

**ASSEMBLY BILL**

**No. 565**

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**Introduced by Assembly Member Cardoza**

February 21, 2001

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An act to amend Sections 11351, 11352, 11353.6, 11374.5, 11378, 11379, 11379.7, and 11380.1 of the Health and Safety Code, and to amend Section 1203.073 of, and to add Section 1203.077 to, the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 565, as introduced, Cardoza. Controlled substance offenses: methamphetamine: increased penalties.

Existing law provides that every person who unlawfully possesses methamphetamine for sale shall be punished by 18 months or 2 or 3 years in state prison.

This bill would increase the punishment for the above crime to 2, 3, or 4 years in state prison.

(2) Existing law provides that every person who unlawfully transports, imports into this state, sells, furnishes, administers, or gives away methamphetamine shall be punished by 2, 3, or 4 years in state prison.

This bill would increase the punishment for the above crime to 3, 4, or 5 years in state prison.

(3) Existing law provides that every person who manufactures, compounds, converts, produces, derives, processes, or prepares methamphetamine shall be punished by a fine not exceeding \$50,000, and 3, 5, or 7 years in the state prison, and that a person 18 years of age or over who commits these crimes near a schoolyard shall receive an additional punishment of 3, 4, or 5 years in the state prison at the court's

discretion. Existing law further provides that a person who commits these crimes, or possesses precursors of methamphetamine, in a structure where any child under 16 years of age is present shall receive an additional punishment of 2 years in the state prison, or where the commission of the crime causes any child under 16 years of age to suffer great bodily injury shall receive an additional punishment of 5 years in the state prison.

This bill would instead provide that a person who commits these crimes, or possesses precursors of methamphetamine, (a) in a structure where any child under 16 years of age is present shall receive an additional punishment of 5 years in the state prison, (b) in an inhabited structure where any child under 16 years of age is present shall receive an additional punishment of 2 years in the state prison, and (c) where the commission of the crime causes any person to suffer great bodily injury shall receive an additional punishment of 5 years in the state prison.

(4) Existing law provides that every person 18 years of age or over who commits a controlled substance offense involving methamphetamine by the use of a minor as an agent or who induces a minor to commit a controlled substance offense shall be punished by 3, 6, or 9 years in the state prison. If the offense occurs near a school the person shall receive an additional punishment of 2 years in the state prison.

This bill would instead provide that if the offense occurs near a school the person shall receive an additional punishment of 10 years in the state prison.

(5) Existing law provides that any manufacturer of a controlled substance who unlawfully disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance is guilty of a public offense punishable by imprisonment in the state prison for 1, 3, or 4 years or in a county jail not exceeding one year. Furthermore, existing law provides that the person shall pay a penalty equal to the amount of the actual cost of the removal and disposal of the hazardous substance.

This bill would provide that, in addition and consecutive to the above punishment, any person who unlawfully disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of methamphetamine shall receive an additional term of 3 years in state prison. This bill would provide that a person who unlawfully disposes any hazardous substance that is a



controlled substance or a chemical used in, or is a byproduct of, the manufacture of methamphetamine shall pay a penalty equal to double the actual cost of removal, disposal, and cleanup. By creating a new enhancement, this bill would impose a state-mandated local program upon local governments.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11351 of the Health and Safety Code is  
2 amended to read:

3 11351. Except as otherwise provided in this division, every  
4 person who possesses for sale or purchases for purposes of sale (1)  
5 any controlled substance specified in subdivision (b), (c), or (e) of  
6 Section 11054, specified in paragraph (14), (15), or (20) of  
7 subdivision (d) of Section 11054, or specified in subdivision (b)  
8 or (c) of Section 11055, *or specified in paragraph (2) of*  
9 *subdivision (d) of Section 11055*, or specified in subdivision (h) of  
10 Section 11056, or (2) any controlled substance classified in  
11 Schedule III, IV, or V which is a narcotic drug, shall be punished  
12 by imprisonment in the state prison for two, three, or four years.

13 SEC. 2. Section 11352 of the Health and Safety Code is  
14 amended to read:

15 11352. (a) Except as otherwise provided in this division,  
16 every person who transports, imports into this state, sells,  
17 furnishes, administers, or gives away, or offers to transport, import  
18 into this state, sell, furnish, administer, or give away, or attempts  
19 to import into this state or transport (1) any controlled substance  
20 specified in subdivision (b), (c), or (e), or paragraph (1) of  
21 subdivision (f) of Section 11054, specified in paragraph (14), (15),  
22 or (20) of subdivision (d) of Section 11054, or specified in  
23 subdivision (b) or (c) of Section 11055, *or specified in paragraph*  
24 *(2) of subdivision (d) of Section 11055*, or specified in subdivision



1 (h) of Section 11056, or (2) any controlled substance classified in  
2 Schedule III, IV, or V which is a narcotic drug, unless upon the  
3 written prescription of a physician, dentist, podiatrist, or  
4 veterinarian licensed to practice in this state, shall be punished by  
5 imprisonment in the state prison for three, four, or five years.

6 (b) Notwithstanding the penalty provisions of subdivision (a),  
7 any person who transports for sale any controlled substances  
8 specified in subdivision (a) within this state from one county to  
9 another noncontiguous county shall be punished by imprisonment  
10 in the state prison for three, six, or nine years.

11 SEC. 3. Section 11353.6 of the Health and Safety Code is  
12 amended to read:

13 11353.6. (a) This section shall be known, and may be cited,  
14 as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

15 (b) ~~Any~~ (1) *Except as provided in paragraph (2), any person*  
16 *18 years of age or over who is convicted of a violation of Section*  
17 *11351.5, 11352, or 11379.6, as those sections apply to paragraph*  
18 *(1) of subdivision (f) of Section 11054, or of Section 11351,*  
19 *11352, or 11379.6, as those sections apply to paragraph (11) of*  
20 *subdivision (c) of Section 11054, or of Section 11378, 11379, or*  
21 ~~*11379.6, as those sections apply to paragraph (2) of subdivision (d)*~~  
22 *of Section 11055, or of a conspiracy to commit one of those*  
23 *offenses, where the violation takes place upon the grounds of, or*  
24 *within 1,000 feet of, a public or private elementary, vocational,*  
25 *junior high, or high school during hours that the school is open for*  
26 *classes or school-related programs, or at any time when minors are*  
27 *using the facility where the offense occurs, shall receive an*  
28 *additional punishment of 3, 4, or 5 years at the court's discretion.*

29 (2) *Notwithstanding paragraph (1), any person 18 years of age*  
30 *or over who is convicted of a violation of Section 11379.6 as that*  
31 *section applies to paragraph (2) of subdivision (d) of Section*  
32 *11055, where the violation takes place upon the grounds of, or*  
33 *within 1,000 feet of, a public or private elementary, vocational,*  
34 *junior high, or high school during hours that the school is open for*  
35 *classes or school-related programs, or at any time when minors are*  
36 *using the facility where the offense occurs, shall receive an*  
37 *additional punishment of 10 years.*

38 (c) Any person 18 years of age or older who is convicted of a  
39 violation pursuant to subdivision (b) which involves a minor who  
40 is at least four years younger than that person, as a full and



1 separately served enhancement to that provided in subdivision (b),  
2 shall be punished by imprisonment in the state prison for 3, 4, or  
3 5 years at the court’s discretion.

4 (d) The additional terms provided in this section shall not be  
5 imposed unless the allegation is charged in the accusatory pleading  
6 and admitted or found to be true by the trier of fact.

7 (e) The additional terms provided in this section shall be in  
8 addition to any other punishment provided by law and shall not be  
9 limited by any other provision of law.

10 (f) Notwithstanding any other provision of law, the court may  
11 strike the additional punishment for the enhancements provided in  
12 this section if it determines that there are circumstances in  
13 mitigation of the additional punishment and states on the record its  
14 reasons for striking the additional punishment.

15 (g) “Within 1,000 feet of a public or private elementary,  
16 vocational, junior high, or high school” means any public area or  
17 business establishment where minors are legally permitted to  
18 conduct business which is located within 1,000 feet of any public  
19 or private elementary, vocational, junior high, or high school.

20 SEC. 4. Section 11374.5 of the Health and Safety Code is  
21 amended to read:

22 11374.5. (a) (1) Any manufacturer of a controlled substance  
23 who disposes of any hazardous substance that is a controlled  
24 substance or a chemical used in, or is a byproduct of, the  
25 manufacture of a controlled substance in violation of any law  
26 regulating the disposal of hazardous substances or hazardous  
27 waste is guilty of a public offense punishable by imprisonment in  
28 the state prison for two, three, or four years or in the county jail not  
29 exceeding one year.

30 (2) *In addition and consecutive to the sentence described in*  
31 *paragraph (1), any person who disposes of any hazardous*  
32 *substance that is a controlled substance or a chemical used in, or*  
33 *is a byproduct of, the manufacture of methamphetamine shall*  
34 *receive an additional term of three years in state prison.*

35 (b) (1) In addition to any other penalty or liability imposed by  
36 law, a person who is convicted of violating subdivision (a), or any  
37 person who is convicted of the manufacture, sale, possession for  
38 sale, possession, transportation, or disposal of any hazardous  
39 substance that is a controlled substance or a chemical used in, or  
40 is a byproduct of, the manufacture of a controlled substance in



1 violation of any law, shall pay a penalty equal to the amount of the  
2 actual cost incurred by the state or local agency to remove and  
3 dispose of the hazardous substance that is a controlled substance  
4 or a chemical used in, or is a byproduct of, the manufacture of a  
5 controlled substance and to take removal action with respect to any  
6 release of the hazardous substance or any items or materials  
7 contaminated by that release, if the state or local agency requests  
8 the prosecuting authority to seek recovery of that cost. The court  
9 shall transmit all penalties collected pursuant to this subdivision to  
10 the county treasurer of the county in which the court is located for  
11 deposit in a special account in the county treasury. The county  
12 treasurer shall pay that money at least once a month to the agency  
13 that requested recovery of the cost for the removal action. The  
14 county may retain up to 5 percent of any assessed penalty for  
15 appropriate and reasonable administrative costs attributable to the  
16 collection and disbursement of the penalty. *If the hazardous*  
17 *substance is methamphetamine or a chemical used in, or a*  
18 *byproduct of, the manufacture of methamphetamine, the penalty*  
19 *assessed shall be double the actual cost of removal, disposal, and*  
20 *cleanup.*

21 (2) If the Department of Toxic Substances Control has  
22 requested recovery of the cost of removing the hazardous  
23 substance that is a controlled substance or a chemical used in, or  
24 is a byproduct of, the manufacture of a controlled substance or  
25 taking removal action with respect to any release of the hazardous  
26 substance, the county treasurer shall transfer funds in the amount  
27 of the penalty collected to the Treasurer, who shall deposit the  
28 money in the Illegal Drug Lab Cleanup Account, which is hereby  
29 created in the General Fund in the State Treasury. The Department  
30 of Toxic Substances Control may expend the money in the Illegal  
31 Drug Lab Cleanup Account, upon appropriation by the  
32 Legislature, to cover the cost of taking removal actions pursuant  
33 to Section 25354.5.

34 (3) If a local agency and the Department of Toxic Substances  
35 Control have both requested recovery of removal costs with  
36 respect to a hazardous substance that is a controlled substance or  
37 a chemical used in, or is a byproduct of, the manufacture of a  
38 controlled substance, the county treasurer shall apportion any  
39 penalty collected among the agencies involved in proportion to the  
40 costs incurred.



1 (c) As used in this section the following terms have the  
2 following meaning:

3 (1) “Dispose” means to abandon, deposit, intern, or otherwise  
4 discard as a final action after use has been achieved or a use is no  
5 longer intended.

6 (2) “Hazardous substance” has the same meaning as defined  
7 in Section 25316.

8 (3) “Hazardous waste” has the same meaning as defined in  
9 Section 25117.

10 (4) For purposes of this section, “remove” or “removal” has  
11 the same meaning as set forth in Section 25323.

12 SEC. 5. Section 11378 of the Health and Safety Code is  
13 amended to read:

14 11378. Except as otherwise provided in Article 7  
15 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
16 Business and Professions Code, every person who possesses for  
17 sale any controlled substance which is (1) classified in Schedule  
18 III, IV, or V and which is not a narcotic drug, except subdivision  
19 (g) of Section 11056, (2) specified in subdivision (d) of Section  
20 11054, except paragraphs (13), (14), (15), (20), (21), (22), and  
21 (23) of subdivision (d), (3) specified in paragraph (2) or (3) of  
22 subdivision (f) of Section 11054, or (4) specified in subdivision  
23 (d), (e), or (f), except *paragraph (2) of subdivision (d) and*  
24 *paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of*  
25 *paragraph (2) of subdivision (f), of Section 11055, shall be*  
26 *punished by imprisonment in the state prison.*

27 SEC. 6. Section 11379 of the Health and Safety Code is  
28 amended to read:

29 11379. (a) Except as otherwise provided in subdivision (b)  
30 and in Article 7 (commencing with Section 4211) of Chapter 9 of  
31 Division 2 of the Business and Professions Code, every person  
32 who transports, imports into this state, sells, furnishes,  
33 administers, or gives away, or offers to transport, import into this  
34 state, sell, furnish, administer, or give away, or attempts to import  
35 into this state or transport any controlled substance which is (1)  
36 classified in Schedule III, IV, or V and which is not a narcotic drug,  
37 except subdivision (g) of Section 11056, (2) specified in  
38 subdivision (d) of Section 11054, except paragraphs (13), (14),  
39 (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in  
40 paragraph (2) or (3) of subdivision (f) of Section 11054, or (4)



1 specified in subdivision (d) or (e), except *paragraph (2) of*  
2 *subdivision (d) or paragraph (3) of subdivision (e)*, or specified in  
3 subparagraph (A) of paragraph (1) of subdivision (f), of Section  
4 11055, unless upon the prescription of a physician, dentist,  
5 podiatrist, or veterinarian, licensed to practice in this state, shall be  
6 punished by imprisonment in the state prison for a period of two,  
7 three, or four years.

8 (b) Notwithstanding the penalty provisions of subdivision (a),  
9 any person who transports for sale any controlled substances  
10 specified in subdivision (a) within this state from one county to  
11 another noncontiguous county shall be punished by imprisonment  
12 in the state prison for three, six, or nine years.

13 SEC. 7. Section 11379.7 of the Health and Safety Code is  
14 amended to read:

15 11379.7. (a) (1) Except as provided in subdivision (b), any  
16 person convicted of a violation of subdivision (a) of Section  
17 11379.6 or Section 11383, or of an attempt to violate subdivision  
18 (a) of Section 11379.6 or Section 11383, as those sections relate  
19 to ~~methamphetamine or phencyclidine~~, when the commission or  
20 attempted commission of the crime occurs in a structure where any  
21 child under 16 years of age is present, shall, in addition and  
22 consecutive to the punishment prescribed for the felony of which  
23 he or she has been convicted, be punished by an additional term of  
24 two years in the state prison.

25 (2) *Except as provided in subdivision (b), any person convicted*  
26 *of a violation of subdivision (a) of Section 11379.6 or Section*  
27 *11383, or of an attempt to violate subdivision (a) of Section*  
28 *11379.6 or Section 11383, as those sections relate to*  
29 *methamphetamine, when the commission or attempted*  
30 *commission of the crime occurs in a structure where any child*  
31 *under 16 years of age is present, shall, in addition and consecutive*  
32 *to the punishment prescribed for the felony of which he or she has*  
33 *been convicted, be punished by an additional term of five years in*  
34 *the state prison.*

35 (b) (1) Any person convicted of a violation of subdivision (a)  
36 of Section 11379.6 or Section 11383, or of an attempt to violate  
37 subdivision (a) of Section 11379.6 or Section 11383, as those  
38 sections relate to ~~methamphetamine or phencyclidine~~, where the  
39 commission of the crime causes any child under 16 years of age to  
40 suffer great bodily injury, shall, in addition and consecutive to the



1 punishment prescribed for the felony of which he or she has been  
2 convicted, be punished by an additional term of five years in the  
3 state prison.

4 (2) *Any person convicted of a violation of subdivision (a) of*  
5 *Section 11379.6 or Section 11383, or of an attempt to violate*  
6 *subdivision (a) of Section 11379.6 or Section 11383, as those*  
7 *sections relate to methamphetamine, where the commission of the*  
8 *crime causes any person to suffer great bodily injury, shall, in*  
9 *addition and consecutive to the punishment prescribed for the*  
10 *felony of which he or she has been convicted, be punished by an*  
11 *additional term of five years in the state prison.*

12 (3) *Any person convicted of a violation of subdivision (a) of*  
13 *Section 11379.6 or Section 11383, or of an attempt to violate*  
14 *subdivision (a) of Section 11379.6 or Section 11383, as those*  
15 *sections relate to methamphetamine, where the commission of the*  
16 *crime occurs in an inhabited structure where any child under 16*  
17 *years of age is present, shall, in addition and consecutive to the*  
18 *punishment prescribed for the felony of which he or she has been*  
19 *convicted, be punished by an additional term of two years in the*  
20 *state prison.*

21 (c) As used in this section, “structure” means any house,  
22 apartment building, shop, warehouse, barn, building, vessel,  
23 railroad car, cargo container, motor vehicle, housecar, trailer,  
24 trailer coach, camper, mine, floating home, or other enclosed  
25 structure capable of holding a child and manufacturing equipment.

26 (d) As used in this section, “great bodily injury” has the same  
27 meaning as defined in Section 12022.7 of the Penal Code.

28 SEC. 8. Section 11380.1 of the Health and Safety Code is  
29 amended to read:

30 11380.1. (a) Notwithstanding any other provision of law, any  
31 person 18 years of age or over who is convicted of a violation of  
32 Section 11380, in addition to the punishment imposed for that  
33 conviction, shall receive an additional punishment as follows:

34 (1) If the offense involved phencyclidine (PCP),  
35 methamphetamine, lysergic acid diethylamide (LSD), or any  
36 analog of these substances and occurred upon the grounds of, or  
37 within, a church or synagogue, a playground, a public or private  
38 youth center, a child day care facility, or a public swimming pool,  
39 during hours in which the facility is open for business, classes, or  
40 school-related programs, or at any time when minors are using the



1 facility, the defendant shall, as a full and separately served  
2 enhancement to any other enhancement provided in paragraph (3),  
3 be punished by imprisonment in the state prison for one year.

4 (2) *¶ Except as specified in Section 11353.6, if the offense*  
5 *involved phencyclidine (PCP), methamphetamine, lysergic acid*  
6 *diethylamide (LSD), or any analog of these substances and*  
7 *occurred upon, or within 1,000 feet of, the grounds of any public*  
8 *or private elementary, vocational, junior high school, or high*  
9 *school, during hours that the school is open for classes or*  
10 *school-related programs, or at any time when minors are using the*  
11 *facility where the offense occurs, the defendant shall, as a full and*  
12 *separately served enhancement to any other enhancement*  
13 *provided in paragraph (3), be punished by imprisonment in the*  
14 *state prison for two years.*

15 (3) If the offense involved a minor who is at least four years  
16 younger than the defendant, the defendant shall, as a full and  
17 separately served enhancement to any other enhancement  
18 provided in this subdivision, be punished by imprisonment in the  
19 state prison for one, two, or three years, at the discretion of the  
20 court.

21 (4) *If the offense involved a violation of Section 11379.6,*  
22 *involving the manufacture, compounding, conversion, production,*  
23 *derivation, processing, or preparation of methamphetamine, its*  
24 *salts, isomers, or salts of its isomers, the defendant shall, as a full*  
25 *and separately served enhancement to any other enhancement*  
26 *provided in paragraph (3), be punished by imprisonment in the*  
27 *state prison for five years.*

28 (b) The additional punishment provided in this section shall not  
29 be imposed unless the allegation is charged in the accusatory  
30 pleading and admitted by the defendant or found to be true by the  
31 trier of fact.

32 (c) The additional punishment provided in this section shall be  
33 in addition to any other punishment provided by law and shall not  
34 be limited by any other provision of law.

35 (d) Notwithstanding any other provision of law, the court may  
36 strike the additional punishment provided for in this section if it  
37 determines that there are circumstances in mitigation of the  
38 additional punishment and states on the record its reasons for  
39 striking the additional punishment.



1 (e) The definitions contained in subdivision (e) of Section  
2 11353.1 shall apply to this section.

3 (f) This section does not require either that notice be posted  
4 regarding the proscribed conduct or that the applicable 1,000-foot  
5 boundary limit be marked.

6 SEC. 9. Section 1203.073 of the Penal Code is amended to  
7 read:

8 1203.073. (a) A person convicted of a felony specified in  
9 subdivision (b) may be granted probation only in an unusual case  
10 where the interests of justice would best be served. When  
11 probation is granted in such a case, the court shall specify on the  
12 record and shall enter in the minutes the circumstances indicating  
13 that the interests of justice would best be served by such a  
14 disposition.

15 (b) Except as provided in subdivision (a), probation shall not  
16 be granted to, nor shall the execution or imposition of sentence be  
17 suspended for, any of the following persons:

18 (1) Any person who is convicted of violating Section 11351 of  
19 the Health and Safety Code by possessing for sale, or Section  
20 11352 of the Health and Safety Code by selling, a substance  
21 containing 28.5 grams or more of cocaine as specified in paragraph  
22 (6) of subdivision (b) of Section 11055 of the Health and Safety  
23 Code, or 57 grams or more of a substance containing cocaine as  
24 specified in paragraph (6) of subdivision (b) of Section 11055 of  
25 the Health and Safety Code.

26 (2) Any person who is convicted of violating Section 11378 of  
27 the Health and Safety Code by possessing for sale, or Section  
28 11379 of the Health and Safety Code by selling a substance  
29 containing 28.5 grams or more of methamphetamine or 57 grams  
30 or more of a substance containing methamphetamine.

31 (3) Any person who is convicted of violating subdivision (a) of  
32 Section 11379.6 of the Health and Safety Code, except those who  
33 manufacture phencyclidine, or who is convicted of an act which  
34 is punishable under subdivision (b) of Section 11379.6 of the  
35 Health and Safety Code, except those who offer to perform an act  
36 which aids in the manufacture of phencyclidine.

37 (4) Except as otherwise provided in Section 1203.07, any  
38 person who is convicted of violating Section 11353 or 11380 of the  
39 Health and Safety Code by using, soliciting, inducing,  
40 encouraging, or intimidating a minor to manufacture, compound,



1 or sell heroin, cocaine base as specified in paragraph (1) of  
2 subdivision (f) of Section 11054 of the Health and Safety Code,  
3 cocaine as specified in paragraph (6) of subdivision (b) of Section  
4 11055 of the Health and Safety Code, or methamphetamine.

5 (5) Any person who is convicted of violating Section 11351.5  
6 of the Health and Safety Code by possessing for sale a substance  
7 containing 14.25 grams or more of cocaine base as specified in  
8 paragraph (1) of subdivision (f) of Section 11054 of the Health and  
9 Safety Code or 57 grams or more of a substance containing at least  
10 five grams of cocaine base as specified in paragraph (1) of  
11 subdivision (f) of Section 11054 of the Health and Safety Code.

12 (6) Any person who is convicted of violating Section 11352 of  
13 the Health and Safety Code by transporting for sale, importing for  
14 sale, or administering, or by offering to transport for sale, import  
15 for sale, or administer, or by attempting to import for sale or  
16 transport for sale, cocaine base as specified in paragraph (1) of  
17 subdivision (f) of Section 11054 of the Health and Safety Code.

18 (7) Any person who is convicted of violating Section 11352 of  
19 the Health and Safety Code by selling or offering to sell cocaine  
20 base as specified in paragraph (1) of subdivision (f) of Section  
21 11054 of the Health and Safety Code.

22 ~~(8) Any person convicted of violating Section 11379.6, 11382,~~  
23 ~~or 11383 of the Health and Safety Code with respect to~~  
24 ~~methamphetamine, if he or she has one or more prior convictions~~  
25 ~~for a violation of Section 11378, 11379, 11379.6, 11380, 11382,~~  
26 ~~or 11383 with respect to methamphetamine.~~

27 (c) As used in this section, the term “manufacture” refers to the  
28 act of any person who manufactures, compounds, converts,  
29 produces, derives, processes, or prepares, either directly or  
30 indirectly by chemical extraction or independently by means of  
31 chemical synthesis.

32 (d) The existence of any previous conviction or fact which  
33 would make a person ineligible for probation under this section  
34 shall be alleged in the information or indictment, and either  
35 admitted by the defendant in open court, or found to be true by the  
36 jury trying the issue of guilt or by the court where guilt is  
37 established by a plea of guilty or nolo contendere or by trial by the  
38 court sitting without a jury.

39 SEC. 10. Section 1203.077 is added to the Penal Code, to  
40 read:



1 1203.077. (a) Notwithstanding any other law, probation shall  
2 not be granted to, nor shall the execution or imposition of sentence  
3 be suspended for, nor shall a finding bringing the defendant within  
4 this section be stricken pursuant to Section 1385 for, any person  
5 who is convicted of violating Section 11379.6, 11382, or 11383 of  
6 the Health and Safety Code with respect to methamphetamine.

7 (b) (1) The existence of any fact which would make a person  
8 ineligible for probation under subdivision (a) shall be alleged in  
9 the accusatory pleading, and either admitted by the defendant in  
10 open court, or found to be true by the jury trying the issue of guilt  
11 or by the court where guilt is established by a plea of guilty or nolo  
12 contendere or by a trial by the court sitting without a jury.

13 (2) This subdivision does not prohibit the adjournment of  
14 criminal proceedings pursuant to Division 3 (commencing with  
15 Section 3000) or Division 6 (commencing with Section 6000) of  
16 the Welfare and Institutions Code.

17 SEC. 11. No reimbursement is required by this act pursuant  
18 to Section 6 of Article XIII B of the California Constitution  
19 because the only costs that may be incurred by a local agency or  
20 school district will be incurred because this act creates a new crime  
21 or infraction, eliminates a crime or infraction, or changes the  
22 penalty for a crime or infraction, within the meaning of Section  
23 17556 of the Government Code, or changes the definition of a  
24 crime within the meaning of Section 6 of Article XIII B of the  
25 California Constitution.

