

AMENDED IN ASSEMBLY APRIL 24, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

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 amended, 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~~ *authorize the finder of fact to consider* the use of an ~~implementation, implement, the~~ throwing, kicking, burning, or cutting *of* a child, ~~the~~ striking a child with a closed fist, ~~the~~ striking a child under the age of 3 on the face or head, ~~the~~ vigorous shaking of a child under the age of 3, ~~the~~ interference with a child's breathing, or ~~threatening a child with the brandishing of~~ a deadly weapon, ~~then it is unjustifiable upon a child when determining whether or not a defendant willfully caused any child to suffer, or inflicted unjustifiable physical pain or mental suffering on a child. Proof of the listed conduct would not be, by itself, enough to prove guilt and the weight and significance of the conduct is for the finder of fact to decide.~~ 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 the
7 vast majority of children killed are younger than four years old.
8 Fatal abuse is too often the result of hitting or shaking by caregivers
9 under the guise of discipline. Infants and toddlers are the most
10 vulnerable because of their tender age and inability to defend
11 themselves or ask for help. It is therefore wholly reasonable that
12 the integrity and sanctity of their bodies should be afforded the
13 greatest protection possible under the law.

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

23 (c) Any person who, under circumstances or conditions other
24 than those likely to produce great bodily harm or death, willfully
25 causes or permits any child to suffer, or inflicts thereon
26 unjustifiable physical pain or mental suffering, or having the care
27 or custody of any child, willfully causes or permits the person or
28 health of that child to be injured, or willfully causes or permits

1 that child to be placed in a situation where his or her person or
2 health may be endangered, is guilty of a misdemeanor.

3 ~~(d) If the infliction of physical pain or mental suffering occurred~~
4 ~~as a result of any of the following, then there is a rebuttable~~
5 ~~presumption that the physical pain or mental suffering is~~
6 ~~unjustifiable:~~

7 *(d) (1) Subject to paragraph (2), in a prosecution for the*
8 *violation of this section and when determining whether or not a*
9 *defendant willfully caused any child to suffer, or inflicted*
10 *unjustifiable physical pain, or mental suffering, the finder of fact*
11 *may consider any of the following:*

12 ~~(1)~~

13 (A) The use of an ~~implementation~~ *implement*, including, but not
14 limited to, a stick, a rod, a switch, an electrical cord, an extension
15 cord, a belt, a broom, or a shoe.

16 ~~(2)~~

17 (B) Throwing, kicking, burning, or cutting a child.

18 ~~(3)~~

19 (C) Striking a child with a closed fist.

20 ~~(4)~~

21 (D) Striking a child under the age of three on the face or head.

22 ~~(5)~~

23 (E) Vigorous shaking of a child under the age of three.

24 ~~(6)~~

25 (F) Interference with a child's breathing.

26 ~~(7) Threatening a child with a deadly weapon.~~

27 (G) *Brandishing a deadly weapon upon a child.*

28 *(2) Proof of the conduct listed in subparagraphs (A) through*
29 *(G), inclusive, is not sufficient, by itself, to prove guilt, and its*
30 *weight and significance, if any, is for the finder of fact to decide.*

31 (e) If a person is convicted of violating this section and probation
32 is granted, the court shall require the following minimum
33 conditions of probation:

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

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

38 (3) (A) Successful completion of either a nonviolent parental
39 education class approved by the probation department or no less
40 than one year of a child abuser's treatment counseling program

1 approved by the probation department. The court shall determine
 2 whether the parenting class or the treatment counseling program
 3 is most appropriate under the circumstances of each particular case
 4 and order the defendant to complete the one which is the most
 5 appropriate. The defendant shall be ordered to begin participation
 6 in either the class or the program immediately upon the grant of
 7 probation. The counseling program shall meet the criteria specified
 8 in Section 273.1. The defendant shall produce documentation of
 9 program enrollment to the court within 30 days of enrollment,
 10 along with quarterly progress reports.

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

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

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

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

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