

AMENDED IN ASSEMBLY MARCH 16, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 253

Introduced by Assembly Member Aghazarian
(Coauthor: Assembly Member Cogdill)

February 8, 2005

An act to amend Section 273a of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 253, as amended, Aghazarian. Child abuse.

Existing law provides that any person who engages in degrading or immoral habits or practices in the presence of any child in his or her care, custody, or control is punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or both. Existing law also provides that any person who under circumstances or conditions other than those likely to produce great bodily harm or death, having the care or custody of any child, causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by a fine not exceeding \$1,000, imprisonment in a county jail for a period not to exceed 6 months, or by both that fine and imprisonment.

This bill would provide that any parent, guardian, or caregiver of a minor child who knowingly and unlawfully consumes, smokes, inhales, ingests, or otherwise uses—~~any~~ *a specified* controlled substance, if the act occurs in the presence of, or is witnessed by, a minor child under his or her care, is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years.

Because this bill would create a new crime, it 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. State-mandated local program: yes.

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

1 SECTION 1. Section 273a of the Penal Code is amended to
2 read:

3 273a. (a) Any person who, under circumstances or conditions
4 likely to produce great bodily harm or death, willfully causes or
5 permits any child to suffer, or inflicts thereon unjustifiable
6 physical pain or mental suffering, or having the care or custody
7 of any child, willfully causes or permits the person or health of
8 that child to be injured, or willfully causes or permits that child to
9 be placed in a situation where his or her person or health is
10 endangered, shall be punished by imprisonment in a county jail
11 not exceeding one year, or in the state prison for two, four, or six
12 years.

13 (b) Any person who, under circumstances or conditions other
14 than those likely to produce great bodily harm or death, willfully
15 causes or permits any child to suffer, or inflicts thereon
16 unjustifiable physical pain or mental suffering, or having the care
17 or custody of any child, willfully causes or permits the person or
18 health of that child to be injured, or willfully causes or permits
19 that child to be placed in a situation where his or her person or
20 health may be endangered, is guilty of a misdemeanor.

21 (c) Any parent, guardian, or caregiver of a minor child who
22 knowingly and unlawfully consumes, smokes, inhales, ingests, or
23 otherwise uses ~~any controlled substance~~ *cocaine, as specified in*
24 *paragraph (6) of subdivision (b) of Section 11055 of the Health*
25 *and Safety Code, cocaine base as specified in paragraph (1) of*
26 *subdivision (f) of Section 11054 of the Health and Safety Code,*
27 *phencyclidine or its analogs, lysergic acid diethylamide (also*
28 *known as LSD), heroin, methamphetamine, or*
29 *3,4-Methylenedioxymethamphetamine (also known as MDMA,*

1 *XTC, or Ecstasy*), if the act occurs in the presence of, or is
2 witnessed by a minor child under his or her care, is punishable by
3 imprisonment in the state prison for 16 months, or two or three
4 years.

5 (d) If a person is convicted of violating this section and
6 probation is granted, the court shall require the following
7 minimum conditions of probation:

8 (1) A mandatory minimum period of probation of 48 months.

9 (2) A criminal court protective order protecting the victim
10 from further acts of violence or threats, and, if appropriate,
11 residence exclusion or stay-away conditions.

12 (3) (A) Successful completion of no less than one year of a
13 child abuser’s treatment counseling program approved by the
14 probation department. The defendant shall be ordered to begin
15 participation in the program immediately upon the grant of
16 probation. The counseling program shall meet the criteria
17 specified in Section 273.1. The defendant shall produce
18 documentation of program enrollment to the court within 30 days
19 of enrollment, along with quarterly progress reports.

20 (B) The terms of probation for offenders shall not be lifted
21 until all reasonable fees due to the counseling program have been
22 paid in full, but in no case shall probation be extended beyond
23 the term provided in subdivision (a) of Section 1203.1. If the
24 court finds that the defendant does not have the ability to pay the
25 fees based on the defendant’s changed circumstances, the court
26 may reduce or waive the fees.

27 (4) If the offense was committed while the defendant was
28 under the influence of drugs or alcohol, the defendant shall
29 abstain from the use of drugs or alcohol during the period of
30 probation and shall be subject to random drug testing by his or
31 her probation officer.

32 (5) The court may waive any of the above minimum
33 conditions of probation upon a finding that the condition would
34 not be in the best interests of justice. The court shall state on the
35 record its reasons for any waiver.

36 SEC. 2. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the

1 penalty for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition of a
3 crime within the meaning of Section 6 of Article XIII B of the
4 California Constitution.

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