

AMENDED IN ASSEMBLY APRIL 10, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1861

Introduced by Assembly Member Olsen

*(Coauthors: Assembly Members Bill Berryhill, Halderman, Nestande,
and Perea)*

(Coauthor: Senator Rubio)

February 22, 2012

An act to add Section 1243.5 to the Government Code, and to add Section 288.6 to the Penal Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1861, as amended, Olsen. School employees: conduct with pupils.

Existing law makes it a felony to engage in certain acts with a minor, including willfully and lewdly committing any lewd or lascivious act with a child who is under 14 years of age. Existing law also provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This bill would make it a felony for any person who is a teacher or employee at a public *or private* elementary or secondary school to engage in a sexual relationship or ~~in excess~~ and inappropriate communications, as defined, with a pupil of any age who is enrolled in the school.

This bill would also require a teacher or ~~school~~ employee *at a public elementary or secondary school* who is convicted of a felony pursuant to those provisions to forfeit all rights and benefits in any public retirement system in which he or she is a member, effective on the date of conviction, as specified. The bill would require any contributions made by that teacher or school employee to the public retirement system to be returned to the teacher or school employee without interest.

By creating a new crime, the bill would impose 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 1243.5 is added to the Government Code,
 2 to read:

3 1243.5. (a) If a teacher or ~~school~~ employee *of a public*
 4 *elementary or secondary school* is convicted of a violation of
 5 Section 288.6 of the Penal Code, he or she shall forfeit all accrued
 6 rights and benefits in any public retirement system in which he or
 7 she is a member, effective on the date of the conviction.

8 (b) Any contributions to the public retirement system made by
 9 the teacher or school employee described in subdivision (a) shall
 10 be returned, without interest, to the teacher or school employee,
 11 in a manner conforming with the requirements of the Internal
 12 Revenue Code.

13 (c) The *public* school district that employs a teacher or school
 14 employee described in subdivision (a) shall notify the public
 15 retirement system in which the person is a member of the person's
 16 conviction.

17 SEC. 2. Section 288.6 is added to the Penal Code, to read:

18 288.6. (a) Any teacher or employee at a public *or private*
 19 elementary or secondary school who engages in a sexual
 20 relationship or ~~in excess and~~ inappropriate communication with a
 21 pupil of any age who is enrolled in the school is guilty of a felony

1 punishable by imprisonment in a county jail pursuant to subdivision
2 (h) of Section 1170.

3 (b) For purposes of this section, ~~“excess and inappropriate~~
4 *“inappropriate communication”* means any communication by a
5 school employee to a pupil, regardless of who initiated the
6 communication, ~~that may be viewed as derogatory,~~ is sexual, lewd,
7 ~~threatening, harassing, discriminatory, or suggestive or lascivious~~
8 in nature.

9 (c) In addition to the penalties provided by this section, ~~a person~~
10 *teacher or employee at a public elementary or secondary school*
11 who is convicted of a violation of this section shall, pursuant to
12 Section 1243.5 of the Government Code, forfeit his or her rights
13 and benefits in any public retirement system in which he or she is
14 a member.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.