

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 676

Introduced by Senator Cannella

February 27, 2015

An act to amend Sections 312.3, 502.01, and 647 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 676, as amended, Cannella. Disorderly conduct: invasion of privacy.

Existing law provides that a person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct, a misdemeanor. Existing law also includes other offenses involving invasion of privacy, including, for example, a person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, 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 bill would ~~provide that a person who intentionally distributes another person's personal identifying information associated with an image of an intimate body part of that other person, as defined, without the consent of the other person,~~ *recast those provisions to provide that a person who intentionally distributes the image of the intimate body*

part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the person distributing the image knows or should know that the depicted person had a reasonable expectation that the image would remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress, is guilty of disorderly conduct. The bill would provide additional exceptions to the prohibition against that distribution.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

Under existing law, matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, as defined, and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to a petition for forfeiture brought in the county in which the matter is located. Existing law provides for forfeiture by a defendant of illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data that was used in committing specified crimes, including depiction of a person under 18 years of age personally engaging in or personally simulating sexual conduct.

This bill would apply those provisions to the new provisions of disorderly conduct described above, and to the existing provisions of disorderly conduct related to invasion of privacy, as provided.

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 312.3 of the Penal Code is amended to
- 2 read:
- 3 312.3. (a) Matter that depicts a person under the age of 18
- 4 years personally engaging in or personally simulating sexual

1 conduct as defined in Section 311.4, or that is obtained or
2 distributed in violation of subdivision (j) of Section 647 and that
3 is in the possession of any city, county, city and county, or state
4 official or agency is subject to forfeiture pursuant to this section.

5 (b) An action to forfeit matter described in subdivision (a) may
6 be brought by the Attorney General, the district attorney, county
7 counsel, or the city attorney. Proceedings shall be initiated by a
8 petition of forfeiture filed in the superior court of the county in
9 which the matter is located.

10 (c) The prosecuting agency shall make service of process of a
11 notice regarding that petition upon every individual who may have
12 a property interest in the alleged proceeds. The notice shall state
13 that any interested party may file a verified claim with the superior
14 court stating the amount of their claimed interest and an affirmation
15 or denial of the prosecuting agency's allegation. If the notice cannot
16 be given by registered mail or personal delivery, the notice shall
17 be published for at least three successive weeks in a newspaper of
18 general circulation in the county where the property is located. All
19 notices shall set forth the time within which a claim of interest in
20 the property seized is required to be filed.

21 (d) (1) Any person claiming an interest in the property or
22 proceeds may, at any time within 30 days from the date of the first
23 publication of the notice of seizure, or within 30 days after receipt
24 of actual notice, file with the superior court of the county in which
25 the action is pending a verified claim stating his or her interest in
26 the property or proceeds. A verified copy of the claim shall be
27 given by the claimant to the Attorney General or district attorney,
28 county counsel, or city attorney, as appropriate.

29 (2) If, at the end of the time set forth in paragraph (1), an
30 interested person has not filed a claim, the court, upon motion,
31 shall declare that the person has defaulted upon his or her alleged
32 interest, and it shall be subject to forfeiture upon proof of
33 compliance with subdivision (c).

34 (e) The burden is on the petitioner to prove beyond a reasonable
35 doubt that matter is subject to forfeiture pursuant to this section.

36 (f) It is not necessary to seek or obtain a criminal conviction
37 prior to the entry of an order for the destruction of matter pursuant
38 to this section. Any matter described in subdivision (a) that is in
39 the possession of any city, county, city and county, or state official
40 or agency, including found property, or property obtained as the

1 result of a case in which no trial was had or that has been disposed
2 of by way of dismissal or otherwise than by way of conviction
3 may be ordered destroyed.

4 (g) A court order for destruction of matter described in
5 subdivision (a) may be carried out by a police or sheriff's
6 department or by the Department of Justice. The court order shall
7 specify the agency responsible for the destruction.

8 (h) As used in this section, "matter" means any book, magazine,
9 newspaper, or other printed or written material or any picture,
10 drawing, photograph, motion picture, or other pictorial
11 representation, or any statue or other figure, or any recording,
12 transcription or mechanical, chemical or electrical reproduction,
13 or any other articles, equipment, machines, or materials. "Matter"
14 also means any representation of information, data, or image,
15 including, but not limited to, any film, filmstrip, photograph,
16 negative, slide, photocopy, videotape, video laser disc, computer
17 hardware, computer software, computer floppy disc, data storage
18 media, CD-ROM, or computer-generated equipment or any other
19 computer-generated image that contains or incorporates in any
20 manner any film or filmstrip.

21 (i) This section does not apply to a depiction of a legally
22 emancipated minor or to lawful conduct between spouses if one
23 or both are under the age of 18.

24 (j) It is a defense in any forfeiture proceeding that the matter
25 seized was lawfully possessed in aid of legitimate scientific or
26 educational purposes.

27 SEC. 2. Section 502.01 of the Penal Code is amended to read:

28 502.01. (a) As used in this section:

29 (1) "Property subject to forfeiture" means any property of the
30 defendant that is illegal telecommunications equipment as defined
31 in subdivision (g) of Section 502.8, or a computer, computer
32 system, or computer network, and any software or data residing
33 thereon, if the telecommunications device, computer, computer
34 system, or computer network was used in committing a violation
35 of, or conspiracy to commit a violation of, subdivision (b) of
36 Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5,
37 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g,
38 or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of
39 Section 484f, subdivision (b) or (c) of Section 484i, subdivision
40 (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5,

1 537e, 593d, 593e, 646.9, or subdivision (j) of Section 647, or was
2 used as a repository for the storage of software or data obtained
3 in violation of those provisions. Forfeiture shall not be available
4 for any property used solely in the commission of an infraction.
5 If the defendant is a minor, it also includes property of the parent
6 or guardian of the defendant.

7 (2) “Sentencing court” means the court sentencing a person
8 found guilty of violating or conspiring to commit a violation of
9 subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2,
10 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475,
11 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section
12 484e, subdivision (d) of Section 484e, subdivision (a) of Section
13 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of
14 Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d,
15 593e, 646.9, or subdivision (j) of Section 647, or, in the case of a
16 minor, found to be a person described in Section 602 of the Welfare
17 and Institutions Code because of a violation of those provisions,
18 the juvenile court.

19 (3) “Interest” means any property interest in the property subject
20 to forfeiture.

21 (4) “Security interest” means an interest that is a lien, mortgage,
22 security interest, or interest under a conditional sales contract.

23 (5) “Value” has the following meanings:

24 (A) When counterfeit items of computer software are
25 manufactured or possessed for sale, the “value” of those items
26 shall be equivalent to the retail price or fair market price of the
27 true items that are counterfeited.

28 (B) When counterfeited but unassembled components of
29 computer software packages are recovered, including, but not
30 limited to, counterfeited computer diskettes, instruction manuals,
31 or licensing envelopes, the “value” of those components of
32 computer software packages shall be equivalent to the retail price
33 or fair market price of the number of completed computer software
34 packages that could have been made from those components.

35 (b) The sentencing court shall, upon petition by the prosecuting
36 attorney, at any time following sentencing, or by agreement of all
37 parties, at the time of sentencing, conduct a hearing to determine
38 whether any property or property interest is subject to forfeiture
39 under this section. At the forfeiture hearing, the prosecuting
40 attorney shall have the burden of establishing, by a preponderance

1 of the evidence, that the property or property interests are subject
2 to forfeiture. The prosecuting attorney may retain seized property
3 that may be subject to forfeiture until the sentencing hearing.

4 (c) (1) Prior to the commencement of a forfeiture proceeding,
5 the law enforcement agency seizing the property subject to
6 forfeiture shall make an investigation as to any person other than
7 the defendant who may have an interest in it. At least 30 days
8 before the hearing to determine whether the property should be
9 forfeited, the prosecuting agency shall send notice of the hearing
10 to any person who may have an interest in the property that arose
11 before the seizure.

12 (2) A person claiming an interest in the property shall file a
13 motion for the redemption of that interest at least 10 days before
14 the hearing on forfeiture, and shall send a copy of the motion to
15 the prosecuting agency and to the probation department.

16 (3) If a motion to redeem an interest has been filed, the
17 sentencing court shall hold a hearing to identify all persons who
18 possess valid interests in the property. No person shall hold a valid
19 interest in the property if, by a preponderance of the evidence, the
20 prosecuting agency shows that the person knew or should have
21 known that the property was being used in violation of, or
22 conspiracy to commit a violation of, subdivision (b) of Section
23 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
24 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision
25 (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f,
26 subdivision (b) or (c) of Section 484i, subdivision (c) of Section
27 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e,
28 646.9, or subdivision (j) of Section 647, and that the person did
29 not take reasonable steps to prevent that use, or if the interest is a
30 security interest, the person knew or should have known at the
31 time that the security interest was created that the property would
32 be used for a violation.

33 (d) If the sentencing court finds that a person holds a valid
34 interest in the property, the following provisions shall apply:

35 (1) The court shall determine the value of the property.

36 (2) The court shall determine the value of each valid interest in
37 the property.

38 (3) If the value of the property is greater than the value of the
39 interest, the holder of the interest shall be entitled to ownership of

1 the property upon paying the court the difference between the
2 value of the property and the value of the valid interest.

3 If the holder of the interest declines to pay the amount determined
4 under paragraph (2), the court may order the property sold and
5 designate the prosecutor or any other agency to sell the property.
6 The designated agency shall be entitled to seize the property and
7 the holder of the interest shall forward any documentation
8 underlying the interest, including any ownership certificates for
9 that property, to the designated agency. The designated agency
10 shall sell the property and pay the owner of the interest the
11 proceeds, up to the value of that interest.

12 (4) If the value of the property is less than the value of the
13 interest, the designated agency shall sell the property and pay the
14 owner of the interest the proceeds, up to the value of that interest.

15 (e) If the defendant was a minor at the time of the offense, this
16 subdivision shall apply to property subject to forfeiture that is the
17 property of the parent or guardian of the minor.

18 (1) The prosecuting agency shall notify the parent or guardian
19 of the forfeiture hearing at least 30 days before the date set for the
20 hearing.

21 (2) The computer or telecommunications device shall not be
22 subject to forfeiture if the parent or guardian files a signed
23 statement with the court at least 10 days before the date set for the
24 hearing that the minor shall not have access to any computer or
25 telecommunications device owned by the parent or guardian for
26 two years after the date on which the minor is sentenced.

27 (3) If the minor is convicted of a violation of Section 288, 288.2,
28 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472,
29 476, 480, or subdivision (b) of Section 484e, subdivision (d) of
30 Section 484e, subdivision (a) of Section 484f, subdivision (b) of
31 Section 484i, subdivision (c) of Section 502, or Section 502.7,
32 502.8, 529, 529a, 530.5, or subdivision (j) of Section 647, within
33 two years after the date on which the minor is sentenced, and the
34 violation involves a computer or telecommunications device owned
35 by the parent or guardian, the original property subject to forfeiture,
36 and the property involved in the new offense, shall be subject to
37 forfeiture notwithstanding paragraph (2).

38 (4) Notwithstanding paragraph (1), (2), or (3), or any other
39 provision of this chapter, if a minor's parent or guardian makes
40 full restitution to the victim of a crime enumerated in this chapter

1 in an amount or manner determined by the court, the forfeiture
2 provisions of this chapter do not apply to the property of that parent
3 or guardian if the property was located in the family's primary
4 residence during the commission of the crime.

5 (f) Notwithstanding any other provision of this chapter, the court
6 may exercise its discretion to deny forfeiture where the court finds
7 that the convicted defendant, or minor adjudicated to come within
8 the jurisdiction of the juvenile court, is not likely to use the
9 property otherwise subject to forfeiture for future illegal acts.

10 (g) If the defendant is found to have the only valid interest in
11 the property subject to forfeiture, it shall be distributed as follows:

12 (1) First, to the victim, if the victim elects to take the property
13 as full or partial restitution for injury, victim expenditures, or
14 compensatory damages, as defined in paragraph (1) of subdivision
15 (e) of Section 502. If the victim elects to receive the property under
16 this paragraph, the value of the property shall be determined by
17 the court and that amount shall be credited against the restitution
18 owed by the defendant. The victim shall not be penalized for
19 electing not to accept the forfeited property in lieu of full or partial
20 restitution.

21 (2) Second, at the discretion of the court, to one or more of the
22 following agencies or entities:

23 (A) The prosecuting agency.

24 (B) The public entity of which the prosecuting agency is a part.

25 (C) The public entity whose officers or employees conducted
26 the investigation resulting in forfeiture.

27 (D) Other state and local public entities, including school
28 districts.

29 (E) Nonprofit charitable organizations.

30 (h) If the property is to be sold, the court may designate the
31 prosecuting agency or any other agency to sell the property at
32 auction. The proceeds of the sale shall be distributed by the court
33 as follows:

34 (1) To the bona fide or innocent purchaser or encumbrancer,
35 conditional sales vendor, or mortgagee of the property up to the
36 amount of his or her interest in the property, if the court orders a
37 distribution to that person.

38 (2) The balance, if any, to be retained by the court, subject to
39 the provisions for distribution under subdivision (g).

40 SEC. 3. Section 647 of the Penal Code is amended to read:

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

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

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

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

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

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

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

39 (g) When a person has violated subdivision (f), a peace officer,
40 if he or she is reasonably able to do so, shall place the person, or

1 cause him or her to be placed, in civil protective custody. The
2 person shall be taken to a facility, designated pursuant to Section
3 5170 of the Welfare and Institutions Code, for the 72-hour
4 treatment and evaluation of inebriates. A peace officer may place
5 a person in civil protective custody with that kind and degree of
6 force which would be lawful were he or she effecting an arrest for
7 a misdemeanor without a warrant. A person who has been placed
8 in civil protective custody shall not thereafter be subject to any
9 criminal prosecution or juvenile court proceeding based on the
10 facts giving rise to this placement. This subdivision shall not apply
11 to the following persons:

12 (1) Any person who is under the influence of any drug, or under
13 the combined influence of intoxicating liquor and any drug.

14 (2) Any person who a peace officer has probable cause to believe
15 has committed any felony, or who has committed any misdemeanor
16 in addition to subdivision (f).

17 (3) Any person who a peace officer in good faith believes will
18 attempt escape or will be unreasonably difficult for medical
19 personnel to control.

20 (h) Who loiters, prowls, or wanders upon the private property
21 of another, at any time, without visible or lawful business with the
22 owner or occupant. As used in this subdivision, “loiter” means to
23 delay or linger without a lawful purpose for being on the property
24 and for the purpose of committing a crime as opportunity may be
25 discovered.

26 (i) Who, while loitering, prowling, or wandering upon the private
27 property of another, at any time, peeks in the door or window of
28 any inhabited building or structure, without visible or lawful
29 business with the owner or occupant.

30 (j) (1) Any person who looks through a hole or opening, into,
31 or otherwise views, by means of any instrumentality, including,
32 but not limited to, a periscope, telescope, binoculars, camera,
33 motion picture camera, camcorder, or mobile phone, the interior
34 of a bedroom, bathroom, changing room, fitting room, dressing
35 room, or tanning booth, or the interior of any other area in which
36 the occupant has a reasonable expectation of privacy, with the
37 intent to invade the privacy of a person or persons inside. This
38 subdivision shall not apply to those areas of a private business
39 used to count currency or other negotiable instruments.

1 (2) Any person who uses a concealed camcorder, motion picture
2 camera, or photographic camera of any type, to secretly videotape,
3 film, photograph, or record by electronic means, another,
4 identifiable person under or through the clothing being worn by
5 that other person, for the purpose of viewing the body of, or the
6 undergarments worn by, that other person, without the consent or
7 knowledge of that other person, with the intent to arouse, appeal
8 to, or gratify the lust, passions, or sexual desires of that person and
9 invade the privacy of that other person, under circumstances in
10 which the other person has a reasonable expectation of privacy.

11 (3) (A) Any person who uses a concealed camcorder, motion
12 picture camera, or photographic camera of any type, to secretly
13 videotape, film, photograph, or record by electronic means, another,
14 identifiable person who may be in a state of full or partial undress,
15 for the purpose of viewing the body of, or the undergarments worn
16 by, that other person, without the consent or knowledge of that
17 other person, in the interior of a bedroom, bathroom, changing
18 room, fitting room, dressing room, or tanning booth, or the interior
19 of any other area in which that other person has a reasonable
20 expectation of privacy, with the intent to invade the privacy of that
21 other person.

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

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

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

28 (4) (A) Any person who intentionally distributes the image of
29 the intimate body part or parts of another identifiable person, or
30 an image of the person depicted engaged in an act of sexual
31 intercourse, sodomy, oral copulation, sexual penetration, or an
32 image of masturbation by the person depicted or in which the
33 person depicted participates, under circumstances in which the
34 ~~persons agree or understand that the image shall~~ *person distributing*
35 *the image knows or should know that the depicted person had a*
36 *reasonable expectation that the image would remain private*, the
37 person distributing the image knows or should know that
38 distribution of the image will cause serious emotional distress, and
39 the person depicted suffers that distress.

1 (B) A person intentionally distributes an image described in
2 subparagraph (A) when he or she personally distributes the image,
3 or arranges, specifically requests, or intentionally causes another
4 person to distribute that image.

5 (C) As used in this paragraph, “intimate body part” means any
6 portion of the genitals, the anus and in the case of a female, also
7 includes any portion of the breasts below the top of the areola, that
8 is either uncovered or clearly visible through clothing.

9 (D) It shall not be a violation of this paragraph to distribute an
10 image described in subparagraph (A) if any of the following
11 applies:

12 (i) The distribution is made in the course of reporting an
13 unlawful activity.

14 (ii) The distribution is made in compliance with a subpoena or
15 other court order for use in a legal proceeding.

16 (iii) The distribution is made in the course of a lawful public
17 proceeding.

18 ~~(5) (A) A person who intentionally distributes another person’s~~
19 ~~personal identifying information associated with an image of an~~
20 ~~intimate body part of that other person without the consent of the~~
21 ~~other person.~~

22 ~~(B) As used in this paragraph, “personal identifying information”~~
23 ~~has the same meaning as defined in Section 530.55.~~

24 ~~(C) As used in this paragraph, “intimate body part” has the same~~
25 ~~meaning as provided in subparagraph (C) of paragraph (4).~~

26 ~~(D) It is not a violation of this paragraph to distribute~~
27 ~~information associated with an image as described in subparagraph~~
28 ~~(A) if any of the following apply:~~

29 ~~(i) The distribution is made in the course of reporting an~~
30 ~~unlawful activity.~~

31 ~~(ii) The distribution is made in compliance with a subpoena or~~
32 ~~other court order for use in a legal proceeding.~~

33 ~~(iii) The distribution is made in the course of a lawful public~~
34 ~~proceeding.~~

35 ~~(iv) The distribution is the republication of otherwise lawful~~
36 ~~public material.~~

37 ~~(v) The distribution is made in the course of a news account~~
38 ~~on a matter of legitimate public concern.~~

39 ~~(v) The distribution is made in the course of providing medical~~
40 ~~services.~~

1 ~~(6)~~

2 (5) This subdivision shall not preclude punishment under any
3 section of law providing for greater punishment.

4 (k) (1) In any accusatory pleading charging a violation of
5 subdivision (b), if the defendant has been once previously convicted
6 of a violation of that subdivision, the previous conviction shall be
7 charged in the accusatory pleading. If the previous conviction is
8 found to be true by the jury, upon a jury trial, or by the court, upon
9 a court trial, or is admitted by the defendant, the defendant shall
10 be imprisoned in a county jail for a period of not less than 45 days
11 and shall not be eligible for release upon completion of sentence,
12 on probation, on parole, on work furlough or work release, or on
13 any other basis until he or she has served a period of not less than
14 45 days in a county jail. In all cases in which probation is granted,
15 the court shall require as a condition thereof that the person be
16 confined in a county jail for at least 45 days. In no event does the
17 court have the power to absolve a person who violates this
18 subdivision from the obligation of spending at least 45 days in
19 confinement in a county jail.

20 (2) In any accusatory pleading charging a violation of
21 subdivision (b), if the defendant has been previously convicted
22 two or more times of a violation of that subdivision, each of these
23 previous convictions shall be charged in the accusatory pleading.
24 If two or more of these previous convictions are found to be true
25 by the jury, upon a jury trial, or by the court, upon a court trial, or
26 are admitted by the defendant, the defendant shall be imprisoned
27 in a county jail for a period of not less than 90 days and shall not
28 be eligible for release upon completion of sentence, on probation,
29 on parole, on work furlough or work release, or on any other basis
30 until he or she has served a period of not less than 90 days in a
31 county jail. In all cases in which probation is granted, the court
32 shall require as a condition thereof that the person be confined in
33 a county jail for at least 90 days. In no event does the court have
34 the power to absolve a person who violates this subdivision from
35 the obligation of spending at least 90 days in confinement in a
36 county jail.

37 (3) In addition to any punishment prescribed by this section, a
38 court may suspend, for not more than 30 days, the privilege of the
39 person to operate a motor vehicle pursuant to Section 13201.5 of
40 the Vehicle Code for any violation of subdivision (b) that was

1 committed within 1,000 feet of a private residence and with the
2 use of a vehicle. In lieu of the suspension, the court may order a
3 person's privilege to operate a motor vehicle restricted, for not
4 more than six months, to necessary travel to and from the person's
5 place of employment or education. If driving a motor vehicle is
6 necessary to perform the duties of the person's employment, the
7 court may also allow the person to drive in that person's scope of
8 employment.

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

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

18 (m) (1) If a crime is committed in violation of subdivision (b)
19 and the person who was solicited was a minor at the time of the
20 offense, and if the defendant knew or should have known that the
21 person who was solicited was a minor at the time of the offense,
22 the violation is punishable by imprisonment in a county jail for
23 not less than two days and not more than one year, or by a fine not
24 exceeding ten thousand dollars (\$10,000), or by both that fine and
25 imprisonment.

26 (2) The court may, in unusual cases, when the interests of justice
27 are best served, reduce or eliminate the mandatory two days of
28 imprisonment in a county jail required by this subdivision. If the
29 court reduces or eliminates the mandatory two days' imprisonment,
30 the court shall specify the reason on the record.

31 SEC. 4. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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