

AMENDED IN ASSEMBLY MARCH 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 116**

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**Introduced by Assembly Member Aghazarian**

January 9, 2007

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An act to ~~amend Section 273a~~ *add Section 273i* to of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 116, as amended, Aghazarian. Child abuse: endangerment: controlled substances.

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 a specified controlled substance, if the act occurs in the *immediate* 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.

*This bill would provide that if the county in which the offense is prosecuted has a highly structured drug court, prosecutions brought under this bill shall be handled by that court.*

*This bill would provide that if probation is granted for this offense, the court shall, as a condition of probation place the defendant in a drug treatment program, as specified.*

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 273i is added to the Penal Code, to read:
- 2     273i. (a) Any parent, guardian, or caregiver of a minor child
- 3     who knowingly and unlawfully consumes, smokes, inhales, ingests,
- 4     or otherwise uses cocaine, as specified in paragraph (6) of
- 5     subdivision (b) of Section 11055 of the Health and Safety Code,
- 6     cocaine base, as specified in paragraph (1) of subdivision (f) of
- 7     Section 11054 of the Health and Safety Code, phencyclidine or its
- 8     analog, lysergic acid diethylamide (also known as LSD), heroin,
- 9     methamphetamine, or 3, 4-Methylenedioxymethamphetamine (also
- 10    known as MDMA, XTC, or Ecstasy), if the act occurs in the
- 11    immediate presence of, or is witnessed by, a minor child under his
- 12    or her care, is punishable by imprisonment in the state prison for
- 13    16 months, or two or three years.
- 14    (b) If the county in which the offense described in subdivision
- 15    (a) is prosecuted has a highly structured drug court, prosecutions
- 16    brought pursuant to this section shall be handled by that court.
- 17    (c) If the court places any person found to have violated
- 18    subdivision (a) on probation, the court shall, as a condition of
- 19    probation, order that the person be placed in a drug treatment
- 20    program appropriate to the person. Nothing in this subdivision
- 21    shall preclude the judge from imposing other conditions of
- 22    probation appropriate for the defendant.

1     *SEC. 2. No reimbursement is required by this act pursuant to*  
2 *Section 6 of Article XIII B of the California Constitution because*  
3 *the only costs that may be incurred by a local agency or school*  
4 *district will be incurred because this act creates a new crime or*  
5 *infraction, eliminates a crime or infraction, or changes the penalty*  
6 *for a crime or infraction, within the meaning of Section 17556 of*  
7 *the Government Code, or changes the definition of a crime within*  
8 *the meaning of Section 6 of Article XIII B of the California*  
9 *Constitution.*

10     ~~SECTION 1. Section 273a of the Penal Code is amended to~~  
11 ~~read:~~

12     ~~273a. (a) Any person who, under circumstances or conditions~~  
13 ~~likely to produce great bodily harm or death, willfully causes or~~  
14 ~~permits any child to suffer, or inflicts thereon unjustifiable physical~~  
15 ~~pain or mental suffering, or having the care or custody of any child,~~  
16 ~~willfully causes or permits the person or health of that child to be~~  
17 ~~injured, or willfully causes or permits that child to be placed in a~~  
18 ~~situation where his or her person or health is endangered, shall be~~  
19 ~~punished by imprisonment in a county jail not exceeding one year,~~  
20 ~~or in the state prison for two, four, or six years.~~

21     ~~(b) Any person who, under circumstances or conditions other~~  
22 ~~than those likely to produce great bodily harm or death, willfully~~  
23 ~~causes or permits any child to suffer, or inflicts thereon~~  
24 ~~unjustifiable physical pain or mental suffering, or having the care~~  
25 ~~or custody of any child, willfully causes or permits the person or~~  
26 ~~health of that child to be injured, or willfully causes or permits~~  
27 ~~that child to be placed in a situation where his or her person or~~  
28 ~~health may be endangered, is guilty of a misdemeanor.~~

29     ~~(c) Any parent, guardian, or caregiver of a minor child who~~  
30 ~~knowingly and unlawfully consumes, smokes, inhales, ingests, or~~  
31 ~~otherwise uses cocaine, as specified in paragraph (6) of subdivision~~  
32 ~~(b) of Section 11055 of the Health and Safety Code, cocaine base,~~  
33 ~~as specified in paragraph (1) of subdivision (f) of Section 11054~~  
34 ~~of the Health and Safety Code, phenethylidine or its analogs,~~  
35 ~~lysergic acid diethylamide (also known as LSD), heroin,~~  
36 ~~methamphetamine, or 3,4-Methylenedioxymethamphetamine (also~~  
37 ~~known as MDMA, XTC, or Ecstasy), if the act occurs in the~~  
38 ~~presence of, or is witnessed by, a minor child under his or her care,~~  
39 ~~is punishable by imprisonment in the state prison for 16 months,~~  
40 ~~or two or three years.~~

1 ~~(d) If a person is convicted of violating this section and~~  
2 ~~probation is granted, the court shall require the following minimum~~  
3 ~~conditions of probation:~~

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

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

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

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

23 ~~(4) If the offense was committed while the defendant was under~~  
24 ~~the influence of drugs or alcohol, the defendant shall abstain from~~  
25 ~~the use of drugs or alcohol during the period of probation and shall~~  
26 ~~be subject to random drug testing by his or her probation officer.~~

27 ~~(5) The court may waive any of the above minimum conditions~~  
28 ~~of probation upon a finding that the condition would not be in the~~  
29 ~~best interests of justice. The court shall state on the record its~~  
30 ~~reasons for any waiver.~~

31 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
32 ~~Section 6 of Article XIII B of the California Constitution because~~  
33 ~~the only costs that may be incurred by a local agency or school~~  
34 ~~district will be incurred because this act creates a new crime or~~  
35 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
36 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
37 ~~the Government Code, or changes the definition of a crime within~~

1 ~~the meaning of Section 6 of Article XIII B of the California~~  
2 ~~Constitution.~~

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