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SB-73 Probation: eligibility: crimes relating to controlled substances. (2021-2022)

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Senate Bill No. 73

CHAPTER 537

An act to amend Section 11370 of the Health and Safety Code, and to amend Section 29820 of, to repeal Section 1203.073 of, and to repeal and add Section 1203.07 of, the Penal Code, relating to probation.

[Approved by Governor October 05, 2021. Filed with Secretary of State October 05, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 73, Wiener. Probation: eligibility: crimes relating to controlled substances.

Existing law prohibits granting probation or suspending a sentence for persons convicted of specified crimes relating to controlled substances, including possessing or agreeing to sell or transport opiates or opium derivatives, possessing or transporting cannabis, planting or cultivating peyote, and various crimes relating to forging or altering prescriptions, among other crimes, if the person has previously been convicted of any one of specified felony offenses relating to controlled substances. Existing law also prohibits granting probation or suspending a sentence for persons convicted of specified crimes relating to controlled substances, including possessing for sale or selling 14.25 grams or more of a substance containing heroin and possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or its analogs, among other crimes.

This bill would delete various crimes relating to controlled substances, including, but not limited to, the crimes described above, from those prohibitions against granting probation or a suspended sentence. The bill would authorize the remaining prohibitions on probation to be waived by a court in the interests of justice. By making additional persons eligible for probation, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11370 of the Health and Safety Code is amended to read:

11370. (a) A person convicted of violating Section 11353 or 11361, or of committing an offense referred to in those sections, shall not, except as provided in subdivision (e), be granted probation by the trial court or have the execution of the sentence suspended by the court, if the person has been previously convicted of an offense described in subdivision (c).

(b) A person who was 18 years of age or older at the time of the commission of the offense and is convicted for the first time of selling, furnishing, administering, or giving a controlled substance that is (1) specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) that is a narcotic drug classified in Schedule III, IV, or V, to a minor or inducing a minor to use the controlled substance in violation of law shall not, except as provided in subdivision (e), be granted probation by the trial court or have the execution of the sentence suspended by the court.

(c) A previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States that, if committed in this state, would have been punishable as that offense, shall render a person ineligible for probation or suspension of sentence pursuant to subdivision (a):

(1) A felony offense described in this division involving a controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(2) A felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

(d) The existence of a previous conviction or fact that would make a person ineligible for suspension of sentence or probation under this section shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) A person who is made ineligible for probation pursuant to this section may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted pursuant to this subdivision, the court shall specify on the record the circumstances supporting the finding.

SEC. 2. Section 1203.07 of the Penal Code is repealed.

SEC. 3. Section 1203.07 is added to the Penal Code, to read:

1203.07. (a) Notwithstanding Section 1203 and except as provided in subdivision (c), probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, either of the following:

(1) A person who is convicted of violating Section 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture, compound, or sell a controlled substance specified in subdivision (d) of Section 11054 of the Health and Safety Code, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), or specified in subdivision (d), (e), or (f) of Section 11055 of the Health and Safety Code, except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f) of Section 11055 of the Health and Safety Code.

(2) A person who is convicted of violating Section 11380 of the Health and Safety Code by using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Section 11378.5, 11379.5, or 11379.6 of the Health and Safety Code insofar as the violation relates to phencyclidine or any of its analogs or precursors.

(b) The existence of a fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) A person who is made ineligible for probation pursuant to this section may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted pursuant to this subdivision, the court shall specify on the record and shall enter into the minutes the circumstances supporting the finding.

SEC. 4. Section 1203.073 of the Penal Code is repealed.

SEC. 5. Section 29820 of the Penal Code is amended to read:

29820. (a) This section applies to a person who satisfies both of the following requirements:

(1) The person meets one of the following:

(A) The person is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(B) The person was convicted of violating Section 11351 or 11351.5 of the Health and Safety Code by possessing for sale, or Section 11352 of the Health and Safety Code by selling, a substance containing 28.5 grams or more of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of, or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of, the Health and Safety Code, or 57 grams or more of a substance containing at least 5 grams of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of, or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of, the Health and Safety Code.

(C) The person was convicted of violating Section 11378 of the Health and Safety Code by possessing for sale, or Section 11379 of the Health and Safety Code by selling, a substance containing 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine.

(D) The person was convicted of violating subdivision (a) of Section 11379.6 of the Health and Safety Code, except those who manufacture phencyclidine, or who is convicted of an act that is punishable under subdivision (b) of Section 11379.6 of the Health and Safety Code, except those who offer to perform an act that aids in the manufacture of phencyclidine.

(E) Except as otherwise provided in Section 1203.07, the person was convicted of violating Section 11353 or 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or methamphetamine.

(F) The person was convicted of violating Section 11379.6, 11382, or 11383 of the Health and Safety Code with respect to methamphetamine, if the person has one or more prior convictions for a violation of Section 11378, 11379, 11379.6, 11380, 11382, or 11383 of the Health and Safety Code with respect to methamphetamine.

(G) The person was alleged to have committed an offense enumerated in Section 29805 or an offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.

(2) The person is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in paragraph (1).

(b) A person described in subdivision (a) shall not own, or have in possession or under custody or control, a firearm until the person is 30 years of age or older.

(c) A violation of this section shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this section may be used to determine eligibility to acquire a firearm.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.