

AMENDED IN SENATE JUNE 17, 2013

AMENDED IN SENATE JUNE 11, 2013

AMENDED IN SENATE MAY 7, 2013

**SENATE BILL**

**No. 255**

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

February 13, 2013

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An act to amend Section 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, ~~Hancock~~ *Cannella*. Disorderly conduct: invasion of privacy.

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 647 of the Penal Code is amended to  
2 read:

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

1 No agreement to engage in an act of prostitution shall constitute  
2 a violation of this subdivision unless some act, in addition to the  
3 agreement, is done within this state in furtherance of the  
4 commission of an act of prostitution by the person agreeing to  
5 engage in that act. As used in this subdivision, “prostitution”  
6 includes any lewd act between persons for money or other  
7 consideration.

8 (c) Who accosts other persons in any public place or in any  
9 place open to the public for the purpose of begging or soliciting  
10 alms.

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

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

17 (f) Who is found in any public place under the influence of  
18 intoxicating liquor, any drug, controlled substance, toluene, or any  
19 combination of any intoxicating liquor, drug, controlled substance,  
20 or toluene, in a condition that he or she is unable to exercise care  
21 for his or her own safety or the safety of others, or by reason of  
22 his or her being under the influence of intoxicating liquor, any  
23 drug, controlled substance, toluene, or any combination of any  
24 intoxicating liquor, drug, or toluene, interferes with or obstructs  
25 or prevents the free use of any street, sidewalk, or other public  
26 way.

27 (g) When a person has violated subdivision (f), a peace officer,  
28 if he or she is reasonably able to do so, shall place the person, or  
29 cause him or her to be placed, in civil protective custody. The  
30 person shall be taken to a facility, designated pursuant to Section  
31 5170 of the Welfare and Institutions Code, for the 72-hour  
32 treatment and evaluation of inebriates. A peace officer may place  
33 a person in civil protective custody with that kind and degree of  
34 force which would be lawful were he or she effecting an arrest for  
35 a misdemeanor without a warrant. ~~No~~ A person who has been  
36 placed in civil protective custody shall *not* thereafter be subject to  
37 any criminal prosecution or juvenile court proceeding based on  
38 the facts giving rise to this placement. This subdivision shall not  
39 apply to the following persons:

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

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

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

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

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

19 (j) (1) Any person who looks through a hole or opening, into,  
20 or otherwise views, by means of any instrumentality, including,  
21 but not limited to, a periscope, telescope, binoculars, camera,  
22 motion picture camera, camcorder, or mobile phone, the interior  
23 of a bedroom, bathroom, changing room, fitting room, dressing  
24 room, or tanning booth, or the interior of any other area in which  
25 the occupant has a reasonable expectation of privacy, with the  
26 intent to invade the privacy of a person or persons inside. This  
27 subdivision shall not apply to those areas of a private business  
28 used to count currency or other negotiable instruments.

29 (2) Any person who uses a concealed camcorder, motion picture  
30 camera, or photographic camera of any type, to secretly videotape,  
31 film, photograph, or record by electronic means, another,  
32 identifiable person under or through the clothing being worn by  
33 that other person, for the purpose of viewing the body of, or the  
34 undergarments worn by, that other person, without the consent or  
35 knowledge of that other person, with the intent to arouse, appeal  
36 to, or gratify the lust, passions, or sexual desires of that person and  
37 invade the privacy of that other person, under circumstances in  
38 which the other person has a reasonable expectation of privacy.

39 (3) (A) Any person who uses a concealed camcorder, motion  
40 picture camera, or photographic camera of any type, to secretly

1 videotape, film, photograph, or record by electronic means, another,  
2 identifiable person who may be in a state of full or partial undress,  
3 for the purpose of viewing the body of, or the undergarments worn  
4 by, that other person, without the consent or knowledge of that  
5 other person, in the interior of a bedroom, bathroom, changing  
6 room, fitting room, dressing room, or tanning booth, or the interior  
7 of any other area in which that other person has a reasonable  
8 expectation of privacy, with the intent to invade the privacy of that  
9 other person.

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

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

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

16 (4) Any person who photographs or records by any means the  
17 image of another, identifiable person without his or her consent  
18 who is in a state of full or partial undress in any area in which the  
19 person being photographed or recorded has a reasonable  
20 expectation of privacy, and subsequently distributes the image  
21 taken, where the distribution of the image would cause a reasonable  
22 person to suffer serious emotional distress.

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

39 In any accusatory pleading charging a violation of subdivision  
40 (b), if the defendant has been previously convicted two or more

1 times of a violation of that subdivision, each of these previous  
2 convictions shall be charged in the accusatory pleading. If two or  
3 more of these previous convictions are found to be true by the jury,  
4 upon a jury trial, or by the court, upon a court trial, or are admitted  
5 by the defendant, the defendant shall be imprisoned in a county  
6 jail for a period of not less than 90 days and shall not be eligible  
7 for release upon completion of sentence, on probation, on parole,  
8 on work furlough or work release, or on any other basis until he  
9 or she has served a period of not less than 90 days in a county jail.  
10 In all cases in which probation is granted, the court shall require  
11 as a condition thereof that the person be confined in a county jail  
12 for at least 90 days. In no event does the court have the power to  
13 absolve a person who violates this subdivision from the obligation  
14 of spending at least 90 days in confinement in a county jail.

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

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

31 (2) If the victim of a violation of subdivision (j) was a minor at  
32 the time of the offense, the violation is punishable by imprisonment  
33 in a county jail not exceeding one year, or by a fine not exceeding  
34 two thousand dollars (\$2,000), or by both that fine and  
35 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 SEC. 3. This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety within  
7 the meaning of Article IV of the Constitution and shall go into  
8 immediate effect. The facts constituting the necessity are:

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

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