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HEALTH AND SAFETY CODE - HSC

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651] (*Division 10 repealed and added by Stats. 1972, Ch. 1407.*)

CHAPTER 6. Offenses and Penalties [11350 - 11395] (*Chapter 6 added by Stats. 1972, Ch. 1407.*)

ARTICLE 5. Offenses Involving Controlled Substances Formerly Classified as Restricted Dangerous Drugs [11377 - 11382.5] (*Heading of Article 5 amended by Stats. 1973, Ch. 1078.*)

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) The judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(c) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(d) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

(Amended (as amended by Proposition 47) by Stats. 2017, Ch. 269, Sec. 6. (SB 811) Effective January 1, 2018. Note: This section was amended on Nov. 4, 2014, by initiative Prop. 47.)

11377.5. (a) Except as otherwise provided in this division, every person who possesses any controlled substance specified in paragraph (11) of subdivision (c) of, or subdivision (g) of, Section 11056 of this code, or paragraph (13) of subdivision (d) of Section 11057 of this code, with the intent to commit sexual assault, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) For purposes of this section, "sexual assault" means conduct in violation of Section 243.4, 261, 262, 286, 287, or 289 of, or former Section 288a of, the Penal Code.

(Amended by Stats. 2018, Ch. 423, Sec. 36. (SB 1494) Effective January 1, 2019.)

11378. Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:

(1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.

(2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d).

(3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.

(4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.

(5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.

(Amended by Stats. 2013, Ch. 76, Sec. 110. (AB 383) Effective January 1, 2014.)

11378.5. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale phencyclidine or any analog or any precursor of phencyclidine which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) or in subdivision (f), except subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

(Amended by Stats. 2011, Ch. 15, Sec. 173. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, "transports" means to transport for sale.

(d) Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory, accessory theory, or a conspiracy theory.

(Amended by Stats. 2014, Ch. 54, Sec. 8. (SB 1461) Effective January 1, 2015.)

11379.2. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale or sells any controlled substance specified in subdivision (g) of Section 11056 shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

(Added by Stats. 1991, Ch. 294, Sec. 5.)

11379.5. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport phencyclidine or any of its analogs which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055, or its precursors as specified in subparagraph (A) or (B) of paragraph (2) of subdivision (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, "transport" means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

(Amended by Stats. 2015, Ch. 77, Sec. 2. (AB 730) Effective January 1, 2016.)

11379.6. (a) Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, five, or seven years and by a fine not exceeding fifty thousand dollars (\$50,000).

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

(c) Except when an enhancement pursuant to Section 11379.7 is pled and proved, the fact that a violation of this section involving methamphetamine occurred within 200 feet of an occupied residence or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court.

(d) 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 or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court.

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

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

(Amended by Stats. 2015, Ch. 141, Sec. 1. (SB 212) Effective January 1, 2016.)

11379.7. (a) Except as provided in subdivision (b), any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of two years in the state prison.

(b) Any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, where the commission of the crime causes any child under 16 years of age to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of five years in the state prison.

(c) As used in this section, "structure" means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment.

(d) As used in this section, "great bodily injury" has the same meaning as defined in Section 12022.7 of the Penal Code.

(Added by Stats. 1996, Ch. 871, Sec. 1. Effective January 1, 1997.)

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

(1) Where the substance exceeds three gallons of liquid by volume or one pound of solid substances by weight, the person shall receive an additional term of three years.

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

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

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

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

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

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

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

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

(Amended by Stats. 1998, Ch. 425, Sec. 3. Effective January 1, 1999.)

11379.9. (a) Except as provided by Section 11379.7, any person convicted of a violation of, or of an attempt to violate, subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice, shall, in addition and consecutive to any other punishment authorized by law, be punished by an additional term of one year in the state prison for each death or injury.

(b) Nothing in this section shall preclude prosecution under both this section and Section 187, 192, or 12022.7, or any other provision of law. However, a person who is punished under another provision of law for causing death or great bodily injury as described in subdivision (a) shall not receive an additional term of imprisonment under this section.

(Amended by Stats. 1998, Ch. 936, Sec. 2. Effective September 28, 1998.)

11380. (a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, specified in paragraph (2) or (3) or subdivision (f) of Section 11054, or specified in subdivision (d), (e), or (f) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving those controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

(b) Nothing in this section applies to a registered pharmacist furnishing controlled substances pursuant to a prescription.

(Amended by Stats. 2001, Ch. 841, Sec. 8. Effective January 1, 2002.)

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, 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, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

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

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

(Amended by Stats. 1993, Ch. 556, Sec. 3.5. Effective January 1, 1994.)

11380.7. (a) Notwithstanding any other provision of law, any person who is convicted of trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), or of a conspiracy to commit trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), in addition to the punishment imposed for the conviction, shall be imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code for an additional one year if the violation occurred upon the grounds of, or within 1,000 feet of, a drug treatment center, detoxification facility, or homeless shelter.

(b) (1) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(2) The additional punishment provided in this section shall not be imposed if any other additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

(c) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment. In determining whether or not to strike the additional punishment, the court shall consider the following factors and any relevant factors in aggravation or mitigation in Rules 4.421 and 4.423 of the California Rules of Court.

(1) The following factors indicate that the court should exercise its discretion to strike the additional punishment unless these factors are outweighed by factors in aggravation:

(A) The defendant is homeless, or is in a homeless shelter or transitional housing.

(B) The defendant lacks resources for the necessities of life.

(C) The defendant is addicted to or dependent on controlled substances.

(D) The defendant's motive was merely to maintain a steady supply of drugs for personal use.

(E) The defendant was recruited or exploited by a more culpable person to commit the crime.

(2) The following factors indicate that the court should not exercise discretion to strike the additional punishment unless these factors are outweighed by factors in mitigation:

(A) The defendant, in committing the crime, preyed on homeless persons, persons with substance use disorder, or substance abusers who were seeking treatment, shelter or transitional services.

(B) The defendant's primary motive was monetary compensation.

(C) The defendant induced others, particularly homeless persons, persons with substance use disorder, and substance abusers, to become involved in trafficking.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Detoxification facility" means any premises, place, or building in which 24-hour residential nonmedical services are provided to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(2) "Drug treatment program" or "drug treatment" has the same meaning set forth in subdivision (b) of Section 1210 of the Penal Code.

(3) "Homeless shelter" includes, but is not limited to, emergency shelter housing, as well as transitional housing, but does not include domestic violence shelters. "Emergency shelter housing" is housing with minimal support services for homeless persons in which residency is limited to six months or less and is not related to the person's ability to pay. "Transitional housing" means

housing with supportive services, including self-sufficiency development services, which is exclusively designed and targeted to help recently homeless persons find permanent housing as soon as reasonably possible, limits residency to 24 months, and in which rent and service fees are based on ability to pay.

(4) "Trafficking" means any of the unlawful activities specified in Sections 11351, 11351.5, 11352, 11353, 11354, 11378, 11379, 11379.6, and 11380. It does not include simple possession or drug use.

(Amended by Stats. 2023, Ch. 21, Sec. 12. (AB 1130) Effective January 1, 2024.)

11381. As used in this article "felony offense" and offense "punishable as a felony" refer to an offense prior to October 1, 2011, for which the law prescribes imprisonment in the state prison, or for an offense on or after October 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

(Amended (as amended by Stats. 2011, Ch. 15) by Stats. 2011, Ch. 39, Sec. 3. (AB 117) Effective June 30, 2011. Operative October 1, 2011, pursuant to Secs. 68 and 69 of Ch. 39.)

11382. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (a) classified in Schedule III, IV, or V and which is not a narcotic drug, or (b) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(Amended by Stats. 2011, 1st Ex. Sess., Ch. 12, Sec. 5. (AB 17 1x) Effective September 21, 2011. Operative October 1, 2011, by Sec. 46 of Ch. 12.)

11382.5. All controlled substances in Schedules I, II, III, IV, and V, in solid or capsule form, except for such controlled substances in the possession or inventory of a wholesaler, retailer, or pharmacist on January 1, 1975, shall not be sold, furnished, or distributed in this state unless they have on the controlled substance if in solid form, or on the capsule if in capsule form, an identifying device, insignia, or mark of the manufacturer of such controlled substance. However, the exception for such controlled substances in the possession or inventory of a wholesaler, retailer, or pharmacist shall not be available to any wholesaler, retailer, or pharmacist under the control or jurisdiction of a manufacturer of controlled substances.

This section shall not apply to a pharmacist who, in accordance with applicable state law, compounds such controlled substance in the course of his practice as a pharmacist for direct dispensing by him upon a prescription of any person licensed to prescribe such controlled substances.

(Added by Stats. 1974, Ch. 926.)