

AB 755 – Updated Alert Supplement

Jointly issued by Child and Family Protection Association and HSLDA – Updated April 24, 2007

(Author: Assembly Member Sally Lieber) – Prohibition of Spanking

AB 755 is authored by California Assembly Member Sally Lieber who has no children. AB 755 would have the practical effect of eliminating spanking with an implement (i.e. inanimate object) in California. Although AB 755 does not use the word “spanking”, it doesn’t need to because it would add language to the Penal Code, describing the actions of spanking with an inanimate object, such as a paddle. AB 755 would force Sally Lieber’s view on everyone else through the police powers of the state.

Her carefully crafted AB 755 is one of the most deceptive and dangerous bills we have ever seen because: (1) it’s language is complex and therefore difficult to understand, especially without the assistance of an attorney; (2) it has the appearance of simply helping the Courts go after true child abusers; (3) it was skillfully written to hide its true agenda; (4) the author is using excellent media staff to sell her message; and, most of all, (5) it would inflict serious destruction upon families, severely hurting both children and their parents all in the name of protecting children.

Lieber’s strategy in AB 755 is to convince the Legislature that because there are a few parents, who abuse their children through spanking, there is a need to treat spanking with an implement (i.e. a paddle) as unjustifiable and therefore a crime. **The author is attempting to cleverly do indirectly what politically she cannot do directly.**

AB 755 would amend Penal Code Section 273a, which currently states, in part, that “any person who ... willfully ... inflicts thereon [i.e. on any child] unjustifiable physical pain or mental suffering ... is guilty....”

AB 755 would amend this Penal Code Section by adding the following jury instructions:

“In a prosecution under this Section in determining whether or not a defendant willfully caused any child to suffer, or inflicted unjustifiable physical pain, or mental suffering, a jury may consider any of the following:

- (1) The use of an implementation, including, but not limited to, a stick, a rod, a switch, an electrical cord, an extension cord, a belt, a broom, or a shoe.
- (2) Throwing, kicking, burning, or cutting a child.
- (3) Striking a child with a closed fist.
- (4) Striking a child under the age of three on the face or head.
- (5) Vigorous shaking of a child under the age of three.
- (6) Interference with a child’s breathing.
- (7) Threatening with a deadly weapon.

However, the above conduct is not sufficient by itself to prove guilt, and its weight and significance, if any, is for the jury to decide.”

The qualifying statement at the end of the seven action items is of little value to the loving parent who used a paddle or ruler in a spanking because the inclusion of item #1 with the remainder of the seven items. The inclusion of Item #1 will cause (or allow) a jury to consider this item on an equal basis as the other six (#2-7) which are obviously abuse items. This was done on purpose to utilize “guilt by association,” and it also gives the author a “basis” to claim that her bill is to get rid of child abuse even though items #2 - #7 are already illegal. To illustrate, the author’s press releases (2-22-07) could be construed to imply that the use of actions such as burning, cutting, and kicking and other actions listed in items #2 - #6 above are legal under current law when

used by parents who claim they are administering corporal discipline. This is simply not true. The cases that involve #2 - #7 are being prosecuted in courts under current law.

The codification of the language, which AB 755 adds to the Penal Code, creates a foregone conclusion of referral. From a liability perspective, a law enforcement or child protective services agency would be foolish to not refer once it is learned an implement was used regardless of the circumstances. This will also be true of the thousands of mandatory child abuse reporters. In our litigious society why risk "second guessing" at a subsequent time when it is simpler to move the case forward and force someone else to decide.

A spanking, by definition, is a conscious decision to inflict some degree of pain on a child. Properly administered, a spanking causes a temporary stinging pain sensation. Up till now, spanking with the hand or with an implement for the purpose of discipline to correct a child's negative behavior, without any serious or permanent injury, has been considered justifiable under Penal Code Section 273a. This is most clearly spelled out in Welfare and Institutions Code Section 300(a), which specifically exempts a reasonable age-appropriate spanking from being considered child abuse. AB 755 would change this to the detriment of children and their parents in California.

If AB 755 is passed, parents (or grandparents) reported to the police for spanking with a paddle or other object could be arrested, handcuffed, and hauled off to jail, have their children taken away from them, and charged with criminal child abuse. Subsequently, one or both parents would have to hire an attorney to defend themselves in an expensive, time-consuming, and very traumatic criminal court trial. This process would consume the parents' lives for a long period of time, and would be very destructive to the children's well-being. Even if later found innocent, the accused parent will still have endured the trauma and expense of being arrested and tried in court -- not to mention the expenses, the possibility of being separated from their child during this time, and losing work time and possibly their job.

This nightmare could be repeated each and every time the parents were reported for spanking their child with an implement. These reported allegations could come from anyone: your own child or their friends, other family members, neighbors, doctors and nurses, your church's child and youth ministry staff, baby sitters, casual acquaintances, total strangers, etc. Reports may come from someone who had witnessed a spanking first hand or from someone who simply learned, during a conversation, that you had spanked your child.

Any person convicted of violating the provisions of AB 755 could be sentenced up to 1 year in jail and pay a fine of up to \$1,000 for each offense. At the court's discretion, a parent could be placed on probation instead of being fined or sent to jail. Probation itself could be extremely difficult for a family. Probation would last for a minimum of 4 years. Each guilty parent would have to receive politically-correct indoctrination by attending either a non-violent parental education class or no less than one year of child abuser's treatment counseling. Finally, the judge could issue a protective order removing the parent(s) from the home and prohibiting them from having any contact with their children; or Child Protective Services could remove one or more of the minor children from the home temporarily or permanently.

Assembly Member Lieber has publicly and repeatedly stated that her ultimate goal is to make all spanking of children by their parents illegal. **AB 755 is only the first incremental effort to achieve the ultimate goal of criminalizing all spanking.** There are several groups and individuals who share this goal of eliminating all spanking. If California passes AB 755, it will only encourage the "no-spanking" proponents to push another bill to incrementally reach their goal. We must stop this first step: AB 755.

Additional Points of Opposition:

(Our main two-page Action Alert contains the best Opposition Points to share with legislators and the Press. It may be viewed at www.childandfamilyprotection.org and www.hslda.org .)

(1) This bill is not necessary to protect children. Current law safeguards the state's interest in protecting children from abuse while at the same time recognizing a parent's constitutional right to direct the upbringing of their children without unreasonable interference by the state. Under current law, the courts

have recognized that corporal discipline is appropriate when necessary and not excessive (People v. Curtiss 116 Cal. App. Supp. 777). Section 300(a) of the Welfare and Institutions Code provides further help where the Legislature has defined serious physical harm in the context of what constitutes abuse of a child. "... serious physical harm does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury." These definitions provide clear direction to a prosecutor, judge, and jury in a spanking case to make sure that abuse of a child is punished and the child is protected while at the same time recognizing that a reasonable spanking is not a crime but is an accepted form of discipline for parents to use. The Legislature has expressed wisdom in how spanking should be addressed by the juvenile and criminal justice system. The fact that some Judges and even Prosecutors are opposed to spanking should not override the wisdom of the Legislature, which reflects the will of the people on this issue.

- (2) We oppose all policies, regardless of the motives, which will weaken the effort to curtail true child abuse. AB 755 does this by lumping parents who administer reasonable love-based spankings with others who commit horrible acts of child abuse and torture. **AB 755 would take valuable resources and time away from fighting true child abuse. Spanking is not child abuse** when administered to a child's bottom as a tool of discipline for negative behavior, whether done by hand or with an implement (inanimate object) and where there is no serious injury.
- (3) **AB 755 would hurt the tourism industry of California when the rest of the nation learned that parents could be arrested, possibly taken to jail, and tried as a criminal for spanking their children when visiting California's beaches, mountains, cities, Nat'l Parks, theme parks, etc.** Out-of-state parents would decide it is safer to take their children to Florida's Disney World rather than California's Disneyland, for example.
- (4) A large number of responsible loving parents utilize spanking with an implement. There is no way for law enforcement agencies, Child Protective Services, the courts and other government systems to handle all of the new cases equally. **AB 755 will lead to selective enforcement**, which is a characteristic of totalitarian regimes and police states.
- (5) **Research and case examples, which are being used in an attempt to justify making spanking illegal, are faulty:** correlation alone does not prove cause and effect. Conclusions are drawn from statistics, which are not specific to good non-injurious models of corporal discipline – often not even distinguishing spanking to the buttocks from striking or hitting the child all over the body in anger. Much of this statistical data also often fails to distinguish the relationship of the person alleged to have abused a child (i.e. natural and adoptive parents vs. live-in boyfriends and baby sitters, etc.). Additionally, it fails to consider critical factors such as substance and alcohol abuse.
- (6) Convicting parents of a crime for lovingly disciplining their children **will weaken the parent-child bond, will undermine parental authority, and will encourage children to ignore their parents' efforts to curb their immature and anti-social behavior.** Additionally, children will be confused about who is right when their parents are arrested and punished for disciplining their children for certain serious things which their parents taught them was wrong.
- (7) **AB 755 would create a climate where parents would avoid getting help from professionals (who are mandatory child abuse reporters) for fear of having their children questioned and their spanking reported.** Already there is a growing trend of professionals in the medical, social and behavioral "sciences", education, and other fields being taught to see it as their mission to monitor children's and their parents' private family life. These professionals are encouraged to keep a permanent record of their observations, including answers to the question of whether their parents spank any of their minor children.^{1,2}
- (8) **AB 755 discriminates against those who believe it is better to use a neutral object rather than the open hand for spanking a child for correcting a child's negative behavior.** Advocates of using an implement when spanking have stated several positive reasons for using an implement like a paddle for spanking. For example, they assert that: (a) It is best not to associate the open hand with discipline – that the outreached

open hand should be reserved for association with support and compassion rather than discipline. (b) It takes more thought and time for the parent to go and get a neutral object so that it gives the parent more time to calm any emotions and to consider if a spanking is appropriate and reasonable for the situation. (c) The use of an object other than the hand is the most consistent with Scripture.

(9) If AB 755 passes, it would be another huge step on the slippery slope of state control over all parenting. Eliminating all spanking is one of many troubling agenda items of the U.N. Convention on the Rights of the Child and other advocates of expanding big government's intrusion into the private affairs of the family. AB 755 is only the first of many steps toward outlawing all corporal discipline (spanking). Additionally other forms of correction, discipline, and instruction commonly accepted now could eventually be added to the forbidden list on the basis of alleging that particular beliefs and acts cause emotional or psychological harm. **AB 755 requires elitists to “look inside the door of your home” and tell you how to raise and care for your children. Once the Legislature has crossed this threshold into your home, how much further into your home and family life will they justify being able to go?** Parental actions, which might be forbidden in the future, could include their requiring a child to apologize and make restitution for stealing property (because this could produce guilt, shame, and a lower self-esteem in the child). They could also criminalize parents or anyone instructing children about hell and sin and that Jesus is the only way to salvation on the grounds of being intolerant and damaging to the emotional well-being of the child. If AB 755 is passed in California, similar legislation could spread to other states. We must stop AB 755 and do all we can to stop the dominoes from falling this direction.

Ultimately, the practical result of this AB 755 would be to scare innocent, loving parents, by threatening them with being arrested, tried, and convicted so that parents in California will be afraid to spank their children.

Your help is needed now to defeat AB 755, which could put hundreds of good parents in jail while causing others to flee the state. Without God's intervention and your committed help, this deceptive and complicated bill will likely become law. However, God through His mercy and grace, working through your obedient responsible action and prayers, can defeat this terrible bill – as He has defeated many other threats before. We cannot afford to be presumptuous. As a team, we must fulfill God's calling to be His faithful stewards in defending the freedoms, which He has entrusted to us.

* This “AB 755 – Updated Alert Supplement” and our main “AB 755 – Updated Action Alert” can be downloaded from www.childandfamilyprotection.org and www.hsllda.org .

Footnotes:

¹ American Academy of Pediatrics; Policy Statement RE9832; January 1999.

Safety Screening – “Pediatricians need to identify the risk factors for violence among their patients. Violence-related assessment and screening should focus on the following areas: [1 among 11 areas] disciplinary attitudes and practices of the parents and caregivers (particularly about corporal punishment and physical/emotional abuse)

² *Connected Kids – Clinical Guide*; American Academy of Pediatrics; www.aap.org/ConnectedKids/ClinicalGuide.pdf

— We evaluate bills and proposals from a Biblical/Christian World View —
KEEP this Supplement as a reference for future Alerts on this subject.