

AMENDED IN SENATE AUGUST 2, 2016
AMENDED IN ASSEMBLY MAY 18, 2016
AMENDED IN ASSEMBLY APRIL 25, 2016
AMENDED IN ASSEMBLY APRIL 12, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1671

Introduced by Assembly Member Gomez
(Principal coauthor: Assembly Member Santiago)
(Coauthor: Senator Jackson)

January 15, 2016

An act to amend Sections 632 and 633.5 of, and to add Section 632.01 to, the Penal Code, relating to confidential communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1671, as amended, Gomez. Confidential communications: disclosure.

(1) Existing law makes it a crime, subject to specified exemptions, for a person to intentionally eavesdrop upon or record a confidential communication by means of an electronic amplifying or recording device without the consent of all parties to the confidential communication. Existing law defines a confidential communication as any communication carried on in circumstances that reasonably indicate that any party to the communication desires it to be confined to the parties thereto. Existing law exempts from the prohibition the recording of a confidential communication made for the purpose of obtaining

evidence reasonably believed to relate to the commission by another party to the communication of certain crimes, including any felony involving violence against the person making the recording.

This bill additionally would make it a crime for a person who unlawfully eavesdrops upon or records a confidential communication as described above with a health care provider, as defined, to intentionally disclose or distribute the contents of the confidential communication without the consent of all parties to the confidential communication unless specified conditions are met. The bill would make this prohibition subject to the same exemptions as are applicable to the prohibition on eavesdropping upon or recording a confidential communication as described above. The bill would also make it a crime for any person to aid ~~or~~ *and* abet any person in the commission of those offenses. The bill would specify, with respect to the exemption for recording communications believed to relate to the commission of a crime by a party to the communication, that a felony involving violence includes human trafficking, as defined. By creating new crimes, this bill would impose a state-mandated local program.

(2) Existing law makes the above-specified crime of eavesdropping punishable by a fine not to exceed \$2,500 or imprisonment in a county jail not exceeding one year, or in the state prison for 16 months or 2 or 3 years. If the person has previously been convicted of eavesdropping, or has previously been convicted of specified invasion of privacy crimes, existing law requires the person to be punished by a fine not exceeding \$10,000, by imprisonment in a county jail not exceeding one year, or in the state prison for 16 months or 2 or 3 years.

This bill would require the above-specified fines to be imposed on a per-violation basis and would impose the same penalties prescribed for the unlawful eavesdropping upon or recording of a confidential communication to the disclosure crimes created by the bill. The bill also would make various technical, nonsubstantive changes to existing law.

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 632 of the Penal Code is amended to
2 read:

3 632. (a) A person who, intentionally and without the consent
4 of all parties to a confidential communication, uses an electronic
5 amplifying or recording device to eavesdrop upon or record the
6 confidential communication, whether the communication is carried
7 on among the parties in the presence of one another or by means
8 of a telegraph, telephone, or other device, except a radio, shall be
9 punished by a fine not exceeding two thousand five hundred dollars
10 (\$2,500) per violation, or imprisonment in a county jail not
11 exceeding one year, or in the state prison, or by both that fine and
12 imprisonment. If the person has previously been convicted of a
13 violation of this section or Section 631, 632.5, 632.6, 632.7, or
14 636, the person shall be punished by a fine not exceeding ten
15 thousand dollars (\$10,000) per violation, by imprisonment in a
16 county jail not exceeding one year, or in the state prison, or by
17 both that fine and imprisonment.

18 (b) For the purposes of this section, “person” means an
19 individual, business association, partnership, corporation, limited
20 liability company, or other legal entity, and an individual acting
21 or purporting to act for or on behalf of any government or
22 subdivision thereof, whether federal, state, or local, but excludes
23 an individual known by all parties to a confidential communication
24 to be overhearing or recording the communication.

25 (c) For the purposes of this section, “confidential
26 communication” means any communication carried on in
27 circumstances as may reasonably indicate that any party to the
28 communication desires it to be confined to the parties thereto, but
29 excludes a communication made in a public gathering or in any
30 legislative, judicial, executive, or administrative proceeding open
31 to the public, or in any other circumstance in which the parties to
32 the communication may reasonably expect that the communication
33 may be overheard or recorded.

34 (d) Except as proof in an action or prosecution for violation of
35 this section, evidence obtained as a result of eavesdropping upon
36 or recording a confidential communication in violation of this
37 section is not admissible in any judicial, administrative, legislative,
38 or other proceeding.

1 (e) This section does not apply (1) to any public utility engaged
 2 in the business of providing communications services and facilities,
 3 or to the officers, employees, or agents thereof, if the acts otherwise
 4 prohibited by this section are for the purpose of construction,
 5 maintenance, conduct, or operation of the services and facilities
 6 of the public utility, (2) to the use of any instrument, equipment,
 7 facility, or service furnished and used pursuant to the tariffs of a
 8 public utility, or (3) to any telephonic communication system used
 9 for communication exclusively within a state, county, city and
 10 county, or city correctional facility.

11 (f) This section does not apply to the use of hearing aids and
 12 similar devices, by persons afflicted with impaired hearing, for
 13 the purpose of overcoming the impairment to permit the hearing
 14 of sounds ordinarily audible to the human ear.

15 SEC. 2. Section 632.01 is added to the Penal Code, to read:

16 632.01. (a) A person who violates subdivision (a) of Section
 17 632 shall be punished pursuant to subdivision (c) if the person
 18 intentionally discloses or distributes, in any manner, in any forum,
 19 including, but not limited to, Internet Web sites and social media,
 20 or for any purpose, the contents of a confidential communication
 21 with a health care provider that is obtained by that person in
 22 violation of subdivision (a) of Section 632. For purposes of this
 23 subdivision, “social media” means an electronic service or account,
 24 or electronic content, including, but not limited to, videos or still
 25 photographs, blogs, video blogs, podcasts, instant and text
 26 messages, email, online services or accounts, or Internet Web site
 27 profiles or locations.

28 (b) (1) A person who ~~aids or~~ *and* abets the commission of an
 29 offense described in subdivision (a) of this section when another
 30 party to the confidential communication is a health care provider
 31 shall be punished pursuant to subdivision (c).

32 (2) For purposes of this section a person “~~aids or~~ *and* abets the
 33 commission of an offense” when he or she, with knowledge of the
 34 unlawful purpose of the perpetrator and with the intent or purpose
 35 of committing, facilitating, or encouraging the commission of the
 36 offense, by act or advice, aids, promotes, encourages, or instigates
 37 the commission of the offense.

38 (c) A violation of subdivision (a) or (b) shall be punished by a
 39 fine not exceeding two thousand five hundred dollars (\$2,500) per
 40 violation, or imprisonment in a county jail not exceeding one year,

1 or in the state prison, or by both that fine and imprisonment. If the
2 person has previously been convicted of a violation of this section,
3 the person shall be punished by a fine not exceeding ten thousand
4 dollars (\$10,000) per violation, by imprisonment in a county jail
5 not exceeding one year, or in the state prison, or by both that fine
6 and imprisonment.

7 (d) For purposes of this section, “health care provider” means
8 any of the following:

9 (1) A person licensed or certified pursuant to Division 2
10 (commencing with Section 500) of the Business and Professions
11 Code.

12 (2) A person licensed pursuant to the Osteopathic Initiative Act
13 or the Chiropractic Initiative Act.

14 (3) A person certified pursuant to Division 2.5 (commencing
15 with Section 1797) of the Health and Safety Code.

16 (4) A clinic, health dispensary, or health facility licensed or
17 exempt from licensure pursuant to Division 2 (commencing with
18 Section 1200) of the Health and Safety Code.

19 (5) An employee, volunteer, or contracted agent of any group
20 practice prepayment health care service plan regulated pursuant
21 to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
22 2.2 (commencing with Section 1340) of Division 2 of the Health
23 and Safety Code).

24 (6) An employee, volunteer, independent contractor, or
25 professional student of a clinic, health dispensary, or health care
26 facility or health care provider described in this subdivision.

27 (7) A professional organization that represents any of the other
28 health care providers described in this subdivision.

29 (e) (1) Subdivisions (a) and (b) do not apply to the disclosure
30 or distribution of a confidential communication pursuant to any
31 of the following:

32 (A) Any party as described in Section 633 acting within the
33 scope of his or her authority overhearing or recording a confidential
34 communication that he or she may lawfully overhear or record
35 pursuant to that section.

36 (B) Any party as described in Section 633.02 overhearing or
37 recording a confidential communication related to sexual assault
38 or other sexual offense that he or she may lawfully overhear or
39 record pursuant to that section, or using or operating a body-worn
40 camera as authorized pursuant to that section.

1 (C) A city attorney as described in Section 633.05 overhearing
2 or recording any communication that he or she may lawfully
3 overhear or record pursuant to that section.

4 (D) An airport law enforcement officer recording a
5 communication received on an incoming telephone line pursuant
6 to Section 633.1.

7 (E) A party to a confidential communication recording the
8 communication for the purpose of obtaining evidence reasonably
9 believed to relate to the commission by another party to the
10 communication of a crime as specified in Section 633.5.

11 (F) A victim of domestic violence recording a prohibited
12 communication made to him or her by the perpetrator pursuant to
13 Section 633.6.

14 (G) A peace officer using electronic amplifying or recording
15 devices to eavesdrop on and record the otherwise confidential oral
16 communications of individuals within a location when responding
17 to an emergency situation that involves the taking of a hostage or
18 the barricading of a location pursuant to Section 633.8.

19 (2) This section does not affect the admissibility of any evidence
20 that would otherwise be admissible pursuant to the authority of
21 any section specified in paragraph (1).

22 SEC. 3. Section 633.5 of the Penal Code is amended to read:

23 633.5. Nothing in Section 631, 632, 632.5, 632.6, or 632.7
24 prohibits one party to a confidential communication from recording
25 the communication for the purpose of obtaining evidence
26 reasonably believed to relate to the commission by another party
27 to the communication of the crime of extortion, kidnapping,
28 bribery, any felony involving violence against the person,
29 including, but not limited to, human trafficking, as defined in
30 Section 231.6, or a violation of Section 653m. Sections 631, 632,
31 632.5, 632.6, and 632.7 do not render any evidence so obtained
32 inadmissible in a prosecution for extortion, kidnapping, bribery,
33 any felony involving violence against the person, including, but
34 not limited to, human trafficking, as defined in Section 231.6, a
35 violation of Section 653m, or any crime in connection therewith.

36 SEC. 4. 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.

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