

ASSEMBLY BILL

No. 804

Introduced by Assembly Member Keeley

February 24, 1999

An act to amend Section 300 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as introduced, Keeley. Dependent children: educational neglect.

Existing law specifies various types of child neglect and abuse that, if found, bring a child within the jurisdiction of the juvenile court that may adjudge the child to be a dependent child of the court.

This bill would add to that list the educational neglect of a child, as specified. By expanding the classes of children within the court's dependency jurisdiction, this bill would expand the duties of local personnel, thereby imposing a state-mandated local program.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by

the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

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

21 (b) The child has suffered, or there is a substantial risk
22 that the child will suffer, serious physical harm or illness,
23 as a result of the failure or inability of his or her parent or
24 guardian to adequately supervise or protect the child, or
25 the willful or negligent failure of the child’s parent or
26 guardian to adequately supervise or protect the child
27 from the conduct of the custodian with whom the child
28 has been left, or by the willful or negligent failure of the
29 parent or guardian to provide the child with adequate
30 food, clothing, shelter, or medical treatment, or by the
31 inability of the parent or guardian to provide regular care
32 for the child due to the parent’s or guardian’s mental
33 illness, developmental disability, or substance abuse. No



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

26 (c) The child is suffering serious emotional damage, or
27 is at substantial risk of suffering serious emotional
28 damage, evidenced by severe anxiety, depression,
29 withdrawal, or untoward aggressive behavior toward self
30 or others, as a result of the conduct of the parent or
31 guardian or who has no parent or guardian capable of
32 providing appropriate care. No child shall be found to be
33 a person described by this subdivision if the willful failure
34 of the parent or guardian to provide adequate mental
35 health treatment is based on a sincerely held religious
36 belief and if a less intrusive judicial intervention is
37 available.

38 (d) The child has been sexually abused, or there is a
39 substantial risk that the child will be sexually abused, as
40 defined in Section 11165.1 of the Penal Code, by his or her



1 parent or guardian or a member of his or her household,
2 or the parent or guardian has failed to adequately protect
3 the child from sexual abuse when the parent or guardian
4 knew or reasonably should have known that the child was
5 in danger of sexual abuse.

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

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

29 (g) The child has been left without any provision for
30 support; the child’s parent has been incarcerated or
31 institutionalized and cannot arrange for the care of the
32 child; or a relative or other adult custodian with whom the
33 child resides or has been left is unwilling or unable to
34 provide care or support for the child, the whereabouts of
35 the parent are unknown, and reasonable efforts to locate
36 the parent have been unsuccessful.

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



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

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

18 (k) *The child is over the age of six years and has*
19 *suffered educational neglect as a result of the willful or*
20 *negligent failure of the child's parent or guardian to*
21 *enroll the child in school or to ensure regular school*
22 *attendance by the child or the parent's or guardian's*
23 *willful or negligent interference with the regular school*
24 *attendance of the child.*

25 It is the intent of the Legislature that nothing in this
26 section disrupt the family unnecessarily or intrude
27 inappropriately into family life, prohibit the use of
28 reasonable methods of parental discipline, or prescribe a
29 particular method of parenting. Further, nothing in this
30 section is intended to limit the offering of voluntary
31 services to those families in need of assistance but who do
32 not come within the descriptions of this section. To the
33 extent that savings accrue to the state from child welfare
34 services funding obtained as a result of the enactment of
35 the act that enacted this section, those savings shall be
36 used to promote services ~~which~~ *that* support family
37 maintenance and family reunification plans, such as
38 client transportation, out-of-home respite care, parenting
39 training, and the provision of temporary or emergency
40 in-home caretakers and persons teaching and



1 demonstrating homemaking skills. The Legislature
2 further declares that a physical disability, such as
3 blindness or deafness, is no bar to the raising of happy and
4 well-adjusted children and that a court's determination
5 pursuant to this section shall center upon whether a
6 parent's disability prevents him or her from exercising
7 care and control.

8 As used in this section "guardian" means the legal
9 guardian of the child.

10 SEC. 2. Notwithstanding Section 17610 of the
11 Government Code, if the Commission on State Mandates
12 determines that this act contains costs mandated by the
13 state, reimbursement to local agencies and school
14 districts for those costs shall be made pursuant to Part 7
15 (commencing with Section 17500) of Division 4 of Title
16 2 of the Government Code. If the statewide cost of the
17 claim for reimbursement does not exceed one million
18 dollars (\$1,000,000), reimbursement shall be made from
19 the State Mandates Claims Fund.

