

AMENDED IN ASSEMBLY FEBRUARY 3, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 59

Introduced by Assembly Member Cohn
(Principal coauthor: Assembly Member Mullin)
(Coauthor: Assembly Member Vargas)

December 6, 2004

An act to add Section 273.55 to the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 59, as amended, Cohn. Domestic violence: presence of minors: enhancements.

Existing law proscribes specified acts of domestic violence, as defined.

This bill would provide that a person convicted of the commission of felony domestic violence, *when the person knew that the violence was committed* in the presence of any child under 18 years of age, shall receive an enhancement of one year in the state prison. The bill would also provide that a person convicted of the commission of misdemeanor domestic violence, *when the person knew that the violence was committed* in the presence of any child under 18 years of age, shall receive a mandatory jail term of at least 90 days for the offense. For a misdemeanor domestic violence offense with an existing mandatory minimum term, that term would be increased by 90 days, as specified. Furthermore, the bill would provide that a person convicted of inflicting great bodily injury, as defined, on any victim of felony domestic violence, *when the person knew that the violence was committed* in the presence of any child under 18 years of age, shall receive an enhancement of 2 years in the state prison. By

increasing the term of imprisonment in a county jail or by imposing mandatory jail time, this bill would impose a state-mandated local program upon local government.

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 273.55 is added to the Penal Code, to
2 read:

3 273.55. (a) Any person convicted of a felony for the
4 commission of an act constituting domestic violence, as defined
5 in Section 13700, when the ~~commission occurs~~ *person knew that*
6 *the act constituting domestic violence was committed* in the
7 presence of, ~~or is witnessed by~~, any child under 18 years of age,
8 shall, in addition and consecutive to the punishment prescribed
9 for the felony of which he or she has been convicted, be punished
10 by an additional term of one year in the state prison.

11 (b) (1) Any person convicted of a misdemeanor for the
12 commission of an act constituting domestic violence, as defined
13 in Section 13700, when the ~~commission occurs~~ *person knew that*
14 *the act constituting domestic violence was committed* in the
15 presence of, ~~or is witnessed by~~, any child under 18 years of age,
16 shall be sentenced to at least 90 days for the offense.

17 (2) If a mandatory jail term is required for the underlying
18 misdemeanor offense, that mandatory term shall be increased by
19 90 days.

20 (c) Any person who inflicts great bodily injury, as defined in
21 Section 12022.7, on any victim in the commission of felony
22 domestic violence, as defined in Section 13700, when the
23 ~~commission occurs~~ *person knew that the act constituting*
24 *domestic violence was committed* in the presence of, ~~or is~~
25 ~~witnessed by~~, any child under 18 years of age, shall, in addition
26 and consecutive to the punishment prescribed for the felony of

1 which he or she has been convicted, be punished by an additional
2 term of two years in the state prison.

3 *(d) As used in this section, “in the presence of any child”*
4 *means capable of being seen or heard by any child.*

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.