

AMENDED IN SENATE APRIL 28, 2015

SENATE BILL

No. 212

Introduced by Senator Mendoza

February 11, 2015

An act to amend Section ~~11353.6~~ *11379.6* of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 212, as amended, Mendoza. Controlled substances: ~~enhanced penalties.~~ *factors in aggravation.*

Existing law, the Juvenile Drug Trafficking and Schoolyard Act of 1988, provides that any person 18 years of age or over who is convicted of specified drug offenses is subject to an additional punishment of 3, 4, or 5 years imprisonment, at the court's discretion, where the offense takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs. Existing law defines "within 1,000 feet of a public or private elementary, vocational, junior high, or high school," as a public area or business establishment where minors are legally permitted to conduct business that is located within 1,000 feet of a public or private elementary, vocational, junior high, or high school.

This bill would include a public or private preschool within the provisions described above. The bill would define "preschool" as a school for children under 6 years of age. The bill would delete the definition of "within 1,000 feet of a public or private elementary, vocational, junior high, or high school" described above, and instead define "within 1,000 feet of a public or private preschool, elementary,

vocational, junior high, or high school” as a public or private area that is located within 1,000 feet of a public or private preschool, elementary, vocational, junior high, or high school. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

Existing law makes it a felony, punishable by imprisonment in a county jail for 3, 5, or 7 years, to manufacture, compound, convert, produce, derive, process, or prepare by chemical extraction, or by means of chemical synthesis, any controlled substance. Existing law requires the sentencing court to consider the fact that a person under 16 years of age resided in a structure in which a violation of these provisions occurred as a factor in aggravation.

This bill would require the sentencing court to consider the fact that a violation involving methamphetamine occurred within 200 feet of an occupied residence as a factor in aggravation. The bill would also require the sentencing court to consider the fact that a violation of this section involving the use of a volatile solvent to chemically extract concentrated cannabis occurred within 300 feet of an occupied residence as a factor in aggravation. By increasing the punishment 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.
State-mandated local program: yes.

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

- 1 ~~SECTION 1. Section 11353.6 of the Health and Safety Code~~
- 2 ~~is amended to read:~~
- 3 ~~11353.6. (a) This section shall be known, and may be cited,~~
- 4 ~~as the Juvenile Drug Trafficking and Schoolyard Act of 1988.~~
- 5 ~~(b) Any person 18 years of age or over who is convicted of a~~
- 6 ~~violation of Section 11351.5, 11352, or 11379.6, as those sections~~
- 7 ~~apply to paragraph (1) of subdivision (f) of Section 11054, or of~~
- 8 ~~Section 11351, 11352, or 11379.6, as those sections apply to~~
- 9 ~~paragraph (11) of subdivision (c) of Section 11054, or of Section~~
- 10 ~~11378, 11379, or 11379.6, as those sections apply to paragraph~~
- 11 ~~(2) of subdivision (d) of Section 11055, or of a conspiracy to~~

1 ~~commit one of those offenses, where the violation takes place upon~~
2 ~~the grounds of, or within 1,000 feet of, a public or private~~
3 ~~preschool, elementary, vocational, junior high, or high school~~
4 ~~during hours that the school is open for classes or school-related~~
5 ~~programs, or at any time when minors are using the facility where~~
6 ~~the offense occurs, shall receive an additional punishment of three,~~
7 ~~four, or five years at the court's discretion.~~

8 ~~(c) Any person 18 years of age or older who is convicted of a~~
9 ~~violation pursuant to subdivision (b) which involves a minor who~~
10 ~~is at least four years younger than that person, as a full and~~
11 ~~separately served enhancement to that provided in subdivision (b),~~
12 ~~shall be punished by imprisonment pursuant to subdivision (h) of~~
13 ~~Section 1170 of the Penal Code for three, four, or five years at the~~
14 ~~court's discretion.~~

15 ~~(d) The additional terms provided in this section shall not be~~
16 ~~imposed unless the allegation is charged in the accusatory pleading~~
17 ~~and admitted or found to be true by the trier of fact.~~

18 ~~(e) The additional terms provided in this section shall be in~~
19 ~~addition to any other punishment provided by law and shall not~~
20 ~~be limited by any other provision of law.~~

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

26 ~~(g) For purposes of this section, the following definitions shall~~
27 ~~apply:~~

28 ~~(1) "Preschool" means a school for children under six years of~~
29 ~~age.~~

30 ~~(2) "Within 1,000 feet of a public or private preschool,~~
31 ~~elementary, vocational, junior high, or high school" means a public~~
32 ~~or private area that is located within 1,000 feet of a public or private~~
33 ~~preschool, elementary, vocational, junior high, or high school.~~

34 *SECTION 1. Section 11379.6 of the Health and Safety Code*
35 *is amended to read:*

36 11379.6. (a) Except as otherwise provided by law, every person
37 who manufactures, compounds, converts, produces, derives,
38 processes, or prepares, either directly or indirectly by chemical
39 extraction or independently by means of chemical synthesis, any
40 controlled substance specified in Section 11054, 11055, 11056,

1 11057, or 11058 shall be punished by imprisonment pursuant to
2 subdivision (h) of Section 1170 of the Penal Code for three, five,
3 or seven years and by a fine not exceeding fifty thousand dollars
4 (\$50,000).

5 (b) Except when an enhancement pursuant to Section 11379.7
6 is pled and proved, the fact that a person under 16 years of age
7 resided in a structure in which a violation of this section involving
8 methamphetamine occurred shall be considered a factor in
9 aggravation by the sentencing court.

10 (c) *The fact that a violation of this section involving*
11 *methamphetamine occurred within 200 feet of an occupied*
12 *residence or any structure where another person was present at*
13 *the time the offense was committed shall be considered a factor*
14 *in aggravation by the sentencing court.*

15 (d) *The fact that a violation of this section involving the use of*
16 *a volatile solvent to chemically extract concentrated cannabis*
17 *occurred within 300 feet of an occupied residence or any structure*
18 *where another person was present at the time the offense was*
19 *committed shall be considered a factor in aggravation by the*
20 *sentencing court.*

21 ~~(e)~~

22 (e) Except as otherwise provided by law, every person who
23 offers to perform an act which is punishable under subdivision (a)
24 shall be punished by imprisonment pursuant to subdivision (h) of
25 Section 1170 of the Penal Code for three, four, or five years.

26 ~~(f)~~

27 (f) All fines collected pursuant to subdivision (a) shall be
28 transferred to the State Treasury for deposit in the Clandestine
29 Drug Lab Clean-up Account, as established by Section 5 of Chapter
30 1295 of the Statutes of 1987. The transmission to the State Treasury
31 shall be carried out in the same manner as fines collected for the
32 state by the county.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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