

Senate Bill No. 139

CHAPTER 624

An act to amend Sections 11357.5 and 11375.5 of, and to add Section 11375.7 to, the Health and Safety Code, and to amend Section 1000.5 of the Penal Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2016. Filed with
Secretary of State September 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 139, Galgiani. Controlled substances.

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative. Existing law also makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale, any synthetic cannabinoid compound or any synthetic cannabinoid derivative. Existing law, beginning January 1, 2016, makes it an infraction to use or possess those drugs.

This bill would expand the definition of a synthetic stimulant compound and a synthetic cannabinoid compound for purposes of existing law and would exclude from that definition substances that are in the federal clinical trial process, as specified. The bill would provide that a first offense of using or possessing these substances is punishable as an infraction, a 2nd offense is punishable as an infraction or a misdemeanor, and a 3rd or subsequent offense is punishable as a misdemeanor. By expanding the scope of existing crimes and by increasing the penalty for existing crimes, the bill would impose a state-mandated local program. The bill would authorize the synthetic cannabinoid compounds to be obtained and used for bona fide research, instruction, or analysis if that possession and use does not violate federal law.

Existing law authorizes the court, together with the district attorney and public defender, to conduct a preguilty plea drug court program pursuant to specified provisions in which proceedings are suspended without a plea of guilty for designated defendants. Existing law sets forth procedures that apply to these programs.

This bill would authorize a person charged with certain crimes relating to synthetic stimulant compounds or synthetic cannabinoid compounds to be eligible to participate in those preguilty plea drug court programs. The bill would set forth additional procedures that would apply in determining eligibility and compliance with 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.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Drug addiction or dependence is a chronically relapsing disease or condition.

(b) The benefits of drug treatment are cumulative and the fact that a person has not completed a prior program or course of treatment does not establish that the person would not benefit from further or additional treatment.

SEC. 2. Section 11357.5 of the Health and Safety Code is amended to read:

11357.5. (a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Every person who uses or possesses any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, is guilty of a public offense, punishable as follows:

(1) A first offense is an infraction punishable by a fine not exceeding two hundred fifty dollars (\$250).

(2) A second offense is an infraction punishable by a fine not exceeding two hundred fifty dollars (\$250) or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding five hundred dollars (\$500), or by both that fine and imprisonment.

(3) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(c) As used in this section, the term “synthetic cannabinoid compound” refers to any of the following substances or an analog of any of the following substances:

(1) Adamantoylindoles or adamantoylindazoles, which includes adamantyl carboxamide indoles and adamantyl carboxamide indazoles, or any compound structurally derived from 3-(1-adamantoyl)indole, 3-(1-adamantoyl)indazole, 3-(2-adamantoyl)indole,

N-(1-adamantyl)-1H-indole-3-carboxamide, or N-(1-adamantyl)-1H-indazole-3-carboxamide by substitution at the nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including, but not limited to, 2NE1, 5F-AKB-48, AB-001, AKB-48, AM-1248, JWH-018 adamantyl carboxamide, STS-135.

(2) Benzoylindoles, which includes any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, AM-630, AM-661, AM-679, AM-694, AM-1241, AM-2233, RCS-4, WIN 48,098 (Pravadoline).

(3) Cyclohexylphenols, which includes any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the cyclohexyl ring to any extent, including, but not limited to, CP 47,497, CP 55,490, CP 55,940, CP 56,667, cannabicyclohexanol.

(4) Cyclopropanoylindoles, which includes any compound structurally derived from 3-(cyclopropylmethanoyl)indole, 3-(cyclopropylmethanone)indole, 3-(cyclobutylmethanone)indole or 3-(cyclopentylmethanone)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent.

(5) Naphthoylindoles, which includes any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl group, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the naphthyl ring to any extent, including, but not limited to, AM-678, AM-1220, AM-1221, AM-1235, AM-2201, AM-2232, EAM-2201, JWH-004, JWH-007, JWH-009, JWH-011, JWH-015, JWH-016, JWH-018,

JWH-019, JWH-020, JWH-022, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-164, JWH-166, JWH-180, JWH-181, JWH-182, JWH-189, JWH-193, JWH-198, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-258, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414, JWH-415, JWH-424, MAM-2201, WIN 55,212.

(6) Naphthoynaphthalenes, which includes any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent, including, but not limited to, CB-13.

(7) Naphthoypyrroles, which includes any compound structurally derived from 3-(1-naphthoypyrrole)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidiny)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-030, JWH-031, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373, JWH-392.

(8) Naphthylmethylindenes, which includes any compound containing a naphthylideneindene structure or which is structurally derived from 1-(1-naphthylmethyl)indene with substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidiny)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-171, JWH-176, JWH-220.

(9) Naphthylmethylindoles, which includes any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidiny)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-175, JWH-184, JWH-185, JWH-192, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199.

(10) Phenylacetylindoles, which includes any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, cannabipiperidiethanone, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-249, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-8.

(11) Quinolinyndolecarboxylates, which includes any compound structurally derived from quinolin-8-yl-1H-indole-3-carboxylate by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the quinoline ring to any extent, including, but not limited to, BB-22, 5-Fluoro-PB-22, PB-22.

(12) Tetramethylcyclopropanoylindoles, which includes any compound structurally derived from 3-tetramethylcyclopropanoylindole, 3-(1-tetramethylcyclopropyl)indole, 3-(2,2,3,3-tetramethylcyclopropyl)indole or 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent, including, but not limited to, 5-bromo-UR-144, 5-chloro-UR-144, 5-fluoro-UR-144, A-796,260, A-834,735, AB-034, UR-144, XLR11.

(13) Tetramethylcyclopropane-thiazole carboxamides, which includes any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including, but not limited to, A-836,339.

(14) Unclassified synthetic cannabinoids, which includes all of the following:

(A) AM-087, (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(B) AM-356, methanandamide, including (5Z,8Z,11Z,14Z)--[(1R)-2-hydroxy-1-methylethyl]icosanoic acid and arachidonyl-1'-hydroxy-2'-propylamide.

(C) AM-411, (6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(D) AM-855, (4aR,12bR)-8-hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol.

(E) AM-905, (6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(F) AM-906, (6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(G) AM-2389, (6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9-diol.

(H) BAY 38-7271, (-)-(R)-3-(2-Hydroxymethylindanyl-4-oxo)phenyl-4,4,4-trifluorobutyl-1-sulfonate.

(I) CP 50,556-1, Levonantradol, including 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; and [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate.

(J) HU-210, including (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol] and 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol.

(K) HU-211, Dexamabinol, including (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol and (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(L) HU-243, 3-dimethylheptyl-11-hydroxyhexahydrocannabinol.

(M) HU-308, [(91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol.

(N) HU-331, 3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione.

(O) HU-336, (6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione.

(P) JTE-907, N-(benzo[1,3]dioxol-5-ylmethyl)-7-methoxy-2-oxo-8-pentyl-1,2-dihydroquinoline-3-carboxamide.

(Q) JWH-051, ((6aR,10aR)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-9-yl)methanol.

(R) JWH-057 (6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran.

(S) JWH-133 (6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran.

(T) JWH-359, (6aR,10aR)- 1-methoxy- 6,6,9-trimethyl- 3-[(2R)-1 ,1,2-trimethylbutyl]- 6a,7,10,10a-tetrahydrobenzo[c]chromene.

(U) URB-597 [3-(3-carbamoylphenyl)phenyl]-N-cyclohexylcarbamate.

(V) URB-602 [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester; OR cyclohexyl [1,1'-biphenyl]-3-ylcarbamate.

(W) URB-754 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one.

(X) URB-937 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl cyclohexyl carbamate.

(Y) WIN 55,212-2, including (R)-(+)-[2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone and [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone.

(d) The substances or analogs of substances identified in subdivision (c) may be lawfully obtained and used for bona fide research, instruction, or analysis if that possession and use does not violate federal law.

(e) As used in this section, “synthetic cannabinoid compound” does not include either of the following:

(1) Any substance for which there is an approved new drug application, as defined in Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or which is generally recognized as safe and effective for use pursuant to Section 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act and Title 21 of the Code of Federal Regulations.

(2) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person pursuant to Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

SEC. 3. Section 11375.5 of the Health and Safety Code is amended to read:

11375.5. (a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, any synthetic stimulant compound specified in subdivision (c), or any synthetic stimulant derivative, to any person, or who possesses that compound or derivative for sale, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Every person who uses or possesses any synthetic stimulant compound specified in subdivision (c), or any synthetic stimulant derivative, is guilty of a public offense, punishable as follows:

(1) A first offense is an infraction punishable by a fine not exceeding two hundred fifty dollars (\$250).

(2) A second offense is an infraction punishable by a fine not exceeding two hundred fifty dollars (\$250) or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding five hundred dollars (\$500), or by both that fine and imprisonment.

(3) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(c) Unless specifically excepted, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, or unless listed in another schedule, subdivisions (a) and (b) apply to any material, compound, mixture, or preparation which contains any quantity of a substance or analog of a substance, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers whenever the existence of such salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers is possible, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in one of the following ways:

(1) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents.

(2) By substitution at the 3-position with an alkyl substituent.

(3) By substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(d) This section shall not prohibit prosecution under any other provision of law.

SEC. 4. Section 11375.7 is added to the Health and Safety Code, to read:

11375.7. (a) Unless otherwise excluded pursuant to this section, a person charged with a misdemeanor pursuant to paragraph (3) of subdivision (b) of Section 11357.5 or paragraph (3) of subdivision (b) of 11375.5 shall be eligible to participate in a preguilty plea drug court program, as described in Section 1000.5 of the Penal Code.

(b) Notwithstanding any other law, a positive test for use of a controlled substance, any other drug that may not be possessed without a prescription, or alcohol shall not be grounds for dismissal from the program, unless the person is not making progress in the program. The court shall consider any report or recommendation of the treatment provider in making this determination. It shall be presumed that a person engaged in a program is making progress, unless that presumption is defeated by clear and convincing evidence. The person may offer evidence or an argument that he or she would benefit from and make progress in a different program or mode. If the court so finds, it may place the person in a different treatment program.

(c) Notwithstanding any other law, the following persons are excluded from participation in the program under this section:

(1) Any person with a history of violence that indicates that he or she presents a current risk of violent behavior currently or during the treatment program. This ground for exclusion shall be established by clear and convincing evidence.

(2) Any person required to register as a sex offender pursuant to Section 290, unless the court finds by clear and convincing evidence that the person does not present a substantial risk of committing sexual offenses currently or through the course of the program and the person would benefit from the

program, including that treatment would reduce the risk that the person would sexually reoffend.

(3) Any person that the treatment provider concludes is unamenable to any and all forms of drug treatment. The defendant may present evidence that he or she is amenable to treatment and the court may retain the person in the program if the court finds that the person is amenable to treatment through a different provider or a different mode of treatment.

(d) Notwithstanding any other law, a prior conviction for an offense involving a controlled substance or drug that may not be possessed without a prescription, including a substance listed in Section 11357.5 or 11375.5, is not grounds for exclusion from the program, unless the court finds by clear and convincing evidence that the person is likely to engage in drug commerce for financial gain, rather than for purposes of obtaining a drug or drugs for personal use.

SEC. 5. Section 1000.5 of the Penal Code is amended to read:

1000.5. (a) (1) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

(2) A person charged with a misdemeanor under paragraph (3) of subdivision (b) of Section 11357.5 or paragraph (3) of subdivision (b) of 11375.5 of the Health and Safety Code shall be eligible to participate in a preguilty plea drug court program established pursuant to this chapter, as set forth in Section 11375.7 of the Health and Safety Code.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs, except as provided in Section 11375.7 of the Health and Safety Code. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

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

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent any harm that may be caused by the controlled substances described in this act at the earliest possible time, it is necessary that this act take effect immediately.