

AMENDED IN SENATE MAY 4, 2011
AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 240

Introduced by Senator Rubio

February 9, 2011

An act to amend Section 270.1 of the Penal Code, relating to truancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 240, as amended, Rubio. Truancy: collective action.

Existing law establishes the system of public elementary and secondary schools in this state. Existing law provides that each person between the ages of 6 and 18 years, with specified exceptions, is subject to compulsory full-time education. Existing law specifies that any pupil subject to compulsory full-time education or compulsory continuation education who is absent from school without valid excuse 3 full days in one school year or tardy or absent for more than any 30-minute period during the schoolday without a valid excuse on 3 occasions in one school year, or any combination thereof, is a truant.

Existing law requires that any pupil subject to compulsory full-time education or compulsory continuation education who is absent from school without a valid excuse for 10% or more of the schooldays in one school year, from the date of enrollment to the current date, is deemed a chronic truant, provided that the appropriate *school* district officer or employee has complied with prescribed provisions. Existing law provides that a parent or guardian of a pupil of 6 years of age or more who is in kindergarten or any of grades 1 to 8, inclusive, and who is subject to compulsory full-time education or compulsory continuation education, whose child is a chronic truant, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has

been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

This bill would prohibit a parent or guardian from being subject to prosecution under this provision because of an absence *of the pupil* due to collective action, as defined. The bill would define collective action as an action in which the parents or guardians of a majority of the pupils enrolled in a grade level at a public elementary, *middle*, or secondary school withhold their children from attendance at that school because of a grievance these parents, guardians, pupils, or other members of the school community are presenting to the administration of the school or school district *relating to the alleged failure to provide pupils with educational opportunity, as specified*. The bill would prescribe a procedure for the commencement *and conclusion* of a collective action under the bill. This procedure would require the presentation of a petition setting forth the grounds for the grievance to the school principal, schoolsite council if one exists, and the secretary or presiding officer of the governing board of the school district.

The bill would provide that an absence of a pupil due to a collective action is an excused absence, and would prohibit any absence due to a collective action from being counted in determining whether a pupil is a truant for purposes of these provisions or the provisions of the Education Code.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 270.1 of the Penal Code is amended to
2 read:
3 270.1. (a) (1) A parent or guardian of a pupil of six years of
4 age or more who is in kindergarten or any of grades 1 to 8,
5 inclusive, and who is subject to compulsory full-time education
6 or compulsory continuation education, whose child is a chronic
7 truant as defined in Section 48263.6 of the Education Code, who
8 has failed to reasonably supervise and encourage the pupil's school
9 attendance, and who has been offered language accessible support
10 services to address the pupil's truancy, is guilty of a misdemeanor
11 punishable by a fine not exceeding two thousand dollars (\$2,000),

1 or by imprisonment in a county jail not exceeding one year, or by
2 both that fine and imprisonment. A parent or guardian guilty of a
3 misdemeanor under this subdivision may participate in the deferred
4 entry of judgment program defined in subdivision (b).

5 (2) (A) Notwithstanding paragraph (1), a parent or guardian
6 shall not be subject to prosecution under this section because of
7 ~~any absence~~ *an absence of the pupil* due to a collective action, as
8 defined in subparagraph (B). *An absence of a pupil due to a*
9 *collective action, commencing three days after the submission of*
10 *the petition described in subparagraph (C), is an excused absence,*
11 *and shall not be counted in determining whether a pupil is a truant*
12 *for purposes of this section or for purposes of the Education Code.*
13 *An absence due to a collective action shall be excused only for a*
14 *pupil whose parent or guardian has signed the petition described*
15 *in subparagraph (C).*

16 (B) For purposes of this paragraph, “collective action” means
17 an action in which the parents or guardians of a majority of the
18 pupils enrolled in a grade level at a public elementary, *middle*, or
19 secondary school withhold their children from attendance at that
20 school because of a grievance these parents, guardians, pupils, or
21 other members of the school community are presenting to the
22 administration of the school or school district *relating to the alleged*
23 *failure to provide pupils with educational opportunity, including,*
24 *but not limited to, failure to provide translated documents pursuant*
25 *to Section 48985 of the Education Code, highly qualified teachers*
26 *and a consistent and stable teaching force, sufficient textbooks or*
27 *instructional materials as defined in Section 60119 of the*
28 *Education Code, or facilities maintained in good repair, as defined*
29 *in Section 17002 of the Education Code.*

30 (C) For purposes of this paragraph, a collective action
31 commences ~~when~~ *three days after* a petition setting forth the
32 grounds for the grievance, and signed by the parents or guardians
33 of a majority of the pupils enrolled in a grade level at the public
34 elementary, *middle*, or secondary school, is presented to the
35 principal of the school, to the schoolsite council if one exists at
36 that school, and to the secretary or presiding officer of the
37 governing board of the school district in which the school is
38 located. Presentation of the petition shall be accomplished by
39 delivery, during regular business hours, of an original or copy of
40 the petition to the school office, with respect to presentation of the

1 petition to the principal or the schoolsite council, and by delivery
2 of an original or copy of the petition to the school district office,
3 with respect to presentation of the petition to the secretary or
4 presiding officer of the governing board of the school district.

5 *(D) A collective action, as defined in subparagraph (B), shall*
6 *conclude on the date that an agreement is signed by the parents*
7 *or guardians of a majority of the pupils enrolled in a grade level*
8 *at the public elementary, middle, or secondary school for which*
9 *the petition was submitted, stating that the grievance has been*
10 *addressed to their satisfaction, or on the 30th day after the*
11 *collective action commenced, whichever occurs first. A collective*
12 *action shall not commence if, within the first three school days*
13 *after the petition is presented, an agreement is signed by the*
14 *parents or guardians of a majority of the pupils enrolled in a grade*
15 *level at the public elementary, middle, or secondary school for*
16 *which the petition was submitted, stating that the grievance has*
17 *been addressed to their satisfaction.*

18 *(E) For purposes of this paragraph, a petition shall be deemed*
19 *valid if, within 24 hours of the presentation of the petition, the*
20 *presiding officer of the governing board of the school district in*
21 *which the school is located does not contest the validity of the*
22 *petition. A petition may be contested only if it can be shown that*
23 *less than a majority of parents or guardians signed the petition*
24 *pursuant to subparagraph (C) or if the petition is presented for a*
25 *grievance other than for the failure to provide educational*
26 *opportunity as described in subparagraph (B).*

27 (b) A superior court may establish a deferred entry of judgment
28 program that includes the components listed in paragraphs (1) to
29 (7), inclusive, to adjudicate cases involving parents or guardians
30 of elementary school pupils who are chronic truants as defined in
31 Section 48263.6 of the Education Code:

32 (1) A dedicated court calendar.

33 (2) Leadership by a judge of the superior court in that county.

34 (3) Meetings, scheduled and held periodically, with school
35 district representatives designated by the chronic truant's school
36 district of enrollment. Those representatives may include school
37 psychologists, school counselors, teachers, school administrators,
38 or other educational service providers deemed appropriate by the
39 school district.

1 (4) Service referrals for parents or guardians, as appropriate to
2 each case, that may include, but are not limited to, all of the
3 following:

- 4 (A) Case management.
- 5 (B) Mental and physical health services.
- 6 (C) Parenting classes and support.
- 7 (D) Substance abuse treatment.
- 8 (E) Child care and housing.

9 (5) A clear statement that, in lieu of trial, the court may grant
10 deferred entry of judgment with respect to the current crime or
11 crimes charged if the defendant pleads guilty to each charge and
12 waives time for the pronouncement of judgment and that, upon
13 the defendant's compliance with the terms and conditions set forth
14 by the court and agreed to by the defendant upon the entry of his
15 or her plea, and upon the motion of the prosecuting attorney, the
16 court will dismiss the charge or charges against the defendant and
17 the same procedures specified for successful completion of a drug
18 diversion program or a deferred entry of judgment program
19 pursuant to Section 851.90 and the provisions of Section 1203.4
20 shall apply.

21 (6) A clear statement that failure to comply with any condition
22 under the program may result in the prosecuting attorney or the
23 court making a motion for entry of judgment, whereupon the court
24 will render a finding of guilty to the charge or charges pled, enter
25 judgment, and schedule a sentencing hearing as otherwise provided
26 in this code.

27 (7) An explanation of criminal record retention and disposition
28 resulting from participation in the deferred entry of judgment
29 program and the defendant's rights relative to answering questions
30 about his or her arrest and deferred entry of judgment following
31 successful completion of the program.

32 (c) Funding for the deferred entry of judgment program pursuant
33 to this section shall be derived solely from nonstate sources.

34 (d) A parent or guardian of an elementary school pupil who is
35 a chronic truant, as defined in Section 48263.6 of the Education
36 Code, may not be punished for a violation of both this section and
37 the provisions of Section 272 that involve criminal liability for
38 parents and guardians of truant children.

39 (e) If any district attorney chooses to charge a defendant with
40 a violation of subdivision (a) and the defendant is found by the

1 prosecuting attorney to be eligible or ineligible for deferred entry
2 of judgment, the prosecuting attorney shall file with the court a
3 declaration in writing, or state for the record, the grounds upon
4 which that determination is based.

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