AMENDED IN ASSEMBLY MAY 30, 1995

AMENDED IN ASSEMBLY MAY 4, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 1892

Introduced by Assembly Member Burton

February 24, 1995

An act to amend Section 636 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1892, as amended, Burton. Privacy: eavesdropping.

Existing law provides that every person who, without permission from all parties to the conversation, eavesdrops on or records by means of an electronic or other device, a conversation between a person who is in the physical custody of a law enforcement officer and his or her attorney, religious advisor, or licensed physician is guilty of a felony.

This bill would *change that provision to apply only to eavesdropping by means of an electronic device and would* provide, in addition, that every person who, intentionally and without permission from all parties to the conversation, nonelectronically eavesdrops upon a conversation, or any portion thereof, that occurs in a place where there exists a reasonable expectation of privacy, between a person who is in the physical custody of a law enforcement officer or other public officer and that person's attorney, religious advisor, or licensed physician, is guilty of a misdemeanor or felony, and

upon conviction shall be punished as specified. The bill would impose a state-mandated local program upon local government by creating a new crime.

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:

SECTION 1. Section 636 of the Penal Code is amended to read:

636. (a) Every person who, without permission from all parties to the conversation, eavesdrops on or records, by means of an electronic ~~or other~~ device, a conversation, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney, religious advisor, or licensed physician, is guilty of a felony.

(b) Every person who, intentionally and without permission from all parties to the conversation, nonelectronically eavesdrops upon a conversation, or any portion thereof, that occurs between a person who is in the physical custody of a law enforcement officer or other public officer and that person's attorney, religious advisor, or licensed physician, is guilty of a public offense. This subdivision applies to conversations that occur in a place, and under circumstances, where there exists a reasonable expectation of privacy, including a custody holding area, holding area, or anteroom. This subdivision does not apply to conversations that are inadvertently overheard or that take place in a courtroom or other room used for adjudicatory proceedings.

~~(c)~~ A person who is convicted of violating this ~~section~~ *subdivision* shall be punished by imprisonment in the state prison, or in the county jail for a term not to exceed one year, or by a fine not to exceed two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

~~(d)~~

(c) This section shall not apply to any employee of a public utility engaged in the business of providing service and facilities for telephone or telegraph communications while engaged in the construction, maintenance, conduct, or operation of the service or facilities of that public utility who listens in to conversations for the limited purpose of testing or servicing equipment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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