

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Spitzer

February 22, 2005

An act to amend Section ~~11353.6~~ 11379.7 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Spitzer. Controlled substances: offense enhancements: preschools and ~~daycare~~ day care facilities.

Existing law imposes an enhancement of ~~3, 4, or 5~~ 2 years upon a defendant who commits specified controlled substance offenses ~~upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school~~ relating to methamphetamine and phencyclidine, when the commission or attempted commission of the offense occurs in a structure where any child under 16 years of age is present.

This bill would provide that a defendant shall also be subject to this enhancement when he or she commits the specified controlled substance offenses ~~upon the grounds of, or within 1,000 feet of, a the grounds of any public or private~~ preschool or child ~~daycare~~ day care facility, as specified.

By creating new enhancements for existing crimes, the elements of which must be plead and proved by local prosecutors, this bill would impose a state-mandated local program upon local governments.

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 11353.6 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 *SECTION 1. Section 11379.7 of the Health and Safety Code*
4 *is amended to read:*

5 11379.7. (a) Except as provided in subdivision (b), any
6 person convicted of a violation of subdivision (a) of Section
7 11379.6 or Section 11383, or of an attempt to violate subdivision
8 (a) of Section 11379.6 or Section 11383, as those sections relate
9 to methamphetamine or phencyclidine, when the commission or
10 attempted commission of the crime occurs in a structure where
11 any child under 16 years of age is present, *or within 1,000 feet of*
12 *the grounds of any public or private preschool or child day care*
13 *facility providing instruction or child day care, during hours that*
14 *the school or facility is open for classes or school-related*
15 *programs or at any time when minors are using the facility where*
16 *the offense occurs, shall, in addition and consecutive to the*
17 *punishment prescribed for the felony of which he or she has been*
18 *convicted, be punished by an additional term of two years in the*
19 *state prison.*

20 (b) Any person convicted of a violation of subdivision (a) of
21 Section 11379.6 or Section 11383, or of an attempt to violate
22 subdivision (a) of Section 11379.6 or Section 11383, as those
23 sections relate to methamphetamine or phencyclidine, where the
24 commission of the crime causes any child under 16 years of age
25 to suffer great bodily injury, shall, in addition and consecutive to
26 the punishment prescribed for the felony of which he or she has
27 been convicted, be punished by an additional term of five years
28 in the state prison.

29 (c) As used in this section, "structure" means any house,
30 apartment building, shop, warehouse, barn, building, vessel,
31 railroad car, cargo container, motor vehicle, housecar, trailer,
32 trailer coach, camper, mine, floating home, or other enclosed

1 structure capable of holding a child and manufacturing
2 equipment.

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

5 *SEC. 2. No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution because*
7 *the only costs that may be incurred by a local agency or school*
8 *district will be incurred because this act creates a new crime or*
9 *infraction, eliminates a crime or infraction, or changes the*
10 *penalty for a crime or infraction, within the meaning of Section*
11 *17556 of the Government Code, or changes the definition of a*
12 *crime within the meaning of Section 6 of Article XIII B of the*
13 *California Constitution.*

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

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

32 ~~(c) Any person 18 years of age or older who is convicted of a~~
33 ~~violation pursuant to subdivision (b) that involves a minor who is~~
34 ~~at least four years younger than that person, as a full and~~
35 ~~separately served enhancement to that provided in subdivision~~
36 ~~(b), shall be punished by imprisonment in the state prison for 3,~~
37 ~~4, or 5 years at the court’s discretion.~~

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

1 ~~(e) The additional terms provided in this section shall be in~~
2 ~~addition to any other punishment provided by law and shall not~~
3 ~~be limited by any other provision of law.~~

4 ~~(f) Notwithstanding any other provision of law, the court may~~
5 ~~strike the additional punishment for the enhancements provided~~
6 ~~in this section if it determines that there are circumstances in~~
7 ~~mitigation of the additional punishment and states on the record~~
8 ~~its reasons for striking the additional punishment.~~

9 ~~(g) “Within 1,000 feet of a public or private elementary,~~
10 ~~vocational, junior high, or high school, preschool, or child~~
11 ~~daycare facility” means any public area or business establishment~~
12 ~~where minors are legally permitted to conduct business that is~~
13 ~~located within 1,000 feet of any public or private elementary,~~
14 ~~vocational, junior high, or high school, preschool, or child~~
15 ~~daycare facility.~~

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