

Senate Bill No. 1318

CHAPTER 650

An act to add Section 11380.7 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 2006. Filed with
Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1318, Cedillo. Controlled substances: sales near drug treatment center or homeless shelter.

Existing law makes it a felony, punishable by imprisonment in the state prison, to engage in specified unlawful activities involving heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP).

This bill would provide that any person who is convicted of trafficking, as defined, in any of these controlled substances, or of a conspiracy to traffic in any of these controlled substances, in addition to the punishment imposed for the conviction, shall be imprisoned in the state prison for an additional one year if the violation occurred upon the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter. The bill would provide for exceptions to the imposition of this enhanced sentence under certain circumstances. The bill would set forth legislative findings, declarations, and intent relating to its provisions. By creating a new enhancement for existing crimes, 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.

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

SECTION 1. (a) The Legislature makes the following findings and declarations relating to drug trafficking near drug treatment centers and homeless shelters:

(1) A substantial drug abuse and drug trafficking problem exists among recovering drug addicts and homeless individuals adjacent to and around drug treatment centers, homeless shelters, and other service providers in this state.

(2) In order for drug abusers to overcome their addiction, the areas around treatment centers must be free of drug traffickers who prey on the vulnerability of victims of drug addiction.

(b) In recognition of these findings and declarations, it is the intent of the Legislature, by enacting this legislation, to do the following:

(1) Support increased efforts by local law enforcement agencies, working in conjunction with drug treatment centers, mental health centers, and other homeless service providers.

(2) Suppress trafficking adjacent to and around facilities and agencies dedicated to drug recovery and rehabilitation to eliminate the victimization of drug addicts attempting to recover.

SEC. 2. Section 11380.7 is added to the Health and Safety Code, to read:

11380.7. (a) Notwithstanding any other provision of law, any person who is convicted of trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), or of a conspiracy to commit trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), in addition to the punishment imposed for the conviction, shall be imprisoned in the state prison for an additional one year if the violation occurred upon the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter.

(b) (1) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(2) The additional punishment provided in this section shall not be imposed if any other additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

(c) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment. In determining whether or not to strike the additional punishment, the court shall consider the following factors and any relevant factors in aggravation or mitigation in Rules 4.421 and 4.423 of the California Rules of Court.

(1) The following factors indicate that the court should exercise its discretion to strike the additional punishment unless these factors are outweighed by factors in aggravation:

(A) The defendant is homeless, or is in a homeless shelter or transitional housing.

(B) The defendant lacks resources for the necessities of life.

(C) The defendant is addicted to or dependent on controlled substances.

(D) The defendant's motive was merely to maintain a steady supply of drugs for personal use.

(E) The defendant was recruited or exploited by a more culpable person to commit the crime.

(2) The following factors indicate that the court should not exercise discretion to strike the additional punishment unless these factors are outweighed by factors in mitigation:

(A) The defendant, in committing the crime, preyed on homeless persons, drug addicts or substance abusers who were seeking treatment, shelter or transitional services.

(B) The defendant's primary motive was monetary compensation.

(C) The defendant induced others, particularly homeless persons, drug addicts and substance abusers, to become involved in trafficking.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Detoxification facility" means any premises, place, or building in which 24-hour residential nonmedical services are provided to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(2) "Drug treatment program" or "drug treatment" has the same meaning set forth in subdivision (b) of Section 1210 of the Penal Code.

(3) "Homeless shelter" includes, but is not limited to, emergency shelter housing, as well as transitional housing, but does not include domestic violence shelters. "Emergency shelter housing" is housing with minimal support services for homeless persons in which residency is limited to six months or less and is not related to the person's ability to pay. "Transitional housing" means housing with supportive services, including self-sufficiency development services, which is exclusively designed and targeted to help recently homeless persons find permanent housing as soon as reasonably possible, limits residency to 24 months, and in which rent and service fees are based on ability to pay.

(4) "Trafficking" means any of the unlawful activities specified in Sections 11351, 11351.5, 11352, 11353, 11354, 11378, 11379, 11379.6, and 11380. It does not include simple possession or drug use.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.