

AMENDED IN ASSEMBLY MAY 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1791

Introduced by Assembly Member Maienschein
*(Coauthors: Assembly Members Chávez, Gonzalez, Olsen, and
Patterson)*
(Coauthor: Senator Berryhill)

February 18, 2014

An act to amend ~~Sections 236.1 and~~ *Section 647* of the Penal Code, relating to ~~human trafficking~~: *disorderly conduct*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1791, as amended, Maienschein. ~~Human trafficking-Prostitution:~~ *minors.*

Existing law makes it a crime to engage in specified forms of disorderly conduct, including soliciting or agreeing to engage in, or engaging in, any act of prostitution and makes that crime a misdemeanor punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would make that crime punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$2,000, or by both that fine and imprisonment, if the person who was solicited by, or who agreed to engage in or engaged in any act of prostitution with, the person who committed that crime was a minor at the time of the offense.

By increasing the penalty for an existing 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.

~~Existing law makes it a crime to engage in specified forms of disorderly conduct, including soliciting or agreeing to engage in or engaging in any act of prostitution. Those crimes are punishable as misdemeanors.~~

~~Existing law, the Sex Offender Registration Act, requires persons who are convicted of specified sex offenses to register with local authorities while residing, located, attending school, or working in this state. The willful failure to register, as required, is a misdemeanor or a felony, depending upon the underlying offense. These provisions do not apply to defendants who are convicted of the provisions of disorderly conduct relating to prostitution.~~

~~Existing law provides that a person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of specified crimes, including specified sex offenses and extortion, is guilty of human trafficking and subject to punishment by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$500,000, or, if the crime involved force, fear, fraud, or specified coercive acts, 15 years to life and a fine of not more than \$500,000. A person who is convicted of one of these offenses is required to register as a sex offender pursuant to the Sex Offender Registration Act.~~

~~This bill would expand the scope of that crime, and the Sex Offender Registration Act, to apply to a person who recruits, harbors, transports, provides, sells, purchases, or obtains, or attempts to recruit, harbor, transport, provide, sell, purchase, or obtain, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of one of the list of offenses specified under existing law. In addition, the bill would expand that list of offenses to include additional crimes relating to procuring prostitution, including the forms of disorderly conduct relating to prostitution that are currently punishable as misdemeanor offenses, thereby making those offenses punishable as felonies. Because the bill would impose additional costs on local law enforcement entities, 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 647 of the Penal Code is amended to
2 read:

3 647. Except as provided in subdivision (l) or (m), every person
4 who commits any of the following acts is guilty of disorderly
5 conduct, a misdemeanor:

6 (a) Who solicits anyone to engage in or who engages in lewd
7 or dissolute conduct in any public place or in any place open to
8 the public or exposed to public view.

9 (b) Who solicits or who agrees to engage in or who engages in
10 any act of prostitution. A person agrees to engage in an act of
11 prostitution when, with specific intent to so engage, he or she
12 manifests an acceptance of an offer or solicitation to so engage,
13 regardless of whether the offer or solicitation was made by a person
14 who also possessed the specific intent to engage in prostitution.
15 No agreement to engage in an act of prostitution shall constitute
16 a violation of this subdivision unless some act, in addition to the
17 agreement, is done within this state in furtherance of the
18 commission of an act of prostitution by the person agreeing to
19 engage in that act. As used in this subdivision, "prostitution"
20 includes any lewd act between persons for money or other
21 consideration.

22 (c) Who accosts other persons in any public place or in any
23 place open to the public for the purpose of begging or soliciting
24 alms.

25 (d) Who loiters in or about any toilet open to the public for the
26 purpose of engaging in or soliciting any lewd or lascivious or any
27 unlawful act.

28 (e) Who lodges in any building, structure, vehicle, or place,
29 whether public or private, without the permission of the owner or
30 person entitled to the possession or in control of it.

1 (f) Who is found in any public place under the influence of
 2 intoxicating liquor, any drug, controlled substance, toluene, or any
 3 combination of any intoxicating liquor, drug, controlled substance,
 4 or toluene, in a condition that he or she is unable to exercise care
 5 for his or her own safety or the safety of others, or by reason of
 6 his or her being under the influence of intoxicating liquor, any
 7 drug, controlled substance, toluene, or any combination of any
 8 intoxicating liquor, drug, or toluene, interferes with or obstructs
 9 or prevents the free use of any street, sidewalk, or other public
 10 way.

11 (g) When a person has violated subdivision (f), a peace officer,
 12 if he or she is reasonably able to do so, shall place the person, or
 13 cause him or her to be placed, in civil protective custody. The
 14 person shall be taken to a facility, designated pursuant to Section
 15 5170 of the Welfare and Institutions Code, for the 72-hour
 16 treatment and evaluation of inebriates. A peace officer may place
 17 a person in civil protective custody with that kind and degree of
 18 force which would be lawful were he or she effecting an arrest for
 19 a misdemeanor without a warrant. A person who has been placed
 20 in civil protective custody shall not thereafter be subject to any
 21 criminal prosecution or juvenile court proceeding based on the
 22 facts giving rise to this placement. This subdivision shall not apply
 23 to the following persons:

24 (1) Any person who is under the influence of any drug, or under
 25 the combined influence of intoxicating liquor and any drug.

26 (2) Any person who a peace officer has probable cause to believe
 27 has committed any felony, or who has committed any misdemeanor
 28 in addition to subdivision (f).

29 (3) Any person who a peace officer in good faith believes will
 30 attempt escape or will be unreasonably difficult for medical
 31 personnel to control.

32 (h) Who loiters, prowls, or wanders upon the private property
 33 of another, at any time, without visible or lawful business with the
 34 owner or occupant. As used in this subdivision, “loiter” means to
 35 delay or linger without a lawful purpose for being on the property
 36 and for the purpose of committing a crime as opportunity may be
 37 discovered.

38 (i) Who, while loitering, prowling, or wandering upon the private
 39 property of another, at any time, peeks in the door or window of

1 any inhabited building or structure, without visible or lawful
2 business with the owner or occupant.

3 (j) (1) Any person who looks through a hole or opening, into,
4 or otherwise views, by means of any instrumentality, including,
5 but not limited to, a periscope, telescope, binoculars, camera,
6 motion picture camera, camcorder, or mobile phone, the interior
7 of a bedroom, bathroom, changing room, fitting room, dressing
8 room, or tanning booth, or the interior of any other area in which
9 the occupant has a reasonable expectation of privacy, with the
10 intent to invade the privacy of a person or persons inside. This
11 subdivision shall not apply to those areas of a private business
12 used to count currency or other negotiable instruments.

13 (2) Any person who uses a concealed camcorder, motion picture
14 camera, or photographic camera of any type, to secretly videotape,
15 film, photograph, or record by electronic means, another,
16 identifiable person under or through the clothing being worn by
17 that other person, for the purpose of viewing the body of, or the
18 undergarments worn by, that other person, without the consent or
19 knowledge of that other person, with the intent to arouse, appeal
20 to, or gratify the lust, passions, or sexual desires of that person and
21 invade the privacy of that other person, under circumstances in
22 which the other person has a reasonable expectation of privacy.

23 (3) (A) Any person who uses a concealed camcorder, motion
24 picture camera, or photographic camera of any type, to secretly
25 videotape, film, photograph, or record by electronic means, another,
26 identifiable person who may be in a state of full or partial undress,
27 for the purpose of viewing the body of, or the undergarments worn
28 by, that other person, without the consent or knowledge of that
29 other person, in the interior of a bedroom, bathroom, changing
30 room, fitting room, dressing room, or tanning booth, or the interior
31 of any other area in which that other person has a reasonable
32 expectation of privacy, with the intent to invade the privacy of that
33 other person.

34 (B) Neither of the following is a defense to the crime specified
35 in this paragraph:

36 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
37 employer, employee, or business partner or associate of the victim,
38 or an agent of any of these.

39 (ii) The victim was not in a state of full or partial undress.

1 (4) (A) Any person who photographs or records by any means
 2 the image of the intimate body part or parts of another identifiable
 3 person, under circumstances where the parties agree or understand
 4 that the image shall remain private, and the person subsequently
 5 distributes the image taken, with the intent to cause serious
 6 emotional distress, and the depicted person suffers serious
 7 emotional distress.

8 (B) As used in this paragraph, intimate body part means any
 9 portion of the genitals, and in the case of a female, also includes
 10 any portion of the breasts below the top of the areola, that is either
 11 uncovered or visible through less than fully opaque clothing.

12 (C) Nothing in this subdivision precludes punishment under
 13 any section of law providing for greater punishment.

14 (k) (1) In any accusatory pleading charging a violation of
 15 subdivision (b), if the defendant has been once previously convicted
 16 of a violation of that subdivision, the previous conviction shall be
 17 charged in the accusatory pleading. If the previous conviction is
 18 found to be true by the jury, upon a jury trial, or by the court, upon
 19 a court trial, or is admitted by the defendant, the defendant shall
 20 be imprisoned in a county jail for a period of not less than 45 days
 21 and shall not be eligible for release upon completion of sentence,
 22 on probation, on parole, on work furlough or work release, or on
 23 any other basis until he or she has served a period of not less than
 24 45 days in a county jail. In all cases in which probation is granted,
 25 the court shall require as a condition thereof that the person be
 26 confined in a county jail for at least 45 days. In no event does the
 27 court have the power to absolve a person who violates this
 28 subdivision from the obligation of spending at least 45 days in
 29 confinement in a county jail.

30 ~~It~~

31 (2) In any accusatory pleading charging a violation of
 32 subdivision (b), if the defendant has been previously convicted
 33 two or more times of a violation of that subdivision, each of these
 34 previous convictions shall be charged in the accusatory pleading.
 35 If two or more of these previous convictions are found to be true
 36 by the jury, upon a jury trial, or by the court, upon a court trial, or
 37 are admitted by the defendant, the defendant shall be imprisoned
 38 in a county jail for a period of not less than 90 days and shall not
 39 be eligible for release upon completion of sentence, on probation,
 40 on parole, on work furlough or work release, or on any other basis

1 until he or she has served a period of not less than 90 days in a
2 county jail. In all cases in which probation is granted, the court
3 shall require as a condition thereof that the person be confined in
4 a county jail for at least 90 days. In no event does the court have
5 the power to absolve a person who violates this subdivision from
6 the obligation of spending at least 90 days in confinement in a
7 county jail.

8 ~~It~~

9 (3) *In addition to any punishment prescribed by this section, a*
10 *court may suspend, for not more than 30 days, the privilege of the*
11 *person to operate a motor vehicle pursuant to Section 13201.5 of*
12 *the Vehicle Code for any violation of subdivision (b) that was*
13 *committed within 1,000 feet of a private residence and with the*
14 *use of a vehicle. In lieu of the suspension, the court may order a*
15 *person's privilege to operate a motor vehicle restricted, for not*
16 *more than six months, to necessary travel to and from the person's*
17 *place of employment or education. If driving a motor vehicle is*
18 *necessary to perform the duties of the person's employment, the*
19 *court may also allow the person to drive in that person's scope of*
20 *employment.*

21 (l) (1) *A second or subsequent violation of subdivision (j) is*
22 *punishable by imprisonment in a county jail not exceeding one*
23 *year, or by a fine not exceeding two thousand dollars (\$2,000), or*
24 *by both that fine and imprisonment.*

25 (2) *If the victim of a violation of subdivision (j) was a minor at*
26 *the time of the offense, the violation is punishable by imprisonment*
27 *in a county jail not exceeding one year, or by a fine not exceeding*
28 *two thousand dollars (\$2,000), or by both that fine and*
29 *imprisonment.*

30 (m) *If a person violates subdivision (b) and the person who was*
31 *solicited by, or who agreed to engage in or engaged in any act of*
32 *prostitution with, that person was a minor at the time of the offense,*
33 *the violation is punishable by imprisonment in a county jail not*
34 *exceeding one year, or by a fine not exceeding two thousand dollars*
35 *(\$2,000), or by both that fine and imprisonment.*

36 SEC. 2. *No reimbursement is required by this act pursuant to*
37 *Section 6 of Article XIII B of the California Constitution because*
38 *the only costs that may be incurred by a local agency or school*
39 *district will be incurred because this act creates a new crime or*
40 *infraction, eliminates a crime or infraction, or changes the penalty*

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

5 SECTION 1. ~~Section 236.1 of the Penal Code is amended to~~
6 ~~read:~~

7 ~~236.1. (a) Any person who deprives or violates the personal~~
8 ~~liberty of another with the intent to obtain forced labor or services,~~
9 ~~is guilty of human trafficking and shall be punished by~~
10 ~~imprisonment in the state prison for 5, 8, or 12 years and a fine of~~
11 ~~not more than five hundred thousand dollars (\$500,000).~~

12 ~~(b) Any person who deprives or violates the personal liberty of~~
13 ~~another with the intent to effect or maintain a violation of Section~~
14 ~~266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5,~~
15 ~~311.6, or 518 is guilty of human trafficking and shall be punished~~
16 ~~by imprisonment in the state prison for 8, 14, or 20 years and a~~
17 ~~fine of not more than five hundred thousand dollars (\$500,000).~~

18 ~~(c) Any person who recruits, harbors, transports, provides, sells,~~
19 ~~purchases, obtains, causes, induces, or persuades, or attempts to~~
20 ~~recruit, harbor, transport, provide, sell, purchase, obtain, cause,~~
21 ~~induce, or persuade, a person who is a minor at the time of~~
22 ~~commission of the offense to engage in a commercial sex act, with~~
23 ~~the intent to effect or maintain a violation of Section 266, 266e,~~
24 ~~266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6,~~
25 ~~518, or subdivision (b) of Section 647, is guilty of human~~
26 ~~trafficking. A violation of this subdivision is punishable by~~
27 ~~imprisonment in the state prison as follows:~~

28 ~~(1) Five, 8, or 12 years and a fine of not more than five hundred~~
29 ~~thousand dollars (\$500,000).~~

30 ~~(2) Fifteen years to life and a fine of not more than five hundred~~
31 ~~thousand dollars (\$500,000) when the offense involves force, fear,~~
32 ~~fraud, deceit, coercion, violence, duress, menace, or threat of~~
33 ~~unlawful injury to the victim or to another person.~~

34 ~~(d) In determining whether a minor was recruited, harbored,~~
35 ~~transported, provided, sold, purchased, obtained, caused, induced,~~
36 ~~or persuaded to engage in a commercial sex act, the totality of the~~
37 ~~circumstances, including the age of the victim, his or her~~
38 ~~relationship to the trafficker or agents of the trafficker, and any~~
39 ~~handicap or disability of the victim, shall be considered.~~

1 ~~(e) Consent by a victim of human trafficking who is a minor at~~
2 ~~the time of the commission of the offense is not a defense to a~~
3 ~~criminal prosecution under this section.~~

4 ~~(f) Mistake of fact as to the age of a victim of human trafficking~~
5 ~~who is a minor at the time of the commission of the offense is not~~
6 ~~a defense to a criminal prosecution under this section.~~

7 ~~(g) The Legislature finds that the definition of human trafficking~~
8 ~~in this section is equivalent to the federal definition of a severe~~
9 ~~form of trafficking found in Section 7102(9) of Title 22 of the~~
10 ~~United States Code.~~

11 ~~(h) For purposes of this chapter, the following definitions apply:~~

12 ~~(1) “Coercion” includes any scheme, plan, or pattern intended~~
13 ~~to cause a person to believe that failure to perform an act would~~
14 ~~result in serious harm to or physical restraint against any person;~~
15 ~~the abuse or threatened abuse of the legal process; debt bondage;~~
16 ~~or providing and facilitating the possession of any controlled~~
17 ~~substance to a person with the intent to impair the person’s~~
18 ~~judgment.~~

19 ~~(2) “Commercial sex act” means sexual conduct on account of~~
20 ~~which anything of value is given or received by any person.~~

21 ~~(3) “Deprivation or violation of the personal liberty of another”~~
22 ~~includes substantial and sustained restriction of another’s liberty~~
23 ~~accomplished through force, fear, fraud, deceit, coercion, violence,~~
24 ~~duress, menace, or threat of unlawful injury to the victim or to~~
25 ~~another person, under circumstances where the person receiving~~
26 ~~or apprehending the threat reasonably believes that it is likely that~~
27 ~~the person making the threat would carry it out.~~

28 ~~(4) “Duress” includes a direct or implied threat of force,~~
29 ~~violence, danger, hardship, or retribution sufficient to cause a~~
30 ~~reasonable person to acquiesce in or perform an act which he or~~
31 ~~she would otherwise not have submitted to or performed; a direct~~
32 ~~or implied threat to destroy, conceal, remove, confiscate, or possess~~
33 ~~any actual or purported passport or immigration document of the~~
34 ~~victim; or knowingly destroying, concealing, removing,~~
35 ~~confiscating, or possessing any actual or purported passport or~~
36 ~~immigration document of the victim.~~

37 ~~(5) “Forced labor or services” means labor or services that are~~
38 ~~performed or provided by a person and are obtained or maintained~~
39 ~~through force, fraud, duress, or coercion, or equivalent conduct~~
40 ~~that would reasonably overbear the will of the person.~~

1 ~~(6) “Great bodily injury” means a significant or substantial~~
2 ~~physical injury.~~

3 ~~(7) “Minor” means a person less than 18 years of age.~~

4 ~~(8) “Serious harm” includes any harm, whether physical or~~
5 ~~nonphysical, including psychological, financial, or reputational~~
6 ~~harm, that is sufficiently serious, under all the surrounding~~
7 ~~circumstances, to compel a reasonable person of the same~~
8 ~~background and in the same circumstances to perform or to~~
9 ~~continue performing labor, services, or commercial sexual acts in~~
10 ~~order to avoid incurring that harm.~~

11 ~~(i) The total circumstances, including the age of the victim, the~~
12 ~~relationship between the victim and the trafficker or agents of the~~
13 ~~trafficker, and any handicap or disability of the victim, shall be~~
14 ~~factors to consider in determining the presence of “deprivation or~~
15 ~~violation of the personal liberty of another,” “duress,” and~~
16 ~~“coercion” as described in this section.~~

17 ~~SEC. 2. Section 647 of the Penal Code is amended to read:~~

18 ~~647. Except as provided in Section 236.1 and in subdivision~~
19 ~~(l), every person who commits any of the following acts is guilty~~
20 ~~of disorderly conduct, a misdemeanor:~~

21 ~~(a) Who solicits anyone to engage in or who engages in lewd~~
22 ~~or dissolute conduct in any public place or in any place open to~~
23 ~~the public or exposed to public view.~~

24 ~~(b) Who solicits or who agrees to engage in or who engages in~~
25 ~~any act of prostitution. A person agrees to engage in an act of~~
26 ~~prostitution when, with specific intent to so engage, he or she~~
27 ~~manifests an acceptance of an offer or solicitation to so engage,~~
28 ~~regardless of whether the offer or solicitation was made by a person~~
29 ~~who also possessed the specific intent to engage in prostitution.~~
30 ~~No agreement to engage in an act of prostitution shall constitute~~
31 ~~a violation of this subdivision unless some act, in addition to the~~
32 ~~agreement, is done within this state in furtherance of the~~
33 ~~commission of an act of prostitution by the person agreeing to~~
34 ~~engage in that act. As used in this subdivision, “prostitution”~~
35 ~~includes any lewd act between persons for money or other~~
36 ~~consideration.~~

37 ~~(c) Who accosts other persons in any public place or in any~~
38 ~~place open to the public for the purpose of begging or soliciting~~
39 ~~alms.~~

1 ~~(d) Who loiters in or about any toilet open to the public for the~~
2 ~~purpose of engaging in or soliciting any lewd or lascivious or any~~
3 ~~unlawful act.~~

4 ~~(e) Who lodges in any building, structure, vehicle, or place,~~
5 ~~whether public or private, without the permission of the owner or~~
6 ~~person entitled to the possession or in control of it.~~

7 ~~(f) Who is found in any public place under the influence of~~
8 ~~intoxicating liquor, any drug, controlled substance, toluene, or any~~
9 ~~combination of any intoxicating liquor, drug, controlled substance,~~
10 ~~or toluene, in a condition that he or she is unable to exercise care~~
11 ~~for his or her own safety or the safety of others, or by reason of~~
12 ~~his or her being under the influence of intoxicating liquor, any~~
13 ~~drug, controlled substance, toluene, or any combination of any~~
14 ~~intoxicating liquor, drug, or toluene, interferes with or obstructs~~
15 ~~or prevents the free use of any street, sidewalk, or other public~~
16 ~~way.~~

17 ~~(g) When a person has violated subdivision (f), a peace officer,~~
18 ~~if he or she is reasonably able to do so, shall place the person, or~~
19 ~~cause him or her to be placed, in civil protective custody. The~~
20 ~~person shall be taken to a facility, designated pursuant to Section~~
21 ~~5170 of the Welfare and Institutions Code, for the 72-hour~~
22 ~~treatment and evaluation of inebriates. A peace officer may place~~
23 ~~a person in civil protective custody with that kind and degree of~~
24 ~~force which would be lawful were he or she effecting an arrest for~~
25 ~~a misdemeanor without a warrant. A person who has been placed~~
26 ~~in civil protective custody shall not thereafter be subject to any~~
27 ~~criminal prosecution or juvenile court proceeding based on the~~
28 ~~facts giving rise to this placement. This subdivision shall not apply~~
29 ~~to the following persons:~~

30 ~~(1) Any person who is under the influence of any drug, or under~~
31 ~~the combined influence of intoxicating liquor and any drug.~~

32 ~~(2) Any person who a peace officer has probable cause to believe~~
33 ~~has committed any felony, or who has committed any misdemeanor~~
34 ~~in addition to subdivision (f).~~

35 ~~(3) Any person who a peace officer in good faith believes will~~
36 ~~attempt escape or will be unreasonably difficult for medical~~
37 ~~personnel to control.~~

38 ~~(h) Who loiters, prowls, or wanders upon the private property~~
39 ~~of another, at any time, without visible or lawful business with the~~
40 ~~owner or occupant. As used in this subdivision, "loiter" means to~~

1 delay or linger without a lawful purpose for being on the property
2 and for the purpose of committing a crime as opportunity may be
3 discovered.

4 (i) ~~Who, while loitering, prowling, or wandering upon the private~~
5 ~~property of another, at any time, peeks in the door or window of~~
6 ~~any inhabited building or structure, without visible or lawful~~
7 ~~business with the owner or occupant.~~

8 (j) (1) ~~Any person who looks through a hole or opening, into,~~
9 ~~or otherwise views, by means of any instrumentality, including,~~
10 ~~but not limited to, a periscope, telescope, binoculars, camera,~~
11 ~~motion picture camera, camcorder, or mobile phone, the interior~~
12 ~~of a bedroom, bathroom, changing room, fitting room, dressing~~
13 ~~room, or tanning booth, or the interior of any other area in which~~
14 ~~the occupant has a reasonable expectation of privacy, with the~~
15 ~~intent to invade the privacy of a person or persons inside. This~~
16 ~~subdivision shall not apply to those areas of a private business~~
17 ~~used to count currency or other negotiable instruments.~~

18 (2) ~~Any person who uses a concealed camcorder, motion picture~~
19 ~~camera, or photographic camera of any type, to secretly videotape,~~
20 ~~film, photograph, or record by electronic means, another,~~
21 ~~identifiable person under or through the clothing being worn by~~
22 ~~that other person, for the purpose of viewing the body of, or the~~
23 ~~undergarments worn by, that other person, without the consent or~~
24 ~~knowledge of that other person, with the intent to arouse, appeal~~
25 ~~to, or gratify the lust, passions, or sexual desires of that person and~~
26 ~~invade the privacy of that other person, under circumstances in~~
27 ~~which the other person has a reasonable expectation of privacy.~~

28 (3) (A) ~~Any person who uses a concealed camcorder, motion~~
29 ~~picture camera, or photographic camera of any type, to secretly~~
30 ~~videotape, film, photograph, or record by electronic means, another,~~
31 ~~identifiable person who may be in a state of full or partial undress,~~
32 ~~for the purpose of viewing the body of, or the undergarments worn~~
33 ~~by, that other person, without the consent or knowledge of that~~
34 ~~other person, in the interior of a bedroom, bathroom, changing~~
35 ~~room, fitting room, dressing room, or tanning booth, or the interior~~
36 ~~of any other area in which that other person has a reasonable~~
37 ~~expectation of privacy, with the intent to invade the privacy of that~~
38 ~~other person.~~

39 (B) ~~Neither of the following is a defense to the crime specified~~
40 ~~in this paragraph:~~

1 (i) ~~The defendant was a cohabitant, landlord, tenant, cotenant,~~
2 ~~employer, employee, or business partner or associate of the victim,~~
3 ~~or an agent of any of these.~~

4 (ii) ~~The victim was not in a state of full or partial undress.~~

5 (4) (A) ~~Any person who photographs or records by any means~~
6 ~~the image of the intimate body part or parts of another identifiable~~
7 ~~person, under circumstances where the parties agree or understand~~
8 ~~that the image shall remain private, and the person subsequently~~
9 ~~distributes the image taken, with the intent to cause serious~~
10 ~~emotional distress, and the depicted person suffers serious~~
11 ~~emotional distress.~~

12 (B) ~~As used in this paragraph, intimate body part means any~~
13 ~~portion of the genitals, and in the case of a female, also includes~~
14 ~~any portion of the breasts below the top of the areola, that is either~~
15 ~~uncovered or visible through less than fully opaque clothing.~~

16 (C) ~~Nothing in this subdivision precludes punishment under~~
17 ~~any section of law providing for greater punishment.~~

18 (k) ~~In any accusatory pleading charging a violation of~~
19 ~~subdivision (b), if the defendant has been once previously convicted~~
20 ~~of a violation of that subdivision, the previous conviction shall be~~
21 ~~charged in the accusatory pleading. If the previous conviction is~~
22 ~~found to be true by the jury, upon a jury trial, or by the court, upon~~
23 ~~a court trial, or is admitted by the defendant, the defendant shall~~
24 ~~be imprisoned in a county jail for a period of not less than 45 days~~
25 ~~and shall not be eligible for release upon completion of sentence,~~
26 ~~on probation, on parole, on work furlough or work release, or on~~
27 ~~any other basis until he or she has served a period of not less than~~
28 ~~45 days in a county jail. In all cases in which probation is granted,~~
29 ~~the court shall require as a condition thereof that the person be~~
30 ~~confined in a county jail for at least 45 days. In no event does the~~
31 ~~court have the power to absolve a person who violates this~~
32 ~~subdivision from the obligation of spending at least 45 days in~~
33 ~~confinement in a county jail.~~

34 ~~In any accusatory pleading charging a violation of subdivision~~
35 ~~(b), if the defendant has been previously convicted two or more~~
36 ~~times of a violation of that subdivision, each of these previous~~
37 ~~convictions shall be charged in the accusatory pleading. If two or~~
38 ~~more of these previous convictions are found to be true by the jury,~~
39 ~~upon a jury trial, or by the court, upon a court trial, or are admitted~~
40 ~~by the defendant, the defendant shall be imprisoned in a county~~

1 jail for a period of not less than 90 days and shall not be eligible
 2 for release upon completion of sentence, on probation, on parole,
 3 on work furlough or work release, or on any other basis until he
 4 or she has served a period of not less than 90 days in a county jail.
 5 In all cases in which probation is granted, the court shall require
 6 as a condition thereof that the person be confined in a county jail
 7 for at least 90 days. In no event does the court have the power to
 8 absolve a person who violates this subdivision from the obligation
 9 of spending at least 90 days in confinement in a county jail.

10 In addition to any punishment prescribed by this section, a court
 11 may suspend, for not more than 30 days, the privilege of the person
 12 to operate a motor vehicle pursuant to Section 13201.5 of the
 13 Vehicle Code for any violation of subdivision (b) that was
 14 committed within 1,000 feet of a private residence and with the
 15 use of a vehicle. In lieu of the suspension, the court may order a
 16 person's privilege to operate a motor vehicle restricted, for not
 17 more than six months, to necessary travel to and from the person's
 18 place of employment or education. If driving a motor vehicle is
 19 necessary to perform the duties of the person's employment, the
 20 court may also allow the person to drive in that person's scope of
 21 employment.

22 (i) (1) A second or subsequent violation of subdivision (j) is
 23 punishable by imprisonment in a county jail not exceeding one
 24 year, or by a fine not exceeding two thousand dollars (\$2,000), or
 25 by both that fine and imprisonment.

26 (2) If the victim of a violation of subdivision (j) was a minor at
 27 the time of the offense, the violation is punishable by imprisonment
 28 in a county jail not exceeding one year, or by a fine not exceeding
 29 two thousand dollars (\$2,000), or by both that fine and
 30 imprisonment.

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

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