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AB-701 Controlled substances: fentanyl. (2023-2024)

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Assembly Bill No. 701

CHAPTER 540

An act to amend Sections 11370.4 and 11372 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 701, Villapudua. Controlled substances: fentanyl.

Existing law classifies controlled substances into 5 schedules and places the greatest restrictions and penalties on the use of those substances placed in Schedule I. Existing law classifies the drug fentanyl in Schedule II. Existing law prohibits a person from possessing for sale or purchasing for purposes of sale specified controlled substances, including fentanyl, and provides for imprisonment in a county jail for 2, 3, or 4 years for a violation of this provision. Existing law also imposes an additional term, and authorizes a trial court to impose a specified fine, upon a person who is convicted of a violation of, or of a conspiracy to violate, specified provisions of law with respect to a substance containing heroin, cocaine base, and cocaine, if the substance exceeds a specified weight.

This bill would add fentanyl to the substances for which additional terms or fines can be imposed and would require a defendant who violates those laws with respect to a substance containing heroin, fentanyl, or cocaine, as specified, to know of the substance's nature or character as a controlled substance to be subjected to an additional term and authorized fine. By increasing the penalty for, and by changing the definition of, a crime, 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 no reimbursement is required by this act for a specified reason.

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

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

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

11370.4. (a) (1) A person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, fentanyl, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, when the person knew of the substance's nature or character as a controlled substance, shall receive an additional term as follows:

(A) If the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

- (B) If the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.
- (C) If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.
- (D) If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.
- (E) If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.
- (F) If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

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

(b) (1) A person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional term as follows:

- (A) If the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.
- (B) If the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.
- (C) If the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.
- (D) If the substance exceeds 20 kilograms by weight, or 400 liters by liquid volume, the person shall receive an additional term of 15 years.

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

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

(c) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, fentanyl, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs 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.

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

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

SEC. 2. Section 11372 of the Health and Safety Code is amended to read:

11372. (a) In addition to the term of imprisonment provided by law for persons convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial court may impose a fine not exceeding twenty thousand dollars (\$20,000) for each offense. A fine shall not be levied in lieu of or in substitution for the term of imprisonment provided by law for any of these offenses.

(b) A person receiving an additional term pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not exceeding one million dollars (\$1,000,000) for each offense.

(c) A person receiving an additional term pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed four million dollars (\$4,000,000) for each offense.

(d) A person receiving an additional term pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed eight million dollars (\$8,000,000) for each offense.

(e) The court shall make a finding, prior to the imposition of the fines authorized by subdivisions (b) through (d), inclusive, that there is a reasonable expectation that the fine, or a substantial portion thereof, could be collected within a reasonable period of time, taking into consideration the defendant's income, earning capacity, and financial resources.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.