

AMENDED IN SENATE JANUARY 7, 2008

SENATE BILL

No. 628

Introduced by Senator Correa

February 22, 2007

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 amended, 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 phenethylidine 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 phenethylamine 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 *specified* counties, *upon their application*, 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-no*.

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

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

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

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

19 ~~11379. (a) Except as otherwise provided in subdivision (b)~~
20 ~~and in Article 7 (commencing with Section 4211) of Chapter 9 of~~
21 ~~Division 2 of the Business and Professions Code, every person~~
22 ~~who transports, imports into this state, sells, furnishes, administers,~~
23 ~~or gives away, or offers to transport, import into this state, sell,~~
24 ~~furnish, administer, or give away, or attempts to import into this~~
25 ~~state or transport any controlled substance which is (1) classified~~
26 ~~in Schedule III, IV, or V and which is not a narcotic drug, except~~
27 ~~subdivision (g) of Section 11056, (2) specified in subdivision (d)~~
28 ~~of Section 11054, except paragraphs (13), (14), (15), (20), (21),~~
29 ~~(22), and (23) of subdivision (d), (3) specified in paragraph (11)~~
30 ~~of subdivision (e) of Section 11056, (4) specified in paragraph (2)~~
31 ~~or (3) of subdivision (f) of Section 11054, or (5) specified in~~
32 ~~subdivision (d) or (e), except paragraph (3) of subdivision (e), or~~
33 ~~specified in subparagraph (A) of paragraph (1) of subdivision (f),~~
34 ~~of Section 11055, unless upon the prescription of a physician,~~
35 ~~dentist, podiatrist, or veterinarian, licensed to practice in this state,~~

1 shall be punished by imprisonment in the state prison for a period
2 of three, four, or five years.

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

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

10 ~~11379.7. (a) Except as provided in subdivision (b), any person~~
11 ~~convicted of a violation of subdivision (a) of Section 11379.6 or~~
12 ~~Section 11383, 11383.5, 11383.6, or 11383.7, or of an attempt to~~
13 ~~violate subdivision (a) of Section 11379.6 or Section 11383,~~
14 ~~11383.5, 11383.6, or 11383.7, as those sections relate to~~
15 ~~methamphetamine or phencyclidine, when the commission or~~
16 ~~attempted commission of the crime occurs in a structure where~~
17 ~~any child under 16 years of age is present, shall, in addition and~~
18 ~~consecutive to the punishment prescribed for the felony of which~~
19 ~~he or she has been convicted, be punished by an additional term~~
20 ~~of two years in the state prison.~~

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

31 ~~(c) Except as provided in subdivision (d), any person convicted~~
32 ~~of a violation of Section 11351, 11351.5, 11352, 11366, 11366.5,~~
33 ~~11366.6, 11378, 11378.5, 11379, or 11379.2, or of an attempt to~~
34 ~~violate Section 11351, 11351.5, 11352, 11366, 11366.5, 11366.6,~~
35 ~~11378, 11378.5, 11379, or 11379.2 when the commission or~~
36 ~~attempted commission of the crime occurs in a structure where~~
37 ~~any child under 16 years of age is present, shall, in addition and~~
38 ~~consecutive to the punishment prescribed for the felony of which~~
39 ~~he or she has been convicted, be punished by an additional term~~
40 ~~of two years in the state prison.~~

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

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

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

18 ~~SEC. 4. Section 12022.76 is added to the Penal Code, to read:~~
 19 ~~12022.76. Any person who possesses methamphetamine, or~~
 20 ~~who is under the influence of methamphetamine, during the~~
 21 ~~commission or attempted commission of a felony shall be punished~~
 22 ~~by an additional and consecutive term of imprisonment in the state~~
 23 ~~prison for one year, unless possession of methamphetamine is an~~
 24 ~~element of that offense.~~

25 ~~SEC. 5.~~
 26 ~~SECTION 1. Chapter 8.5 (commencing with Section 13875)~~
 27 ~~is added to Title 6 of Part 4 of the Penal Code, to read:~~

28
 29 CHAPTER 8.5. CALIFORNIA DRUG ENDANGERED CHILD
 30 PROTECTION ACT

31
 32 13875. The Legislature finds and declares all of the following:

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

36 An increasing number of children in this state are being abused,
 37 neglected, and placed at highest risk of harm or death as a result
 38 of their presence in homes or dwellings involved in clandestine
 39 drug production and distribution. In 1999, more than 1,200 children
 40 were found in 2,400 clandestine laboratories seized by California

1 law enforcement agencies. That same year, the number of
2 drug-related toxic “cleanups” in California reached an all-time
3 high. The actual number of drug endangered children is unknown,
4 since many clandestine home labs are abandoned due to fire or
5 explosion before they become known to authorities.

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

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

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

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

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

38 (3) Vertically prosecuting drug manufacturers and sellers who
39 endanger children.

1 13876. (a) There is hereby established in the agency or
2 agencies designated by the Director of Finance pursuant to Section
3 13820, a program of technical and financial assistance for counties,
4 designated the California Drug Endangered Child Protection Act.
5 All funds appropriated to the agency or agencies designated by
6 the Director of Finance pursuant to Section 13820 for the purposes
7 of this chapter shall be administered and disbursed by the executive
8 director and shall to the greatest extent feasible be coordinated or
9 consolidated with federal funds that may be made available for
10 these purposes. The agency or agencies designated by the Director
11 of Finance pursuant to Section 13820 may retain up to 5 percent
12 of the amount appropriated for purposes of this chapter to cover
13 costs associated with administering this program.

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

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

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

37 13877. District attorneys, or county sheriffs, if the sheriff is
38 currently the lead agency in the county's existing drug endangered
39 children program, receiving funds under this chapter shall
40 coordinate multiagency drug endangered child response teams in

1 cooperation with local, state, and federal law enforcement agencies,
2 and the county departments of health and children's services. Under
3 the direction of the lead agency in the county's existing drug
4 endangered children program, a multiagency team's services shall
5 include, but not be limited to:

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

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

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

22 (d) Maintain complete records of each case for documentation
23 and evaluation.

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

37 13878. District attorneys receiving funds under this chapter
38 shall concentrate enhanced prosecution efforts and resources upon
39 individuals who endanger children through exposure to the
40 clandestine manufacture of controlled substances, their precursors,

1 and analogs under Sections 11379.6 and 11383 of the Health and
2 Safety Code. Where appropriate, felony child endangerment
3 charges shall be filed in every case under subdivision (a) of Section
4 273a or special allegations under Section 11379.7 of the Health
5 and Safety Code. Enhanced prosecution efforts and resources under
6 the Drug Endangered Child Protection Act shall include, but not
7 be limited to, all of the following:

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

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

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

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

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

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

38 (2) The following factors shall be considered in awarding these
39 grants:

40 (A) Size of the county.

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

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

4 (D) Number of children found at seized or prosecuted
5 clandestine laboratories.

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

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

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

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