

AMENDED IN SENATE JUNE 12, 2006
AMENDED IN ASSEMBLY MAY 26, 2005
AMENDED IN ASSEMBLY MAY 9, 2005
AMENDED IN ASSEMBLY MAY 2, 2005
AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 283

Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Maze)
(Coauthors: Senators Alquist and Margett)

February 9, 2005

An act to ~~add Section 11100.01 to the Health and Safety Code, relating to controlled substances; repeal Section 851.85 of, to repeal and add Section 851.8 to, and to repeal Chapter 5 (commencing with Section 4900) of Title 6 of Part 3 of, the Penal Code, relating to criminal procedure.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 283, as amended, Koretz. ~~Ephedrine and pseudoephedrine: retail sale. Criminal procedure: factual innocence.~~

Existing law establishes procedures for the determining of factual innocence and for the sealing and destruction of arrest or other criminal records in connection thereto.

This bill would repeal those provisions and establish a new procedure for determining factual innocence and sealing and destroying arrest and other criminal records, as specified. The bill

would also establish new procedures for persons who are erroneously convicted to make claims for specified compensation against the state, as specified.

By imposing additional duties on local law enforcement agencies in connection with criminal records, this bill would impose a state-mandated local program.

Existing law establishes procedures for persons who are wrongfully convicted to make claims against the state for compensation, as specified.

This bill would repeal those provisions.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(1) Under existing law, a retailer who makes an over-the-counter retail sale of ephedrine or pseudoephedrine is generally subject to a 3 package per transaction limitation or 9 gram per transaction limitation. Any violation of this requirement is a crime, punishable as specified.~~

~~This bill would provide that the dispensing, sale, or distribution at retail of any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or any derivative of ephedrine or pseudoephedrine shall be subject to specified additional requirements. The retailer would be required to store and display the product in a locked cabinet or as specified and the transaction would be required to be made by a retailer or employee of a retailer who meets specified requirements. A violation of any of these provisions would be a misdemeanor, punishable as specified, except that (1) a retail clerk who fails to comply with these provisions would not be subject to any civil, criminal, or other penalty, unless the clerk is a willful participant in an ongoing criminal conspiracy to violate these provisions; and (2) a retailer whose employee sells pseudoephedrine or ephedrine in violation of these provisions would not be guilty of a crime or subject to a civil penalty under the bill's provisions, if the retailer complies with the storage and display requirements and can document that an employee training program was conducted to train employees on compliance with these~~

provisions. The bill would provide, however, that its provisions shall not alter or affect any cause of action or remedy otherwise available to a consumer under the law. By creating new crimes, this bill would impose a state-mandated local program upon local governments.

(2) 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. It is the intent of the Legislature in enacting this
2 act to provide a uniform, transparent and reliable procedure for
3 persons who have been arrested, convicted, and incarcerated for
4 crimes they did not commit, to establish their factual innocence,
5 to have the record of the wrongful conviction cleared, to provide
6 those persons with appropriate compensation for the time that
7 they were wrongfully imprisoned, and to provide those persons
8 with social services to assist their re-entry into society.

9 SEC. 2. Section 851.8 of the Penal Code is repealed.

10 851.8. (a) In any case where a person has been arrested and
11 no accusatory pleading has been filed, the person arrested may
12 petition the law enforcement agency having jurisdiction over the
13 offense to destroy its records of the arrest. A copy of such
14 petition shall be served upon the district attorney of the county
15 having jurisdiction over the offense. The law enforcement agency
16 having jurisdiction over the offense, upon a determination that
17 the person arrested is factually innocent, shall, with the
18 concurrence of the district attorney, seal its arrest records, and
19 the petition for relief under this section for three years from the
20 date of the arrest and thereafter destroy its arrest records and the
21 petition. The law enforcement agency having jurisdiction over
22 the offense shall notify the Department of Justice, and any law
23 enforcement agency which arrested the petitioner or participated
24 in the arrest of the petitioner for an offense for which the
25 petitioner has been found factually innocent under this

1 subdivision, of the sealing of the arrest records and the reason
2 therefor. The Department of Justice and any law enforcement
3 agency so notified shall forthwith seal their records of the arrest
4 and the notice of sealing for three years from the date of the
5 arrest, and thereafter destroy their records of the arrest and the
6 notice of sealing. The law enforcement agency having
7 jurisdiction over the offense and the Department of Justice shall
8 request the destruction of any records of the arrest which they
9 have given to any local, state, or federal agency or to any other
10 person or entity. Each such agency, person, or entity within the
11 State of California receiving such a request shall destroy its
12 records of the arrest and such request, unless otherwise provided
13 in this section.

14 (b) If, after receipt by both the law enforcement agency and
15 the district attorney of a petition for relief under subdivision (a),
16 the law enforcement agency and district attorney do not respond
17 to the petition by accepting or denying such petition within 60
18 days after the running of the relevant statute of limitations or
19 within 60 days after receipt of the petition in cases where the
20 statute of limitations has previously lapsed, then the petition shall
21 be deemed to be denied. In any case where the petition of an
22 arrestee to the law enforcement agency to have an arrest record
23 destroyed is denied, petition may be made to the superior court
24 which would have had territorial jurisdiction over the matter. A
25 copy of such petition shall be served on the district attorney of
26 the county having jurisdiction over the offense at least 10 days
27 prior to the hearing thereon. The district attorney may present
28 evidence to the court at such hearing. Notwithstanding Section
29 1538.5 or 1539, any judicial determination of factual innocence
30 made pursuant to this section may be heard and determined upon
31 declarations, affidavits, police reports, or any other evidence
32 submitted by the parties which is material, relevant and reliable.
33 A finding of factual innocence and an order for the sealing and
34 destruction of records pursuant to this section shall not be made
35 unless the court finds that no reasonable cause exists to believe
36 that the arrestee committed the offense for which the arrest was
37 made. In any court hearing to determine the factual innocence of
38 a party, the initial burden of proof shall rest with the petitioner to
39 show that no reasonable cause exists to believe that the arrestee
40 committed the offense for which the arrest was made. If the court

1 finds that this showing of no reasonable cause has been made by
2 the petitioner, then the burden of proof shall shift to the
3 respondent to show that a reasonable cause exists to believe that
4 the petitioner committed the offense for which the arrest was
5 made. If the court finds the arrestee to be factually innocent of
6 the charges for which the arrest was made, then the court shall
7 order the law enforcement agency having jurisdiction over the
8 offense, the Department of Justice, and any law enforcement
9 agency which arrested the petitioner or participated in the arrest
10 of the petitioner for an offense for which the petitioner has been
11 found factually innocent under this section to seal their records of
12 the arrest and the court order to seal and destroy such records, for
13 three years from the date of the arrest and thereafter to destroy
14 their records of the arrest and the court order to seal and destroy
15 such records. The court shall also order the law enforcement
16 agency having jurisdiction over the offense and the Department
17 of Justice to request the destruction of any records of the arrest
18 which they have given to any local, state, or federal agency,
19 person or entity. Each state or local agency, person or entity
20 within the State of California receiving such a request shall
21 destroy its records of the arrest and the request to destroy such
22 records, unless otherwise provided in this section. The court shall
23 give to the petitioner a copy of any court order concerning the
24 destruction of the arrest records.

25 (e) In any case where a person has been arrested, and an
26 accusatory pleading has been filed, but where no conviction has
27 occurred, the defendant may, at any time after dismissal of the
28 action, petition the court which dismissed the action for a finding
29 that the defendant is factually innocent of the charges for which
30 the arrest was made. A copy of such petition shall be served on
31 the district attorney of the county in which the accusatory
32 pleading was filed at least 10 days prior to the hearing on the
33 petitioner's factual innocence. The district attorney may present
34 evidence to the court at such hearing. Such hearing shall be
35 conducted as provided in subdivision (b). If the court finds the
36 petitioner to be factually innocent of the charges for which the
37 arrest was made, then the court shall grant the relief as provided
38 in subdivision (b).

39 (d) In any case where a person has been arrested and an
40 accusatory pleading has been filed, but where no conviction has

1 occurred, the court may, with the concurrence of the district
2 attorney, grant the relief provided in subdivision (b) at the time
3 of the dismissal of the accusatory pleading.

4 (e) Whenever any person is acquitted of a charge and it
5 appears to the judge presiding at the trial wherein such acquittal
6 occurred that the defendant was factually innocent of such
7 charge, the judge may grant the relief provided in subdivision
8 (b).

9 (f) In any case where a person who has been arrested is
10 granted relief pursuant to subdivision (a) or (b), the law
11 enforcement agency having jurisdiction over the offense or court
12 shall issue a written declaration to the arrestee stating that it is
13 the determination of the law enforcement agency having
14 jurisdiction over the offense or court that the arrestee is factually
15 innocent of the charges for which the person was arrested and
16 that the arrestee is thereby exonerated. Thereafter, the arrest shall
17 be deemed not to have occurred and the person may answer
18 accordingly any question relating to its occurrence.

19 (g) The Department of Justice shall furnish forms to be
20 utilized by persons applying for the destruction of their arrest
21 records and for the written declaration that one person was found
22 factually innocent under subdivisions (a) and (b).

23 (h) Documentation of arrest records destroyed pursuant to
24 subdivision (a), (b), (c), (d), or (e) which are contained in
25 investigative police reports shall bear the notation "Exonerated"
26 whenever reference is made to the arrestee. The arrestee shall be
27 notified in writing by the law enforcement agency having
28 jurisdiction over the offense of the sealing and destruction of the
29 arrest records pursuant to this section.

30 (i) Any finding that an arrestee is factually innocent pursuant
31 to subdivision (a), (b), (c), (d), or (e) shall not be admissible as
32 evidence in any action.

33 (j) Destruction of records of arrest pursuant to subdivision (a),
34 (b), (c), (d), or (e) shall be accomplished by permanent
35 obliteration of all entries or notations upon such records
36 pertaining to the arrest, and the record shall be prepared again so
37 that it appears that the arrest never occurred. However, where (1)
38 the only entries on the record pertain to the arrest and (2) the
39 record can be destroyed without necessarily effecting the

1 ~~destruction of other records, then the document constituting the~~
2 ~~record shall be physically destroyed.~~

3 ~~(k) No records shall be destroyed pursuant to subdivision (a),~~
4 ~~(b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil~~
5 ~~action against the peace officers or law enforcement jurisdiction~~
6 ~~which made the arrest or instituted the prosecution and if the~~
7 ~~agency which is the custodian of such records has received a~~
8 ~~certified copy of the complaint in such civil action, until the civil~~
9 ~~action has been resolved. Any records sealed pursuant to this~~
10 ~~section by the court in the civil actions, upon a showing of good~~
11 ~~cause, may be opened and submitted into evidence. The records~~
12 ~~shall be confidential and shall be available for inspection only by~~
13 ~~the court, jury, parties, counsel for the parties and any other~~
14 ~~person authorized by the court. Immediately following the final~~
15 ~~resolution of the civil action, records subject to subdivision (a),~~
16 ~~(b), (c), (d), or (e) shall be sealed and destroyed pursuant to~~
17 ~~subdivision (a), (b), (c), (d), or (e).~~

18 ~~(l) For arrests occurring on or after January 1, 1981, and for~~
19 ~~accusatory pleadings filed on or after January 1, 1981, petitions~~
20 ~~for relief under this section may be filed up to two years from the~~
21 ~~date of the arrest or filing of the accusatory pleading, whichever~~
22 ~~is later. Until January 1, 1983, petitioners can file for relief under~~
23 ~~this section for arrests which occurred or accusatory pleadings~~
24 ~~which were filed up to five years prior to the effective date of the~~
25 ~~statute. Any time restrictions on filing for relief under this section~~
26 ~~may be waived upon a showing of good cause by the petitioner~~
27 ~~and in the absence of prejudice.~~

28 ~~(m) Any relief which is available to a petitioner under this~~
29 ~~section for an arrest shall also be available for an arrest which~~
30 ~~has been deemed to be or described as a detention under Section~~
31 ~~849.5 or 851.6.~~

32 ~~(n) The provisions of this section shall not apply to any~~
33 ~~offense which is classified as an infraction.~~

34 ~~(o) (1) The provisions of this section shall be repealed on the~~
35 ~~effective date of a final judgment based on a claim under the~~
36 ~~California or United States Constitution holding that evidence~~
37 ~~which is relevant, reliable, and material may not be considered~~
38 ~~for purposes of a judicial determination of factual innocence~~
39 ~~under this section. For purposes of this subdivision, a judgment~~
40 ~~by the appellate division of a superior court is a final judgment if~~

1 ~~it is published and if it is not reviewed on appeal by a court of~~
2 ~~appeal. A judgment of a court of appeal is a final judgment if it is~~
3 ~~published and if it is not reviewed by the California Supreme~~
4 ~~Court.~~

5 ~~(2) Any such decision referred to in this subdivision shall be~~
6 ~~stayed pending appeal.~~

7 ~~(3) If not otherwise appealed by a party to the action, any such~~
8 ~~decision referred to in this subdivision which is a judgment by~~
9 ~~the appellate division of the superior court shall be appealed by~~
10 ~~the Attorney General.~~

11 ~~(p) A judgment of the court under subdivision (b), (c), (d), or~~
12 ~~(e) is subject to the following appeal path:~~

13 ~~(1) In a felony case, appeal is to the court of appeal.~~

14 ~~(2) In a misdemeanor case, or in a case in which no accusatory~~
15 ~~pleading was filed, appeal is to the appellate division of the~~
16 ~~superior court.~~

17 *SEC. 3. Section 851.8 is added to the Penal Code, to read:*

18 *851.8. (a) A person who has been arrested for an offense*
19 *without a conviction, or whose conviction for an offense has been*
20 *set aside or has been the subject of a pardon, may establish his*
21 *or her “factual innocence” by proving either of the following by*
22 *a preponderance of the evidence:*

23 *(1) That the offense was not committed.*

24 *(2) If the offense was committed, that he or she did not commit*
25 *the offense.*

26 *(b) A proceeding to determine “factual innocence” shall be*
27 *initiated as follows:*

28 *(1) The person shall file a written petition in the superior*
29 *court where the conviction occurred or, in cases where the*
30 *person was not convicted, where the arrest occurred. The form*
31 *for such a petition shall be provided by the Judicial Council.*

32 *(2) The petition shall be supported by affidavits or*
33 *declarations under penalty of perjury, setting forth in plain*
34 *language and from personal knowledge, the following:*

35 *(A) The facts demonstrating the offense was not committed, or*
36 *that the petitioner did not commit the offense.*

37 *(B) In the event there was no conviction, the date of release*
38 *after arrest.*

39 *(C) In the event of a conviction, the dates of commitment to*
40 *and release from the Department of Corrections and*

1 *Rehabilitation, and the date the conviction was set aside or the*
2 *date of any pardon from the Governor, if the pardon was granted*
3 *either on the ground the offense was not committed, or on the*
4 *ground the petitioner did not commit the offense.*

5 *(3) A petition under this section must be filed within two years*
6 *of whichever of the following events occurs latest in time:*

7 *(A) The date upon which the petitioner was released from*
8 *custody after the arrest.*

9 *(B) The date upon which the petitioner was released from*
10 *custody after conviction.*

11 *(C) The date of the pardon for the conviction or the date of a*
12 *final judgment setting aside the conviction.*

13 *(D) The effective date of this section.*

14 *(c) (1) The court shall review the petition and the record of*
15 *arrest or conviction to determine whether the petition satisfies*
16 *the requirements in subdivision (b). The court may request an*
17 *informal response from the district attorney, and from the*
18 *Attorney General in cases involving a conviction and sentence to*
19 *state prison. The court shall deny a petition which does not meet*
20 *the requirements in subdivision (b). The court shall grant leave*
21 *to amend the petition if it appears the requirements can be*
22 *satisfied.*

23 *(2) If the petition meets the requirements of subdivision (b),*
24 *then the court shall grant a hearing on the petition if there is a*
25 *reasonable possibility the petitioner could prevail on the merits*
26 *based on the court's review of the pleadings, the record, and any*
27 *relevant evidence notwithstanding Section 1538.5 or 1539. In the*
28 *court's discretion, the public defender, an alternate public*
29 *defender or other attorney may be appointed.*

30 *(3) Upon the granting of a hearing, the court shall ensure the*
31 *district attorney and the Attorney General are provided copies of*
32 *the petition and any supporting documents filed with the petition,*
33 *if these have not been previously served on the district attorney*
34 *and the Attorney General. The district attorney, and the Attorney*
35 *General in cases involving a conviction and sentence to state*
36 *prison, shall be entitled to respond to the petition in writing and*
37 *to appear at the hearing.*

38 *(d) At the hearing, the court shall consider the record of arrest*
39 *or conviction and other evidence presented by the parties,*
40 *notwithstanding Section 1538.5 or 1539. Upon consideration of*

1 *the entire case, the court shall declare the petitioner factually*
2 *innocent if it is proven by a preponderance of the evidence that*
3 *both:*

4 *(1) The offense was not committed, or the petitioner did not*
5 *commit the offense.*

6 *(2) The petitioner did not intentionally contribute to the arrest*
7 *or the conviction. The petitioner intentionally contributed to the*
8 *arrest or conviction if he or she intended to cause the arrest or*
9 *conviction and actually caused the arrest or conviction by act or*
10 *omission. A false confession or guilty plea is not an automatic*
11 *bar to the finding of factual innocence under this section.*

12 *(e) Upon a finding of factual innocence, the following shall*
13 *occur:*

14 *(1) (A) The court shall order the Department of Justice, and*
15 *any law enforcement agency which arrested the petitioner or*
16 *participated in the arrest of the petitioner for the offense for*
17 *which the petitioner has been found factually innocent under this*
18 *section, to seal all physical records of the arrest and conviction.*
19 *Physical records include paper documents such as arrest reports.*

20 *(B) The department and any law enforcement agency which*
21 *arrested the petitioner or participated in the arrest of the*
22 *petitioner for the offense for which the petitioner has been found*
23 *factually innocent under this section shall destroy all computer*
24 *and electronic records of the arrest and conviction. Destruction*
25 *of computer and electronic records shall include deletion of all*
26 *reference to the arrest or conviction from any and all national,*
27 *statewide, or local databases maintained by law enforcement*
28 *agencies.*

29 *(C) The department and any law enforcement agency which*
30 *arrested the petitioner or participated in the arrest of the*
31 *petitioner for the offense for which the petitioner has been found*
32 *factually innocent under this section shall request the destruction*
33 *of such records which the agency has given to any other agency*
34 *or entity.*

35 *(D) The court or other officer presiding over any litigation*
36 *related to the arrest or conviction for which the petitioner has*
37 *been found factually innocent may, upon a showing of good*
38 *cause, permit any records sealed pursuant to this section to be*
39 *opened and submitted into evidence. The records shall be*
40 *confidential and shall be available for inspection only by the*

1 court, jury, parties, counsel for the parties and any other person
2 authorized by the court or presiding officer.

3 (2) (A) The court shall issue a written certificate to the
4 petitioner that he or she has been found factually innocent of the
5 offense. The Judicial Council shall supply a form for the court to
6 use for this certificate. Thereafter, the arrest and conviction shall
7 be deemed not to have occurred and the person may answer
8 accordingly any question relating to its occurrence.

9 (B) If the court grants a factual finding of innocence for a
10 conviction that resulted in a sentence to state prison, then the
11 court shall also include on the written certificate the number of
12 days the petitioner was imprisoned pursuant to the conviction for
13 which the petitioner has been found factually innocent under this
14 section. The number of days shall include both the days of
15 imprisonment prior to and subsequent to the date of the
16 conviction. A copy of the certificate shall be given to the
17 petitioner.

18 (3) The court shall, based on evidence provided after petition
19 is granted, determine the actual economic losses incurred by the
20 petitioner as a result of the conviction for which the petitioner
21 has been found factually innocent under this section, including
22 but not limited to, reasonable attorneys fees associated with
23 petitioner's criminal defense and efforts to prove his or her
24 innocence.

25 (4) The court shall, based on evidence provided after the
26 petition is granted, determine the value of the reasonable goods
27 and services necessary for the petitioner to meet basic needs and
28 successfully reintegrate into society. Those goods and services
29 may include necessary medical services, mental health
30 counseling, housing assistance, educational and vocational
31 counseling, job training and job placement assistance.

32 (5) The court shall transmit to the Victim Compensation and
33 Government Claims Board a copy of the petition, the certificate
34 of factual innocence, and its findings regarding appropriate
35 compensation under this section.

36 (6) (A) Within thirty days of receipt of the information
37 referenced in paragraph (4), the Victim Compensation and
38 Government Claims Board shall prepare and submit a report to
39 the next Legislature of this state, with a recommendation that an
40 appropriation be made by the Legislature to indemnify the

1 petitioner in an amount equal to one hundred dollars (\$100) per
2 day of incarceration, as found by the court and noted on the
3 certificate, and for the amount determined by the court under
4 paragraphs (3) and (4). The Victim Compensation and
5 Government Claims Board shall include in its report a copy of
6 the petition, the certificate of factual innocence, and the court's
7 findings pursuant to this section Any such appropriation shall not
8 be treated as gross income to the petitioner under the provisions
9 of the Revenue and Taxation Code.

10 (B) The Victim Compensation and Government Claims Board
11 shall also give to the Controller of this state a statement showing
12 its recommendations for appropriations under the provisions of
13 this section, as provided by law in cases of other claimants
14 against this state for which no appropriations have been made.

15 (f) The provisions of this section shall apply to a detention
16 under Section 849.5 or 851.6. However, the provisions of this
17 section shall not apply to any offense which is classified as an
18 infraction.

19 (g) (1) The provisions of this section shall be repealed on the
20 effective date of a final judgment based on a claim under the
21 California or United States Constitution holding that evidence
22 which is relevant, reliable, and material may not be considered
23 for purposes of a judicial determination of factual innocence
24 under this section. For purposes of this subdivision, a judgment
25 by the appellate division of a superior court is a final judgment if
26 it is published and if it is not reviewed on appeal by a court of
27 appeal. A judgment of a court of appeal is a final judgment if it is
28 published and if it is not reviewed by the California Supreme
29 Court.

30 (2) Any such decision referred to in this subdivision shall be
31 stayed pending appeal.

32 (h) A judgment of the court granting or denying a
33 determination of factual innocence is subject to the following
34 appeal path:

35 (1) If no accusatory pleading was filed in the arrest at issue in
36 the petition, or if the accusatory pleading was filed in a
37 misdemeanor case, appeal is to the appellate division of the
38 superior court.

1 (2) *If the accusatory pleading was filed in a felony case in the*
2 *arrest or conviction at issue in the petition, appeal is to the court*
3 *of appeal.*

4 (i) *A judicial determination on a petition filed pursuant to this*
5 *section, either granting or denying a factual finding of*
6 *innocence, shall not be admissible in any civil suit brought by the*
7 *petitioner related to the arrest, prosecution, or incarceration at*
8 *issue in the petition.*

9 (j) *The Department of Corrections and Rehabilitation shall*
10 *notify each person who receives a pardon or whose conviction is*
11 *reversed, at or before the time that he or she is released from*
12 *prison, that he or she may be eligible for compensation under*
13 *this chapter.*

14 *SEC. 4. Section 851.85 of the Penal Code is repealed.*

15 ~~851.85. Whenever a person is acquitted of a charge and it~~
16 ~~appears to the judge presiding at the trial wherein such acquittal~~
17 ~~occurred that the defendant was factually innocent of the charge,~~
18 ~~the judge may order that the records in the case be sealed,~~
19 ~~including any record of arrest or detention, upon the written or~~
20 ~~oral motion of any party in the case or the court, and with notice~~
21 ~~to all parties to the case. If such an order is made, the court shall~~
22 ~~give to the defendant a copy of such order and inform the~~
23 ~~defendant that he may thereafter state that he was not arrested for~~
24 ~~such charge and that he was found innocent of such charge by the~~
25 ~~court.~~

26 *SEC. 5. Chapter 5 (commencing with Section 4900) of Title 6*
27 *of Part 3 of the Penal Code is repealed.*

28 *SEC. 6. If the Commission on State Mandates determines that*
29 *this act contains costs mandated by the state, reimbursement to*
30 *local agencies and school districts for those costs shall be made*
31 *pursuant to Part 7 (commencing with Section 17500) of Division*
32 *4 of Title 2 of the Government Code.*

33 ~~SECTION 1. Section 11100.01 is added to the Health and~~
34 ~~Safety Code, to read:~~

35 ~~11100.01. (a) In addition to any requirement specified in~~
36 ~~Section 11100, the dispensing, sale, or distribution at retail of any~~
37 ~~compound, mixture, preparation, or product that contains any~~
38 ~~detectable quantity of ephedrine, pseudoephedrine, or any~~
39 ~~derivative of ephedrine or pseudoephedrine, or any detectable~~
40 ~~quantity of any salt, optical isomer, or salt of an optical isomer of~~

1 ephedrine, pseudoephedrine, or any derivative of ephedrine or
2 pseudoephedrine, shall be subject to the following requirements:

3 (1) Any product specified in subdivision (a) shall be stored or
4 displayed by a retailer in a locked cabinet or in such a manner
5 that the product is accessible to the public only with the
6 assistance of the retailer or employee of the retailer. The retailer
7 or employee of the retailer shall at all times act to prevent the
8 theft or diversion of the product.

9 (2) The dispensing, sale, or distribution at retail of any
10 product specified in subdivision (a) shall be made only by a
11 retailer or employee of a retailer who is trained in the legal
12 requirements set forth in this section and who shall at all times
13 act to prevent the theft or diversion of the product.

14 (b) This section shall not apply to any product specified in
15 subdivision (a) in liquid, liquid capsule, or dissolvable strip form
16 in which ephedrine, pseudoephedrine, or any derivative of
17 ephedrine or pseudoephedrine is the active ingredient.

18 (c) (1) The Department of Justice may adopt rules and
19 regulations in accordance with Chapter 3.5 (commencing with
20 Section 11340) of Part 1 of Division 3 of Title 2 of the
21 Government Code that exempt a substance from the application
22 of subdivision (a) if the department finds that the substance is not
23 used in the unlawful manufacture of methamphetamine or any
24 other controlled substance.

25 (2) The Department of Justice shall, upon satisfactory
26 application by the manufacturer of a drug product to the
27 department, exempt any product the department determines to
28 have been formulated in such a way as to effectively prevent the
29 conversion of any active ingredient in the product into
30 methamphetamine or any other controlled substance.

31 (d) Except as provided in subdivision (c), any person who
32 violates this section shall be punished as follows:

33 (1) A first violation of this section is a misdemeanor.

34 (2) Any person who has previously been convicted of a
35 violation of this section or Section 11100 shall, upon a
36 subsequent conviction thereof, be punished by imprisonment in a
37 county jail not exceeding one year, by a fine not exceeding ten
38 thousand dollars (\$10,000), or by both the fine and
39 imprisonment.

1 ~~(e) Notwithstanding subdivision (d), liability for a violation of~~
2 ~~this section shall not be imposed in the following cases:~~

3 ~~(1) A retail clerk who fails to comply with the provisions of~~
4 ~~subdivision (a) shall not be guilty of a crime pursuant to~~
5 ~~subdivision (d), shall not be subject to any civil penalty, and shall~~
6 ~~not be subject to any disciplinary action or discharge by his or~~
7 ~~her employer, except if the retail clerk is a willful participant in~~
8 ~~an ongoing criminal conspiracy to violate this section.~~

9 ~~(2) A retailer whose employee sells pseudoephedrine or~~
10 ~~ephedrine in violation of this section shall not be guilty of a~~
11 ~~crime pursuant to subdivision (d) and shall not be subject to any~~
12 ~~civil penalty under this subdivision, if the retailer complies with~~
13 ~~paragraph (1) of subdivision (a) and can document that an~~
14 ~~employee training program was conducted to train employees on~~
15 ~~compliance with this section.~~

16 ~~(3) Nothing in this subdivision shall alter or affect any cause~~
17 ~~of action or remedy otherwise available to a consumer under the~~
18 ~~law.~~

19 ~~(f) It is the intent of the Legislature that this section and~~
20 ~~Section 11100 shall preempt all local ordinances or regulations~~
21 ~~governing the sale by a retail distributor of over-the-counter~~
22 ~~products containing pseudoephedrine.~~

23 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
24 ~~Section 6 of Article XIII B of the California Constitution because~~
25 ~~the only costs that may be incurred by a local agency or school~~
26 ~~district will be incurred because this act creates a new crime or~~
27 ~~infraction, eliminates a crime or infraction, or changes the~~
28 ~~penalty for a crime or infraction, within the meaning of Section~~
29 ~~17556 of the Government Code, or changes the definition of a~~
30 ~~crime within the meaning of Section 6 of Article XIII B of the~~
31 ~~California Constitution.~~