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


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 a 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 with the intent to cause serious emotional distress, and the other person suffers 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:

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

647. Except as provided in subdivision (1), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

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

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

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

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

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

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

(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the
facts giving rise to this placement. This subdivision shall not apply
to the following persons:
(1) Any person who is under the influence of any drug, or under
the combined influence of intoxicating liquor and any drug.
(2) Any person who a peace officer has probable cause to believe
has committed any felony, or who has committed any misdemeanor
in addition to subdivision (f).
(3) Any person who a peace officer in good faith believes will
attempt escape or will be unreasonably difficult for medical
personnel to control.
(h) Who loiters, prowls, or wanders upon the private property
of another, at any time, without visible or lawful business with the
owner or occupant. As used in this subdivision, “loiter” means to
delay or linger without a lawful purpose for being on the property
and for the purpose of committing a crime as opportunity may be
discovered.
(i) Who, while loitering, prowling, or wandering upon the private
property of another, at any time, peeks in the door or window of
any inhabited building or structure, without visible or lawful
business with the owner or occupant.
(j) (1) Any person who looks through a hole or opening, into,
or otherwise views, by means of any instrumentality, including,
but not limited to, a periscope, telescope, binoculars, camera,
motion picture camera, camcorder, or mobile phone, the interior
of a bedroom, bathroom, changing room, fitting room, dressing
room, or tanning booth, or the interior of any other area in which
the occupant has a reasonable expectation of privacy, with the
intent to invade the privacy of a person or persons inside. This
subdivision shall not apply to those areas of a private business
used to count currency or other negotiable instruments.
(2) 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 under or through the clothing being worn by
that other person, 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, with the intent to arouse, appeal
to, or gratify the lust, passions, or sexual desires of that person and
invade the privacy of that other person, under circumstances in
which the other person has a reasonable expectation of privacy.
3. (A) 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.

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

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

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

4. (A) 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, with the intent to cause serious emotional distress, and the other person suffers serious emotional distress.

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

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

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

In all cases in which probation is granted, the court shall require
as a condition thereof that the person be confined in a county jail
for at least 90 days. In no event does the court have the power to
absolve a person who violates this subdivision from the obligation
of spending at least 90 days in confinement in a county jail.

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

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

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

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

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

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