

**Introduced by Senator Correa**

February 22, 2007

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An act to amend Sections 11378, 11379, and 11379.7 of the Health and Safety Code, to add Section 12022.76 to, and to add Chapter 8.5 (commencing with Section 13875) to Title 6 of Part 4 of, the Penal Code, relating to controlled substances.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 628, as introduced, Correa. Controlled substances.

Existing law makes the possession for sale of specified controlled substances a felony punishable by imprisonment in the state prison.

This bill would make the possession for sale of specified controlled substances a felony punishable by imprisonment in the state prison for 2, 3, or 4 years.

Existing law makes furnishing, sale, transportation for sale, and other acts related to specified controlled substances a felony punishable by 2, 3, or 4 years in state prison.

This bill would make furnishing, sale, transportation for sale, and other acts related to specified controlled substances a felony punishable by 3, 4, or 5 years in state prison.

Existing law provides for an additional term of 2 years in state prison upon conviction of specified controlled substance offenses if the controlled substance involved was methamphetamine or phencyclidine and the crime occurs in a structure and a child under 16 years of age is present.

This bill would add specified controlled substance offenses to the list of crimes for which the 2-year term applies.

Existing law provides for an additional term of 5 years in state prison upon conviction of specified controlled substance offenses if the

controlled substance involved was methamphetamine or phencyclidine and the crime and the commission of the crime causes any child under 16 years of age to suffer great bodily injury.

This bill would add specified controlled substance offenses to the list of crimes for which the additional 5-year term would apply.

This bill would also provide for an additional and consecutive term of 2 years upon conviction of specified controlled substance offenses when the crime occurs in a structure and a child under 16 years of age is present.

This bill would further provide for an additional and consecutive term of 5 years in state prison upon conviction of specified controlled substance offenses when the crime causes any child under 16 years of age to suffer great bodily injury.

Existing law makes it a misdemeanor to be under the influence of a controlled substance.

This bill would provide that it is a felony, punishable by an additional and consecutive term of one year for any person to possess methamphetamine, or who is under the influence of methamphetamine, during the commission or attempted commission of a felony, unless possession of methamphetamine is an element of that offense.

Because a violation of this bill's provisions would constitute a crime, this bill would create a state-mandated local program.

Existing law provides various programs for crime prevention and the prosecution of criminal offenses.

This bill would establish through the Department of Finance a program of financial and technical assistance for counties to provide district attorneys or county sheriffs with funds to coordinate multiagency drug endangered child response teams for the purpose of responding promptly to cases involving drug endangered children. Specified counties would be eligible to receive funds. This bill would require the agency or agencies designated by the director to make an annual report, to the Legislature on the fiscal and operational status of the 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

SECTION 1. Section 11378 of the Health and Safety Code is amended to read:

11378. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055, shall be punished by imprisonment in the state prison *for two, three, or four years*.

SEC. 2. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state prison for a period of ~~two, three, or four~~ *three, four, or five years*.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

SEC. 3. Section 11379.7 of the Health and Safety Code is amended to read:

11379.7. (a) Except as provided in subdivision (b), any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, 11383.5, 11383.6, or 11383.7, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, 11383.5, 11383.6, or 11383.7, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of two years in the state prison.

(b) Any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, 11383.5, 11383.6, or 11383.7, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, 11383.5, 11383.6, or 11383.7, as those sections relate to methamphetamine or phencyclidine, where the commission of the crime causes any child under 16 years of age to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of five years in the state prison.

(c) *Except as provided in subdivision (d), any person convicted of a violation of Section 11351, 11351.5, 11352, 11366, 11366.5, 11366.6, 11378, 11378.5, 11379, or 11379.2, or of an attempt to violate Section 11351, 11351.5, 11352, 11366, 11366.5, 11366.6, 11378, 11378.5, 11379, or 11379.2 when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of two years in the state prison.*

(d) *Any person convicted of a violation of Section 11351, 11351.5, 11352, 11366, 11366.5, 11366.6, 11378, 11378.5, 11379,*

1 or 11379.2, or of an attempt to violate Section 11351, 11351.5,  
2 11352, 11366, 11366.5, 11366.6. 11378, 11378.5, 11379, or  
3 11379.2 when the commission of the crime causes any child under  
4 16 years of age to suffer great bodily injury, shall, in addition and  
5 consecutive to the punishment prescribed for the felony of which  
6 he or she has been convicted, be punished by an additional term  
7 of five years in the state prison.

8 ~~(e)~~

9 (e) As used in this section, “structure” means any house,  
10 apartment building, shop, warehouse, barn, building, vessel,  
11 railroad car, cargo container, motor vehicle, housecar, trailer, trailer  
12 coach, camper, mine, floating home, or other enclosed structure  
13 capable of holding a child and manufacturing equipment.

14 ~~(d)~~

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

17 SEC. 4. Section 12022.76 is added to the Penal Code, to read:

18 12022.76. Any person who possesses methamphetamine, or  
19 who is under the influence of methamphetamine, during the  
20 commission or attempted commission of a felony shall be punished  
21 by an additional and consecutive term of imprisonment in the state  
22 prison for one year, unless possession of methamphetamine is an  
23 element of that offense.

24 SEC. 5. Chapter 8.5 (commencing with Section 13875) is added  
25 to Title 6 of Part 4 of the Penal Code, to read:

26  
27 CHAPTER 8.5. CALIFORNIA DRUG ENDANGERED CHILD  
28 PROTECTION ACT  
29

30 13875. The Legislature finds and declares all of the following:

31 (a) The clandestine manufacture of methamphetamine and other  
32 controlled substances has created a public health and safety crisis  
33 for children in California.

34 An increasing number of children in this state are being abused,  
35 neglected, and placed at highest risk of harm or death as a result  
36 of their presence in homes or dwellings involved in clandestine  
37 drug production and distribution. In 1999, more than 1,200 children  
38 were found in 2,400 clandestine laboratories seized by California  
39 law enforcement agencies. That same year, the number of  
40 drug-related toxic “cleanups” in California reached an all-time

1 high. The actual number of drug endangered children is unknown,  
2 since many clandestine home labs are abandoned due to fire or  
3 explosion before they become known to authorities.

4 (b) The response to children discovered in clandestine drug labs  
5 varies greatly from county to county. In many cases, the response  
6 has been inadequate. Services may be fragmented, and untrained  
7 staff can fail to recognize the danger to the child. Without  
8 coordinated assessment and intervention, children may be left in  
9 or returned to these deadly environments. The Legislature further  
10 finds and declares that the Counties of Butte, Los Angeles, Orange,  
11 Riverside, San Bernardino, San Diego, and Shasta have  
12 implemented multiagency response teams consisting of law  
13 enforcement, prosecution and health or children's services, that  
14 can respond most effectively to clandestine laboratories in which  
15 children are present.

16 (c) Clandestine laboratories are increasingly operated in single  
17 and multifamily homes, garages, apartments, motels, and  
18 mobilehomes in urban and suburban neighborhoods. The dangers  
19 to children, those in the lab and nearby, are significantly higher in  
20 those counties where most clandestine labs are located in residential  
21 neighborhoods. The Legislature recognizes the need to provide  
22 financial assistance for those counties that have the highest number  
23 of clandestine laboratory seizures with children present, and that  
24 have implemented multiagency response teams for drug endangered  
25 children.

26 (d) The Legislature intends to support the efforts of counties  
27 that have implemented a multiagency response to drug endangered  
28 children that includes, at a minimum, all of the following:

29 (1) Staffing a multiagency team consisting of law enforcement,  
30 prosecution, and health or children's services personnel or both  
31 health and children's services personnel, to respond to drug  
32 endangered child cases.

33 (2) Coordinating immediate and ongoing medical treatment and  
34 family services for drug endangered children under the direction  
35 of a child services worker.

36 (3) Vertically prosecuting drug manufacturers and sellers who  
37 endanger children.

38 13876. (a) There is hereby established in the agency or  
39 agencies designated by the Director of Finance pursuant to Section  
40 13820, a program of technical and financial assistance for counties,

1 designated the California Drug Endangered Child Protection Act.  
2 All funds appropriated to the agency or agencies designated by  
3 the Director of Finance pursuant to Section 13820 for the purposes  
4 of this chapter shall be administered and disbursed by the executive  
5 director and shall to the greatest extent feasible be coordinated or  
6 consolidated with federal funds that may be made available for  
7 these purposes. The agency or agencies designated by the Director  
8 of Finance pursuant to Section 13820 may retain up to 5 percent  
9 of the amount appropriated for purposes of this chapter to cover  
10 costs associated with administering this program.

11 (b) The executive director is authorized to allocate and award  
12 funds to counties in which the California Drug Endangered Child  
13 Protection Act is implemented in substantial compliance with the  
14 policies and criteria set forth in this chapter.

15 (c) The allocation and award of funds shall be made upon  
16 application executed by the county's district attorney, or county  
17 sheriff, if the sheriff is currently the lead agency in the county's  
18 existing drug endangered children program, and approved by its  
19 board of supervisors. Funds disbursed under this chapter shall not  
20 supplant local funds that would, in the absence of the California  
21 Drug Endangered Child Protection Act, be made available to  
22 support the functions of this program. The district attorney or  
23 county sheriff shall consult with each agency receiving funding  
24 as part of the county's drug endangered children program to  
25 develop the budget submitted to the agency or agencies designated  
26 by the Director of Finance pursuant to Section 13820 for the  
27 purposes of implementing this chapter.

28 (d) Law enforcement, prosecution, health, and children's  
29 services personnel working on multiagency teams established  
30 pursuant to this chapter shall be considered "multidisciplinary  
31 personnel" as defined in Section 18951 of the Welfare and  
32 Institutions Code, and may share information necessary for the  
33 protection of the minor.

34 13877. District attorneys, or county sheriffs, if the sheriff is  
35 currently the lead agency in the county's existing drug endangered  
36 children program, receiving funds under this chapter shall  
37 coordinate multiagency drug endangered child response teams in  
38 cooperation with local, state, and federal law enforcement agencies,  
39 and the county departments of health and children's services. Under  
40 the direction of the lead agency in the county's existing drug

1 endangered children program, a multiagency team's services shall  
2 include, but not be limited to:

3 (a) Prompt, multiagency response to cases involving drug  
4 endangered children. Teams shall have the ability to respond  
5 quickly at any time, day or night, and to reduce the amount of time  
6 children must wait for medical screening, treatment, and other  
7 necessary services.

8 (b) Develop, adopt, and regularly review local protocols for the  
9 multiagency response to cases involving drug endangered children.

10 (c) Convene a countywide drug endangered child protection  
11 task force, that shall include, but not be limited to, representatives  
12 from law enforcement, children's services, a county juvenile court,  
13 hospitals and health services, fire and paramedics, education,  
14 probation, prosecution, and the Victim-Witness Assistance  
15 Program. Each countywide task force shall meet no less than twice  
16 yearly to review local protocols and recommend local policies and  
17 procedures for the protection, treatment, and continuing care of  
18 drug endangered children.

19 (d) Maintain complete records of each case for documentation  
20 and evaluation.

21 13877.5. The district attorney or county sheriff, if the sheriff  
22 is currently the lead agency in the county's existing drug  
23 endangered children program, of a county may utilize program  
24 funds made available under this section to subcontract for  
25 specialized services with local law enforcement or the county  
26 departments of health or children's services, if local resources are  
27 not sufficient to staff multiagency drug endangered child response  
28 teams at the level required in subdivision (a) of Section 13877.  
29 Those subcontracts shall be in an amount sufficient to obtain  
30 federal matching funds for the services of at least two full-time  
31 children's services workers, and shall compensate participating  
32 agencies for the reasonable cost of overtime or equipment, or both  
33 overtime and equipment, to respond as a multiagency team.

34 13878. District attorneys receiving funds under this chapter  
35 shall concentrate enhanced prosecution efforts and resources upon  
36 individuals who endanger children through exposure to the  
37 clandestine manufacture of controlled substances, their precursors,  
38 and analogs under Sections 11379.6 and 11383 of the Health and  
39 Safety Code. Where appropriate, felony child endangerment  
40 charges shall be filed in every case under subdivision (a) of Section

1 273a or special allegations under Section 11379.7 of the Health  
2 and Safety Code. Enhanced prosecution efforts and resources under  
3 the Drug Endangered Child Protection Act shall include, but not  
4 be limited to, all of the following:

5 (a) “Vertical prosecutorial representation,” whereby the  
6 prosecutor who makes the initial filing or appearance in a drug  
7 endangered child case will perform all subsequent court  
8 appearances on that particular case through its conclusion,  
9 including the sentencing phase.

10 (b) Assignment of highly qualified investigators and prosecutors  
11 to drug endangered child cases.

12 (c) Significant reduction of caseloads for investigators and  
13 prosecutors assigned to drug endangered child cases.

14 13879. Commencing one year after the effective date of this  
15 chapter, the agency or agencies designated by the Director of  
16 Finance pursuant to Section 13820 shall make an annual report to  
17 the Legislature on the fiscal and operational status of the program.  
18 This report shall include, at a minimum, an evaluation of the  
19 number of clandestine laboratories seized, the number of children  
20 located and removed from clandestine laboratories, and the number  
21 of prosecutions of individuals involved in the manufacturing and  
22 distribution of methamphetamine or other controlled substances  
23 manufactured at clandestine laboratories where children are present.

24 13879.5. (a) Available funds may be used by the agency or  
25 agencies designated by the Director of Finance pursuant to Section  
26 13820 to fund countywide drug endangered children programs in  
27 the Counties of Butte, Los Angeles, Orange, Riverside, San  
28 Bernardino, San Diego, and Shasta, for the purpose of  
29 implementing this chapter.

30 (b) (1) The funds available in subdivision (a) that remain after  
31 funding the countywide programs specified in subdivision (a) may  
32 be distributed to up to five additional counties to fund drug  
33 endangered children programs. These funds shall be distributed  
34 to counties on a competitive grant basis.

35 (2) The following factors shall be considered in awarding these  
36 grants:

37 (A) Size of the county.

38 (B) Number of clandestine laboratories seized in the county.

39 (C) Number of prosecutions brought against clandestine  
40 laboratories at which children were found.

1 (D) Number of children found at seized or prosecuted  
2 clandestine laboratories.

3 (E) The demonstrated ability of the county to utilize multiagency  
4 emergency response teams to meet the immediate health and safety  
5 needs of children found at clandestine drug laboratories, as well  
6 as a demonstrated ability to prosecute the individuals operating  
7 those laboratories.

8 (3) One representative of each local agency involved in  
9 implementing a county's drug endangered children program shall  
10 form an executive committee, the function of which is to distribute  
11 the grant funds awarded the county under subdivision (a) in a fair  
12 and equitable manner and for the purposes of implementing this  
13 chapter.

14 (4) The county health and welfare agencies shall be responsible  
15 for coordinating health-related services for children living in  
16 clandestine laboratories seized by a county drug endangered  
17 children response team pursuant to this program. The county health  
18 and welfare agencies shall consult with the district attorney when  
19 developing the health services protocols in order to ensure that the  
20 health services protocols do not interfere with the law enforcement  
21 functions of the drug endangered children response teams.

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