

AMENDED IN SENATE MAY 14, 2001

SENATE BILL

No. 791

Introduced by Senator McPherson

February 23, 2001

An act to amend Section 11357 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 791, as amended, McPherson. Marijuana: possession: penalty.

(1) Existing law provides, that except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor ~~and~~, punishable by a fine of not more than \$100, *and if that person has been previously convicted 3 or more times of that offense during the previous 2 years, the person is eligible for diversion, as specified.*

This bill would instead ~~make the possession of not more than 28.5 grams of marijuana, other than concentrated cannabis, an infraction.~~ provide that (a) except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of an infraction, punishable by a fine not to exceed \$100, and is, for the 2nd offense, guilty of an infraction or a misdemeanor, punishable by a fine not to exceed \$100; and (b) if that person has been previously convicted 2 or more times of that offense during the previous 2 years, the person is eligible for diversion, as specified. To the extent that this bill would increase the duties of local officers by providing for the diversion of offenders after a 2nd rather than 3rd offense, this bill would impose a state-mandated local program upon local governments.

(2) Existing law provides that in any case in which a person is arrested for possessing not more than 28.5 grams of marijuana, other than concentrated cannabis, and does not demand to be taken before a magistrate, the person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, and the person shall not be subjected to booking.

This bill would delete the above provision. By subjecting a new group of offenders to booking, this bill would impose a state-mandated local program upon local governments.

(3) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Section 11357 of the Health and Safety Code is
2 amended to read:

3 11357. (a) Except as authorized by law, every person who
4 possesses any concentrated cannabis shall be punished by
5 imprisonment in the county jail for a period of not more than one
6 year or by a fine of not more than five hundred dollars (\$500), or
7 by both ~~such~~ that fine and imprisonment, or shall be punished by
8 imprisonment in the state prison.

9 (b) Except as authorized by law, every person who possesses
10 not more than 28.5 grams of marijuana, other than concentrated
11 cannabis, is guilty of an infraction and shall be punished by a fine
12 of not more than one hundred dollars (\$100). ~~cannabis, is, for the~~



1 *first offense, guilty of an infraction punishable by a fine not to*
2 *exceed one hundred dollars (\$100), and is, for the second offense,*
3 *guilty of an infraction or a misdemeanor punishable by a fine not*
4 *to exceed one hundred dollars (\$100). Notwithstanding other*
5 *provisions of law, if that person has been previously convicted*
6 ~~three~~ *two or more times of an offense described in this subdivision*
7 *during the two-year period immediately preceding the date of*
8 *commission of the violation to be charged, the previous*
9 *convictions shall also be charged in the accusatory pleading and,*
10 *if found to be true by the jury upon a jury trial or by the court upon*
11 *a court trial or if admitted by the person, the provisions of Sections*
12 *1000.1 and 1000.2 of the Penal Code shall be applicable to him or*
13 *her, and the court shall divert and refer him or her for education,*
14 *treatment, or rehabilitation, without a court hearing or*
15 *determination or the concurrence of the district attorney, to an*
16 *appropriate community program which will accept him or her. If*
17 *the person is so diverted and referred he or she shall not be subject*
18 *to the fine specified in this subdivision. If no community program*
19 *will accept him or her, the person shall be subject to the fine*
20 *specified in this subdivision.* ~~In any case in which a person is~~
21 ~~arrested for a violation of this subdivision and does not demand to~~
22 ~~be taken before a magistrate, the person shall be released by the~~
23 ~~arresting officer upon presentation of satisfactory evidence of~~
24 ~~identity and giving his or her written promise to appear in court,~~
25 ~~as provided in Section 853.6 of the Penal Code, and shall not be~~
26 ~~subjected to booking.~~

27 (c) Except as authorized by law, every person who possesses
28 more than 28.5 grams of marijuana, other than concentrated
29 cannabis, shall be punished by imprisonment in the county jail for
30 a period of not more than six months or by a fine of not more than
31 five hundred dollars (\$500), or by both—~~such~~ *that* fine and
32 imprisonment.

33 (d) Except as authorized by law, every person 18 years of age
34 or over who possesses not more than 28.5 grams of marijuana,
35 other than concentrated cannabis, upon the grounds of, or within,
36 any school providing instruction in kindergarten or any of grades
37 1 through 12 during hours the school is open for classes or
38 school-related programs is guilty of a misdemeanor and shall be
39 punished by a fine of not more than five hundred dollars (\$500),



1 or by imprisonment in the county jail for a period of not more than
2 10 days, or both.

3 (e) Except as authorized by law, every person under the age of
4 18 who possesses not more than 28.5 grams of marijuana, other
5 than concentrated cannabis, upon the grounds of, or within, any
6 school providing instruction in kindergarten or any of grades 1
7 through 12 during hours the school is open for classes or
8 school-related programs is guilty of a misdemeanor and shall be
9 subject to the following dispositions:

10 (1) A fine of not more than two hundred fifty dollars (\$250),
11 upon a finding that a first offense has been committed.

12 (2) A fine of not more than five hundred dollars (\$500), or
13 commitment to a juvenile hall, ranch, camp, forestry camp, or
14 secure juvenile home for a period of not more than 10 days, or
15 both, upon a finding that a second or subsequent offense has been
16 committed.

17 *SEC. 2. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution for*
19 *certain costs that may be incurred by a local agency or school*
20 *district because in that regard this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*

26 *However, notwithstanding Section 17610 of the Government*
27 *Code, if the Commission on State Mandates determines that this*
28 *act contains other costs mandated by the state, reimbursement to*
29 *local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code. If the statewide cost of the*
32 *claim for reimbursement does not exceed one million dollars*
33 *(\$1,000,000), reimbursement shall be made from the State*
34 *Mandates Claims Fund.*

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