

AMENDED IN SENATE JUNE 11, 2013

AMENDED IN SENATE MAY 7, 2013

SENATE BILL

No. 255

Introduced by Senator ~~Cannella~~ Hancock
(Coauthors: Senators Anderson, Beall, De León, and Knight)

February 13, 2013

An act to amend Section ~~653.2~~ 647 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 255, as amended, ~~Cannella Hancock~~. ~~Electronic communication devices: prohibited distribution of personal information. Disorderly conduct: invasion of privacy.~~

~~Existing law makes it a crime for a person who, with the intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted contact, injury, or harassment by a 3rd party, distributes specified identifying information that would be likely to incite or produce that unlawful action.~~

~~This bill would make it a misdemeanor for any person who, with the intent to cause substantial emotional distress or humiliation to another person, by means of an electronic communication device, and without consent of the other person, electronically distributes, publishes, emails, hyperlinks, or makes available for downloading nude images of the other person along with personal identifying information of the other person.~~

Existing law provides that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person is guilty of disorderly conduct, which is a misdemeanor. Under existing law, (1) a first violation of that offense is punishable by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment, and (2) a 2nd or subsequent violation of that offense, or any violation of that offense in which the victim was, at the time of the offense, a minor, is 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.

This bill would provide that any person who photographs or records by any means the image of another, identifiable person without his or her consent who is in a state of full or partial undress in any area in which the person being photographed or recorded has a reasonable expectation of privacy, and subsequently distributes the image taken, where the distribution of the image would cause a reasonable person to suffer serious emotional distress would constitute disorderly conduct subject to that same punishment.

By creating a new crime, this 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 653.2 of the Penal Code is amended to read:

2 653.2. (a) (1) Every person who, with intent to place another
3 person in reasonable fear for his or her safety, or the safety of the
4 other person's immediate family, by means of an electronic
5 communication device, and without consent of the other person,
6 and for the purpose of imminently causing that other person
7 unwanted physical contact, injury, or harassment, by a third party,
8 electronically distributes, publishes, e-mails, hyperlinks, or makes
9 available for downloading, personal identifying information,
10 including, but not limited to, a digital image of another person, or
11 an electronic message of a harassing nature about another person,
12 which would be likely to incite or produce that unlawful action,
13 is guilty of a misdemeanor punishable by up to one year in a county
14 jail, by a fine of not more than one thousand dollars (\$1,000), or
15 by both that fine and imprisonment.

16 (2) Every person who, with the intent to cause substantial
17 emotional distress or humiliation, by means of an electronic
18 communication device, and without consent of the other person,
19 electronically distributes, publishes, emails, hyperlinks, or makes
20 available for downloading nude images of the other person along
21 with personal identifying information of the other person, is guilty
22 of a misdemeanor punishable by up to one year in a county jail,
23 by a fine of not more than one thousand dollars (\$1,000), or by
24 both that fine and imprisonment.

25 (b) For purposes of this section, "electronic communication
26 device" includes, but is not limited to, telephones, cell phones,
27 computers, Internet Web pages or sites, Internet phones, hybrid
28 cellular/Internet/wireless devices, personal digital assistants
29 (PDAs), video recorders, fax machines, or pagers. "Electronic
30 communication" has the same meaning as the term is defined in
31 Section 2510(12) of Title 18 of the United States Code.

32 (c) For purposes of this section, the following terms apply:

33 (1) "Harassment" means a knowing and willful course of
34 conduct directed at a specific person that a reasonable person would
35 consider as seriously alarming, seriously annoying, seriously
36 tormenting, or seriously terrorizing the person and that serves no
37 legitimate purpose.

38 (2) "Of a harassing nature" means of a nature that a reasonable
39 person would consider as seriously alarming, seriously annoying,

1 ~~seriously tormenting, or seriously terrorizing of the person and~~
2 ~~that serves no legitimate purpose.~~

3 *SECTION 1. Section 647 of the Penal Code is amended to*
4 *read:*

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

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

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

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

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

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

33 (f) Who is found in any public place under the influence of
34 intoxicating liquor, any drug, controlled substance, toluene, or any
35 combination of any intoxicating liquor, drug, controlled substance,
36 or toluene, in a condition that he or she is unable to exercise care
37 for his or her own safety or the safety of others, or by reason of
38 his or her being under the influence of intoxicating liquor, any
39 drug, controlled substance, toluene, or any combination of any
40 intoxicating liquor, drug, or toluene, interferes with or obstructs

1 or prevents the free use of any street, sidewalk, or other public
2 way.

3 (g) When a person has violated subdivision (f), a peace officer,
4 if he or she is reasonably able to do so, shall place the person, or
5 cause him or her to be placed, in civil protective custody. The
6 person shall be taken to a facility, designated pursuant to Section
7 5170 of the Welfare and Institutions Code, for the 72-hour
8 treatment and evaluation of inebriates. A peace officer may place
9 a person in civil protective custody with that kind and degree of
10 force which would be lawful were he or she effecting an arrest for
11 a misdemeanor without a warrant. No person who has been placed
12 in civil protective custody shall thereafter be subject to any criminal
13 prosecution or juvenile court proceeding based on the facts giving
14 rise to this placement. This subdivision shall not apply to the
15 following persons:

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

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

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

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

30 (i) Who, while loitering, prowling, or wandering upon the private
31 property of another, at any time, peeks in the door or window of
32 any inhabited building or structure, without visible or lawful
33 business with the owner or occupant.

34 (j) (1) Any person who looks through a hole or opening, into,
35 or otherwise views, by means of any instrumentality, including,
36 but not limited to, a periscope, telescope, binoculars, camera,
37 motion picture camera, camcorder, or mobile phone, the interior
38 of a bedroom, bathroom, changing room, fitting room, dressing
39 room, or tanning booth, or the interior of any other area in which
40 the occupant has a reasonable expectation of privacy, with the

1 intent to invade the privacy of a person or persons inside. This
2 subdivision shall not apply to those areas of a private business
3 used to count currency or other negotiable instruments.

4 (2) Any person who uses a concealed camcorder, motion picture
5 camera, or photographic camera of any type, to secretly videotape,
6 film, photograph, or record by electronic means, another,
7 identifiable person under or through the clothing being worn by
8 that other person, for the purpose of viewing the body of, or the
9 undergarments worn by, that other person, without the consent or
10 knowledge of that other person, with the intent to arouse, appeal
11 to, or gratify the lust, passions, or sexual desires of that person and
12 invade the privacy of that other person, under circumstances in
13 which the other person has a reasonable expectation of privacy.

14 (3) (A) Any person who uses a concealed camcorder, motion
15 picture camera, or photographic camera of any type, to secretly
16 videotape, film, photograph, or record by electronic means, another,
17 identifiable person who may be in a state of full or partial undress,
18 for the purpose of viewing the body of, or the undergarments worn
19 by, that other person, without the consent or knowledge of that
20 other person, in the interior of a bedroom, bathroom, changing
21 room, fitting room, dressing room, or tanning booth, or the interior
22 of any other area in which that other person has a reasonable
23 expectation of privacy, with the intent to invade the privacy of that
24 other person.

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

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

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

31 (4) *Any person who photographs or records by any means the*
32 *image of another, identifiable person without his or her consent*
33 *who is in a state of full or partial undress in any area in which the*
34 *person being photographed or recorded has a reasonable*
35 *expectation of privacy, and subsequently distributes the image*
36 *taken, where the distribution of the image would cause a*
37 *reasonable person to suffer serious emotional distress.*

38 (k) In any accusatory pleading charging a violation of
39 subdivision (b), if the defendant has been once previously convicted
40 of a violation of that subdivision, the previous conviction shall be

1 charged in the accusatory pleading. If the previous conviction is
2 found to be true by the jury, upon a jury trial, or by the court, upon
3 a court trial, or is admitted by the defendant, the defendant shall
4 be imprisoned in a county jail for a period of not less than 45 days
5 and shall not be eligible for release upon completion of sentence,
6 on probation, on parole, on work furlough or work release, or on
7 any other basis until he or she has served a period of not less than
8 45 days in a county jail. In all cases in which probation is granted,
9 the court shall require as a condition thereof that the person be
10 confined in a county jail for at least 45 days. In no event does the
11 court have the power to absolve a person who violates this
12 subdivision from the obligation of spending at least 45 days in
13 confinement in a county jail.

14 In any accusatory pleading charging a violation of subdivision
15 (b), if the defendant has been previously convicted two or more
16 times of a violation of that subdivision, each of these previous
17 convictions shall be charged in the accusatory pleading. If two or
18 more of these previous convictions are found to be true by the jury,
19 upon a jury trial, or by the court, upon a court trial, or are admitted
20 by the defendant, the defendant shall be imprisoned in a county
21 jail for a period of not less than 90 days and shall not be eligible
22 for release upon completion of sentence, on probation, on parole,
23 on work furlough or work release, or on any other basis until he
24 or she has served a period of not less than 90 days in a county jail.
25 In all cases in which probation is granted, the court shall require
26 as a condition thereof that the person be confined in a county jail
27 for at least 90 days. In no event does the court have the power to
28 absolve a person who violates this subdivision from the obligation
29 of spending at least 90 days in confinement in a county jail.

30 In addition to any punishment prescribed by this section, a court
31 may suspend, for not more than 30 days, the privilege of the person
32 to operate a motor vehicle pursuant to Section 13201.5 of the
33 Vehicle Code for any violation of subdivision (b) that was
34 committed within 1,000 feet of a private residence and with the
35 use of a vehicle. In lieu of the suspension, the court may order a
36 person's privilege to operate a motor vehicle restricted, for not
37 more than six months, to necessary travel to and from the person's
38 place of employment or education. If driving a motor vehicle is
39 necessary to perform the duties of the person's employment, the

1 court may also allow the person to drive in that person’s scope of
2 employment.

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

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

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SEC. 3. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 In order to protect the privacy of the public and the safety of the
26 public at the earliest possible time, it is necessary for this act to
27 take effect immediately.