

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2723

Introduced by Assembly Member Chávez

February 19, 2016

An act to amend Section ~~602~~ 300 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2723, as amended, Chávez. ~~Juveniles: wards. Juvenile dependency: prostitution.~~

Existing law establishes the jurisdiction of the juvenile court, which may adjudge certain children to be dependents of the court under certain circumstances, including when the child is abused, a parent or guardian fails to adequately supervise or protect the child, as specified, or a parent or guardian fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law declares that a child is within the dependency jurisdiction of the juvenile court if the child is a victim of sexual trafficking, or receives food, shelter, or money in exchange for specified sexual acts, as a result of the failure or inability of his or her parent or guardian to protect the child, and declares that this is declaratory of existing law.

This bill would additionally include a child within the dependency jurisdiction of the juvenile court if the child solicits or engages in any act of prostitution or loiters in a public place with the intent to commit prostitution, and the child's parent or guardian has failed to protect the child. The bill would state that these provisions are declaratory of existing law.

~~The Arnold-Kennick Juvenile Court Law provides that any person who is under 18 years of age when he or she violates any criminal law while in this state, except an age curfew ordinance or any other specified offense, comes within the jurisdiction of the juvenile court, which may adjudge the person a ward of the court.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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 300 of the Welfare and Institutions Code
2 is amended to read:

3 300. A child who comes within any of the following
4 descriptions is within the jurisdiction of the juvenile court which
5 may adjudge that person to be a dependent child of the court:

6 (a) The child has suffered, or there is a substantial risk that the
7 child will suffer, serious physical harm inflicted nonaccidentally
8 upon the child by the child’s parent or guardian. For purposes of
9 this subdivision, a court may find there is a substantial risk of
10 serious future injury based on the manner in which a less serious
11 injury was inflicted, a history of repeated inflictions of injuries on
12 the child or the child’s siblings, or a combination of these and other
13 actions by the parent or guardian that indicate the child is at risk
14 of serious physical harm. For purposes of this subdivision, “serious
15 physical harm” does not include reasonable and age-appropriate
16 spanking to the buttocks if there is no evidence of serious physical
17 injury.

18 (b) (1) The child has suffered, or there is a substantial risk that
19 the child will suffer, serious physical harm or illness, as a result
20 of the failure or inability of his or her parent or guardian to
21 adequately supervise or protect the child, or the willful or negligent
22 failure of the child’s parent or guardian to adequately supervise
23 or protect the child from the conduct of the custodian with whom
24 the child has been left, or by the willful or negligent failure of the
25 parent or guardian to provide the child with adequate food,
26 clothing, shelter, or medical treatment, or by the inability of the
27 parent or guardian to provide regular care for the child due to the
28 parent’s or guardian’s mental illness, developmental disability, or

1 substance abuse. A child shall not be found to be a person described
2 by this subdivision solely due to the lack of an emergency shelter
3 for the family. Whenever it is alleged that a child comes within
4 the jurisdiction of the court on the basis of the parent's or
5 guardian's willful failure to provide adequate medical treatment
6 or specific decision to provide spiritual treatment through prayer,
7 the court shall give deference to the parent's or guardian's medical
8 treatment, nontreatment, or spiritual treatment through prayer alone
9 in accordance with the tenets and practices of a recognized church
10 or religious denomination, by an accredited practitioner thereof,
11 and shall not assume jurisdiction unless necessary to protect the
12 child from suffering serious physical harm or illness. In making
13 its determination, the court shall consider (1) the nature of the
14 treatment proposed by the parent or guardian, (2) the risks to the
15 child posed by the course of treatment or nontreatment proposed
16 by the parent or guardian, (3) the risk, if any, of the course of
17 treatment being proposed by the petitioning agency, and (4) the
18 likely success of the courses of treatment or nontreatment proposed
19 by the parent or guardian and agency. The child shall continue to
20 be a dependent child pursuant to this subdivision only so long as
21 is necessary to protect the child from risk of suffering serious
22 physical harm or illness.

23 (2) The Legislature finds and declares that a child who is
24 sexually trafficked, as described in Section 236.1 of the Penal
25 Code, or who receives food or shelter in exchange for, or who is
26 paid to perform, sexual acts described in Section 236.1 or 11165.1
27 of the Penal Code, *or who has engaged in the conduct described*
28 *in subdivision (b) of Section 647 or Section 653.22 of the Penal*
29 *Code*, and whose parent or guardian failed to, or was unable to,
30 protect the child, is within the description of this subdivision, and
31 that this finding is declaratory of existing law. These children shall
32 be known as commercially sexually exploited children.

33 (c) The child is suffering serious emotional damage, or is at
34 substantial risk of suffering serious emotional damage, evidenced
35 by severe anxiety, depression, withdrawal, or untoward aggressive
36 behavior toward self or others, as a result of the conduct of the
37 parent or guardian or who has no parent or guardian capable of
38 providing appropriate care. A child shall not be found to be a
39 person described by this subdivision if the willful failure of the
40 parent or guardian to provide adequate mental health treatment is

1 based on a sincerely held religious belief and if a less intrusive
2 judicial intervention is available.

3 (d) The child has been sexually abused, or there is a substantial
4 risk that the child will be sexually abused, as defined in Section
5 11165.1 of the Penal Code, by his or her parent or guardian or a
6 member of his or her household, or the parent or guardian has
7 failed to adequately protect the child from sexual abuse when the
8 parent or guardian knew or reasonably should have known that
9 the child was in danger of sexual abuse.

10 (e) The child is under the age of five years and has suffered
11 severe physical abuse by a parent, or by any person known by the
12 parent, if the parent knew or reasonably should have known that
13 the person was physically abusing the child. For the purposes of
14 this subdivision, “severe physical abuse” means any of the
15 following: any single act of abuse which causes physical trauma
16 of sufficient severity that, if left untreated, would cause permanent
17 physical disfigurement, permanent physical disability, or death;
18 any single act of sexual abuse which causes significant bleeding,
19 deep bruising, or significant external or internal swelling; or more
20 than one act of physical abuse, each of which causes bleeding,
21 deep bruising, significant external or internal swelling, bone
22 fracture, or unconsciousness; or the willful, prolonged failure to
23 provide adequate food. A child shall not be removed from the
24 physical custody of his or her parent or guardian on the basis of a
25 finding of severe physical abuse unless the social worker has made
26 an allegation of severe physical abuse pursuant to Section 332.

27 (f) The child’s parent or guardian caused the death of another
28 child through abuse or neglect.

29 (g) The child has been left without any provision for support;
30 physical custody of the child has been voluntarily surrendered
31 pursuant to Section 1255.7 of the Health and Safety Code and the
32 child has not been reclaimed within the 14-day period specified
33 in subdivision (g) of that section; the child’s parent has been
34 incarcerated or institutionalized and cannot arrange for the care of
35 the child; or a relative or other adult custodian with whom the child
36 resides or has been left is unwilling or unable to provide care or
37 support for the child, the whereabouts of the parent are unknown,
38 and reasonable efforts to locate the parent have been unsuccessful.

1 (h) The child has been freed for adoption by one or both parents
2 for 12 months by either relinquishment or termination of parental
3 rights or an adoption petition has not been granted.

4 (i) The child has been subjected to an act or acts of cruelty by
5 the parent or guardian or a member of his or her household, or the
6 parent or guardian has failed to adequately protect the child from
7 an act or acts of cruelty when the parent or guardian knew or
8 reasonably should have known that the child was in danger of
9 being subjected to an act or acts of cruelty.

10 (j) The child's sibling has been abused or neglected, as defined
11 in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk
12 that the child will be abused or neglected, as defined in those
13 subdivisions. The court shall consider the circumstances
14 surrounding the abuse or neglect of the sibling, the age and gender
15 of each child, the nature of the abuse or neglect of the sibling, the
16 mental condition of the parent or guardian, and any other factors
17 the court considers probative in determining whether there is a
18 substantial risk to the child.

19 It is the intent of the Legislature that this section not disrupt the
20 family unnecessarily or intrude inappropriately into family life,
21 prohibit the use of reasonable methods of parental discipline, or
22 prescribe a particular method of parenting. Further, this section is
23 not intended to limit the offering of voluntary services to those
24 families in need of assistance but who do not come within the
25 descriptions of this section. To the extent that savings accrue to
26 the state from child welfare services funding obtained as a result
27 of the enactment of the act that enacted this section, those savings
28 shall be used to promote services which support family
29 maintenance and family reunification plans, such as client
30 transportation, out-of-home respite care, parenting training, and
31 the provision of temporary or emergency in-home caretakers and
32 persons teaching and demonstrating homemaking skills. The
33 Legislature further declares that a physical disability, such as
34 blindness or deafness, is no bar to the raising of happy and
35 well-adjusted children and that a court's determination pursuant
36 to this section shall center upon whether a parent's disability
37 prevents him or her from exercising care and control. The
38 Legislature further declares that a child whose parent has been
39 adjudged a dependent child of the court pursuant to this section
40 shall not be considered to be at risk of abuse or neglect solely

1 because of the age, dependent status, or foster care status of the
2 parent.

3 As used in this section, “guardian” means the legal guardian of
4 the child.

5 SECTION 1. Section 602 of the Welfare and Institutions Code
6 is amended to read:

7 602. ~~(a) Except as provided in subdivision (b), any person
8 who is under 18 years of age when he or she violates any law of
9 this state or of the United States or any ordinance of any city or
10 county of this state defining crime, other than an ordinance
11 establishing a curfew based solely on age, is within the jurisdiction
12 of the juvenile court, which may adjudge that person to be a ward
13 of the court.~~

14 ~~(b) Any person who is alleged, when he or she was 14 years of
15 age or older, to have committed one of the following offenses shall
16 be prosecuted under the general law in a court of criminal
17 jurisdiction:~~

18 ~~(1) Murder, as described in Section 187 of the Penal Code, if
19 one of the circumstances enumerated in subdivision (a) of Section
20 190.2 of the Penal Code is alleged by the prosecutor, and the
21 prosecutor alleges that the minor personally killed the victim.~~

22 ~~(2) The following sex offenses, if the prosecutor alleges that
23 the minor personally committed the offense and alleges that one
24 of the circumstances enumerated in subdivision (d) or (e) of Section
25 667.61 of the Penal Code applies:~~

26 ~~(A) Rape, as described in paragraph (2) of subdivision (a) of
27 Section 261 of the Penal Code.~~

28 ~~(B) Spousal rape, as described in paragraph (1) of subdivision
29 (a) of Section 262 of the Penal Code.~~

30 ~~(C) Foreible sex offenses in concert with another, as described
31 in Section 264.1 of the Penal Code.~~

32 ~~(D) Foreible lewd and lascivious acts on a child under 14 years
33 of age, as described in subdivision (b) of Section 288 of the Penal
34 Code.~~

35 ~~(E) Foreible sexual penetration, as described in subdivision (a)
36 of Section 289 of the Penal Code.~~

37 ~~(F) Sodomy or oral copulation in violation of Section 286 or
38 288a of the Penal Code, by force, violence, duress, menace, or fear
39 of immediate and unlawful bodily injury on the victim or another
40 person.~~

1 ~~(G) Lewd and lascivious acts on a child under 14 years of age,~~
2 ~~as defined in subdivision (a) of Section 288, unless the defendant~~
3 ~~qualifies for probation under subdivision (d) of Section 1203.066~~
4 ~~of the Penal Code.~~

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