

AMENDED IN ASSEMBLY APRIL 26, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1491

Introduced by Assembly Member McPherson

February 24, 1995

An act to amend Sections 647.6 and 1203.067 of the Penal Code, relating to child molestation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1491, as amended, McPherson. Child molestation: probation: visitation.

Existing law makes it a misdemeanor for a person to annoy or molest any child under the age of 18 years and a felony for a person to willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member of a child who is under the age of 14 years with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person or the child. Existing law also requires that a person convicted of certain sex offenses be evaluated, that a hearing be conducted at the time of sentencing to determine if probation of the defendant would pose a threat to the victim, and, if a defendant is granted probation, that the defendant be placed in an appropriate treatment program designed to deal with child molestation or sexual offenders, if an appropriate program is available in the county.

This bill would provide that in any case in which a person is convicted of violating any of the above offenses regarding annoying, molesting, or committing lewd or lascivious acts

upon a child or certain sex offenses in which there is a child victim and probation is granted, visitation of the child victim shall be prohibited by any court order granting probation and that court order shall not be modified to permit visitation, except upon the request of the victim *and a finding by the court that such a modification to permit visitation would be in the best interest of the victim.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647.6 of the Penal Code is
 2 amended to read:
 3 647.6. (a) Every person who annoys or molests any
 4 child under the age of 18 shall be punished by a fine not
 5 exceeding one thousand dollars (\$1,000), by
 6 imprisonment in a county jail not exceeding one year, or
 7 by both the fine and imprisonment.
 8 (b) Every person who violates this section after having
 9 entered, without consent, an inhabited dwelling house, or
 10 trailer coach as defined in Section 635 of the Vehicle
 11 Code, or the inhabited portion of any other building, shall
 12 be punished by imprisonment in the state prison, or in a
 13 county jail not exceeding one year.
 14 (c) (1) Every person who violates this section shall be
 15 punished upon the second and each subsequent
 16 conviction by imprisonment in the state prison.
 17 (2) Every person who violates this section after a
 18 previous felony conviction under this section, conviction
 19 under Section 288, or felony conviction under Section
 20 311.4 involving a minor under the age of 14 years shall be
 21 punished by imprisonment in the state prison for two,
 22 four, or six years.
 23 (d) (1) In any case in which a person is convicted of
 24 violating this section and probation is granted, the court
 25 shall require counseling as a condition of probation,
 26 unless the court makes a written statement in the court
 27 record, that counseling would be inappropriate or
 28 ineffective.



1 (2) In any case in which a person is convicted of
2 violating this section and probation is granted, visitation
3 of the child victim shall be prohibited by any court order
4 granting probation and that court order shall not be
5 modified to permit visitation, except upon the request of
6 the victim *and a finding by the court that such a*
7 *modification to permit visitation would be in the best*
8 *interest of the victim.*

9 SEC. 2. Section 1203.067 of the Penal Code is
10 amended to read:

11 1203.067. (a) Notwithstanding any other law, before
12 probation may be granted to any person convicted of a
13 felony specified in Section 261, 262, 264.1, 286, 288, 288a,
14 or 289, who is eligible for probation, the court shall do all
15 of the following:

16 (1) Order the defendant evaluated pursuant to
17 Section 1203.03, or similar evaluation by the county
18 probation department.

19 (2) Conduct a hearing at the time of sentencing to
20 determine if probation of the defendant would pose a
21 threat to the victim. The victim shall be notified of the
22 hearing by the prosecuting attorney and given an
23 opportunity to address the court.

24 (3) Order any psychiatrist or psychologist appointed
25 pursuant to Section 288.1 to include a consideration of the
26 threat to the victim and the defendant's potential for
27 positive response to treatment in making his or her report
28 to the court. Nothing in this section shall be construed to
29 require the court to order an examination of the victim.

30 (b) If a defendant is granted probation pursuant to
31 subdivision (a), the court shall order the defendant to be
32 placed in an appropriate treatment program designed to
33 deal with child molestation or sexual offenders, if an
34 appropriate program is available in the county.

35 (c) Any defendant ordered to be placed in a treatment
36 program pursuant to subdivision (b) shall be responsible
37 for paying the expense of his or her participation in the
38 treatment program as determined by the court. The
39 court shall take into consideration the ability of the



1 defendant to pay, and no defendant shall be denied
2 probation because of his or her inability to pay.

3 (d) In any case in which a person is subject to this
4 section and probation is granted, visitation of any child
5 victim shall be prohibited by any court order granting
6 probation and that court order shall not be modified to
7 permit visitation, except upon the request of the victim.

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