

City of Sacramento  
State Legislature

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B I L L R E F E R R A L

DATE: JAN 23 1990 COMMITTEE ACTION: \_\_\_\_\_

TO: Chief Kearns DATE: \_\_\_\_\_

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: FEB 6 1990

A.B. \_\_\_\_\_, As Amended \_\_\_\_\_ \* Author \_\_\_\_\_

S.B. 1751, As Amended 1-8-90 \* Author Russell

\*Date of introduction or latest amendment

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. \_\_\_\_\_.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).

See attached sheet.

2. This measure should be: (Please circle desired position)

Supported                      Opposed                      Supported if Amended  
Placed on Watch List                      Other (explain)

3. Please explain your reasons for the above determination, including how this measure effects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials. (Continue on next page or attach additional sheets if necessary.)

Enhanced sentences, prohibiting plea bargains and probation, and ineligibility for parole would decrease...

(Continue answer to Question No. 3 here)

activity occurring near local youth.

There would be no fiscal impact on the City of Sacramento.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

Unknown

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

Amendment of "within 1,000 feet of a school bus" to "within 1,000 feet of a stationary in-service school bus" would enhance enforceability.

The addition of provisions for violations occurring within 1,000 feet of a playground, youth center, or a public pool would more closely parallel existing federal law (21 USC 845a).

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

Lists of supporters and those opposed to the bill are not available at this time.

7. Does this bill involve a State-mandated local program? If so, does the bill contain a State-mandated waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

No State-mandated program

No appropriation

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento? 9

FORM COMPLETED BY: BEVERLY STAFFORD, ADMIN. ANALYST II DATE: 1/31/90

S.B. 1751, as amended 1/8/90

Author: Senator Russell

BILL ANALYSIS (Continued)

1. The Juvenile Drug Trafficking and Schoolyard Act of 1988 provides for an additional term of imprisonment in the State Prison of 3, 4 or 5 years at the courts discretion for any person 18 years or older who is convicted of specified controlled substance offenses where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high school, or high school. Existing law also provides for enhanced separately served sentences of 3, 4 or 5 years for any person 18 years or older who is convicted of these offenses where the violation involves a minor at least 4 years younger than the defendant.

Senate Bill 1751 expands current provisions to include violations of specified controlled substance offenses which take place within 1,000 feet of a school bus, on a school bus, or on the grounds of any public or private elementary, vocational, junior high or high school.

The proposed legislation would prohibit plea bargaining in these cases and prohibit the granting of probation to any person who has received an additional sentence pursuant to the provisions of the Juvenile Drug Trafficking and Schoolyard Act of 1988.

Defendants shall also be ineligible for parole during any and all of a sentence imposed under these provisions.

**Introduced by Senator Russell**

**January 8, 1990**

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An act to amend Section 11353.6 of the Health and Safety Code, and to amend Sections 1192.7 and 1203.07 of the Penal Code, relating to controlled substances.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1751, as introduced, Russell. Controlled substances: Juvenile Drug Trafficking and Schoolyard Act of 1988.

Existing law, the Juvenile Drug Trafficking and Schoolyard Act of 1988, provides for an additional term of imprisonment in the state prison of 3, 4, or 5 years at the court's discretion for any person 18 years of age or older who is convicted of specified controlled substances offenses where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high school, or high school. Existing law also provides that any person 18 years of age or older who is convicted of these offenses where the violation involves a minor who is at least 4 years younger than that person shall also be punished by an additional full and separately served sentence enhancement of 3, 4, or 5 years at the court's discretion.

This bill would expand these provisions to include violations of the specified controlled substances offenses which take place within 1,000 feet of a school bus or while on any school bus, and would specify that the grounds of a public or private elementary, vocational, junior high school, or high school include those owned by, or leased to, that entity. Additionally, the bill would prohibit plea bargaining in any case in which the information or indictment alleges facts which could result in an enhancement pursuant to these provisions and would prohibit the granting of probation to any person who has received an additional sentence pursuant to these provisions.

It would further provide that the defendant shall be ineligible for parole during any and all of a sentence imposed under these provisions. Because the provisions relating to plea bargaining provide that they shall not be amended by the Legislature except by a statute passed in each house by a rollcall vote entered in the journal,  $\frac{2}{3}$  of the membership concurring, or by a statute that becomes effective only when approved by the electors, this bill would require a  $\frac{2}{3}$  rollcall vote of the membership of each house.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 11353.6 of the Health and Safety
- 2 Code is amended to read:
- 3 11353.6. (a) This section shall be known and may be
- 4 cited as the Juvenile Drug Trafficking and Schoolyard
- 5 Act of 1988.
- 6 (b) Any person 18 years of age or over who is
- 7 convicted of a violation of Section 11351.5 or of Section
- 8 11352 or 11379.6, as those sections apply to paragraph (1)
- 9 of subdivision (f) of Section 11054 or a conspiracy to
- 10 commit such offense, where such violation takes
- 11 upon the grounds of, or within 1,000 feet of, a public
- 12 private elementary, vocational, junior high school, or
- 13 high school, or within 1,000 feet of a school bus or while
- 14 on any school bus, shall receive an additional punishment
- 15 of ~~3, 4~~ three, four, or ~~5~~ five years at the court's discretion.
- 16 (c) Any person 18 years of age or older who is
- 17 convicted of a violation pursuant to subdivision (b) which
- 18 involves a minor who is at least four years younger than
- 19 that person shall, as a full and separately served
- 20 enhancement to that provided in subdivision (b), be
- 21 punished by imprisonment in the state prison for ~~3, 4~~
- 22 three, four, or ~~5~~ five years at the court's discretion.
- 23 (d) The additional terms provided in this section shall
- 24 not be imposed unless the allegation is charged in the
- 25 accusatory pleading and admitted or found to be true by
- 26 the trier of fact.

1 (e) The additional terms provided in this section shall  
2 be in addition to any other punishment provided by law  
3 and shall not be limited by any other provision of law.

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

10 (g) A defendant shall be ineligible for parole during  
11 any and all of a sentence imposed as a result of a violation  
12 of this section and shall also be ineligible to receive any  
13 credits under Article 2.5 (commencing with Section  
14 2930) of Chapter 7 of Title 1 of Part 3 to reduce that  
15 sentence.

16 (h) For purposes of this section, "grounds of a public  
17 or private elementary, vocational, junior high school, or  
18 high school" include property owned by, or leased to,  
19 that entity.

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for

20 SEC. 2. Section 1192.7 of the Penal Code is amended  
21 to read:

or

22 1192.7. (a) Plea bargaining in any case in which the  
23 indictment or information charges any serious felony, any  
24 felony in which it is alleged that a firearm was personally  
25 used by the defendant, or any offense of driving while  
26 under the influence of alcohol, drugs, narcotics, or any  
27 other intoxicating substance, or any combination thereof,  
28 or in which the information or indictment alleges facts  
29 which could result in an enhancement pursuant to  
30 Section 11353.6 of the Health and Safety Code, is  
31 prohibited, unless there is insufficient evidence to prove  
32 the people's case, or testimony of a material witness  
33 cannot be obtained, or a reduction or dismissal would not  
34 result in a substantial change in sentence.

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35 (b) As used in this section "plea bargaining" means  
36 any bargaining, negotiation, or discussion between a  
37 criminal defendant, or his or her counsel, and a  
38 prosecuting attorney or judge, whereby the defendant  
39 agrees to plead guilty or nolo contendere, in exchange for  
40 any promises, commitments, concessions, assurances, or

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1 consideration by the prosecuting attorney or judge  
2 relating to any charge against the defendant or to the  
3 sentencing of the defendant.

4 (c) As used in this section, "serious felony" means any  
5 of the following:

6 (1) Murder or voluntary manslaughter; (2) mayhem;  
7 (3) rape; (4) sodomy by force, violence, duress, menace,  
8 threat of great bodily injury, or fear of immediate and  
9 unlawful bodily injury on the victim or another person;  
10 (5) oral copulation by force, violence, duress, menace,  
11 threat of great bodily injury, or fear of immediate and  
12 unlawful bodily injury on the victim or another person;  
13 (6) lewd or lascivious act on a child under the age of 14  
14 years; (7) any felony punishable by death or  
15 imprisonment in the state prison for life; (8) any other  
16 felony in which the defendant personally inflicts great  
17 bodily injury on any person, other than an accomplice, or  
18 any felony in which the defendant personally uses a  
19 firearm; (9) attempted murder; (10) assault with intent  
20 to commit rape or robbery; (11) assault with a deadly  
21 weapon or instrument on a peace officer; (12) assault by  
22 a life prisoner on a noninmate; (13) assault with a deadly  
23 weapon by an inmate; (14) arson; (15) exploding a  
24 destructive device or any explosive with intent to injure  
25 (16) exploding a destructive device or any explosive  
26 causing great bodily injury or mayhem; (17) exploding a  
27 destructive device or any explosive with intent to  
28 murder; (18) burglary of an inhabited dwelling house, or  
29 trailer coach as defined by the Vehicle Code, or inhabited  
30 portion of any other building; (19) robbery or bank  
31 robbery; (20) kidnapping; (21) holding of a hostage by a  
32 person confined in a state prison; (22) attempt to commit  
33 a felony punishable by death or imprisonment in the state  
34 prison for life; (23) any felony in which the defendant  
35 personally used a dangerous or deadly weapon; (24)  
36 selling, furnishing, administering, giving, or offering to  
37 sell, furnish, administer, or give to a minor any heroin,  
38 cocaine, phencyclidine (PCP), or any  
39 methamphetamine-related drug, as described in  
40 paragraph (2) of subdivision (d) of Section 11055 of the

1 Health and Safety Code, or any of the precursors of  
2 methamphetamines, as described in subparagraph (A) of  
3 paragraph (1) of subdivision (f) of Section 11055 or  
4 subdivision (a) of Section 11100 of the Health and Safety  
5 Code; (25) any violation of subdivision (a) of Section 289  
6 where the act is accomplished against the victim's will by  
7 force, violence, duress, menace, or fear of immediate and  
8 unlawful bodily injury on the victim or another person;  
9 (26) grand theft involving a firearm; (27) any attempt to  
10 commit a crime listed in this subdivision other than an  
11 assault.

12 (d) As used in this section, "bank robbery" means to  
13 take or attempt to take, by force or violence, or by  
14 intimidation from the person or presence of another any  
15 property or money or any other thing of value belonging  
16 to, or in the care, custody, control, management, or  
17 possession of, any bank, credit union, or any savings and  
18 loan association.

19 As used in this subdivision, the following terms have  
20 the following meanings:

21 (1) "Bank" means any member bank of the Federal  
22 Reserve System, and any bank, banking association, trust  
23 company, savings bank, or other banking institution  
24 organized or operating under the laws of the United  
25 States, and any bank the deposits of which are insured by  
26 the Federal Deposit Insurance Corporation.

27 (2) "Savings and loan association" means any federal  
28 savings and loan association and any "insured institution"  
29 as defined in Section 401 of the National Housing Act, as  
30 amended, and any federal credit union as defined in  
31 Section 2 of the Federal Credit Union Act.

32 (3) "Credit union" means any federal credit union and  
33 any state-chartered credit union the accounts of which  
34 are insured by the Administrator of the National Credit  
35 Union Administration.

36 (e) The provisions of this section shall not be amended  
37 by the Legislature except by statute passed in each house  
38 by rollcall vote entered in the journal, two-thirds of the  
39 membership concurring, or by a statute that becomes  
40 effective only when approved by the electors.

1 SEC. 3. Section 1203.07 of the Penal Code is amended  
2 to read:

3 1203.07. (a) Notwithstanding Section 1203, probation  
4 shall not be granted to, nor shall the execution or  
5 imposition of sentence be suspended for, any of the  
6 following persons:

7 (1) Any person who is convicted of violating Section  
8 11351 of the Health and Safety Code by possessing for sale  
9 14.25 grams or more of a substance containing heroin.

10 (2) Any person who is convicted of violating Section  
11 11352 of the Health and Safety Code by selling or offering  
12 to sell 14.25 grams or more of a substance containing  
13 heroin.

14 (3) Any person convicted of violating Section 11351 of  
15 the Health and Safety Code by possessing heroin for sale  
16 or convicted of violating Section 11352 of the Health and  
17 Safety Code by selling or offering to sell heroin, and who  
18 has one or more prior convictions for violating Section  
19 11351 or Section 11352 of the Health and Safety Code.

20 (4) Any person who is convicted of violating Section  
21 11378.5 of the Health and Safety Code by possessing for  
22 sale 14.25 grams or more of any salt or solution of  
23 phencyclidine or any of its analogs as specified in  
24 paragraph (21), (22), or (23) of subdivision (d) of Section  
25 11054 or in paragraph (3) of subdivision (e) of Section  
26 11055 of the Health and Safety Code, or any of the  
27 precursors of phencyclidine as specified in paragraph (2)  
28 of subdivision (f) of Section 11055 of the Health and  
29 Safety Code.

30 (5) Any person who is convicted of violating Section  
31 11379.5 of the Health and Safety Code by transporting for  
32 sale, importing for sale, or administering, or offering to  
33 transport for sale, import for sale, or administer, or by  
34 attempting to import for sale or transport for sale,  
35 phencyclidine or any of its analogs or precursors.

36 (6) Any person who is convicted of violating Section  
37 11379.5 of the Health and Safety Code by selling or  
38 offering to sell phencyclidine or any of its analogs or  
39 precursors.

40 (7) Any person who is convicted of violating Section

1 11379.6 of the Health and Safety Code by manufacturing  
2 or offering to perform an act involving the manufacture  
3 of phencyclidine or any of its analogs or precursors.

4 As used in this section "manufacture" refers to the act  
5 of any person who manufactures, compounds, converts,  
6 produces, derives, processes, or prepares, either directly  
7 or indirectly by chemical extraction or independently by  
8 means of chemical synthesis.

9 (8) Any person who is convicted of violating Section  
10 11380 of the Health and Safety Code by using, soliciting,  
11 inducing, encouraging, or intimidating a minor to act as  
12 an agent to manufacture, compound, or sell any  
13 controlled substance specified in subdivision (d) of  
14 Section 11054 of the Health and Safety Code, except  
15 paragraphs (13), (14), (15), (20), (21), (22), and (23) of  
16 subdivision (d), or specified in subdivision (d), (e), or (f)  
17 of Section 11055 of the Health and Safety Code, except  
18 paragraph (3) of subdivision (e) and subparagraphs (A)  
19 and (B) of paragraph (2) of subdivision (f).

20 (9) Any person who is convicted of violating Section  
21 11380.5 of the Health and Safety Code by the use of a  
22 minor as an agent or who solicits, induces, encourages, or  
23 intimidates a minor with the intent that the minor shall  
24 violate the provisions of Section 11378.5, 11379.5, or  
25 11379.6 of the Health and Safety Code insofar as the  
26 violation relates to phencyclidine or any of its analogs or  
27 precursors.

28 (10) Any person who is convicted of violating  
29 subdivision (b) of Section 11383 of the Health and Safety  
30 Code by possessing piperidine, pyrrolidine, or  
31 morpholine, and cyclohexanone, with intent to  
32 manufacture phencyclidine or any of its analogs.

33 (11) Any person convicted of violating Section 11351,  
34 11351.5, or 11378 of the Health and Safety Code by  
35 possessing for sale cocaine base, cocaine, or  
36 methamphetamine, or convicted of violating Section  
37 11352 or 11379 of the Health and Safety Code, by selling  
38 or offering to sell cocaine base, cocaine, or  
39 methamphetamine and who has one or more convictions  
40 for violating Section 11351, 11351.5, 11352, 11378, 11378.5,

1 11379, or 11379.5 of the Health and Safety Code. For  
2 purposes of prior convictions under Sections 11352, 1135  
3 and 11379.5 of the Health and Safety Code, this  
4 subdivision shall not apply to the transportation, offering  
5 to transport, or attempting to transport a controlled  
6 substance.

7 *(12) Any person who has received an additional*  
8 *sentence pursuant to Section 11353.6 of the Health and*  
9 *Safety Code.*

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

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