

AMENDED IN SENATE JUNE 28, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

AMENDED IN ASSEMBLY APRIL 7, 2016

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2199

**Introduced by Assembly Member Campos
(Coauthor: Assembly Member Lackey)**

February 18, 2016

An act to amend Section 261.5 of, and to add Section 287 to, the Penal Code, relating to sexual offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2199, as amended, Campos. Sexual offenses against minors: persons in a position of authority.

(1) Existing law provides various circumstances that constitute rape, which are punishable by imprisonment in the state prison for 3, 6, or 8 years, except as specified.

Existing law also prescribes circumstances that constitute unlawful sexual intercourse, some of which involve an adult perpetrator who engages in that unlawful intercourse with a minor, as specified. Unlawful sexual intercourse under those circumstances is punishable by imprisonment for 2, 3, or 4 years, and also may be subject to designated civil penalties or fines. Under existing law, any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, punishable by imprisonment in a county jail not exceeding

one year, or by imprisonment pursuant to a specified provision of law for 2, 3, or 4 years.

This bill would subject any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age and is convicted of a felony to a sentence enhancement of 2 years, if the perpetrator holds a position of authority over the minor with whom he or she engaged in the act of unlawful sexual intercourse. By changing the penalty for the commission of unlawful sexual intercourse under the above circumstances, the bill would impose a state-mandated local program.

(2) Existing law makes it a crime for a person to engage in specified acts of a sexual nature with a minor, including lewd and lascivious conduct when the victim is a child of 14 or 15 years of age and the person is at least 10 years older, and sodomy, oral copulation, or sexual penetration of a minor under 16 years of age when the person is 21 years of age or older.

This bill would impose an additional term of 2 years when a person who is convicted of a felony violation of the above crimes is a person who holds a position of authority, as defined, over the minor victim. By increasing the penalty for a crime, the bill would impose a state-mandated local program.

(3) 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 261.5 of the Penal Code is amended to
- 2 read:
- 3 261.5. (a) Unlawful sexual intercourse is an act of sexual
- 4 intercourse accomplished with a person who is not the spouse of
- 5 the perpetrator, if the person is a minor. For the purposes of this
- 6 section, a “minor” is a person under 18 years of age and an “adult”
- 7 is a person who is at least 18 years of age.
- 8 (b) Any person who engages in an act of unlawful sexual
- 9 intercourse with a minor who is not more than three years older

1 or three years younger than the perpetrator, is guilty of a
2 misdemeanor.

3 (c) Any person who engages in an act of unlawful sexual
4 intercourse with a minor who is more than three years younger
5 than the perpetrator is guilty of either a misdemeanor or a felony,
6 and shall be punished by imprisonment in a county jail not
7 exceeding one year, or by imprisonment pursuant to subdivision
8 (h) of Section 1170.

9 (d) Any person 21 years of age or older who engages in an act
10 of unlawful sexual intercourse with a minor who is under 16 years
11 of age is guilty of either a misdemeanor or a felony, and shall be
12 punished by imprisonment in a county jail not exceeding one year,
13 or by imprisonment pursuant to subdivision (h) of Section 1170
14 for two, three, or four years.

15 (e) Notwithstanding any other provision of this section, a person
16 who is guilty of a felony pursuant to subdivision (d) who holds a
17 position of authority over the minor with whom he or she has
18 engaged in an act of unlawful sexual intercourse, shall be punished
19 by an additional term of imprisonment in a county jail for two
20 years.

21 (1) For purposes of this subdivision, a person is in a “position
22 of authority” if he or she, by reason of that position, is able to
23 exercise undue influence over a minor. A “position of authority”
24 includes, but is not limited to, a stepparent, foster parent, partner
25 of the parent, caretaker, youth leader, recreational director, athletic
26 manager, coach, teacher, counselor, therapist, religious leader,
27 doctor, ~~employer, or employee~~ *or employer* of one of those
28 aforementioned persons.

29 (2) For purposes of this subdivision, “undue influence” ~~has the~~
30 ~~same meaning as that term is defined in Section 15610.70 of the~~
31 ~~Welfare and Institutions Code.~~ *includes, but is not limited to, the*
32 *use of affection, intimidation, coercion, or deceit, the taking,*
33 *withholding, or bestowing of a reward or benefit, or the promise*
34 *or threat to take, withhold, or bestow a benefit or reward.*

35 (f) (1) Notwithstanding any other provision of this section, an
36 adult who engages in an act of sexual intercourse with a minor in
37 violation of this section may be liable for civil penalties in the
38 following amounts:

39 (A) An adult who engages in an act of unlawful sexual
40 intercourse with a minor less than two years younger than the adult

1 is liable for a civil penalty not to exceed two thousand dollars
2 (\$2,000).

3 (B) An adult who engages in an act of unlawful sexual
4 intercourse with a minor at least two years younger than the adult
5 is liable for a civil penalty not to exceed five thousand dollars
6 (\$5,000).

7 (C) An adult who engages in an act of unlawful sexual
8 intercourse with a minor at least three years younger than the adult
9 is liable for a civil penalty not to exceed ten thousand dollars
10 (\$10,000).

11 (D) An adult over the age of 21 years who engages in an act of
12 unlawful sexual intercourse with a minor under 16 years of age is
13 liable for a civil penalty not to exceed twenty-five thousand dollars
14 (\$25,000).

15 (2) The district attorney may bring actions to recover civil
16 penalties pursuant to this subdivision. From the amounts collected
17 for each case, an amount equal to the costs of pursuing the action
18 shall be deposited with the treasurer of the county in which the
19 judgment was entered, and the remainder shall be deposited in the
20 Underage Pregnancy Prevention Fund, which is hereby created in
21 the State Treasury. Amounts deposited in the Underage Pregnancy
22 Prevention Fund may be used only for the purpose of preventing
23 underage pregnancy upon appropriation by the Legislature.

24 (3) In addition to any punishment imposed under this section,
25 the judge may assess a fine not to exceed seventy dollars (\$70)
26 against any person who violates this section with the proceeds of
27 this fine to be used in accordance with Section 1463.23. The court
28 shall, however, take into consideration the defendant's ability to
29 pay, and no defendant shall be denied probation because of his or
30 her inability to pay the fine permitted under this subdivision.

31 SEC. 2. Section 287 is added to the Penal Code, to read:

32 287. (a) A person who is guilty of a felony violation of
33 paragraph (2) of subdivision (b) of Section 286, paragraph (1) of
34 subdivision (c) of Section 288, paragraph (2) of subdivision (b) of
35 Section 288a, or subdivision (i) of Section 289, and who holds a
36 position of authority over the minor victim, shall be punished by
37 an additional term of imprisonment for two years.

38 (b) For purposes of this section, a person is in a "position of
39 authority" if he or she, by reason of that position, is able to exercise
40 undue influence over a minor. A "position of authority" includes,

1 but is not limited to, a stepparent, foster parent, partner of the
2 parent, youth leader, recreational director, athletic manager, coach,
3 teacher, counselor, therapist, religious leader, doctor, employer,
4 or employee of one of those aforementioned persons.

5 (c) For purposes of this section, “undue influence” ~~has the same~~
6 ~~meaning as that term is defined in Section 15610.70 of the Welfare~~
7 ~~and Institutions Code.~~ *includes, but is not limited to, the use of*
8 *affection, intimidation, coercion, or deceit, the taking, withholding,*
9 *or bestowing of a reward or benefit, or the promise or threat to*
10 *take, withhold, or bestow a benefit or reward.*

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.