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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2369

Introduced by Assembly Members Wayne and Hertzberg
(~~Coauthor: Assembly Member Olberg~~)
(Coauthors: Assembly Members Cardoza, Escutia, Murray,
and Olberg)

February 20, 1998

An act to amend Sections—~~11374.5~~ 11370.4, 11374.5, and 11379.8 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2369, as amended, Wayne. Controlled substances: penalties.

Existing law requires that persons convicted of the unlawful possession for sale, transportation, importation, sale, furnishing, manufacture of, or certain related offenses involving methamphetamine, amphetamine, or phencyclidine (PCP) receive additional terms of imprisonment depending on the weight or volume of the substances.

This bill would delete the manufacture of methamphetamine, amphetamine, or PCP from the offenses specified for purposes of this provision.

Existing law requires any manufacturer of a controlled substance who is convicted of disposing of any hazardous substance that is a controlled substance or a chemical used in the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste to pay a penalty equal to the amount of the actual cost of any gross evidence removal of hazardous substances or hazardous waste that is incurred by an agency as a result of the illegal disposal.

This bill additionally would require any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law to pay a penalty equal to the amount of the actual cost incurred by any state or local agency to remove and dispose of the hazardous substance and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release.

Existing law imposes enhancements upon persons convicted of the unlawful manufacture of large quantities of methamphetamine, amphetamine, or phencyclidine (PCP), as determined by the weight or volume of the substances involved.

This bill would amend certain of these provisions setting forth enhancements to be imposed upon persons convicted of the unlawful manufacture of large quantities of methamphetamine, amphetamine, or phencyclidine (PCP), as determined by the weight or volume of the substances involved.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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

1 SECTION 1. *Section 11370.4 of the Health and Safety*
2 *Code is amended to read:*

3 11370.4. (a) Any person convicted of a violation of, or
4 of a conspiracy to violate, Section 11351, 11351.5, or 11352
5 with respect to a substance containing heroin, cocaine
6 base as specified in paragraph (1) of subdivision (f) of
7 Section 11054, or cocaine as specified in paragraph (6) of
8 subdivision (b) of Section 11055 shall receive an
9 additional term as follows:

10 (1) Where the substance exceeds one kilogram by
11 weight, the person shall receive an additional term of
12 three years.

13 (2) Where the substance exceeds four kilograms by
14 weight, the person shall receive an additional term of five
15 years.

16 (3) Where the substance exceeds 10 kilograms by
17 weight, the person shall receive an additional term of 10
18 years.

19 (4) Where the substance exceeds 20 kilograms by
20 weight, the person shall receive an additional term of 15
21 years.

22 (5) Where the substance exceeds 40 kilograms by
23 weight, the person shall receive an additional term of 20
24 years.

25 (6) Where the substance exceeds 80 kilograms by
26 weight, the person shall receive an additional term of 25
27 years.

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

33 (b) Any person convicted of a violation of, or of
34 conspiracy to violate, Section 11378, 11378.5, 11379, *or*
35 ~~11379.5, or 11379.6~~ with respect to a substance containing
36 methamphetamine, amphetamine, phencyclidine
37 (PCP) and its analogs shall receive an additional term as
38 follows:



1 (1) Where the substance exceeds one kilogram by
2 weight, or 30 liters by liquid volume, the person shall
3 receive an additional term of three years.

4 (2) Where the substance exceeds four kilograms by
5 weight, or 100 liters by liquid volume, the person shall
6 receive an additional term of five years.

7 (3) Where the substance exceeds 10 kilograms by
8 weight, or 200 liters by liquid volume, the person shall
9 receive an additional term of 10 years.

10 (4) Where the substance exceeds 20 kilograms by
11 weight, or 400 liters by volume, the person shall receive
12 an additional term of 15 years.

13 In computing the quantities involved in this
14 subdivision, plant or vegetable material seized shall not
15 be included.

16 The conspiracy enhancements provided for in this
17 subdivision shall not be imposed unless the trier of fact
18 finds that the defendant conspirator was substantially
19 involved in the planning, direction, execution, or
20 financing of the underlying offense.

21 (c) The additional terms provided in this section shall
22 not be imposed unless the allegation that the weight of
23 the substance containing heroin, cocaine base as specified
24 in paragraph (1) of subdivision (f) of Section 11054,
25 cocaine as specified in paragraph (6) of subdivision (b)
26 of Section 11055, methamphetamine, amphetamine, or
27 phencyclidine (PCP) and its analogs exceeds the
28 amounts provided in this section is charged in the
29 accusatory pleading and admitted or found to be true by
30 the trier of fact.

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

33 (e) Notwithstanding any other provision of law, the
34 court may strike the additional punishment for the
35 enhancements provided in this section if it determines
36 that there are circumstances in mitigation of the
37 additional punishment and states on the record its reasons
38 for striking the additional punishment.

39 SEC. 2. Section 11374.5 of the Health and Safety Code
40 is amended to read:



1 11374.5. (a) Any manufacturer of a controlled
2 substance who disposes of any hazardous substance that
3 is a controlled substance or a chemical used in, or is a
4 byproduct of, the manufacture of a controlled substance
5 in violation of any law regulating the disposal of
6 hazardous substances or hazardous waste is guilty of a
7 public offense punishable by imprisonment in the state
8 prison for two, three, or four years or in the county jail not
9 exceeding one year.

10 (b) (1) In addition to any other penalty or liability
11 imposed by law, a person who is convicted of violating
12 subdivision (a), or any person who is convicted of the
13 manufacture, sale, possession for sale, possession,
14 transportation, or disposal of any hazardous substance
15 that is a controlled substance or a chemical used in, or is
16 a byproduct of, the manufacture of a controlled substance
17 in violation of any law, shall pay a penalty equal to the
18 amount of the actual cost incurred by any state or local
19 agency to remove and dispose of the hazardous substance
20 that is a controlled substance or a chemical used in, or is
21 a byproduct of, the manufacture of a controlled substance
22 and to take removal action with respect to any release of
23 the hazardous substance or any items or materials
24 contaminated by that release. The court shall transmit all
25 penalties collected pursuant to this subdivision to the
26 county treasurer of the county in which the court is
27 located for deposit in a special account in the county
28 treasury. The county treasurer shall pay that money at
29 least once a month to the agency that incurred the cost
30 for the removal action. The county may retain up to 5
31 percent of any assessed penalty for appropriate and
32 reasonable administrative costs attributable to the
33 collection and disbursement of the penalty.

34 (2) If the Department of Toxic Substances Control has
35 incurred the cost of removing the hazardous substance
36 that is a controlled substance or a chemical used in, or is
37 a byproduct of, the manufacture of a controlled substance
38 or taking removal action with respect to any release of the
39 hazardous substance, the county treasurer shall transfer
40 funds in the amount of the penalty collected to the



1 Treasurer, who shall deposit the money in the Illegal
 2 Drug Lab Cleanup Account, which is hereby created in
 3 the General Fund in the State Treasury. The Department
 4 of Toxic Substances Control may expend the money in
 5 the Illegal Drug Lab Cleanup Account, upon
 6 appropriation by the Legislature, to cover the cost of
 7 taking removal actions pursuant to Section 25354.5.

8 (3) If a local agency and the Department of Toxic
 9 Substances Control have both incurred removal costs
 10 with respect to a hazardous substance that is a controlled
 11 substance or a chemical used in, or is a byproduct of, the
 12 manufacture of a controlled substance, the county
 13 treasurer shall apportion any penalty collected among
 14 the agencies involved in proportion to the costs incurred.

15 (c) As used in this section the following terms have the
 16 following meaning:

17 (1) “Dispose” means to abandon, deposit, intern, or
 18 otherwise discard as a final action after use has been
 19 achieved or a use is no longer intended.

20 (2) “Hazardous substance” has the same meaning as
 21 defined in Section 25316.

22 (3) “Hazardous waste” has the same meaning as
 23 defined in Section 25117.

24 (4) For purposes of this section, “remove” or
 25 “removal” has the same meaning as set forth in Section
 26 25323.

27 ~~SEC. 2.~~

28 *SEC. 3.* Section 11379.8 of the Health and Safety Code
 29 is amended to read:

30 11379.8. (a) Any person convicted of a violation of
 31 subdivision (a) of Section 11379.6, or of a conspiracy to
 32 violate subdivision (a) of Section 11379.6, with respect to
 33 any substance containing a controlled substance which is
 34 specified in paragraph (21), (22), or (23) of subdivision
 35 (d) of Section 11054, or in paragraph (1) or (2) of
 36 subdivision (d) or in paragraph (3) of subdivision (e) or
 37 in paragraph (2) of subdivision (f) of Section 11055 shall
 38 receive an additional term as follows:

39 (1) Where the substance exceeds three gallons of
 40 liquid by volume or one pound of solid substances by



1 weight, the person shall receive an additional term of
2 three years.

3 (2) Where the substance exceeds 10 gallons of liquid
4 by volume or three pounds of solid substance by weight,
5 the person shall receive an additional term of five years.

6 (3) Where the substance exceeds 25 gallons of liquid
7 by volume or 10 pounds of solid substance by weight, the
8 person shall receive an additional term of 10 years.

9 (4) Where the substance exceeds 105 gallons of liquid
10 by volume or 44 pounds of solid substance by weight, the
11 person shall receive an additional term of 15 years.

12 In computing the quantities involved in this
13 subdivision, plant or vegetable material seized shall not
14 be included.

15 (b) The additional terms provided in this section shall
16 not be imposed unless the allegation that the controlled
17 substance exceeds the amounts provided in this section is
18 charged in the accusatory pleading and admitted or
19 found to be true by the trier of fact.

20 (c) The additional terms provided in this section shall
21 be in addition to any other punishment provided by law.

22 (d) Notwithstanding any other provision of law, the
23 court may strike the additional punishment for the
24 enhancements provided in this section if it determines
25 that there are circumstances in mitigation of the
26 additional punishment and states on the record its reasons
27 for striking the additional punishment.

28 (e) The conspiracy enhancements provided for in this
29 section shall not be imposed unless the trier of fact finds
30 that the defendant conspirator was substantially involved
31 in the direction or supervision of, or in a significant
32 portion of the financing of, the underlying offense.

