

AMENDED IN SENATE MAY 7, 2002
AMENDED IN SENATE APRIL 25, 2002

SENATE BILL

No. 1287

Introduced by Senator Alarcon

January 16, 2002

An act to amend Sections 11417, 11418, 11418.5, and 11419 of, and to add Section 11418.1 to, the Penal Code, relating to weapons of mass destruction, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1287, as amended, Alarcon. Weapons of mass destruction.

Existing law defines "weapon of mass destruction." Existing law also provides that, absent lawful authority, the possession, development, manufacture, production, transfer, acquisition, or retention of any weapon of mass destruction is a felony.

This bill would expand that definition to include restricted biological agents, and an aircraft, vessel, or vehicle that is used as a destructive weapon. This bill would also define "used as a destructive weapon" for purposes of those provisions.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that, absent lawful authority, the possession, development, manufacture, production, transfer, acquisition, or retention of any weapon of mass destruction is a felony.

This bill would, in addition, provide that a person who employs, as specified, a weapon of mass destruction in a form that causes widespread great bodily injury or death would be punishable by

imprisonment in the state prison for life without the possibility of parole.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law provides that the use of recombinant technology or any other biological advance to create new or more virulent pathogens for purposes of provisions prohibiting use of weapons of mass destruction is a crime with a specified penalty.

This bill would divide that prohibition into 2 separate crimes with different penalties based on the type of use intended for the pathogens.

This bill would increase the penalty for related crimes.

Existing law provides that a threat, as specified, to use a weapon of mass destruction is a crime.

This bill would, in addition, provide that giving, mailing, sending, or causing to be sent a false or facsimile weapon of mass destruction, as specified, would be punishable by imprisonment in a county jail not exceeding one year, or imprisonment in the state prison for 3, 4, or 6 years and a fine not exceeding \$250,000.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law provides that a threat, as specified, to use a weapon of mass destruction, that results in “sustained fear,” as defined, is a crime.

This bill would, in addition, expand the definition of evidence showing “sustained fear” to include any isolation, quarantine, or decontamination effort *while deleting language specifying that any action taken in direct response to a threat to use a weapon of mass destruction is evidence of sustained fear.* By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that possession of a restricted biological agent, as defined, is punishable by imprisonment in the state prison for 4, 8, or 12 years, or a fine not exceeding \$250,000, or by both *that imprisonment and the fine.*

This bill would revise the penalties to provide that the offense would be punishable by both the prison term and the fine. The bill would also expand the list of restricted biological agents to include bioengineered products, as specified.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The bill would make related changes.



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.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 11417 of the Penal Code is amended to
2 read:
3 11417. (a) For the purposes of this article, the following
4 terms have the following meanings:
5 (1) “Weapon of mass destruction” includes chemical warfare
6 agents, weaponized biological or biologic warfare agents,
7 restricted biological agents, nuclear agents, radiological agents, or
8 the intentional release of industrial agents as a weapon, or an
9 aircraft, vessel, or vehicle, as described in Section 34500 of the
10 Vehicle Code, which is used as a destructive weapon.
11 (2) “Chemical Warfare Agents” includes, but is not limited to,
12 the following weaponized agents, or any analog of these agents:
13 (A) Nerve agents, including Tabun (GA), Sarin (GB), Soman
14 (GD), GF, and VX.
15 (B) Choking agents, including Phosgene (CG) and Diphosgene
16 (DP).
17 (C) Blood agents, including Hydrogen Cyanide (AC),
18 Cyanogen Chloride (CK), and Arsine (SA).
19 (D) Blister agents, including mustards (H, HD [sulfur
20 mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals,
21 such as Lewisite (L), urticants, such as CX; and incapacitating
22 agents, such as BZ.
23 (3) “Weaponized biological or biologic warfare agents”
24 include weaponized pathogens, such as bacteria, viruses,
25 rickettsia, yeasts, fungi, or genetically engineered pathogens,
26 toxins, vectors, and endogenous biological regulators (EBRs).



1 (4) “Nuclear or radiological agents” includes any improvised
2 nuclear device (IND) which is any explosive device designed to
3 cause a nuclear yield; any radiological dispersal device (RDD)
4 which is any explosive device utilized to spread radioactive
5 material; or a simple radiological dispersal device (SRDD) which
6 is any act or container designed to release radiological material as
7 a weapon without an explosion.

8 (5) “Vector” means a living organism or a molecule, including
9 a recombinant molecule, or a biological product that may be
10 engineered as a result of biotechnology, that is capable of carrying
11 a biological agent or toxin to a host.

12 (6) “Weaponization” is the deliberate processing, preparation,
13 packaging, or synthesis of any substance for use as a weapon or
14 munition. “Weaponized agents” are those agents or substances
15 prepared for dissemination through any explosive, thermal,
16 pneumatic, or mechanical means.

17 (7) For purposes of this section, “used as a destructive
18 weapon” means to use with the intent of causing *widespread great*
19 *bodily injury or death by causing a fire or explosion, a release of*
20 *or the release of a chemical, biological, or radioactive agent that*
21 ~~may cause widespread great bodily injury or death.~~

22 (b) The intentional release of a dangerous chemical or
23 hazardous material generally utilized in an industrial or
24 commercial process shall be considered use of a weapon of mass
25 destruction when a person knowingly utilizes those agents with the
26 intent to cause harm and the use places persons or animals at risk
27 of serious injury, illness, or death, or endangers the environment.

28 (c) The lawful use of chemicals for legitimate mineral
29 extraction, industrial, agricultural, or commercial purposes is not
30 proscribed by this article.

31 (d) No university, research institution, private company,
32 individual, or hospital engaged in scientific or public health
33 research and, as required, registered with the Centers for Disease
34 Control and Prevention (CDC) pursuant to Part 113 (commencing
35 with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or
36 pursuant to Part 72 (commencing with Section 72.1) of Subchapter
37 E of Chapter 1 of Title 42 of the Code of Federal Regulations, or
38 any successor provisions, shall be subject to this article.

39 SEC. 2. Section 11418 of the Penal Code is amended to read:



1 11418. (a) (1) Any person, without lawful authority, who
2 possesses, develops, manufactures, produces, transfers, acquires,
3 or retains any weapon of mass destruction; shall be punished by
4 imprisonment in the state prison for 4, 8, or 12 years.

5 (2) Any person who commits a violation of paragraph (1) and
6 who has been previously convicted of Section 11411, 11412,
7 11413, 11418, 11418.1, 11418.5, 11419, 11460, 12303.1,
8 12303.2, or 12303.3 shall be punished by imprisonment in the state
9 prison for 5, 10, or 15 years.

10 (b) (1) Any person who uses or directly employs against
11 another person a weapon of mass destruction in a form that may
12 cause widespread, disabling illness or injury in human beings shall
13 be punished by imprisonment in the state prison for life.

14 (2) Any person who uses or directly employs against another
15 person a weapon of mass destruction in a form that may cause
16 widespread great bodily injury or death and causes great bodily
17 injury to or the death of any human being shall be punished by
18 imprisonment in the state prison for life without the possibility of
19 parole. Nothing in this paragraph shall prevent punishment instead
20 under Section 190.2.

21 (3) Any person who uses a weapon of mass destruction in a
22 form that may cause widespread damage to or disruption of the
23 food supply or “source of drinking water” as defined in
24 subdivision (d) of Section 25249.11 of the Health and Safety Code
25 shall be punished by imprisonment in the state prison for 5, 8, or
26 12 years, and by a fine of not more than one hundred thousand
27 dollars (\$100,000).

28 (4) Any person who maliciously uses against animals, crops, or
29 seed and seed stock a weapon of mass destruction in a form that
30 may cause widespread damage to or substantial diminution in the
31 value of stock animals or crops, including seeds used for crops or
32 products of the crops shall be punished by imprisonment in the
33 state prison for 4, 8, or 12 years and by a fine of not more than one
34 hundred thousand dollars (\$100,000).

35 (c) Any person who uses a weapon of mass destruction in a
36 form that may cause widespread and significant damage to public
37 natural resources, including coastal waterways and beaches,
38 public parkland, surface waters, ground water, and wildlife, shall
39 be punished by imprisonment in the state prison for 3, 4, or 6 years.



1 (d) (1) Any person who uses recombinant technology or any
2 other biological advance to create new pathogens or more virulent
3 forms of existing pathogens for the purposes specified in ~~this~~
4 ~~section~~, *subdivision (b)* shall be punished by imprisonment in the
5 state prison for 4, 8, or 12 years and by a fine of not more than two
6 hundred fifty thousand dollars (\$250,000).

7 (2) *Any person who uses recombinant technology or any other*
8 *biological advance to create new pathogens or more virulent forms*
9 *of existing pathogens for the purposes specified in subdivision (c)*
10 *shall be punished by imprisonment in the state prison for three, six,*
11 *or nine years and by a fine of not more than two hundred fifty*
12 *thousand dollars (\$250,000).*

13 (e) Nothing in this section shall be construed to prevent
14 punishment instead pursuant to any other provision of law that
15 imposes a greater or more severe punishment.

16 SEC. 3. Section 11418.1 is added to the Penal Code, to read:

17 11418.1. Any person who gives, mails, sends, or causes to be
18 sent any false or facsimile of a weapon of mass destruction to
19 another person, or places, causes to be placed, or possesses any
20 false or facsimile of a weapon of mass destruction, with the intent
21 to cause another person to fear for his or her own safety, or for the
22 personal safety of others, *is guilty of a misdemeanor. If the person's*
23 *conduct causes another person to be placed in sustained fear, the*
24 *person shall be punished by imprisonment in a county jail for not*
25 *more than one year or in the state prison for 16 months, two years,*
26 *or three years and by a fine of not more than two hundred fifty*
27 *thousand dollars (\$250,000). For purposes of this section,*
28 *“sustained fear” shall have the same meaning as in Section*
29 *11418.5.*

30 SEC. 4. Section 11418.5 of the Penal Code is amended to
31 read:

32 11418.5. (a) Any person who knowingly threatens to use a
33 weapon of mass destruction, with the specific intent that the
34 statement as defined in Section 225 of the Evidence Code or a
35 statement made by means of an electronic communication device,
36 is to be taken as a threat, even if there is no intent of actually
37 carrying it out, which, on its face and under the circumstances in
38 which it is made, is so unequivocal, immediate, and specific as to
39 convey to the person threatened, a gravity of purpose and an
40 immediate prospect of execution of the threat, and thereby causes



1 that person reasonably to be in sustained fear for his or her own
2 safety, or for his or her immediate family’s safety, shall be
3 punished by imprisonment in a county jail for up to one year or in
4 the state prison for 3, 4, or 6 years, and *by* a fine of not more than
5 two hundred fifty thousand dollars (\$250,000).

6 (b) For the purposes of this section, “sustained fear” can be
7 established by, but is not limited to, conduct such as evacuation of
8 any building by any occupant, evacuation of any school by any
9 employee or student, evacuation of any home by any resident or
10 occupant, any isolation, quarantine, or decontamination effort, ~~or~~
11 ~~any other action taken in direct response to the threat to use a~~
12 ~~weapon of mass destruction.~~

13 (c) The fact that the person who allegedly violated this section
14 did not actually possess a biological agent, toxin, or chemical
15 weapon does not constitute a defense to the crime specified in this
16 section.

17 (d) Nothing in this section shall be construed to prevent
18 punishment instead pursuant to any other provision of law that
19 imposes a greater or more severe punishment.

20 SEC. 5. Section 11419 of the Penal Code is amended to read:

21 11419. (a) Any person or entity possessing any of the
22 restricted biological agents enumerated in subdivision (b) shall be
23 punished by imprisonment in the state prison for 4, 8, or 12 years,
24 and *by* a fine of not more than two hundred fifty thousand dollars
25 (\$250,000).

26 (b) For the purposes of this section, “restricted biological
27 agents” means the following:

28 (1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern
29 equine encephalitis virus, ebola viruses, equine morbilli virus,
30 lassa fever virus, marburg virus, Rift Valley fever virus, South
31 African hemorrhagic fever viruses (Junin, Machupo, Sabia,
32 Flexal, Guanarito), tick-borne encephalitis complex viruses,
33 variola major virus (smallpox virus), Venezuelan equine
34 encephalitis virus, viruses causing hantavirus pulmonary
35 syndrome, yellow fever virus.

36 (2) Bacteria: bacillus anthracis (commonly known as anthrax),
37 brucella abortus, brucella melitensis, brucella suis, burkholderia
38 (pseudomonas) mallei, burkholderia (pseudomonas)
39 pseudomallei, clostridium botulinum, francisella tularensis,
40 yersinia pestis (commonly known as plague).



1 (3) Rickettsiae: coxiella burnetii, rickettsia prowazekii,
2 rickettsia rickettsii.

3 (4) Fungi: coccidioides immitis.

4 (5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium
5 perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin,
6 saxitoxin, shigatoxin, staphylococcal enterotoxins, tabtoxin,
7 tetrodotxin, T-2 toxin.

8 (6) Any other microorganism, virus, infectious substance, or
9 biological product that ~~may be engineered as a result of~~
10 ~~biotechnology, or any naturally occurring or bioengineered~~
11 ~~component of any microorganisms, viruses, infectious substances,~~
12 ~~or biological products capable of causing any of the following:~~

13 (A) ~~Death, disease, or other biological malfunction in a human,~~
14 ~~an animal, a plant, or a living organism.~~

15 (B) ~~Deterioration of food, water, equipment, supplies, or~~
16 ~~material of any kind.~~

17 (C) ~~Deleterious alteration of the environment.~~ *has the same*
18 *characteristics as, or is substantially similar to, the substances*
19 *prohibited in this section.*

20 (c) (1) This section shall not apply to any physician,
21 veterinarian, pharmacist, or licensed medical practitioner
22 authorized to dispense a prescription under Section 11026 of the
23 Health and Safety Code, or universities, research institutions, or
24 pharmaceutical corporations, or any person possessing the agents
25 pursuant to a lawful prescription issued by a person defined in
26 Section 11026 of the Health and Safety Code, if the person
27 possesses vaccine strains of the viral agents Junin virus strain #1,
28 Rift Valley fever virus strain MP-12, Venezuelan equine
29 encephalitis virus strain TC-83 and yellow fever virus strain 17-D;
30 any vaccine strain described in Section 78.1 of Subpart A of Part
31 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal
32 Regulations, or any successor provisions, and any toxin for
33 medical use, inactivated for use as vaccines, or toxin preparation
34 for biomedical research use at a median lethal dose for vertebrates
35 of more than 100 ng/kg, as well as any national standard toxin
36 required for biologic potency testing as described in Part 113
37 (commencing with Section 113.1) of Subchapter E of Chapter 1 of
38 Title 9 of the Code of Federal Regulations, or any successor
39 provisions.



1 (2) For the purposes of this section, no person shall be deemed
2 to be in possession of an agent if the person is naturally exposed
3 to, or innocently infected or contaminated with, the agent.

4 (d) Any peace officer who encounters any of the restricted
5 agents mentioned above shall immediately notify and consult with
6 a local public health officer to ensure proper consideration of any
7 public health risk.

8 (e) Nothing in this section shall be construed to prevent
9 punishment instead pursuant to any other provision of law that
10 imposes a greater or more severe punishment.

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

20 SEC. 7. This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or safety
22 within the meaning of Article IV of the Constitution and shall go
23 into immediate effect. The facts constituting the necessity are:

24 In order to provide for immediate authority to effectively
25 address the use or threatened use of weapons of mass destruction
26 in California, it is necessary that this act take effect immediately.

