

AMENDED IN SENATE MARCH 17, 2014

SENATE BILL

No. 1010

Introduced by Senator Mitchell

(Principal coauthor: Senator Hancock)

(Principal coauthor: Assembly Member Ammiano)

(Coauthors: Assembly Members Hall, Jones-Sawyer, and Quirk)

February 13, 2014

An act to amend ~~Section 11006 of the Penal Code, relating to the Department of Justice 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

SB 1010, as amended, Mitchell. ~~Department of Justice: peace officers: training. Cocaine base: penalties.~~

Existing law provides that every person who possesses for sale or purchases for purposes of sale cocaine base is subject to imprisonment in the state prison for a period of 3, 4, or 5 years.

This bill instead would provide that every person who possesses for sale or purchases for purposes of sale cocaine base is subject to imprisonment in the state prison for 2, 3, or 4 years.

Existing law generally provides that the interest of any registered owner of a boat, airplane, or any vehicle, except as specified, that has been used to facilitate the manufacture of, or possession for sale or sale of, 14.25 grams or more of cocaine base or 28.5 grams or more of cocaine is subject to forfeiture, as specified.

This bill would revise that provision to instead make property that has been used to facilitate the manufacture of, or possession for sale

or sale of, 28.5 grams or more of cocaine base or cocaine subject to forfeiture.

Existing law, except in unusual cases, prohibits granting probation or suspending a sentence for persons convicted of specified crimes relating to controlled substances, including possessing for sale a substance containing 57 grams or more of a substance containing cocaine, 14.25 grams of more of cocaine base, or 57 grams or more of a substance containing at least 5 grams of cocaine base, and transporting or importing for sale, selling, or offering to sell cocaine base.

This bill would delete those provisions and would instead prohibit, except in unusual cases, granting probation or suspending a sentence for persons convicted of possessing for sale or selling a substance containing 28.5 grams or more of cocaine base or 57 grams or more of a substance containing at least 5 grams of cocaine or cocaine base.

By making additional persons eligible for probation, the 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 requires the Department of Justice to require all persons employed within the department as peace officers and performing investigative duties to obtain a certificate from the Commission on Peace Officer Standards and Training.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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. This act shall be known, and may be cited, as the
- 2 California Fair Sentencing Act.
- 3 SEC. 2. (a) The Legislature finds and declares that cocaine
- 4 hydrochloride (powder cocaine) and cocaine base (crack cocaine)
- 5 are two forms of the same drug, the effects of which on the human
- 6 body are so similar that to mete out unequal punishment for the

1 *same crime (e.g., possession for sale of a particular form of*
2 *cocaine), is wholly and cruelly unjust.*

3 *(b) It is the intent of the Legislature in enacting this act to*
4 *provide that for the purposes of determining appropriate penalties*
5 *for crimes relating to cocaine hydrochloride and cocaine base,*
6 *including, but not limited to, the crime of possession, possession*
7 *for sale, or transportation for sale, cocaine hydrochloride and*
8 *cocaine base shall be treated in an identical manner.*

9 *SEC. 3. Section 11351.5 of the Health and Safety Code is*
10 *amended to read:*

11 11351.5. Except as otherwise provided in this division, every
12 person who possesses for sale or purchases for purposes of sale
13 cocaine base, which is specified in paragraph (1) of subdivision
14 (f) of Section 11054, shall be punished by imprisonment pursuant
15 to subdivision (h) of Section 1170 of the Penal Code for a period
16 of ~~three, four, or five~~ *two, three, or four* years.

17 *SEC. 4. Section 11470 of the Health and Safety Code is*
18 *amended to read:*

19 11470. The following are subject to forfeiture:

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

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

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

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

32 (e) The interest of any registered owner of a boat, airplane, or
33 any vehicle other than an implement of husbandry, as defined in
34 Section 36000 of the Vehicle Code, which has been used as an
35 instrument to facilitate the manufacture of, or possession for sale
36 or sale of 14.25 grams or more of heroin ~~or cocaine base~~ as
37 ~~specified in paragraph (1) of subdivision (f) of Section 11054,~~ or
38 a substance containing 14.25 grams or more of heroin ~~or cocaine~~
39 ~~base as specified in paragraph (1) of subdivision (f) of Section~~
40 ~~11054,~~ or 14.25 grams or more of a substance containing heroin

1 ~~or cocaine base as specified in paragraph (1) of subdivision (f) of~~
2 ~~Section 11054, or 28.5 grams or more of Schedule I controlled~~
3 ~~substances except marijuana, peyote, or psilocybin; 10 pounds dry~~
4 ~~weight or more of marijuana, peyote, or psilocybin; or 28.5 grams~~
5 ~~or more of cocaine, as specified in paragraph (6) of subdivision~~
6 ~~(b) of Section 11055, *cocaine base as specified in paragraph (1)*~~
7 ~~*of subdivision (f) of Section 11054, or methamphetamine; or a*~~
8 ~~substance containing 28.5 grams or more of cocaine, as specified~~
9 ~~in paragraph (6) of subdivision (b) of Section 11055, *cocaine base*~~
10 ~~*as specified in paragraph (1) of subdivision (f) of Section 11054,*~~
11 ~~or methamphetamine; or 57 grams or more of a substance~~
12 ~~containing cocaine, as specified in paragraph (6) of subdivision~~
13 ~~(b) of Section 11055, *cocaine base as specified in paragraph (1)*~~
14 ~~*of subdivision (f) of Section 11054, 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 ~~12804.9 of the Vehicle Code, may be forfeited under this~~
19 ~~subdivision if there is a community property interest in the vehicle~~
20 ~~by a person other than the defendant and the vehicle is the sole~~
21 ~~class C, class M1, or class M2 vehicle available to the defendant's~~
22 ~~immediate 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) (1) Subject to the requirements of Section 11488.5 and
5 except as further limited by this subdivision to protect innocent
6 parties who claim a property interest acquired from a defendant,
7 all right, title, and interest in any personal property described in
8 this section shall vest in the state upon commission of the act giving
9 rise to forfeiture under this chapter, if the state or local
10 governmental entity proves a violation of Section 11351, 11351.5,
11 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5,
12 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of
13 the Penal Code, or a felony violation of Section 11366.8 of this
14 code, insofar as the offense involves the manufacture, sale,
15 possession for sale, offer for sale, offer to manufacture, or
16 conspiracy to commit at least one of those offenses, in accordance
17 with the burden of proof set forth in paragraph (1) of subdivision
18 (i) of Section 11488.4 or, in the case of cash or negotiable
19 instruments in excess of twenty-five thousand dollars (\$25,000),
20 paragraph (4) of subdivision (i) of Section 11488.4.

21 ~~The~~

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

30 *SEC. 5. Section 1203.073 of the Penal Code is amended to*
31 *read:*

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

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

1 (1) Any person who is convicted of violating Section 11351 *or*
2 *11351.5* of the Health and Safety Code by possessing for sale, or
3 Section 11352 of the Health and Safety Code by selling, a
4 substance containing 28.5 grams or more of cocaine as specified
5 in paragraph (6) of subdivision (b) of Section 11055 of, *or cocaine*
6 *base as specified in paragraph (1) of subdivision (f) of Section*
7 *11054 of*, the Health and Safety Code, or 57 grams or more of a
8 substance containing *at least five grams of* cocaine as specified in
9 paragraph (6) of subdivision (b) of Section 11055 of, *or cocaine*
10 *base as specified in paragraph (1) of subdivision (f) of Section*
11 *11054 of*, the Health and Safety Code.

12 (2) Any person who is convicted of violating Section 11378 of
13 the Health and Safety Code by possessing for sale, or Section
14 11379 of the Health and Safety Code by selling a substance
15 containing 28.5 grams or more of methamphetamine or 57 grams
16 or more of a substance containing methamphetamine.

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

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

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

38 ~~(6) Any person who is convicted of violating Section 11352 of~~
39 ~~the Health and Safety Code by transporting for sale, importing for~~
40 ~~sale, or administering, or by offering to transport for sale, import~~

1 ~~for sale, or administer, or by attempting to import for sale or~~
2 ~~transport for sale, cocaine base as specified in paragraph (1) of~~
3 ~~subdivision (f) of Section 11054 of the Health and Safety Code.~~

4 ~~(7) Any person who is convicted of violating Section 11352 of~~
5 ~~the Health and Safety Code by selling or offering to sell cocaine~~
6 ~~base as specified in paragraph (1) of subdivision (f) of Section~~
7 ~~11054 of the Health and Safety Code.~~

8 ~~(8)~~

9 (5) Any person convicted of violating Section 11379.6, 11382,
10 or 11383 of the Health and Safety Code with respect to
11 methamphetamine, if he or she has one or more prior convictions
12 for a violation of Section 11378, 11379, 11379.6, 11380, 11382,
13 or 11383 with respect to methamphetamine.

14 (c) As used in this section, the term “manufacture” refers to the
15 act of any person who manufactures, compounds, converts,
16 produces, derives, processes, or prepares, either directly or
17 indirectly by chemical extraction or independently by means of
18 chemical synthesis.

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

26 *SEC. 6. 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.*

35 ~~SECTION 1. Section 11006 of the Penal Code is amended to~~
36 ~~read:~~

37 ~~11006. The Attorney General shall appoint such agents and~~
38 ~~other employees as he deems necessary to carry out the provisions~~
39 ~~of this chapter.~~

1 ~~The Department of Justice shall require all persons employed~~
2 ~~after July 1, 1973, within the department designated as peace~~
3 ~~officers and performing investigative duties to obtain a certificate~~
4 ~~from the Commission on Peace Officer Standards and Training.~~

O