

Introduced by Senators Bates and Huff
(Coauthors: Senators Nguyen and Stone)
(Coauthors: Assembly Members Brough and Wagner)

February 19, 2016

An act to amend Sections 11370.4 and 11372 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1323, as introduced, Bates. Controlled substances: fentanyl.

Existing law classifies controlled substances into 5 schedules and places the greatest restrictions and penalties on the use of those substances placed in Schedule I. The drug fentanyl is classified in Schedule II. Existing law prohibits a person from possessing for sale or purchasing for purposes of sale, specified controlled substances, including fentanyl, and provides for imprisonment in a county jail for 2, 3, or 4 years for a violation of this provision. Existing law also imposes an additional term upon a person who is convicted of a violation of, or of a conspiracy to violate, specified provisions of law with respect to a substance containing heroin, cocaine base, and cocaine, if the substance exceeds a specified weight. Existing law imposes a greater additional term under these provisions depending on the weight of the substance.

This bill would make the provisions imposing an additional term, as described above, applicable with respect to a substance containing fentanyl. By imposing additional incarceration costs on local agencies, 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.

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 11370.4 of the Health and Safety Code
2 is amended to read:
3 11370.4. (a) ~~Any~~(1) A person convicted of a violation of, or
4 of a conspiracy to violate, Section 11351, 11351.5, or 11352 with
5 respect to a substance containing heroin, *fentanyl*, cocaine base as
6 specified in paragraph (1) of subdivision (f) of Section 11054, or
7 cocaine as specified in paragraph (6) of subdivision (b) of Section
8 11055 shall receive an additional term as follows:
9 ~~(1)~~
10 (A) Where the substance exceeds one kilogram by weight, the
11 person shall receive an additional term of three years.
12 ~~(2)~~
13 (B) Where the substance exceeds four kilograms by weight,
14 the person shall receive an additional term of five years.
15 ~~(3)~~
16 (C) Where the substance exceeds 10 kilograms by weight, the
17 person shall receive an additional term of 10 years.
18 ~~(4)~~
19 (D) Where the substance exceeds 20 kilograms by weight, the
20 person shall receive an additional term of 15 years.
21 ~~(5)~~
22 (E) Where the substance exceeds 40 kilograms by weight, the
23 person shall receive an additional term of 20 years.
24 ~~(6)~~
25 (F) Where the substance exceeds 80 kilograms by weight, the
26 person shall receive an additional term of 25 years.
27 ~~The~~
28 (2) *The* conspiracy enhancements provided for in this
29 subdivision shall not be imposed unless the trier of fact finds that
30 the defendant conspirator was substantially involved in the
31 planning, direction, execution, or financing of the underlying
32 offense.

1 (b) ~~Any~~-(1) A person convicted of a violation of, or of
2 conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5
3 with respect to a substance containing methamphetamine,
4 amphetamine, phencyclidine (PCP) and its analogs shall receive
5 an additional term as follows:

6 ~~(1)~~

7 (A) Where the substance exceeds one kilogram by weight, or
8 30 liters by liquid volume, the person shall receive an additional
9 term of three years.

10 ~~(2)~~

11 (B) Where the substance exceeds four kilograms by weight, or
12 100 liters by liquid volume, the person shall receive an additional
13 term of five years.

14 ~~(3)~~

15 (C) Where the substance exceeds 10 kilograms by weight, or
16 200 liters by liquid volume, the person shall receive an additional
17 term of 10 years.

18 ~~(4)~~

19 (D) Where the substance exceeds 20 kilograms by weight, or
20 400 liters by liquid volume, the person shall receive an additional
21 term of 15 years.

22 ~~In~~

23 (2) *In* computing the quantities involved in this subdivision,
24 plant or vegetable material seized shall not be included.

25 ~~The~~

26 (3) *The* conspiracy enhancements provided for in this
27 subdivision shall not be imposed unless the trier of fact finds that
28 the defendant conspirator was substantially involved in the
29 planning, direction, execution, or financing of the underlying
30 offense.

31 (c) The additional terms provided in this section shall not be
32 imposed unless the allegation that the weight of the substance
33 containing heroin, *fentanyl*, cocaine base as specified in paragraph
34 (1) of subdivision (f) of Section 11054, cocaine as specified in
35 paragraph (6) of subdivision (b) of Section 11055,
36 methamphetamine, amphetamine, or phencyclidine (PCP) and its
37 analogs exceeds the amounts provided in this section is charged
38 in the accusatory pleading and admitted or found to be true by the
39 trier of fact.

1 (d) The additional terms provided in this section shall be in
2 addition to any other punishment provided by law.

3 (e) Notwithstanding any other ~~provision of~~ law, the court may
4 strike the additional punishment for the enhancements provided
5 in this section if it determines that there are circumstances in
6 mitigation of the additional punishment and states on the record
7 its reasons for striking the additional punishment.

8 SEC. 2. Section 11372 of the Health and Safety Code is
9 amended to read:

10 11372. (a) In addition to the term of imprisonment provided
11 by law for persons convicted of violating Section 11350, 11351,
12 11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial
13 court may impose a fine not exceeding twenty thousand dollars
14 (\$20,000) for each offense. In no event shall a fine be levied in
15 lieu of or in substitution for the term of imprisonment provided
16 by law for any of these offenses.

17 (b) Any person receiving an additional term pursuant to
18 *subparagraph (A) of paragraph (1) of subdivision (a) of Section*
19 *11370.4*, may, in addition, be fined by an amount not exceeding
20 one million dollars (\$1,000,000) for each offense.

21 (c) Any person receiving an additional term pursuant to
22 ~~paragraph (2) subparagraph (B) of paragraph (1) of subdivision~~
23 (a) of Section 11370.4, may, in addition, be fined by an amount
24 not to exceed four million dollars (\$4,000,000) for each offense.

25 (d) Any person receiving an additional term pursuant to
26 ~~paragraph (3) subparagraph (C) of paragraph (1) of subdivision~~
27 (a) of Section 11370.4, may, in addition, be fined by an amount
28 not to exceed eight million dollars (\$8,000,000) for each offense.

29 (e) The court shall make a finding, prior to the imposition of
30 the fines authorized by subdivisions (b) to (e), inclusive, that there
31 is a reasonable expectation that the fine, or a substantial portion
32 thereof, could be collected within a reasonable period of time,
33 taking into consideration the defendant's income, earning capacity,
34 and financial resources.

35 SEC. 3. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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