

AMENDED IN SENATE AUGUST 30, 2016
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~~ 632, 633.5, and 637.2 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 specify the conduct that constitutes aiding and abetting the commission of those offenses, as specified.* 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 a new crime, this bill would impose a state-mandated local program.

(2) *Existing law authorizes any person who has been injured by a violation of the prohibition on eavesdropping upon or recording confidential communications, and related offenses, to bring an action against the person who committed the violation to enjoin and restrain the violation, as well as to bring an action for monetary damages, as specified.*

This bill would provide that the monetary damages be imposed per violation of the above-described provisions.

(2)

(3) 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

1 an individual known by all parties to a confidential communication
2 to be overhearing or recording the communication.

3 (c) For the purposes of this section, “confidential
4 communication” means any communication carried on in
5 circumstances as may reasonably indicate that any party to the
6 communication desires it to be confined to the parties thereto, but
7 excludes a communication made in a public gathering or in any
8 legislative, judicial, executive, or administrative proceeding open
9 to the public, or in any other circumstance in which the parties to
10 the communication may reasonably expect that the communication
11 may be overheard or recorded.

12 (d) Except as proof in an action or prosecution for violation of
13 this section, evidence obtained as a result of eavesdropping upon
14 or recording a confidential communication in violation of this
15 section is not admissible in any judicial, administrative, legislative,
16 or other proceeding.

17 (e) This section does not apply (1) to any public utility engaged
18 in the business of providing communications services and facilities,
19 or to the officers, employees, or agents thereof, if the acts otherwise
20 prohibited by this section are for the purpose of construction,
21 maintenance, conduct, or operation of the services and facilities
22 of the public utility, (2) to the use of any instrument, equipment,
23 facility, or service furnished and used pursuant to the tariffs of a
24 public utility, or (3) to any telephonic communication system used
25 for communication exclusively within a state, county, city and
26 county, or city correctional facility.

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

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

32 632.01. (a) (1) A person who violates subdivision (a) of
33 Section 632 shall be punished pursuant to subdivision (b) if the
34 person intentionally discloses or distributes, in any manner, in any
35 forum, including, but not limited to, Internet Web sites and social
36 media, or for any purpose, the contents of a confidential
37 communication with a health care provider that is obtained by that
38 person in violation of subdivision (a) of Section 632. For purposes
39 of this subdivision, “social media” means an electronic service or
40 account, or electronic content, including, but not limited to, videos

1 or still photographs, blogs, video blogs, podcasts, instant and text
2 messages, email, online services or accounts, or Internet Web site
3 profiles or locations.

4 *(2) Notwithstanding any other provision of law, to aid and abet*
5 *a violation of paragraph (1), for the purposes of Section 31, the*
6 *person shall either violate, or aid and abet in a violation of, both*
7 *Section 632 and paragraph (1).*

8 ~~(2) This section does not apply if the confidential~~
9 ~~communication is provided solely to law enforcement for~~
10 ~~investigative purposes.~~

11 (b) A violation of subdivision (a) shall be punished by a fine
12 not exceeding two thousand five hundred dollars (\$2,500) per
13 violation, or imprisonment in a county jail not exceeding one year,
14 or in the state prison, or by both that fine and imprisonment. If the
15 person has previously been convicted of a violation of this section,
16 the person shall be punished by a fine not exceeding ten thousand
17 dollars (\$10,000) per violation, by imprisonment in a county jail
18 not exceeding one year, or in the state prison, or by both that fine
19 and imprisonment.

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

22 (1) A person licensed or certified pursuant to Division 2
23 (commencing with Section 500) of the Business and Professions
24 Code.

25 (2) A person licensed pursuant to the Osteopathic Initiative Act
26 or the Chiropractic Initiative Act.

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

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

32 (5) An employee, volunteer, or contracted agent of any group
33 practice prepayment health care service plan regulated pursuant
34 to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
35 2.2 (commencing with Section 1340) of Division 2 of the Health
36 and Safety Code).

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

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

3 (d) (1) Subdivision (a) does not apply to the disclosure or
4 distribution of a confidential communication pursuant to any of
5 the following:

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

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

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

18 (D) An airport law enforcement officer recording a
19 communication received on an incoming telephone line pursuant
20 to Section 633.1.

21 (E) A party to a confidential communication recording the
22 communication for the purpose of obtaining evidence reasonably
23 believed to relate to the commission by another party to the
24 communication of a crime as specified in Section 633.5.

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

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

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

36 SEC. 3. Section 633.5 of the Penal Code is amended to read:
37 633.5. Nothing in Section 631, 632, 632.5, 632.6, or 632.7
38 prohibits one party to a confidential communication from recording
39 the communication for the purpose of obtaining evidence
40 reasonably believed to relate to the commission by another party

1 to the communication of the crime of extortion, kidnapping,
 2 bribery, any felony involving violence against the person,
 3 including, but not limited to, human trafficking, as defined in
 4 Section 231.6, or a violation of Section 653m. Sections 631, 632,
 5 632.5, 632.6, and 632.7 do not render any evidence so obtained
 6 inadmissible in a prosecution for extortion, kidnapping, bribery,
 7 any felony involving violence against the person, including, but
 8 not limited to, human trafficking, as defined in Section 231.6, a
 9 violation of Section 653m, or any crime in connection therewith.

10 *SEC. 4. Section 637.2 of the Penal Code is amended to read:*

11 637.2. (a) Any person who has been injured by a violation of
 12 this chapter may bring an action against the person who committed
 13 the violation for the greater of the following amounts:

- 14 (1) Five thousand dollars ~~(\$5,000)~~; (\$5,000) per violation.
- 15 (2) Three times the amount of actual damages, if any, sustained
 16 by the plaintiff.

17 (b) Any person may, in accordance with Chapter 3 (commencing
 18 with Section 525) of Title 7 of Part 2 of the Code of Civil
 19 Procedure, bring an action to enjoin and restrain any violation of
 20 this chapter, and may in the same action seek damages as provided
 21 by subdivision (a).

22 (c) It is not a necessary prerequisite to an action pursuant to this
 23 section that the plaintiff has suffered, or be threatened with, actual
 24 damages.

25 (d) *This section shall not be construed to affect Title 4*
 26 *(commencing with Section 3425.1) of Part 1 of Division 4 of the*
 27 *Civil Code.*

28 ~~SEC. 4.~~

29 *SEC. 5.* No reimbursement is required by this act pursuant to
 30 Section 6 of Article XIII B of the California Constitution because
 31 the only costs that may be incurred by a local agency or school
 32 district will be incurred because this act creates a new crime or
 33 infraction, eliminates a crime or infraction, or changes the penalty
 34 for a crime or infraction, within the meaning of Section 17556 of
 35 the Government Code, or changes the definition of a crime within
 36 the meaning of Section 6 of Article XIII B of the California
 37 Constitution.