

AMENDED IN SENATE JULY 22, 1997  
AMENDED IN ASSEMBLY JUNE 2, 1997  
AMENDED IN ASSEMBLY MAY 22, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 123**

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**Introduced by Assembly Members Wildman and Cunneen  
(Coauthors: Assembly Members Alquist, Baca, Caldera,  
Cardoza, Knox, Kuehl, Lempert, Mazzoni, Napolitano,  
Perata, Sweeney, Washington, and Wayne)  
(Coauthors: Senators Alpert and Solis)**

January 14, 1997

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An act to amend Section 270 of the Penal Code, relating to support.

LEGISLATIVE COUNSEL'S DIGEST

AB 123, as amended, Wildman. Child support.

(1) Under existing law, if a parent willfully omits to furnish necessary clothing, food, shelter, medical attendance, or other remedial care for his or her minor child, he or she shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment.

Existing law further provides that, if a person has notice that he or she has been adjudicated the parent of a minor child and he or she then commits the above offense, he or she shall be punished by imprisonment in a county jail not exceeding one

year or in the state prison for one year and one day, by a fine not exceeding \$2,000, or by both that fine and imprisonment.

This bill would provide, ~~in addition~~ *instead of the second offense described above*, that if a parent is in violation of the ~~above first offense described above~~ for more than 6 months, or ~~the parent~~ previously has been convicted of that offense; ~~a violation of that offense for more than 6 months~~, or a violation of a court order concerning child support, he or she shall be punished by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or 2 or 3 years, by a fine not exceeding \$5,000, or by both that fine and imprisonment. By increasing the penalty for an existing crime, the bill would impose a state-mandated local program.

~~(2) Existing law provides that a person is not immune from liability under the provisions in (1) merely because the other parent of the child is entitled to custody of the child or because the other parent of the child or any other person or organization furnishes necessary food, clothing, shelter, medical attendance, or other remedial care for the child or undertakes to do these things.~~

~~This bill additionally would provide that a person is not immune from liability under the provisions in (1) merely because visitation rights have been withheld or interfered with. Existing law, known as “the three strikes law” and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions. The initiative statutes provide that any amendment of these provisions requires a  $\frac{2}{3}$  vote of the membership of each house of the Legislature.~~

~~This bill would provide that a felony conviction under the provisions in (1) above shall not constitute a current felony conviction for purposes of sentencing under the “three strikes” provisions of those initiative statutes. Because the bill would constitute an amendment of those initiative statutes, the bill would require a  $\frac{2}{3}$  vote.~~

(3) Existing law provides that in determining the ability of a parent to support his or her child, the court shall consider all income, including social insurance benefits and gifts.



This bill instead would provide for these purposes that the court shall consider all assets and income available to the parent, including social insurance benefits and gifts. The bill additionally would provide that inability to pay may constitute an affirmative defense to the element of willfulness for purposes of the provisions in (1).

(4) Existing law specifies that the provisions in (1) apply whether the parents of the child are or were ever married or divorced, and regardless of any divorce decree relating to alimony or child support.

This bill would delete the reference to a divorce decree relating to alimony. The bill also would define the term “parent” for purposes of the above provisions.

(5) 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~~ <sup>2/3</sup>. 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 270 of the Penal Code is  
2 amended to read:  
3 270. (a) If a parent of a minor child willfully omits,  
4 without lawful excuse, to furnish necessary clothing, food,  
5 shelter, or medical attendance, or other remedial care for  
6 his or her child, he or she is guilty of a misdemeanor  
7 punishable by a fine not exceeding two thousand dollars  
8 (\$2,000), or by imprisonment in a county jail not  
9 exceeding one year, or by both that fine and  
10 imprisonment.  
11 (b) Any person who meets ~~all~~ *both* of the following  
12 conditions shall be punished by imprisonment in a county  
13 jail not exceeding one year or in the state prison for 16  
14 months, or two or three years, or by a fine not exceeding  
15 five thousand dollars (\$5,000), or by both that fine and  
16 imprisonment:



1 (1) The person has been in violation of subdivision (a)  
2 for more than six months, or has been convicted  
3 previously of a violation of this subdivision, subdivision  
4 (a), or paragraph (4) of subdivision (a) of Section 166  
5 concerning child support.

6 ~~(2) A court of competent jurisdiction has made a final  
7 adjudication in either a civil or criminal action that the  
8 person is the parent of a minor child and the person has  
9 received notice of that adjudication.~~

10 ~~(3)~~  
11 (2) The person willfully omits, without lawful excuse,  
12 to furnish necessary clothing, food, shelter, medical  
13 attendance, or other remedial care, for his or her child.

14 (c) This section does not relieve a parent from the  
15 criminal liability defined herein for an omission merely  
16 because the other parent of the child is legally entitled to  
17 the custody of the child, ~~visitation rights have been  
18 withheld or interfered with,~~ or the other parent of the  
19 child or any other person or organization voluntarily or  
20 involuntarily furnishes the necessary food, clothing,  
21 shelter, medical attendance, or other remedial care for  
22 the child or undertakes to do so.

23 (d) Proof of abandonment or desertion of a child by a  
24 parent, or the omission by a parent to furnish necessary  
25 food, clothing, shelter, or medical attendance, or other  
26 remedial care for his or her child is prima facie evidence  
27 that the abandonment or desertion or omission to furnish  
28 necessary food, clothing, shelter, or medical attendance,  
29 or other remedial care is willful and without lawful  
30 excuse.

31 (e) Inability to pay may constitute an affirmative  
32 defense to the element of willfulness. The court, in  
33 determining the ability of the parent to support his or her  
34 child, shall consider all assets and income available to the  
35 parent, including social insurance benefits and gifts.

36 (f) This section is applicable whether the parents of  
37 the child are or were ever married or divorced, and  
38 without regard to whether or not an order for support of  
39 the child has been made. A child conceived but not yet



1 born is to be deemed an existing person insofar as this  
2 section is concerned.

3 (g) The husband of a woman who bears a child as a  
4 result of artificial insemination shall be considered the  
5 father of that child for the purpose of this section, if he  
6 consented in writing to the artificial insemination.

7 (h) For the purposes of this section, “parent” shall  
8 have the meaning provided in existing law as it relates to  
9 the liability of a parent for the support of his or her child.

10 (i) If a parent provides a minor with treatment by  
11 spiritual means through prayer alone in accordance with  
12 the tenets and practices of a recognized church or  
13 religious denomination, by a duly accredited practitioner  
14 thereof, the treatment shall constitute “other remedial  
15 care,” as used in this section.

16 (j) *A felony conviction under subdivision (b) shall not*  
17 *constitute a current felony conviction for purposes of*  
18 *subdivisions (b) to (i), inclusive, of Section 667 or Section*  
19 *1170.12.*

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

30 Notwithstanding Section 17580 of the Government  
31 Code, unless otherwise specified, the provisions of this act  
32 shall become operative on the same date that the act  
33 takes effect pursuant to the California Constitution.

