

AMENDED IN ASSEMBLY MARCH 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 318

Introduced by Assembly Member Silva

February 13, 2007

An act to amend ~~Section 11350~~ *Sections 11351.5 and 11470* of the Health and Safety Code, and to amend *Section 1203.073* of the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 318, as amended, Silva. Controlled substances.

Existing law establishes crimes for possession for purposes of sale and sale of various controlled substances, including cocaine, cocaine base, and methamphetamine. Existing law establishes a lower threshold amount of weight for cocaine base for purposes of establishing those offenses than the threshold amounts of weight established for those offense in the case of cocaine and methamphetamine.

This bill would recast those provisions to apply the lower threshold amount of weight currently applicable to cocaine base to the threshold amounts of weight of cocaine and methamphetamine for purposes of those offenses.

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

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.

Existing law provides that the possession of specified controlled substances is unlawful.

~~This bill would make technical, nonsubstantive changes to that provision.~~

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 11351.5 of the Health and Safety Code
2 is amended to read:

3 ~~11351.5. Except as otherwise provided in this division~~
4 *Notwithstanding Section 11351*, every person who possesses for
5 sale or purchases for purposes of sale, *cocaine as specified in*
6 *paragraph (6) of subdivision (b) of Section 11055, or cocaine base*
7 *which is specified in paragraph (1) of subdivision (f) of Section*
8 *11054, or methamphetamine*, shall be punished by imprisonment
9 in the state prison for a period of three, four, or five years.

10 SEC. 2 Section 11470 of the Health and Safety Code is amended
11 to read:

12 11470. The following are subject to forfeiture:

13 (a) All controlled substances which have been manufactured,
14 distributed, dispensed, or acquired in violation of this division.

15 (b) All raw materials, products, and equipment of any kind
16 which are used, or intended for use, in manufacturing,
17 compounding, processing, delivering, importing, or exporting any
18 controlled substance in violation of this division.

19 (c) All property except real property or a boat, airplane, or any
20 vehicle which is used, or intended for use, as a container for
21 property described in subdivision (a) or (b).

22 (d) All books, records, and research products and materials,
23 including formulas, microfilm, tapes, and data which are used, or
24 intended for use, in violation of this division.

25 (e) The interest of any registered owner of a boat, airplane, or
26 any vehicle other than an implement of husbandry, as defined in
27 Section 36000 of the Vehicle Code, which has been used as an
28 instrument to facilitate the manufacture of, or possession for sale
29 or sale of 14.25 grams or more of heroin, or *cocaine, or cocaine*
30 *base as specified in paragraph (1) of subdivision (f) of Section*
31 *11054, or methamphetamine*, or a substance containing 14.25

1 grams or more of heroin, *or cocaine*, or cocaine base as specified
2 in paragraph (1) of subdivision (f) of Section 11054, or 14.25
3 grams or more of a substance containing heroin, *or cocaine*, or
4 cocaine base as specified in paragraph (1) of subdivision (f) of
5 Section 11054, *or methamphetamine*, or 28.5 grams or more of
6 Schedule I controlled substances except marijuana, peyote, or
7 psilocybin; 10 pounds dry weight or more of marijuana, peyote,
8 or psilocybin; ~~or 28.5 grams or more of cocaine, as specified in~~
9 ~~paragraph (6) of subdivision (b) of Section 11055, or~~
10 ~~methamphetamine; or a substance containing 28.5 grams or more~~
11 ~~of cocaine, as specified in paragraph (6) of subdivision (b) of~~
12 ~~Section 11055, or methamphetamine; or 57 grams or more of a~~
13 ~~substance containing cocaine, as specified in paragraph (6) of~~
14 ~~subdivision (b) of Section 11055, or methamphetamine; or 28.5~~
15 grams or more of Schedule II controlled substances. No interest
16 in a vehicle which may be lawfully driven on the highway with a
17 class C, class M1, or class M2 license, as prescribed in Section
18 12804 of the Vehicle Code, may be forfeited under this subdivision
19 if there is a community property interest in the vehicle by a person
20 other than the defendant and the vehicle is the sole class C, class
21 M1, or class M2 vehicle available to the defendant's immediate
22 family.

23 (f) All moneys, negotiable instruments, securities, or other things
24 of value furnished or intended to be furnished by any person in
25 exchange for a controlled substance, all proceeds traceable to such
26 an exchange, and all moneys, negotiable instruments, or securities
27 used or intended to be used to facilitate any violation of Section
28 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5,
29 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or
30 Section 182 of the Penal Code, or a felony violation of Section
31 11366.8 of this code, insofar as the offense involves manufacture,
32 sale, possession for sale, offer for sale, or offer to manufacture, or
33 conspiracy to commit at least one of those offenses, if the
34 exchange, violation, or other conduct which is the basis for the
35 forfeiture occurred within five years of the seizure of the property,
36 or the filing of a petition under this chapter, or the issuance of an
37 order of forfeiture of the property, whichever comes first.

38 (g) The real property of any property owner who is convicted
39 of violating Section 11366, 11366.5, or 11366.6 with respect to
40 that property. However, property which is used as a family

1 residence or for other lawful purposes, or which is owned by two
2 or more persons, one of whom had no knowledge of its unlawful
3 use, shall not be subject to forfeiture.

4 (h) Subject to the requirements of Section 11488.5 and except
5 as further limited by this subdivision to protect innocent parties
6 who claim a property interest acquired from a defendant, all right,
7 title, and interest in any personal property described in this section
8 shall vest in the state upon commission of the act giving rise to
9 forfeiture under this chapter, if the state or local governmental
10 entity proves a violation of Section 11351, 11351.5, 11352, 11355,
11 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380,
12 11382, or 11383 of this code, or Section 182 of the Penal Code,
13 or a felony violation of Section 11366.8 of this code, insofar as
14 the offense involves the manufacture, sale, possession for sale,
15 offer for sale, offer to manufacture, or conspiracy to commit at
16 least one of those offenses, in accordance with the burden of proof
17 set forth in paragraph (1) of subdivision (i) of Section 11488.4 or,
18 in the case of cash or negotiable instruments in excess of
19 twenty-five thousand dollars (\$25,000), paragraph (4) of
20 subdivision (i) of Section 11488.4.

21 The operation of the special vesting rule established by this
22 subdivision shall be limited to circumstances where its application
23 will not defeat the claim of any person, including a bona fide
24 purchaser or encumbrancer who, pursuant to Section 11488.5,
25 11488.6, or 11489, claims an interest in the property seized,
26 notwithstanding that the interest in the property being claimed was
27 acquired from a defendant whose property interest would otherwise
28 have been subject to divestment pursuant to this subdivision.

29 *SEC. 3. Section 1203.073 of the Penal Code is amended to*
30 *read:*

31 1203.073. (a) A person convicted of a felony specified in
32 subdivision (b) may be granted probation only in an unusual case
33 where the interests of justice would best be served. When probation
34 is granted in such a case, the court shall specify on the record and
35 shall enter in the minutes the circumstances indicating that the
36 interests of justice would best be served by such a disposition.

37 (b) Except as provided in subdivision (a), probation shall not
38 be granted to, nor shall the execution or imposition of sentence be
39 suspended for, any of the following persons:

1 ~~(1) Any person who is convicted of violating Section 11351 of~~
2 ~~the Health and Safety Code by possessing for sale, or Section~~
3 ~~11352 of the Health and Safety Code by selling, a substance~~
4 ~~containing 28.5 grams or more of cocaine as specified in paragraph~~
5 ~~(6) of subdivision (b) of Section 11055 of the Health and Safety~~
6 ~~Code, or 57 grams or more of a substance containing cocaine as~~
7 ~~specified in paragraph (6) of subdivision (b) of Section 11055 of~~
8 ~~the Health and Safety Code.~~

9 ~~(2) Any person who is convicted of violating Section 11378 of~~
10 ~~the Health and Safety Code by possessing for sale, or Section~~
11 ~~11379 of the Health and Safety Code by selling a substance~~
12 ~~containing 28.5 grams or more of methamphetamine or 57 grams~~
13 ~~or more of a substance containing methamphetamine.~~

14 ~~(3) Any person who is convicted of violating subdivision (a) of~~
15 ~~Section 11379.6 of the Health and Safety Code, except those who~~
16 ~~manufacture phencyclidine, or who is convicted of an act which~~
17 ~~is punishable under subdivision (b) of Section 11379.6 of the~~
18 ~~Health and Safety Code, except those who offer to perform an act~~
19 ~~which aids in the manufacture of phencyclidine.~~

20 ~~(4)~~

21 (2) Except as otherwise provided in Section 1203.07, any person
22 who is convicted of violating Section 11353 or 11380 of the Health
23 and Safety Code by using, soliciting, inducing, encouraging, or
24 intimidating a minor to manufacture, compound, or sell heroin,
25 cocaine base as specified in paragraph (1) of subdivision (f) of
26 Section 11054 of the Health and Safety Code, cocaine as specified
27 in paragraph (6) of subdivision (b) of Section 11055 of the Health
28 and Safety Code, or methamphetamine.

29 ~~(5)~~

30 (3) Any person who is convicted of violating Section 11351.5
31 of the Health and Safety Code by possessing for sale a substance
32 containing 14.25 grams or more of *cocaine, or cocaine base* as
33 specified in paragraph (1) of subdivision (f) of Section 11054 of
34 the Health and Safety Code, *or methamphetamine*, or 57 grams or
35 more of a substance containing at least five grams of *cocaine or*
36 *cocaine base* as specified in paragraph (1) of subdivision (f) of
37 Section 11054 of the Health and Safety Code, *or*
38 *methamphetamine*.

39 ~~(6)~~

1 (4) Any person who is convicted of violating Section 11352 of
2 the Health and Safety Code by transporting for sale, importing for
3 sale, or administering, or by offering to transport for sale, import
4 for sale, or administer, or by attempting to import for sale or
5 transport for sale, *cocaine, or cocaine base as specified in*
6 *paragraph (1) of subdivision (f) of Section 11054 of the Health*
7 *and Safety Code, or methamphetamine.*

8 (7)
9 (5) Any person who is convicted of violating Section 11352 of
10 the Health and Safety Code by selling or offering to sell *cocaine,*
11 *or cocaine base as specified in paragraph (1) of subdivision (f) of*
12 *Section 11054 of the Health and Safety Code, or*
13 *methamphetamine.*

14 (8)
15 (6) Any person convicted of violating Section 11379.6, 11382,
16 or 11383 of the Health and Safety Code with respect to
17 methamphetamine, if he or she has one or more prior convictions
18 for a violation of Section 11378, 11379, 11379.6, 11380, 11382,
19 or 11383 with respect to methamphetamine.

20 (c) As used in this section, the term “manufacture” refers to the
21 act of any person who manufactures, compounds, converts,
22 produces, derives, processes, or prepares, either directly or
23 indirectly by chemical extraction or independently by means of
24 chemical synthesis.

25 (d) The existence of any previous conviction or fact which would
26 make a person ineligible for probation under this section shall be
27 alleged in the information or indictment, and either admitted by
28 the defendant in open court, or found to be true by the jury trying
29 the issue of guilt or by the court where guilt is established by a
30 plea of guilty or nolo contendere or by trial by the court sitting
31 without a jury.

32 *SEC. 4. No reimbursement is required by this act pursuant to*
33 *Section 6 of Article XIII B of the California Constitution because*
34 *the only costs that may be incurred by a local agency or school*
35 *district are the result of a program for which legislative authority*
36 *was requested by that local agency or school district, within the*
37 *meaning of Section 17556 of the Government Code and Section 6*
38 *of Article XIII B of the California Constitution.*

39 ~~SECTION 1. Section 11350 of the Health and Safety Code is~~
40 ~~amended to read:~~

1 ~~11350. (a) Except as otherwise provided in this division, a~~
2 ~~person who possesses (1) any controlled substance specified in~~
3 ~~subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section~~
4 ~~11054, specified in paragraph (14), (15), or (20) of subdivision (d)~~
5 ~~of Section 11054, or specified in subdivision (b) or (c) of Section~~
6 ~~11055, or specified in subdivision (h) of Section 11056, or (2) any~~
7 ~~controlled substance classified in Schedule III, IV, or V which is~~
8 ~~a narcotic drug, unless upon the written prescription of a physician,~~
9 ~~dentist, podiatrist, or veterinarian licensed to practice in this state,~~
10 ~~shall be punished by imprisonment in the state prison.~~

11 ~~(b) Except as otherwise provided in this division, a person who~~
12 ~~possesses any controlled substance specified in subdivision (c) of~~
13 ~~Section 11054 shall be punished by imprisonment in the county~~
14 ~~jail for not more than one year or in the state prison.~~

15 ~~(c) Except as otherwise provided in this division, whenever a~~
16 ~~person possesses any of the controlled substances specified in~~
17 ~~subdivision (a) or (b), the judge may, in addition to any punishment~~
18 ~~provided for pursuant to subdivision (a) or (b), assess against that~~
19 ~~person a fine not to exceed seventy dollars (\$70) with proceeds of~~
20 ~~this fine to be used in accordance with Section 1463.23 of the~~
21 ~~Penal Code. The court shall, however, take into consideration the~~
22 ~~defendant's ability to pay, and no defendant shall be denied~~
23 ~~probation because of his or her inability to pay the fine permitted~~
24 ~~under this subdivision.~~

25 ~~(d) Except in unusual cases, in which it would not serve the~~
26 ~~interest of justice to do so, whenever a court grants probation~~
27 ~~pursuant to a felony conviction under this section, in addition to~~
28 ~~any other conditions of probation which may be imposed, the~~
29 ~~following conditions of probation shall be ordered:~~

30 ~~(1) For a first offense under this section, a fine of at least one~~
31 ~~thousand dollars (\$1,000) or community service.~~

32 ~~(2) For a second or subsequent offense under this section, a~~
33 ~~fine of at least two thousand dollars (\$2,000) or community service.~~

34 ~~(3) If a defendant does not have the ability to pay the minimum~~
35 ~~finer specified in paragraphs (1) and (2), community service shall~~
36 ~~be ordered in lieu of the fine.~~

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