

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Mark Leno, Chair
2009-2010 Regular Session

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SB 1317 (Leno)
As Amended April 8, 2010
Hearing date: April 20, 2010
Penal Code
AA:mc

TRUANCY:

PARENTAL CRIMINAL LIABILITY

HISTORY

Source: San Francisco District Attorney

Prior Legislation: SB 1555 (Robbins) – Ch. 1256, Stats. 1988

Support: California District Attorneys Association; California State PTA; California Teachers Association; California Probation, Parole, and Correctional Association; Chief Probation Officers of California; one individual

Opposition: California Public Defenders Association; American Civil Liberties Union (unless amended)

KEY ISSUES

SHOULD A NEW MISDEMEANOR BE ENACTED FOR PARENTS OF K-8 CHILDREN WHO ARE CHRONICALLY TRUANT, AS SPECIFIED?

SHOULD COURTS EXPRESSLY BE AUTHORIZED TO ESTABLISH A DEFERRED ENTRY OF JUDGMENT PROGRAM TO HANDLE CASES INVOLVING PARENTS OR GUARDIANS OF ELEMENTARY SCHOOL PUPILS WHO ARE CHRONICALLY TRUANT, AS SPECIFIED?

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PURPOSE

The purposes of this bill are to 1) enact a new misdemeanor for parents of K-8 children who are chronically truant, as specified; and 2) authorize courts to establish a deferred entry of judgment program to handle cases involving parents or guardians of elementary school pupils who are chronically truant, with specified features.

Current law provides that "every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to (become a dependent or delinquent ward of the juvenile court¹) or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or to remain a person within the (jurisdiction of the dependency or delinquency court, as specified), is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$2,500, or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years." (Penal Code § 272.)

Current law provides that for purposes of these provisions, "a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child." (*Id.*)

This bill would enact a new crime providing that a "parent or guardian of a pupil of six 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 as defined in Section 48263.6 of the Education Code, is guilty of a misdemeanor," punishable by a fine not exceeding \$2,000, or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

Current law authorizes a diversion program for parents or guardians who are being prosecuted for contributing to the delinquency of a minor under Penal Code section 272, as specified. (Penal Code § 1001.70 et seq.)

This bill would provide that a parent or guardian guilty of the new misdemeanor this bill would create would be eligible to participate in the deferred entry of judgment program created by this bill, as explained below.

¹ Specifically, come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code.

This bill would authorize a superior court to establish a deferred entry of judgment program "to adjudicate cases involving parents or guardians of elementary school pupils who are chronic truants as defined in Section 48263.6 of the Education Code,²" with the following components:

- (1) A dedicated court calendar.
- (2) Leadership by a judge of the superior court in that county.
- (3) Service referrals for parents or guardians, including, but not necessarily limited to, all of the following:
 - (A) Case management.
 - (B) Mental and physical health services.
 - (C) Parenting classes and support.
 - (D) Substance abuse treatment.
 - (E) Child care and housing.
- (4) A clear statement that, in lieu of trial, the court may grant deferred entry of judgment with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment and that, upon the defendant's compliance with the terms and conditions set forth by the court and agreed to by the defendant upon the entry of his or her plea, and upon the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant, as specified.
- (5) A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.
- (6) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

This bill becomes operative only if Senate Bill 1148 of the 2009–10 Regular Session is enacted, adds Section 48263.6 to the Education Code, and becomes operative on or before January 1, 2011.

² This section is proposed in SB 1148 (Alquist), the enactment of which this bill is contingent upon. As amended April 6, 2010, SB 1148 would provide that, "Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse for 10 percent 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 Sections 48260, 48260.5, 48261, 48262, 48263, and 48291."

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION IMPLICATIONS

The severe prison overcrowding problem California has experienced for the last several years has not been solved. In December of 2006 plaintiffs in two federal lawsuits against the Department of Corrections and Rehabilitation sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a federal three-judge panel issued an order requiring the state to reduce its inmate population to 137.5 percent of design capacity -- a reduction of roughly 40,000 inmates -- within two years. In a prior, related 184-page Opinion and Order dated August 4, 2009, that court stated in part:

"California's correctional system is in a tailspin," the state's independent oversight agency has reported. . . . (Jan. 2007 Little Hoover Commission Report, "Solving California's Corrections Crisis: Time Is Running Out"). Tough-on-crime politics have increased the population of California's prisons dramatically while making necessary reforms impossible. . . . As a result, the state's prisons have become places "of extreme peril to the safety of persons" they house, . . . (Governor Schwarzenegger's Oct. 4, 2006 Prison Overcrowding State of Emergency Declaration), while contributing little to the safety of California's residents, California "spends more on corrections than most countries in the world," but the state "reaps fewer public safety benefits." Although California's existing prison system serves neither the public nor the inmates well, the state has for years been unable or unwilling to implement the reforms necessary to reverse its continuing deterioration. (Some citations omitted.)

. . .

The massive 750% increase in the California prison population since the mid-1970s is the result of political decisions made over three decades, including the shift to inflexible determinate sentencing and the passage of harsh mandatory minimum and three-strikes laws, as well as the state's counterproductive parole system. Unfortunately, as California's prison population has grown, California's political decision-makers have failed to provide the resources and facilities required to meet the additional need for space and for other necessities of prison existence. Likewise, although state-appointed experts have repeatedly provided numerous methods by which the state could safely reduce its prison population, their recommendations have been ignored, underfunded, or postponed indefinitely. The convergence of tough-on-crime policies and an unwillingness to expend the necessary funds to support the population growth has brought California's prisons to the breaking point. The state of emergency declared by Governor Schwarzenegger almost three years ago continues to this day, California's prisons remain severely overcrowded, and inmates in the California

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prison system continue to languish without constitutionally adequate medical and mental health care.³

The court stayed implementation of its January 12, 2010, ruling pending the state's appeal of the decision to the U.S. Supreme Court. That appeal, and the final outcome of this litigation, is not anticipated until later this year or 2011.

This bill does not aggravate the prison overcrowding crisis described above.

COMMENTS

1. Stated Need for This Bill

The author states in part:

When it comes to breaking the cycle of crime, we can either pay attention to the signs of trouble now, or we can pay the price later. We pay that price in more ways than one. Elementary school children who fail to attend school today become tomorrow's high school dropouts. Dropouts are those most likely to end up in the streets as either victims or perpetrators of crime. . . . Combating elementary school truancy is a smart approach to crime prevention.

The statistics speak volumes. Habitual truants become high school truants, and it is estimated that as many as 75 percent of all truant high school students will eventually drop out of school. Statewide, three-fourths of prison inmates are high school dropouts. In San Francisco, over 94 percent of all homicide victims under the age of 25 are high school dropouts. . . .

. . . In 2007, the National Center for Children in Poverty issued a study finding that children who miss 10 percent or more of the days in a given school year are the most likely to suffer lower academic performance in subsequent school years.

. . .

. . . Numerous studies demonstrate a strong correlation between teenage truancy and juvenile delinquency. The California Department of Education identified truancy as the most powerful predictor of juvenile delinquent behavior. The Office of Juvenile Justice and Delinquency Prevention reported that truancy correlates with substance abuse, gang involvement, and other criminal activity. A report by Fight Crime: Invest in Kids concluded that increasing graduation rates by 10 percentage points would decrease rates of violent crime by 20 percent, and

³ Three Judge Court Opinion and Order, *Coleman v. Schwarzenegger, Plata v. Schwarzenegger*, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (August 4, 2009).

prevent 500 murders and more than 20,000 aggravated assaults each year in California. . . .

County prosecutors have relied on Penal Code Section 272, "contributing to the delinquency of a minor" to seek stronger sanctions against parents of repeatedly truant children. Although Section 272 does not specifically address truancy, courts have found parents guilty of this misdemeanor if their failure to get their child in school results in delinquent juvenile behavior. Under this statute, parents can be fined up to \$2,500 or placed in jail for 6 months.

Unfortunately, however, neither the Education Code nor the Penal Code effectively addresses the most serious problem that needs the most immediate attention: chronic elementary school truancy.

The Education Code does not distinguish between levels of truancy, leaving the potential for parents of children who have missed 5 days to be considered as liable as parents of children who have missed 50 days for failing to ensure access to education. The most severe consequence that a parent can receive under the Education Code is an infraction conviction and a fine. (Education Code Section 48293)

Second, the Penal Code's silence on the issue of truancy leaves prosecutors and courts with the unhelpful option of focusing on whether the child is delinquent as a result of missing school, rather than focusing on the parents' failure to provide a basic need. Parents who allow their young children to have chronic levels of truancy are neglecting their child's needs, regardless of whether that child demonstrates delinquent behavior. Failing to educate a child is an issue of neglect, just like failing to feed or clothe them.

Finally, when prosecutors do invoke "contributing to the delinquency of a minor" to bring misdemeanor charges against parents of severely truant children, criminal courts have widely varying responses to these charges. Some courts take a punitive approach that may levy a fine or jail time on the parent but may not result in the return of the child to school, while others may not take these charges seriously, given the gravity of other criminal offenses being addressed, and may throw out the cases with no changed circumstances for the child. . . .

2. What This Bill Would Do

As explained in detail above, this bill would do the following:

- Enact a discrete new misdemeanor for parents of K-8 children where the child is a "chronic truant," subject to a fine up to \$2,000 or by county jail up to one year, or both; and

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- Authorize courts to establish a deferred entry of judgment program to handle cases involving parents or guardians of elementary school pupils who are chronic truants, with specified features.

This bill is contingent upon the passage of SB 1148 (Alquist), which would enact the definition of "chronic truant" employed by this bill.

3. "Chronic Truant"

As noted above, this bill is contingent upon the passage of Senator Alquist's bill, SB 1148, which as amended April 6, 2010, would provide the following definition of chronic truancy:

Any pupil subject to compulsory full-time education or to compulsory continuation education who *is absent from school without valid excuse for 10 percent 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 Sections 48260, 48260.5, 48261, 48262, 48263, and 48291. (emphasis added.)

The analysis of SB 1148 prepared by the Senate Committee on Education sets forth the following summary of relevant law in the Education Code:

Current law:

- 1) Defines a truant as a pupil subject to compulsory full-time education who is absent without valid excuses three full days in one school year, or tardy or absent for more than any 30-minute period on three occasions, or any combination. (Education Code § 48260.)
- 2) Requires a truant to be reported to the attendance supervisor or to the superintendent of the school district. (EC § 48260.)
- 3) Requires the school district to notify the pupil's parent by mail upon a pupil's initial classification as a truant about basic information, including that the parent is obligated to compel the pupil to attend school, may be guilty of an infraction and subject to prosecution, and that the pupil may be subject to penalties. (EC § 48260.5.)
- 4) Requires that any pupil who has once been reported as a truant and who is again absent or tardy from school without a valid excuse for one day to again be reported as a truant to the attendance supervisor or district superintendent. (EC § 48261.)

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- 5) Defines a habitual truant as any pupil who has been reported as a truant three or more times per school year (absent or tardy at least 5 days). A pupil may not be deemed habitually truant unless an appropriate district officer or employee had made a conscientious effort to hold at least one conference with a parent and the pupil, after the filing of either a truancy report to the attendance supervisor or district superintendent. (EC § 48262.)
- 6) Authorizes a habitually truant pupil to be referred to a school attendance review board (SARB) or to the probation department for services. If the SARB or probation officer determines that available community services can resolve the problem, the pupil or pupil's parents shall be directed to make use of those services. If it is determined that services cannot solve the problem, or if the pupil and/or parent have failed to respond to directives, the SARB may notify the district attorney or probation officer. (EC § 48263.)
- 7) Establishes a truancy mediation program whereby the district attorney or probation officer may request the parents and the pupil attend a meeting to discuss the possible legal consequences of the child's truancy. (EC §§ 48260.6 and 48263.5.)
- 8) Authorizes schools to require any minor who is reported as a truant to attend makeup classes during the weekend and provides that truants are subject to the following:
 - a) The pupil may be given a written warning by a peace officer the first time a truancy report is required.
 - b) The pupil may be assigned by the school to an afterschool or weekend study program upon the second truancy report.
 - c) The pupil shall be classified a habitual truant and may be referred to, and required to attend, an attendance review board or a truancy mediation program upon the third truancy report.
 - d) The pupil shall be within the jurisdiction of the juvenile court, which may adjudge the pupil to be a ward of the court upon the fourth truancy report. (EC § 48264.5.)

4. Contributing to the Delinquency of a Minor; Truancy

As noted above, under current law, parents and guardians can be prosecuted for allowing their children to be truant under Penal Code section 272, which penalizes contributing to the delinquency of a minor. Witkin explains:

P.C. 272 was amended in 1988 to provide that under the statute, a parent or legal guardian of a person under age 18 has a duty "to exercise reasonable care, supervision, protection, and control" over the minor.

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In *Williams v. Garcetti* (1993) 5 C.4th 561, . . . a challenge to this provision as unconstitutionally vague and overbroad was rejected. The court declined to decide whether the amendment enlarged or merely clarified the scope of parents' criminal liability, because in either case the inquiry is the same: "Whether a parental duty of 'reasonable care, supervision, protection, and control' is sufficiently certain to meet constitutional due process requirements. We conclude that it is because it incorporates the definitions and the limits of parental duties that have long been a part of California dependency law and tort law."

(a) Parents' legal responsibilities for the care and protection of their children are well established and defined, and Welf.C. 300 provides guidelines that are sufficiently specific to define the parental duty of care and protection.

(b) The parental duty of supervision and control focuses on the child's actions and their effect on third persons. Prior to the 1988 amendment, P.C. 272, read in conjunction with Welf.C. 601 and 602, imposed misdemeanor liability on a person whose act or omission "causes or tends to cause or encourage" a child to engage in delinquent acts. Implicit in the statutory language was the duty to make a reasonable effort to prevent the child from so doing.

(c) "The amendment here at issue provides more explicitly that *parents* violate section 272 when they omit to perform their duty of reasonable 'supervision' and 'control' and that omission results in the child's delinquency. Therefore, the Legislature must have intended the 'supervision' and 'control' elements of the amendment to describe parents' duty to reasonably supervise and control their children so that the children do not engage in delinquent acts."

(d) Parents' duty to supervise and control their children, and tort liability for breach of that duty, have long existed in California; "supervision" and "control," as used in the 1988 amendment, are consistent with that duty. "Therefore, we understand the amendment to describe the duty of reasonable restraint of and discipline for a child's delinquent acts by parents who know or should know that their child is at risk of delinquency and that they are able to control the child

(e) This duty of reasonable supervision and control is sufficiently certain even though it cannot be defined with precision. Liability under P.C. 272 requires criminal negligence, i.e., aggravated, culpable, gross, or reckless conduct. These heightened standards alleviate any uncertainty as to what constitutes reasonable supervision or control. Liability attaches only if parents know or reasonably should know that their child is at risk of delinquency. And parents who reasonably try but are unable to control their children are not criminally negligent.

. . . ⁴

⁴ 2 Witkin Cal. Crim. Law Sex Crimes § 154 (some citations omitted).

With respect to truancy, the *Garcetti* case noted in Witkin stated:

The terms "supervision" and "control" suggest an aspect of the parental duty that focuses on the child's actions and their effect on third parties. This aspect becomes plain when the amendment is read in conjunction with Welfare and Institutions Code sections 601 and 602. . . . Subdivision (b) of section 601 brings within the jurisdiction of the juvenile court minors for whom "the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities" Section 602 brings within the jurisdiction of the juvenile court any minor who "violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime" ⁵

The author and/or the Committee may wish to describe how this bill would affect or work in conjunction with current law.

5. Deferred Entry of Judgment Program; Diversion

This bill would authorize a deferred entry of judgment program for K-8 chronic truancy cases, as detailed above. Current law, enacted in 1988, authorizes diversion under certain circumstances involving contributing to the delinquency of a minor. Unlike deferred entry of judgment, where defendants are required to plead guilty in exchange for the future dismissal of the charges once they have complied with all the terms and conditions required by the court, a diversion model does not require defendants to plead guilty in order to get into the program. The author and/or the Committee may wish to discuss the differences of these two models with respect to the persons affected by this measure.

IS THE DEFERRED ENTRY MODEL BETTER THAN A DIVERSION MODEL FOR THE PERSONS AND PROBLEM TARGETED BY THIS BILL?

6. San Francisco District Attorney's Office Program

This Committee conducted an informational hearing earlier this year on issues surrounding truancy, especially with respect to its impact on public safety. The district attorneys for San Bernardino and San Francisco, along with other informed experts, underscored the importance of addressing truancy, especially in the lower grades. The San Francisco District Attorney, sponsor of this bill, describes the San Francisco program which is the basis of this bill as follows:

The District Attorney's Office works with the San Francisco Unified School District (SFUSD) to employ a three-pronged approach to combat truancy.

⁵ *Williams v. Garcetti* (1993) 5 Cal. 4th 561, 570-571).

Stage 1: Education

We engage in public education and outreach. We use billboards, media and district-wide forums to educate parents about truancy and encourage students to stay in school. The DA also sends letters to every public school parent describing the problem of truancy and the consequences, and urging parents to keep children in school.

Stage 2: Intervention

When children become habitually truant, parents are asked to attend school attendance review board (SARB) meetings. We also host parent mediations to outline the steps parents must take to get their children in school and avoid more serious consequences. The DA's Office also hosts collaborative meetings with various city agencies and service providers to address the needs of parents with habitually truant students.

Stage 3: Prosecution

Parents of truant children who do not change course in Stage 2 are subject to prosecution. Parents must report to a specialized Truancy Court we created that combines close court monitoring with tailored family services. We have SFUSD and Children and Family Services on hand to resolve underlying issues such as transportation, unstable housing, substance abuse, mental health, neglect or unresolved special education needs. Parents who are continually reluctant to send their children to school are subject to fine or imprisonment.⁶

⁶ *The Truancy Reduction Initiative: Getting Kids Back in School* (available online at: <http://www.sfdistrictattorney.org/pdfs/SFDA.truancybrochure.pdf>).