

ASSEMBLY BILL

No. 755

Introduced by Assembly Member Lieber

February 22, 2007

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

LEGISLATIVE COUNSEL'S DIGEST

AB 755, as introduced, Lieber. Corporal punishment.

Existing law makes it a crime for any person, under specified circumstances, to willfully cause or permit a child to suffer, or inflicts on a child unjustifiable physical pain or mental suffering.

This bill would create a rebuttable presumption that if the physical pain or mental suffering results from the use of an implementation, throwing, kicking, burning, or cutting a child, striking a child with a closed fist, striking a child under the age of 3 on the face or head, vigorous shaking of a child under the age of 3, interference with a child's breathing, or threatening a child with a deadly weapon, then it is unjustifiable. This bill would also authorize the court to order a person convicted of this offense into a nonviolent parental education class as a condition of probation, if appropriate.

By changing the definition and punishment for 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.
 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) *The Legislature hereby finds and declares that child*
 4 *abuse is a major social problem and that children in the age group*
 5 *of birth to three years suffer the highest rate of victimization. Child*
 6 *fatalities are the most tragic consequence of maltreatment, and*
 7 *the vast majority of children killed are younger than four years*
 8 *old. Fatal abuse is too often the result of hitting or shaking by*
 9 *caregivers under the guise of discipline. Infants and toddlers are*
 10 *the most vulnerable because of their tender age and inability to*
 11 *defend themselves or ask for help. It is therefore wholly reasonable*
 12 *that the integrity and sanctity of their bodies should be afforded*
 13 *the greatest protection possible under the law.*
 14 (a)
 15 (b) Any person who, under circumstances or conditions likely
 16 to produce great bodily harm or death, willfully causes or permits
 17 any child to suffer, or inflicts thereon unjustifiable physical pain
 18 or mental suffering, or having the care or custody of any child,
 19 willfully causes or permits the person or health of that child to be
 20 injured, or willfully causes or permits that child to be placed in a
 21 situation where his or her person or health is endangered, shall be
 22 punished by imprisonment in a county jail not exceeding one year,
 23 or in the state prison for two, four, or six years.
 24 (b)
 25 (c) Any person who, under circumstances or conditions other
 26 than those likely to produce great bodily harm or death, willfully
 27 causes or permits any child to suffer, or inflicts thereon
 28 unjustifiable physical pain or mental suffering, or having the care
 29 or custody of any child, willfully causes or permits the person or
 30 health of that child to be injured, or willfully causes or permits
 31 that child to be placed in a situation where his or her person or
 32 health may be endangered, is guilty of a misdemeanor.
 33 (d) *If the infliction of physical pain or mental suffering occurred*
 34 *as a result of any of the following, then there is a rebuttable*

1 *presumption that the physical pain or mental suffering is*
2 *unjustifiable:*

3 (1) *The use of an implementation, including, but not limited to,*
4 *a stick, a rod, a switch, an electrical cord, an extension cord, a*
5 *belt, a broom, or a shoe.*

6 (2) *Throwing, kicking, burning, or cutting a child.*

7 (3) *Striking a child with a closed fist.*

8 (4) *Striking a child under the age of three on the face or head.*

9 (5) *Vigorous shaking of a child under the age of three.*

10 (6) *Interference with a child's breathing.*

11 (7) *Threatening a child with a deadly weapon.*

12 ~~(e)~~

13 (e) *If a person is convicted of violating this section and probation*
14 *is granted, the court shall require the following minimum*
15 *conditions of probation:*

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

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

20 (3) (A) *Successful completion of either a nonviolent parental*
21 *education class approved by the probation department or no less*
22 *than one year of a child abuser's treatment counseling program*
23 *approved by the probation department. The court shall determine*
24 *whether the parenting class or the treatment counseling program*
25 *is most appropriate under the circumstances of each particular*
26 *case and order the defendant to complete the one which is the most*
27 *appropriate. The defendant shall be ordered to begin participation*
28 *in either the class or the program immediately upon the grant of*
29 *probation. The counseling program shall meet the criteria specified*
30 *in Section 273.1. The defendant shall produce documentation of*
31 *program enrollment to the court within 30 days of enrollment,*
32 *along with quarterly progress reports.*

33 (B) *The terms of probation for offenders shall not be lifted until*
34 *all reasonable fees due to the counseling program have been paid*
35 *in full, but in no case shall probation be extended beyond the term*
36 *provided in subdivision (a) of Section 1203.1. If the court finds*
37 *that the defendant does not have the ability to pay the fees based*
38 *on the defendant's changed circumstances, the court may reduce*
39 *or waive the fees.*

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

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

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.