

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1449**

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**Introduced by Senator Leno**

February 19, 2010

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An act to amend Section 11357 of the Health and Safety Code, and to amend Section 23222 of the Vehicle Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as amended, 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. *This same penalty is imposed for the crime of possessing not more than 28.5 grams of marijuana while driving on a highway or on lands, as specified.* Existing law provides for ~~this offense~~ *with respect to these offenses* 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,~~ *any person who commits any of the above offenses is instead* guilty of an infraction punishable by a fine of not more than ~~\$250~~ \$100. *This bill would eliminate the above-described provisions relating to booking and to diversion and referral for education, treatment, or rehabilitation. 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~~-no. State-mandated local program: ~~yes~~-no.

*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 an infraction punishable by a fine of not more  
12 than ~~two hundred fifty dollars (\$250)~~ *one hundred dollars (\$100)*.

13 (c) Except as authorized by law, every person who possesses  
14 more than 28.5 grams of marijuana, other than concentrated  
15 cannabis, shall be punished by imprisonment in the county jail for  
16 a period of not more than six months or by a fine of not more than  
17 five hundred dollars (\$500), or by both such fine and imprisonment.

18 (d) Except as authorized by law, every person 18 years of age  
19 or over who possesses not more than 28.5 grams of marijuana,  
20 other than concentrated cannabis, upon the grounds of, or within,  
21 any school providing instruction in kindergarten or any of grades  
22 1 through 12 during hours the school is open for classes or  
23 school-related programs is guilty of a misdemeanor and shall be  
24 punished by a fine of not more than five hundred dollars (\$500),  
25 or by imprisonment in the county jail for a period of not more than  
26 10 days, or both.

27 (e) Except as authorized by law, every person under the age of  
28 18 who possesses not more than 28.5 grams of marijuana, other  
29 than concentrated cannabis, upon the grounds of, or within, any  
30 school providing instruction in kindergarten or any of grades 1

1 through 12 during hours the school is open for classes or  
2 school-related programs is guilty of a misdemeanor and shall be  
3 subject to the following dispositions:

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

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

11 *SEC. 2. Section 23222 of the Vehicle Code is amended to read:*

12 23222. (a) No person shall have in his or her possession on  
13 his or her person, while driving a motor vehicle upon a highway  
14 or on lands, as described in subdivision (b) of Section 23220, any  
15 bottle, can, or other receptacle, containing any alcoholic beverage  
16 which has been opened, or a seal broken, or the contents of which  
17 have been partially removed.

18 (b) Except as authorized by law, every person who possesses,  
19 while driving a motor vehicle upon a highway or on lands, as  
20 described in subdivision (b) of Section 23220, not more than one  
21 avoirdupois ounce of marijuana, other than concentrated cannabis  
22 as defined by Section 11006.5 of the Health and Safety Code, is  
23 guilty of a misdemeanor and shall be punished *an infraction*  
24 *punishable* by a fine of not more than one hundred dollars (\$100).  
25 ~~Notwithstanding any other provision of law, if the person has been~~  
26 ~~previously convicted three or more times of an offense described~~  
27 ~~in this subdivision during the two-year period immediately~~  
28 ~~preceding the date of commission of the violation to be charged,~~  
29 ~~the previous convictions shall also be charged in the accusatory~~  
30 ~~pleading and, if found to be true by the jury upon a jury trial or by~~  
31 ~~the court upon a court trial or if admitted by the person, Sections~~  
32 ~~1000.1 and 1000.2 of the Penal Code are applicable to the person,~~  
33 ~~and the court shall divert and refer the person for education,~~  
34 ~~treatment, or rehabilitation, without a court hearing or~~  
35 ~~determination or the concurrence of the district attorney, to an~~  
36 ~~appropriate community program which will accept the person. If~~  
37 ~~the person is so diverted and referred, the person is not subject to~~  
38 ~~the fine specified in this subdivision. In any case in which a person~~  
39 ~~is arrested for a violation of this subdivision and does not demand~~  
40 ~~to be taken before a magistrate, the person shall be released by the~~

1 ~~arresting officer upon presentation of satisfactory evidence of~~  
2 ~~identity and giving his or her written promise to appear in court,~~  
3 ~~as provided in Section 40500, and shall not be subjected to~~  
4 ~~booking.~~

5 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
6 ~~Section 6 of Article XIII B of the California Constitution because~~  
7 ~~the only costs that may be incurred by a local agency or school~~  
8 ~~district will be incurred because this act creates a new crime or~~  
9 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
10 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
11 ~~the Government Code, or changes the definition of a crime within~~  
12 ~~the meaning of Section 6 of Article XIII B of the California~~  
13 ~~Constitution.~~