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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 UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651] (*Division 10 repealed and added by Stats. 1972, Ch. 1407.*)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 8. Treatment-Mandated Felony [11395- 11395.] (*Article 8 added November 5, 2024, by initiative Proposition 36, Sec. 7.*)

11395. (a) This article shall be known and cited as the Treatment-Mandated Felony Act.

(b) (1) Notwithstanding any other law, and except as provided in subdivision (d), a person described in subdivision (c) who possesses a hard drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. A second or subsequent conviction of this section, is punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(2) A person shall not be sentenced to jail or prison pursuant to this section unless a court determines that the person is not eligible or suitable for treatment or that any other circumstance described in paragraph (4) of subdivision (d) applies to that person.

(c) Subdivision (b) applies to a person who has two or more prior convictions for a felony or misdemeanor violation of Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11370.1, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11395, including a conviction that occurred before the effective date of this section. Prior convictions shall be alleged in the accusatory pleading, and either admitted by the defendant in open court or found to be true by the trier of fact.

(d) (1) (A) In lieu of a jail or prison sentence, or a grant of probation with jail as a condition of probation, a defendant charged with a violation of this section may elect treatment by pleading guilty or no contest to a violation of this section and admitting the alleged prior convictions, waiving time for sentencing and the pronouncement of judgment, and agreeing to participate in, and complete, a detailed treatment program developed by a drug addiction expert and approved by the court. A defendant's plea of guilty or no contest shall not constitute a conviction for any purpose unless judgment is entered pursuant to paragraph (4) for a violation of this section.

(B) Upon or subsequent to arraignment for a violation of this section, and at the request or with the consent of the defendant or their attorney, the court shall order a drug addiction expert to conduct a substance abuse and mental health evaluation of the defendant. The expert shall submit a report of the evaluation to the court and parties. The evaluation may be based on an interview of the defendant or other individuals with relevant knowledge and review of records the expert deems appropriate, including medical records, criminal history, prior treatment history, and records pertaining to the current offense. If the defendant participates in the interview, neither the defendant's interview nor evidence derived from the interview may be used against the defendant at any subsequent trial for the instant offense except for the purposes of impeachment should the defendant testify inconsistently. The evaluation shall detail the defendant's drug abuse or mental health issues, if any, so the court and parties may better determine appropriate handling of the defendant's case.

(C) Concurrent with the order for a substance abuse and mental health evaluation of the defendant, and with the defendant's consent, the court shall also order that a case worker or other qualified individual determine whether the defendant is eligible to receive Medi-Cal, Medicare, or any other relevant benefits for any programs or evaluations under this section. If the defendant did not previously consent to an eligibility determination at arraignment, the court shall order the eligibility determination upon and as a condition of the defendant's agreement to participate in and complete a treatment program as described in this subdivision.

(2) A treatment program may include, but is not limited to, drug treatment, mental health treatment, job training, and any other conditions related to treatment or a successful outcome for the defendant that the court finds appropriate. The court must hold

regular hearings to review the progress of the defendant. The court shall make referrals to programs that provide services at no cost to the participant and have been deemed by the court, the drug addiction expert, and the parties to be credible and effective. A defendant may also choose to pay for a program that is approved by the court.

(3) Upon the defendant's successful completion of the treatment program as specified in paragraph (2), the positive recommendation of the treatment program, and the motion of the defendant, prosecuting attorney, the court, or the probation department, the court shall dismiss this charge against the defendant and the provisions of Section 1000.4 of the Penal Code, as it read on the effective date of this section, shall apply, including the provision that the arrest upon which the defendant was deferred shall be deemed to have never occurred. A dismissal based on the successful completion of treatment shall not count as a conviction for any purpose, including for determining punishment pursuant to subdivision (b).

(4) If at any time it appears that the defendant is performing unsatisfactorily in the program, is not benefiting from treatment, is not amenable to treatment, has refused treatment, or has been convicted of a crime that was committed since starting treatment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment and sentencing. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered and the defendant sentenced. Judgment shall be imposed and the defendant sentenced if the court finds true one or more of the foregoing circumstances. However, except when the defendant has been found to have been convicted of a crime that was committed since starting treatment, the court may rerefer the defendant to treatment if the court finds that it is in the interest of justice to do so, that the defendant is currently amenable to treatment, and if the defendant agrees to participate in, and complete, a treatment program as described in this section.

(5) For time spent in residential treatment, a defendant may earn only actual credits pursuant to Section 2900.5 of the Penal Code and shall not earn conduct credits pursuant to Section 4019 of the Penal Code or any other provision. Time spent in any other type of program or counseling is not eligible for any credits.

(e) (1) Except as provided in paragraph (2), as used in this section, "hard drug" means a substance listed in Section 11054 or 11055, including a substance containing fentanyl, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine, and the analogs of any of these substances as defined in Sections 11400 and 11401.

(2) As used in this section, "hard drug" does not include cannabis, cannabis products, peyote, lysergic acid diethylamide (LSD), other psychedelic drugs, including mescaline and psilocybin (mushrooms), any other substance listed in subdivisions (d) and (e) of Section 11054, or, with the exception of methamphetamine, any other substance listed in subdivision (d) of Section 11055.

(f) Upon an arrest for a violation of this section, the court shall require judicial review prior to release to make an individualized determination of risk to public safety and likelihood to return to court.

(g) This section shall not be construed to preclude prosecution or punishment pursuant to any other law.

(Added November 5, 2024, by initiative Proposition 36, Sec. 7. Effective December 18, 2024. Approved in Proposition 36 at the November 5, 2024, election.)