

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2943

Introduced by Assembly Member Lieber

February 22, 2008

~~An act to amend Section 300 of the Welfare and Institutions Code, relating to dependent children. An act to amend Section 273a of the Penal Code, relating to corporal punishment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2943, as amended, Lieber. ~~Dependent children. Corporal punishment.~~

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

This bill would authorize the finder of fact to consider the use of an implement, the throwing, kicking, burning, or cutting of a child, the striking of a child with a closed fist, the striking of a child under 3 years of age on the face or head, the vigorous shaking of a child under 3 years of age, the interference with a child's breathing, or the brandishing of a deadly weapon 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.

~~Existing law provides that a child who has been abused or neglected, as described, is within the jurisdiction of the juvenile court and may be adjudged a dependent child of the juvenile court. Existing law states the intent of the Legislature that nothing in this provision disrupts the family unnecessarily or intrudes inappropriately into family life, prohibits the use of reasonable methods of parental discipline, or prescribes a particular method of parenting.~~

~~This bill would further state the intent of the Legislature in enacting this provision to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. The bill would state that this protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children, and that the protection shall focus on the preservation of the family whenever possible.~~

~~The bill would correct an erroneous cross-reference and make other technical, nonsubstantive changes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-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 of age suffer the highest rate of victimization.
- 6 Child fatalities are the most tragic consequence of maltreatment,
- 7 and the vast majority of children killed are younger than four years
- 8 of age. 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

1 *defend themselves or ask for help. It is therefore wholly reasonable*
2 *that the integrity and sanctity of their bodies should be afforded*
3 *the greatest protection possible under the law.*

4 ~~(a)~~

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

14 ~~(b)~~

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

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

28 (A) *The use of an implement, including, but not limited to, a*
29 *stick, a rod, a switch, an electrical cord, an extension cord, a belt,*
30 *a broom, or a shoe.*

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

32 (C) *Striking a child with a closed fist.*

33 (D) *Striking a child under three years of age on the face or*
34 *head.*

35 (E) *Vigorous shaking of a child under three years of age.*

36 (F) *Interference with a child's breathing.*

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

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

1 (e)

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

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

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

9 (3) (A) Successful completion of *either a nonviolent parental*
10 *education class approved by the probation department or no less*
11 *than one year of a child abuser's treatment counseling program*
12 *approved by the probation department. The court shall determine*
13 *whether the parenting class or the treatment counseling program*
14 *is most appropriate under the circumstances of each particular*
15 *case and order the defendant to complete the one which is the most*
16 *appropriate. The defendant shall be ordered to begin participation*
17 *in either the class or the program immediately upon the grant of*
18 *probation. The counseling program shall meet the criteria specified*
19 *in Section 273.1. The defendant shall produce documentation of*
20 *program enrollment to the court within 30 days of enrollment,*
21 *along with quarterly progress reports.*

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

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

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

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

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

6 SECTION 1. ~~Section 300 of the Welfare and Institutions Code~~
7 ~~is amended to read:~~

8 300. ~~A child who comes within any of the following~~
9 ~~descriptions is within the jurisdiction of the juvenile court which~~
10 ~~may adjudge that person to be a dependent child of the court:~~

11 (a) ~~The child has suffered, or there is a substantial risk that the~~
12 ~~child will suffer, serious physical harm inflicted nonaccidentally~~
13 ~~upon the child by the child's parent or guardian. For the purposes~~
14 ~~of this subdivision, a court may find there is a substantial risk of~~
15 ~~serious future injury based on the manner in which a less serious~~
16 ~~injury was inflicted, a history of repeated inflictions of injuries on~~
17 ~~the child or the child's siblings, or a combination of these and other~~
18 ~~actions by the parent or guardian that indicate the child is at risk~~
19 ~~of serious physical harm. For purposes of this subdivision, "serious~~
20 ~~physical harm" does not include reasonable and age-appropriate~~
21 ~~spanking to the buttocks if there is no evidence of serious physical~~
22 ~~injury.~~

23 (b) ~~The child has suffered, or there is a substantial risk that the~~
24 ~~child will suffer, serious physical harm or illness, as a result of the~~
25 ~~failure or inability of his or her parent or guardian to adequately~~
26 ~~supervise or protect the child, or the willful or negligent failure of~~
27 ~~the child's parent or guardian to adequately supervise or protect~~
28 ~~the child from the conduct of the custodian with whom the child~~
29 ~~has been left, or by the willful or negligent failure of the parent or~~
30 ~~guardian to provide the child with adequate food, clothing, shelter,~~
31 ~~or medical treatment, or by the inability of the parent or guardian~~
32 ~~to provide regular care for the child due to the parent's or~~
33 ~~guardian's mental illness, developmental disability, or substance~~
34 ~~abuse. A child shall not be found to be a person described by this~~
35 ~~subdivision solely due to the lack of an emergency shelter for the~~
36 ~~family. If it is alleged that a child comes within the jurisdiction of~~
37 ~~the court on the basis of the parent's or guardian's willful failure~~
38 ~~to provide adequate medical treatment or specific decision to~~
39 ~~provide spiritual treatment through prayer, the court shall give~~
40 ~~deference to the parent's or guardian's medical treatment,~~

1 nontreatment, or spiritual treatment through prayer alone in
2 accordance with the tenets and practices of a recognized church
3 or religious denomination, by an accredited practitioner thereof,
4 and shall not assume jurisdiction unless necessary to protect the
5 child from suffering serious physical harm or illness. In making
6 its determination, the court shall consider (1) the nature of the
7 treatment proposed by the parent or guardian, (2) the risks to the
8 child posed by the course of treatment or nontreatment proposed
9 by the parent or guardian, (3) the risk, if any, of the course of
10 treatment being proposed by the petitioning agency, and (4) the
11 likely success of the courses of treatment or nontreatment proposed
12 by the parent or guardian and agency. The child shall continue to
13 be a dependent child pursuant to this subdivision only so long as
14 is necessary to protect the child from risk of suffering serious
15 physical harm or illness.

16 (e) The child is suffering serious emotional damage, or is at
17 substantial risk of suffering serious emotional damage, evidenced
18 by severe anxiety, depression, withdrawal, or untoward aggressive
19 behavior toward self or others, as a result of the conduct of the
20 parent or guardian, or who has no parent or guardian capable of
21 providing appropriate care. A child shall not be found to be a
22 person described by this subdivision if the willful failure of the
23 parent or guardian to provide adequate mental health treatment is
24 based on a sincerely held religious belief, and if a less intrusive
25 judicial intervention is available.

26 (d) The child has been sexually abused, or there is a substantial
27 risk that the child will be sexually abused, as defined in Section
28 11165.1 of the Penal Code, by his or her parent or guardian or a
29 member of his or her household, or the parent or guardian has
30 failed to adequately protect the child from sexual abuse when the
31 parent or guardian knew or reasonably should have known that
32 the child was in danger of sexual abuse.

33 (e) The child is under five years of age and has suffered severe
34 physical abuse by a parent, or by any person known by the parent,
35 if the parent knew or reasonably should have known that the person
36 was physically abusing the child. For the purposes of this
37 subdivision, "severe physical abuse" means any of the following:
38 any single act of abuse that causes physical trauma of sufficient
39 severity that, if left untreated, would cause permanent physical
40 disfigurement, permanent physical disability, or death; any single

1 act of sexual abuse that causes significant bleeding, deep bruising,
2 or significant external or internal swelling; or more than one act
3 of physical abuse, each of which causes bleeding, deep bruising,
4 significant external or internal swelling, bone fracture, or
5 unconsciousness; or the willful, prolonged failure to provide
6 adequate food. A child shall not be removed from the physical
7 custody of his or her parent or guardian on the basis of a finding
8 of severe physical abuse unless the social worker has made an
9 allegation of severe physical abuse pursuant to Section 332.

10 (f) ~~The child's parent or guardian caused the death of another~~
11 ~~child through abuse or neglect.~~

12 (g) ~~The child has been left without any provision for support;~~
13 ~~physical custody of the child has been voluntarily surrendered~~
14 ~~pursuant to Section 1255.7 of the Health and Safety Code and the~~
15 ~~child has not been reclaimed within the 14-day period specified~~
16 ~~in subdivision (g) of that section; the child's parent has been~~
17 ~~incarcerated or institutionalized and cannot arrange for the care of~~
18 ~~the child; or a relative or other adult custodian with whom the child~~
19 ~~resides or has been left is unwilling or unable to provide care or~~
20 ~~support for the child, the whereabouts of the parent are unknown,~~
21 ~~and reasonable efforts to locate the parent have been unsuccessful.~~

22 (h) ~~The child has been freed for adoption by one or both parents~~
23 ~~for 12 months by either relinquishment or termination of parental~~
24 ~~rights or an adoption petition has not been granted.~~

25 (i) ~~The child has been subjected to an act or acts of cruelty by~~
26 ~~the parent or guardian or a member of his or her household, or the~~
27 ~~parent or guardian has failed to adequately protect the child from~~
28 ~~an act or acts of cruelty if the parent or guardian knew or~~
29 ~~reasonably should have known that the child was in danger of~~
30 ~~being subjected to an act or acts of cruelty.~~

31 (j) ~~The child's sibling has been abused or neglected, as defined~~
32 ~~in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk~~
33 ~~that the child will be abused or neglected, as defined in those~~
34 ~~subdivisions. The court shall consider the circumstances~~
35 ~~surrounding the abuse or neglect of the sibling, the age and gender~~
36 ~~of each child, the nature of the abuse or neglect of the sibling, the~~
37 ~~mental condition of the parent or guardian, and any other factors~~
38 ~~the court considers probative in determining whether there is a~~
39 ~~substantial risk to the child.~~

1 It is the intent of the Legislature in enacting this section to
2 provide maximum protection for children who are currently being
3 physically, sexually, or emotionally abused, being neglected, or
4 being exploited, and to protect children who are at risk of that
5 harm. This protection includes provision of a full array of social
6 and health services to help the child and family and to prevent
7 reabuse of children. That protection shall focus on the preservation
8 of the family whenever possible. Nothing in this section is intended
9 to disrupt the family unnecessarily or to intrude inappropriately
10 into family life, to prohibit the use of reasonable methods of
11 parental discipline, or to prescribe a particular method of parenting.
12 Further, nothing in this section is intended to limit the offering of
13 voluntary services to those families in need of assistance but who
14 do not come within the descriptions of this section. To the extent
15 that savings accrue to the state from child welfare services funding
16 obtained as a result of the enactment of the act that enacted this
17 section, those savings shall be used to promote services that support
18 family maintenance and family reunification plans, such as client
19 transportation, out-of-home respite care, parenting training, and
20 the provision of temporary or emergency in-home caretakers and
21 persons teaching and demonstrating homemaking skills. The
22 Legislature further declares that a physical disability, such as
23 blindness or deafness, is no bar to the raising of happy and
24 well-adjusted children, and that a court's determination pursuant
25 to this section shall center upon whether a parent's disability
26 prevents him or her from exercising care and control. The
27 Legislature further declares that a child whose parent has been
28 adjudged a dependent child of the court pursuant to this section
29 shall not be considered to be at risk of abuse or neglect solely
30 because of the age, dependent status, or foster care status of the
31 parent.

32 As used in this section, "guardian" means the legal guardian of
33 the child.