sale within CA from one noncontiguous county to another 3, 6, 9 ¹³	yes	yes
11379.5	I(d)(21)(22)(23) II (e)(3), (f)(2)(A), (B)	1. Offers or actually transports/imports phencyclidine(PCP) into CA/sells/furnishes/administers/ gives away or 2. Attempts to import or transport	2301	3, 4, 5 11379.5(b) for transport controlled substance for sale within CA from one noncontiguous county to another 3,6,9	yes	yes

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
11379.6	I, II, III, IV, V	1. Manufactures/compounds, produces/derives/processes/prepares or offers to do same 2. With knowledge of the nature of the controlled substance 3. Directly or indirectly by use of chemical extraction or by use of independent chemical synthesis ¹⁴	2330	3, 5, 7 Offer - 3, 4, 5	yes	yes
11380	III, IV, V (not narcotic drugs) I(d) except (13), (14), (15), (20), (f)(2), (3) II (d), (e), (f) III (c)(11)	1. Δ 18+ years violates any section this chapter involving controlled substances in schedules at let, 2. by use of minor as agent or solicits/nduces/encourages/intimidates minor to violate section or unlawfully furnishes/offers to furnish/attempts to furnish to minor ¹⁵	2380 2381 2383 2384	3, 6, 9	no	yes

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
11550	I (d) (14), (15), (21), (22), (23); (f)(1)(b), (c),(e) II(b)(c), (d)(1)(2), (e)(3) III, IV, V “narcotic drug”	(a) 1. Use or 2. Be under the influence of designated drugs (e)1. unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine (PCP) 2. while in immediate personal possession ¹⁶ of a 3. loaded, 4. operable firearm		11550(a) -90 days - 1 year (misd) 11550(b) - w/in 7 years of 2 or more separate violations + refuses drug rehab - 180 days - 1 year 11550(e) while in immediate possession loaded/operable gun - wobbler 11550(f) violates §(e) for second and subsequent time - 3, 4, 5	no	yes

CRIME	Schedule	Elements	CALCRIM	TRIAD	PC1170(h)	Register 11590?
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1. Jury instructions should not be cited as legal authority on a point of law. When accurate, they restate the law. (*People v. Morales* (2001) 25 Cal.4th 34, 48, n.7.)

2. *People v. Rushing* (1989) 209 Cal.App.3d 618, 621; *People v. Groom* (1964) 60 Cal.2d 694, 696-697

3. *People v. Saldana* (1984) 157 Cal.App.3d 443, 454; *People v. Glass* (1975) 44 Cal.App.3d 772, 774.

4. There are no published opinions enumerating the elements of this section, but see *People v. Muhammeem*, 2009 Cal. App. Unpub. LEXIS 2860 (Cal. App. 4th Dist. Apr. 10, 2009)

5. Effective January 1, 2014, “transport” means “transports for sale” (Health & Saf. Code, §11352, subd. (C).)

6. *People v. Innes* (1971) 16 Cal.App.3d 175, 178 ([“The elements . . . are sale. . . with knowledge of the dangerous drug character of the drug sold.”]); Possession is not an essential element of sections 11352, 11379 and 11379.5 because one can transport drugs possessed by others. (*People v. Rogers* (1971) 5 Cal.3d 129, 134.)

7. *People v. Meza* (1995) 38 Cal.App.4th 1741, 1746; *People v. Encerti* (1982) 130 Cal.App.3d 791, 800 (“[T]he offense is complete when an offer is made with the accompanying requisite intent.”.) Offer to sell absent an intent to sell is not sufficient. (*People v. Camarillo* (1964) 225 Cal.App.2d 127, 131.)

8. *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242; *People v. Williams* (1971) 5 Cal.3d 211, 215 (defining dangerous); *People v. Hurst* (1960) 183 Cal.App.2d 379, 387; *People v. Cuellar* (1952) 110 Cal.App.2d 273 (buried on public playground); *People v. Showers* (1968) 68 Cal.2d 639, 644 (defining possession); *People v. Riley* (2010) 185 Cal.App.4th 754, 763; prosecution need not prove drug capable of narcotic effect, only usable quantity. (*People v. Mardian* (1975) 47 Cal.App.3d 16, 45, disapproved of on unrelated grounds by *People v. Anderson* (1987) 43 Cal.3d 1104.) “ ‘[P]ossession of a minute crystalline residue or narcotic not intended for consumption or sale and useless for either of these purposes is insufficient evidence to sustain a conviction for known possession of a narcotic.’ ” (*People v. Leal* (1966) 64 Cal.2d 504, 510, quoting *People v. Sullivan* (1965) 234 Cal.App.2d 562, 565.)

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The usable amount rule “prohibits conviction only when the substance possessed simply cannot be used, such as when it is a blackened residue or a useless trace.” (*People v. Rubacalba* (1993) 6 Cal.4th 62, 66.) In proving a usable quantity, the prosecution does not need to establish the purity of the substance or that there was a sufficient amount of the controlled substance to produce a narcotic effect. (*Ibid.*) (defining useable amount); BUT trial court did not err in denying defendant's motion for judgment of acquittal pursuant to Pen. Code, § 1118.1, at the close of the prosecution's case-in-chief on grounds the prosecution had failed to present evidence of a useable amount. Where the prosecutor simply made a mistake and failed to present evidence that the prosecution had in its possession, the fact that the defendant moved for judgment of acquittal pursuant to § 1118.1 should not categorically prohibit the trial court from exercising the discretion granted to it under Pen. Code, §§ 1093 and 1094. (*People v. Riley* (2010) 185 Cal.App.4th 754.) (Useable amount); (*People v. Martin* (2001) 25 Cal.4th 1180, 1184); *People v. Garringer* (1975) 48 Cal.App.3d 827, 835 “[t]he defendant need not know the chemical name or the precise chemical nature of the substance.”]; *People v. Flores* (1958) 162 Cal.App.2d 222, 224 [“Knowledge . . . may be inferred from . . . facts and circumstances”.] (defining knowledge of presence); *People v. Garringer* (1975) 48 Cal.App.3d 827, 835 [“[t]he defendant need not know the chemical name or the precise chemical nature of the substance.”]; *People v. Ross* (1957) 149 Cal.App.2d 287, 289 -SODDI defense but no evidence SODDI existed] (defining knowledge of narcotic character).

9. *People v. Montero* (2007) 155 Cal.App.4th 1170, 1175.

10. *People v. Johnson* (1984) 158 Cal.App.3d 850, 853.

11. Effective January 1, 2014, “transports” means “transports for sale”. (Health & Saf. Code, §11379, subd. (C).)

12. *People v. LaCross* (2001) 91 Cal.App.4th 182, 185; *People v. Parra* (1999) 70 Cal.App.4th 222, 227; *People v. Consuegra* (1994) 26 Cal.App.4th 1726 [intent to sell or for someone else to sell]; *People v. Daniels* (1975) 14 Cl.3d 857, 861

13. *People v. Miranda* (2008) 161 Cal.App.4th 98, 101

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14. Encompasses the beginning and intermediate steps in the manufacturing process. (*People v. Lancellotti* (1993) 19 Cal.App.4th 809, 813.) “The express terms of Health and Safety Code section 11379.6 subject to liability not only one who ‘manufactures’ a controlled substance, but also one who ‘compounds, converts, produces, derives, processes, or prepares’ such a substance. (Health & Saf. Code, § 11379.6.)” (*People v. Heath* (1998) 66 Cal.App.4th 697, 705.) “It is evident from the Legislature’s use of such all-encompassing language that it intended to criminalize all acts which are part of the manufacturing process, whether or not those acts directly result in completion of the final product.” (*Ibid.*) Knowledge required. (*People v. Coria* (1999) 21 Cal.4th 868, 878.)

15. A mistake about the age of the person to whom a controlled substance is sold is not a defense to a charge of selling a controlled substance to a minor. (*People v. Williams* (1991) 233 Cal.App.3d 407, 409.) “The specific intent for the crime of selling [a controlled substance] to a minor is the intent to sell [the controlled substance], not the intent to sell it to a minor.” (*Id.* at p. 411.) “It follows that ignorance as to the age of the offeree . . . does not give rise to a ‘mistake of fact’ defense to the intent element of the crime.” (*Ibid.*)