

ASSEMBLY BILL

No. 461

Introduced by Assembly Member Dickerson

February 21, 2001

An act to amend Sections 243.4 and 647.6 of the Penal Code, relating to sexual battery.

LEGISLATIVE COUNSEL'S DIGEST

AB 461, as introduced, Dickerson. Sexual battery: minors.

Existing law provides that any person who touches an intimate part of another person, if the touching is against the will of that person, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable as specified. Existing law provides that every person who annoys or molests any child under the age of 18 shall be punished by a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

This bill would provide that any person who, under the circumstances described above, touches an intimate part of a minor of 14 years of age or older, and the person holds a position of special trust, as defined, in relation to the minor is guilty of sexual battery, an act which would be punishable by imprisonment in a county jail for not more than one year and a fine not exceeding \$2,000, or by imprisonment in the state prison and by a fine not exceeding \$10,000. By creating a new crime, this bill would create a state-mandated local program.

This bill would also provide that a person who annoys or molests any child under the age of 18, and holds a position of special trust, as defined, in relation to the child, would be punished by a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one

year, or by both the fine and imprisonment, or by imprisonment in the state prison. By creating a new crime, this bill would create 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.

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 243.4 of the Penal Code is amended to
2 read:

3 243.4. (a) Any person who touches an intimate part of
4 another person while that person is unlawfully restrained by the
5 accused or an accomplice, and if the touching is against the will of
6 the person touched and is for the purpose of sexual arousal, sexual
7 gratification, or sexual abuse, is guilty of sexual battery. A
8 violation of this subdivision is punishable by imprisonment in a
9 county jail for not more than one year, and by a fine not exceeding
10 two thousand dollars (\$2,000); or by imprisonment in the state
11 prison for two, three, or four years, and by a fine not exceeding ten
12 thousand dollars (\$10,000).

13 (b) Any person who touches an intimate part of another person
14 who is institutionalized for medical treatment and who is seriously
15 disabled or medically incapacitated, if the touching is against the
16 will of the person touched, and if the touching is for the purpose
17 of sexual arousal, sexual gratification, or sexual abuse, is guilty of
18 sexual battery. A violation of this subdivision is punishable by
19 imprisonment in a county jail for not more than one year, and by
20 a fine not exceeding two thousand dollars (\$2,000); or by
21 imprisonment in the state prison for two, three, or four years, and
22 by a fine not exceeding ten thousand dollars (\$10,000).

23 (c) Any person who, for the purpose of sexual arousal, sexual
24 gratification, or sexual abuse, causes another, against that person's
25 will while that person is unlawfully restrained either by the
26 accused or an accomplice, or is institutionalized for medical



1 treatment and is seriously disabled or medically incapacitated, to
2 masturbate or touch an intimate part of either of those persons or
3 a third person, is guilty of sexual battery. A violation of this
4 subdivision is punishable by imprisonment in a county jail for not
5 more than one year, and by a fine not exceeding two thousand
6 dollars (\$2,000); or by imprisonment in the state prison for two,
7 three, or four years, and by a fine not exceeding ten thousand
8 dollars (\$10,000).

9 (d) (1) *Any person who touches an intimate part of a minor
10 who is 14 years of age or older, and the touching is against the will
11 of the minor touched, and is for the purpose of sexual arousal,
12 sexual gratification, or sexual abuse, and the person holds a
13 position of special trust in relation to the minor, is guilty of sexual
14 battery. A violation of this subdivision is punishable by
15 imprisonment in a county jail for not more than one year, and by
16 a fine not exceeding two thousand dollars (\$2,000); or by
17 imprisonment in the state prison, and by a fine not exceeding ten
18 thousand dollars (\$10,000).*

19 (2) *As used in this subdivision, ‘touches’ means physical
20 contact with another person, whether accomplished directly,
21 through the clothing of the person committing the offense, or
22 through the clothing of the victim.*

23 (e) (1) Any person who touches an intimate part of another
24 person, if the touching is against the will of the person touched, and
25 is for the specific purpose of sexual arousal, sexual gratification,
26 or sexual abuse, is guilty of misdemeanor sexual battery,
27 punishable by a fine not exceeding two thousand dollars (\$2,000),
28 or by imprisonment in a county jail not exceeding six months, or
29 by both that fine and imprisonment. However, if the defendant was
30 an employer and the victim was an employee of the defendant, the
31 misdemeanor sexual battery shall be punishable by a fine not
32 exceeding three thousand dollars (\$3,000), by imprisonment in a
33 county jail not exceeding six months, or by both that fine and
34 imprisonment. Notwithstanding any other provision of law, any
35 amount of a fine above two thousand dollars (\$2,000) which is
36 collected from a defendant for a violation of this subdivision shall
37 be transmitted to the State Treasury and, upon appropriation by the
38 Legislature, distributed to the Department of Fair Employment
39 and Housing for the purpose of enforcement of the California Fair
40 Employment and Housing Act (Part 2.8 (commencing with



1 Section 12900) of Division 3 of Title 2 of the Government Code),
2 including, but not limited to, laws that proscribe sexual harassment
3 in places of employment. However, in no event shall an amount
4 over two thousand dollars (\$2,000) be transmitted to the State
5 Treasury until all fines, including any restitution fines that may
6 have been imposed upon the defendant, have been paid in full.

7 (2) As used in this subdivision, “touches” means physical
8 contact with another person, whether accomplished directly,
9 through the clothing of the person committing the offense, or
10 through the clothing of the victim.

11 ~~(e)~~

12 (f) As used in subdivisions (a), (b), and (c), “touches” means
13 physical contact with the skin of another person whether
14 accomplished directly or through the clothing of the person
15 committing the offense.

16 ~~(f)~~

17 (g) As used in this section, the following terms have the
18 following meanings:

19 (1) “Intimate part” means the sexual organ, anus, groin, or
20 buttocks of any person, and the breast of a female.

21 (2) “Sexual battery” does not include the crimes defined in
22 Section 261 or 289.

23 (3) “Seriously disabled” means a person with severe physical
24 or sensory disabilities.

25 (4) “Medically incapacitated” means a person who is
26 incapacitated as a result of prescribed sedatives, anesthesia, or
27 other medication.

28 (5) “Institutionalized” means a person who is located
29 voluntarily or involuntarily in a hospital, medical treatment
30 facility, nursing home, acute care facility, or mental hospital.

31 (6) “Minor” means a person under 18 years of age.

32 ~~(g)~~

33 (7) “*Position of special trust*” means that position occupied by
34 a person in a position of authority who, by reason of that position,
35 is able to exercise undue influence over the victim. Position of
36 authority includes, but is not limited to, the position occupied by
37 a natural parent, adoptive parent, stepparent, foster parent,
38 relative, household member, child care provider, adult youth
39 leader, adult recreational director, adult athletic manager, adult
40 coach, teacher, counselor, religious leader, doctor, dentist, health



1 *care provider, psychiatrist, psychologist, mental health care*
2 *provider, lawyer, security officer, law enforcement officer or*
3 *employee, or employer.*

4 (h) This section shall not be construed to limit or prevent
5 prosecution under any other law which also proscribes a course of
6 conduct that also is proscribed by this section.

7 ~~(h)~~

8 (i) In the case of a felony conviction for a violation of this
9 section, the fact that the defendant was an employer and the victim
10 was an employee of the defendant shall be a factor in aggravation
11 in sentencing.

12 ~~(i)~~

13 (j) A person who commits a violation of subdivision (a), (b), or
14 (c) against a minor when the person has a prior felony conviction
15 for a violation of this section shall be guilty of a felony, punishable
16 by imprisonment in the state prison for two, three, or four years and
17 a fine not exceeding ten thousand dollars (\$10,000).

18 SEC. 2. Section 647.6 of the Penal Code is amended to read:

19 647.6. (a) Every person who annoys or molests any child
20 under the age of 18 shall be punished by a fine not exceeding one
21 thousand dollars (\$1,000), by imprisonment in a county jail not
22 exceeding one year, or by both the fine and imprisonment.

23 (b) *Every person who annoys or molests any child under the*
24 *age of 18, and the person holds a position of special trust in*
25 *relation to the child annoyed or molested, shall be punished by a*
26 *fine not exceeding one thousand dollars (\$1,000), by*
27 *imprisonment in a county jail not exceeding one year, or by both*
28 *the fine and imprisonment, or by imprisonment in the state prison.*

29 (c) Every person who violates this section after having entered,
30 without consent, an inhabited dwelling house, or trailer coach as
31 defined in Section 635 of the Vehicle Code, or the inhabited
32 portion of any other building, shall be punished by imprisonment
33 in the state prison, or in a county jail not exceeding one year.

34 ~~(c)~~

35 (d) (1) Every person who violates this section shall be
36 punished upon the second and each subsequent conviction by
37 imprisonment in the state prison.

38 (2) Every person who violates this section after a previous
39 felony conviction under Section 261, 264.1, 269, 285, 286, 288a,
40 288.5, or 289, any of which involved a minor under the age of 16



1 years, or a previous felony conviction under this section, a
2 conviction under Section 288, or a felony conviction under
3 Section 311.4 involving a minor under the age of 14 years shall be
4 punished by imprisonment in the state prison for two, four, or six
5 years.

6 ~~(d)~~

7 (e) (1) In any case in which a person is convicted of violating
8 this section and probation is granted, the court shall require
9 counseling as a condition of probation, unless the court makes a
10 written statement in the court record, that counseling would be
11 inappropriate or ineffective.

12 (2) In any case in which a person is convicted of violating this
13 section, and as a condition of probation, the court prohibits the
14 defendant from having contact with the victim, the court order
15 prohibiting contact shall not be modified except upon the request
16 of the victim and a finding by the court that the modification is in
17 the best interest of the victim. As used in this paragraph, “contact
18 with the victim” includes all physical contact, being in the
19 presence of the victim, communication by any means, any
20 communication by a third party acting on behalf of the defendant,
21 and any gifts.

22 (f) *As used in this section, “position of special trust” means that*
23 *position occupied by a person in a position of authority who, by*
24 *reason of that position, is able to exercise undue influence over the*
25 *victim. Position of authority includes, but is not limited to, the*
26 *position occupied by a natural parent, adoptive parent, stepparent,*
27 *foster parent, relative, household member, child care provider,*
28 *adult youth leader, adult recreational director, adult athletic*
29 *manager, adult coach, teacher, counselor, religious leader, doctor,*
30 *dentist, health care provider, psychiatrist, psychologist, mental*
31 *health care provider, lawyer, security officer, law enforcement*
32 *officer or employee, or employer.*

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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