

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2496**

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**Introduced by Assembly Member Melendez**

February 21, 2014

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An act to amend Section ~~273a~~ 237d of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2496, as amended, Melendez. Child abuse.

*Under existing law, a person who willfully inflicts cruel or inhuman corporal punishment or an injury resulting in a traumatic condition upon a child is guilty of a crime. Under existing law, a felony violation of this offense is punishable in a county jail for 2, 4, or 6 years.*

*This bill would make a felony violation of the above offense punishable in the state prison.*

~~Existing law makes it unlawful, under circumstances or conditions likely to produce great bodily harm or death, to willfully cause or permit a child to suffer, or to inflict thereon unjustifiable physical pain or mental suffering, or, having the care or custody of a child, to willfully cause or permit the person or health of that child to be injured, or to willfully cause or permit that child to be placed in a situation where his or her person or health may be endangered.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

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

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

1     SECTION 1. Section 273d of the Penal Code is amended to  
2 read:

3     273d. (a) ~~Any~~A person who willfully inflicts upon a child ~~any~~  
4 cruel or inhuman corporal punishment or an injury resulting in a  
5 traumatic condition is guilty of a felony *or a misdemeanor* and  
6 shall be punished by imprisonment ~~pursuant to subdivision (h) of~~  
7 ~~Section 1170~~ *in the state prison* for two, four, or six years, or in a  
8 county jail for not more than one year, by a fine of up to six  
9 thousand dollars (\$6,000), or by both that imprisonment and fine.

10     (b) ~~Any~~A person who is found guilty of violating subdivision  
11 (a) shall receive a four-year enhancement for a prior conviction  
12 of that offense provided that no additional term shall be imposed  
13 under this subdivision for any prison term or term imposed under  
14 the provisions of subdivision (h) of Section 1170 served prior to  
15 a period of 10 years in which the defendant remained free of both  
16 the commission of an offense that results in a felony conviction  
17 and prison custody or custody in a county jail under the provisions  
18 of subdivision (h) of Section 1170.

19     (c) If a person is convicted of violating this section and probation  
20 is granted, the court shall require the following minimum  
21 conditions of probation:

22     (1) A mandatory minimum period of probation of 36 months.

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

26     (3) (A) Successful completion of no less than one year of a  
27 child abuser’s treatment counseling program. The defendant shall  
28 be ordered to begin participation in the program immediately upon  
29 the grant of probation. The counseling program shall meet the  
30 criteria specified in Section 273.1. The defendant shall produce  
31 documentation of program enrollment to the court within 30 days  
32 of enrollment, 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

1 on the defendant's changed circumstances, the court may reduce  
2 or waive the fees.

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

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

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

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

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

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

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

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

37 ~~(3) (A) Successful completion of no less than one year of a~~  
38 ~~child abuser's treatment counseling program approved by the~~  
39 ~~probation department. The defendant shall be ordered to begin~~  
40 ~~participation in the program immediately upon the grant of~~

1 probation. The counseling program shall meet the criteria specified  
2 in Section 273.1. The defendant shall produce documentation of  
3 program enrollment to the court within 30 days of enrollment,  
4 along with quarterly progress reports.

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

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

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