

AMENDED IN SENATE AUGUST 16, 2016
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 not apply if the confidential communication is disclosed solely to law enforcement for investigative purposes.* 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 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,~~ *a new crime*, 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

1 or recording a confidential communication in violation of this
 2 section is not admissible in any judicial, administrative, legislative,
 3 or other proceeding.

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

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

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

19 632.01. (a) (1) A person who violates subdivision (a) of
 20 Section 632 shall be punished pursuant to subdivision ~~(e)~~ (b) if
 21 the person intentionally discloses or distributes, in any manner, in
 22 any forum, including, but not limited to, Internet Web sites and
 23 social media, or for any purpose, the contents of a confidential
 24 communication with a health care provider that is obtained by that
 25 person in violation of subdivision (a) of Section 632. For purposes
 26 of this subdivision, “social media” means an electronic service or
 27 account, or electronic content, including, but not limited to, videos
 28 or still photographs, blogs, video blogs, podcasts, instant and text
 29 messages, email, online services or accounts, or Internet Web site
 30 profiles or locations.

31 (2) *This section does not apply if the confidential communication*
 32 *is provided solely to law enforcement for investigative purposes.*

33 ~~(b) (1) A person who aids and abets the commission of an~~
 34 ~~offense described in subdivision (a) of this section when another~~
 35 ~~party to the confidential communication is a health care provider~~
 36 ~~shall be punished pursuant to subdivision (c).~~

37 ~~(2) For purposes of this section a person “aids and abets the~~
 38 ~~commission of an offense” when he or she, with knowledge of the~~
 39 ~~unlawful purpose of the perpetrator and with the intent or purpose~~
 40 ~~of committing, facilitating, or encouraging the commission of the~~

1 offense, by act or advice, aids, promotes, encourages, or instigates
2 the commission of the offense.

3 (e)

4 (b) A violation of subdivision (a) ~~or (b)~~ shall be punished by a
5 fine not exceeding two thousand five hundred dollars (\$2,500) per
6 violation, or imprisonment in a county jail not exceeding one year,
7 or in the state prison, or by both that fine and imprisonment. If the
8 person has previously been convicted of a violation of this section,
9 the person shall be punished by a fine not exceeding ten thousand
10 dollars (\$10,000) per violation, by imprisonment in a county jail
11 not exceeding one year, or in the state prison, or by both that fine
12 and imprisonment.

13 (d)

14 (c) For purposes of this section, “health care provider” means
15 any of the following:

16 (1) A person licensed or certified pursuant to Division 2
17 (commencing with Section 500) of the Business and Professions
18 Code.

19 (2) A person licensed pursuant to the Osteopathic Initiative Act
20 or the Chiropractic Initiative Act.

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

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

26 (5) An employee, volunteer, or contracted agent of any group
27 practice prepayment health care service plan regulated pursuant
28 to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
29 2.2 (commencing with Section 1340) of Division 2 of the Health
30 and Safety Code).

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

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

36 (e)

37 (d) (1) ~~Subdivisions (a) and (b) do~~ *Subdivision (a) does not*
38 apply to the disclosure or distribution of a confidential
39 communication pursuant to any of the following:

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

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

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

13 (D) An airport law enforcement officer recording a
14 communication received on an incoming telephone line pursuant
15 to Section 633.1.

16 (E) A party to a confidential communication recording the
17 communication for the purpose of obtaining evidence reasonably
18 believed to relate to the commission by another party to the
19 communication of a crime as specified in Section 633.5.

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

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

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

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

32 633.5. Nothing in Section 631, 632, 632.5, 632.6, or 632.7
33 prohibits one party to a confidential communication from recording
34 the communication for the purpose of obtaining evidence
35 reasonably believed to relate to the commission by another party
36 to the communication of the crime of extortion, kidnapping,
37 bribery, any felony involving violence against the person,
38 including, but not limited to, human trafficking, as defined in
39 Section 231.6, or a violation of Section 653m. Sections 631, 632,
40 632.5, 632.6, and 632.7 do not render any evidence so obtained

1 inadmissible in a prosecution for extortion, kidnapping, bribery,
2 any felony involving violence against the person, including, but
3 not limited to, human trafficking, as defined in Section 231.6, a
4 violation of Section 653m, or any crime in connection therewith.

5 SEC. 4. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.