

Introduced by Senator LenoFebruary 19, 2010

An act to amend Section 11357 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as introduced, Leno. Marijuana: possession.

Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than \$100. Existing law provides for this offense that under specified conditions (1) the court shall divert and refer the defendant for education, treatment, or rehabilitation, as specified, and (2) an arrested person who gives satisfactory evidence of identity and a written promise to appear in court shall not be subjected to booking.

This bill would instead provide that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than \$250. By changing the penalties for 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.

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 11357 of the Health and Safety Code is
2 amended to read:

3 11357. (a) Except as authorized by law, every person who
4 possesses any concentrated cannabis shall be punished by
5 imprisonment in the county jail for a period of not more than one
6 year or by a fine of not more than five hundred dollars (\$500), or
7 by both such fine and imprisonment, or shall be punished by
8 imprisonment in the state prison.

9 (b) Except as authorized by law, every person who possesses
10 not more than 28.5 grams of marijuana, other than concentrated
11 cannabis, is guilty of a misdemeanor and shall be punished by a
12 fine of not more than one hundred dollars (\$100). Notwithstanding
13 other provisions of law, if such person has been previously
14 convicted three or more times of an offense described in this
15 subdivision during the two-year period immediately preceding the
16 date of commission of the violation to be charged, the previous
17 convictions shall also be charged in the accusatory pleading and,
18 if found to be true by the jury upon a jury trial or by the court upon
19 a court trial or if admitted by the person, the provisions of Sections
20 1000.1 and 1000.2 of the Penal Code shall be applicable to him,
21 and the court shall divert and refer him for education, treatment,
22 or rehabilitation, without a court hearing or determination or the
23 concurrence of the district attorney, to an appropriate community
24 program which will accept him. If the person is so diverted and
25 referred he shall not be subject to the fine specified in this
26 subdivision. If no community program will accept him, the person
27 shall be subject to the fine specified in this subdivision. In any
28 case in which a person is arrested for a violation of this subdivision
29 and does not demand to be taken before a magistrate, such person
30 shall be released by the arresting officer upon presentation of
31 satisfactory evidence of identity and giving his written promise to
32 appear in court, as provided in Section 853.6 of the Penal Code,
33 and shall not be subjected to booking *an infraction punishable by*
34 *a fine of not more than two hundred fifty dollars (\$250).*

35 (c) Except as authorized by law, every person who possesses
36 more than 28.5 grams of marijuana, other than concentrated
37 cannabis, shall be punished by imprisonment in the county jail for

1 a period of not more than six months or by a fine of not more than
2 five hundred dollars (\$500), or by both such fine and imprisonment.

3 (d) Except as authorized by law, every person 18 years of age
4 or over who possesses not more than 28.5 grams of marijuana,
5 other than concentrated cannabis, upon the grounds of, or within,
6 any school providing instruction in kindergarten or any of grades
7 1 through 12 during hours the school is open for classes or
8 school-related programs is guilty of a misdemeanor and shall be
9 punished by a fine of not more than five hundred dollars (\$500),
10 or by imprisonment in the county jail for a period of not more than
11 10 days, or both.

12 (e) Except as authorized by law, every person under the age of
13 18 who possesses not more than 28.5 grams of marijuana, other
14 than concentrated cannabis, upon the grounds of, or within, any
15 school providing instruction in kindergarten or any of grades 1
16 through 12 during hours the school is open for classes or
17 school-related programs is guilty of a misdemeanor and shall be
18 subject to the following dispositions:

19 (1) A fine of not more than two hundred fifty dollars (\$250),
20 upon a finding that a first offense has been committed.

21 (2) A fine of not more than five hundred dollars (\$500), or
22 commitment to a juvenile hall, ranch, camp, forestry camp, or
23 secure juvenile home for a period of not more than 10 days, or
24 both, upon a finding that a second or subsequent offense has been
25 committed.

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.