

Introduced by Senator Ackerman

February 20, 2007

An act to amend Section 288 of the Penal Code, relating to lewd and lascivious acts.

LEGISLATIVE COUNSEL'S DIGEST

SB 338, as introduced, Ackerman. Lewd and lascivious acts.

Existing law establishes crimes for lewd and lascivious acts committed upon minors and dependent persons, as specified.

This bill would make a technical, nonsubstantive change to those provisions.

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 288 of the Penal Code is amended to
2 read:

3 288. (a) Any person who willfully and lewdly commits any
4 lewd or lascivious act, including any of the acts constituting other
5 crimes provided for in Part 1, upon or with the body, or any part
6 or member thereof, of a child who is under the age of 14 years,
7 with the intent of arousing, appealing to, or gratifying the lust,
8 passions, or sexual desires of that person or the child, is guilty of
9 a felony and shall be punished by imprisonment in the state prison
10 for three, six, or eight years.

11 (b) (1) Any person who commits an act described in subdivision
12 (a) by use of force, violence, duress, menace, or fear of immediate
13 and unlawful bodily injury on the victim or another person, is

1 guilty of a felony and shall be punished by imprisonment in the
2 state prison for three, six, or eight years.

3 (2) Any person who is a caretaker and commits an act described
4 in subdivision (a) upon a dependent person by use of force,
5 violence, duress, menace, or fear of immediate and unlawful bodily
6 injury on the victim or another person, with the intent described
7 in subdivision (a), is guilty of a felony and shall be punished by
8 imprisonment in the state prison for three, six, or eight years.

9 (c) (1) Any person who commits an act described in subdivision
10 (a) with the intent described in that subdivision, and the victim is
11 a child of 14 or 15 years, and that person is at least 10 years older
12 than the child, is guilty of a public offense and shall be punished
13 by imprisonment in the state prison for one, two, or three years,
14 or by imprisonment in a county jail for not more than one year. In
15 determining whether the person is at least 10 years older than the
16 child, the difference in age shall be measured from the birth date
17 of the person to the birth date of the child.

18 (2) Any person who is a caretaker and commits an act described
19 in subdivision (a) upon a dependent person, with the intent
20 described in subdivision (a), is guilty of a public offense and shall
21 be punished by imprisonment in the state prison for one, two, or
22 three years, or by imprisonment in a county jail for not more than
23 one year.

24 (d) In any arrest or prosecution under this section or Section
25 288.5, the peace officer, district attorney, and the court shall
26 consider the needs of the child victim or dependent person and
27 shall do whatever is necessary, within existing budgetary resources,
28 and constitutionally permissible to prevent psychological harm to
29 the child victim or to prevent psychological harm to the dependent
30 person victim resulting from participation in the court process.

31 (e) (1) Upon the conviction of any person for a violation of
32 subdivision (a) or (b), the court may, in addition to any other
33 penalty or fine imposed, order the defendant to pay an additional
34 fine not to exceed ten thousand dollars (\$10,000). In setting the
35 amount of the fine, the court shall consider any relevant factors,
36 including, but not limited to, the seriousness and gravity of the
37 offense, the circumstances of its commission, whether the
38 defendant derived any economic gain as a result of the crime, and
39 the extent to which the victim suffered economic losses as a result
40 of the crime. Every fine imposed and collected under this section

1 shall be deposited in the Victim-Witness Assistance Fund to be
2 available for appropriation to fund child sexual exploitation and
3 child sexual abuse victim counseling centers and prevention
4 programs pursuant to Section 13837.

5 If

6 (2) *If* the court orders a fine imposed pursuant to this
7 subdivision, the actual administrative cost of collecting that fine,
8 not to exceed 2 percent of the total amount paid, may be paid into
9 the general fund of the county treasury for the use and benefit of
10 the county.

11 (f) For purposes of paragraph (2) of subdivision (b) and
12 paragraph (2) of subdivision (c), the following definitions apply:

13 (1) “Caretaker” means an owner, operator, administrator,
14 employee, independent contractor, agent, or volunteer of any of
15 the following public or private facilities when the facilities provide
16 care for elder or dependent persons:

17 (A) Twenty-four hour health facilities, as defined in Sections
18 1250, 1250.2, and 1250.3 of the Health and Safety Code.

19 (B) Clinics.

20 (C) Home health agencies.

21 (D) Adult day health care centers.

22 (E) Secondary schools that serve dependent persons and
23 postsecondary educational institutions that serve dependent persons
24 or elders.

25 (F) Sheltered workshops.

26 (G) Camps.

27 (H) Community care facilities, as defined by Section 1402 of
28 the Health and Safety Code, and residential care facilities for the
29 elderly, as defined in Section 1569.2 of the Health and Safety
30 Code.

31 (I) Respite care facilities.

32 (J) Foster homes.

33 (K) Regional centers for persons with developmental disabilities.

34 (L) A home health agency licensed in accordance with Chapter
35 8 (commencing with Section 1725) of Division 2 of the Health
36 and Safety Code.

37 (M) An agency that supplies in-home supportive services.

38 (N) Board and care facilities.

39 (O) Any other protective or public assistance agency that
40 provides health services or social services to elder or dependent

1 persons, including, but not limited to, in-home supportive services,
2 as defined in Section 14005.14 of the Welfare and Institutions
3 Code.

4 (P) Private residences.

5 (2) “Board and care facilities” means licensed or unlicensed
6 facilities that provide assistance with one or more of the following
7 activities:

8 (A) Bathing.

9 (B) Dressing.

10 (C) Grooming.

11 (D) Medication storage.

12 (E) Medical dispensation.

13 (F) Money management.

14 (3) “Dependent person” means any person who has a physical
15 or mental impairment that substantially restricts his or her ability
16 to carry out normal activities or to protect his or her rights,
17 including, but not limited to, persons who have physical or
18 developmental disabilities or whose physical or mental abilities
19 have significantly diminished because of age. “Dependent person”
20 includes any person who is admitted as an inpatient to a 24-hour
21 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
22 the Health and Safety Code.

23 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
24 subdivision (c) apply to the owners, operators, administrators,
25 employees, independent contractors, agents, or volunteers working
26 at these public or private facilities and only to the extent that the
27 individuals personally commit, conspire, aid, abet, or facilitate any
28 act prohibited by paragraph (2) of subdivision (b) and paragraph
29 (2) of subdivision (c).

30 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
31 subdivision (c) do not apply to a caretaker who is a spouse of, or
32 who is in an equivalent domestic relationship with, the dependent
33 person under care.

O