

AMENDED IN ASSEMBLY APRIL 3, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 327

Introduced by Assembly Member Havice

February 14, 1997

An act to amend Section ~~261.5~~ *11165.1* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 327, as amended, Havice. ~~Unlawful sexual intercourse~~
Sexual assault.

~~Under existing law, an adult who has sexual intercourse with a minor who is not the adult's spouse is subject to various criminal and civil penalties.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Existing law defines "sexual abuse" as sexual assault or sexual exploitation, for purposes of the Child Abuse and Neglect Reporting Act. "Sexual assault" is defined under the act to include several specified sex offenses. Failure to report known or suspected instances of child abuse, including sexual abuse, under the act is a misdemeanor.

This bill would add unlawful sexual intercourse with a child under the age of 16 years when the perpetrator is over the age of 21 years and lewd and lascivious acts with a child of 14 or 15 years of age when the perpetrator is more than 10 years older than the victim to the offenses included in that

definition. Because the bill would expand the scope of a crime, the bill would impose a state-mandated local program.

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: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

1 ~~SECTION 1. Section 261.5 of the Penal Code is~~
2 *SECTION 1. Section 11165.1 of the Penal Code is*
3 *amended to read:*
4 11165.1. As used in this article, “sexual abuse” means
5 sexual assault or sexual exploitation as defined by the
6 following:
7 (a) “Sexual assault” means conduct in violation of one
8 or more of the following sections: Section 261 (rape),
9 *subdivision (d) of Section 261.5 (statutory rape), 264.1*
10 *(rape in concert), 285 (incest), 286 (sodomy), subdivision*
11 *(a) or (b), or paragraph (1) of subdivision (c) of Section*
12 *288 (lewd or lascivious acts upon a child—under 14 years*
13 *of age), 288a (oral copulation), 289 (penetration of a*
14 *genital or anal opening by a foreign object), or ~~647a~~ 647.6*
15 *(child molestation).*
16 (b) Conduct described as “sexual assault” includes,
17 but is not limited to, all of the following:
18 (1) Any penetration, however slight, of the vagina or
19 anal opening of one person by the penis of another
20 person, whether or not there is the emission of semen.
21 (2) Any sexual contact between the genitals or anal
22 opening of one person and the mouth or tongue of
23 another person.
24 (3) Any intrusion by one person into the genitals or
25 anal opening of another person, including the use of any
26 object for this purpose, except that, it does not include
27 acts performed for a valid medical purpose.



1 (4) The intentional touching of the genitals or
2 intimate parts (including the breasts, genital area, groin,
3 inner thighs, and buttocks) or the clothing covering
4 them, of a child, or of the perpetrator by a child, for
5 purposes of sexual arousal or gratification, except that, it
6 does not include acts which may reasonably be construed
7 to be normal caretaker responsibilities; interactions with,
8 or demonstrations of affection for, the child; or acts
9 performed for a valid medical purpose.

10 (5) The intentional masturbation of the perpetrator's
11 genitals in the presence of a child.

12 (c) "Sexual exploitation" refers to any of the following:

13 (1) Conduct involving matter depicting a minor
14 engaged in obscene acts in violation of Section 311.2
15 (preparing, selling, or distributing obscene matter) or
16 subdivision (a) of Section 311.4 (employment of minor to
17 perform obscene acts).

18 (2) Any person who knowingly promotes, aids, or
19 assists, employs, uses, persuades, induces, or coerces a
20 child, or any person responsible for a child's welfare, who
21 knowingly permits or encourages a child to engage in, or
22 assist others to engage in, prostitution or a live
23 performance involving obscene sexual conduct, or to
24 either pose or model alone or with others for purposes of
25 preparing a film, photograph, negative, slide, drawing,
26 painting, or other pictorial depiction, involving obscene
27 sexual conduct. For the purpose of this section, "person
28 responsible for a child's welfare" means a parent,
29 guardian, foster parent, or a licensed administrator or
30 employee of a public or private residential home,
31 residential school, or other residential institution.

32 (3) Any person who depicts a child in, or who
33 knowingly develops, duplicates, prints, or exchanges, any
34 film, photograph, video tape, negative, or slide in which
35 a child is engaged in an act of obscene sexual conduct,
36 except for those activities by law enforcement and
37 prosecution agencies and other persons described in
38 subdivisions (c) and (e) of Section 311.3.

39 *SEC. 2. No reimbursement is required by this act*
40 *pursuant to Section 6 of Article XIII B of the California*



1 Constitution because the only costs that may be incurred
2 by a local agency or school district will be incurred
3 because this act creates a new crime or infraction,
4 eliminates a crime or infraction, or changes the penalty
5 for a crime or infraction, within the meaning of Section
6 17556 of the Government Code, or changes the definition
7 of a crime within the meaning of Section 6 of Article
8 XIII B of the California Constitution.

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

13 amended to read:

14 ~~261.5. (a) Unlawful sexual intercourse is an act of~~
15 ~~sexual intercourse accomplished with a person who is not~~
16 ~~the spouse of the perpetrator, if the person is a minor. For~~
17 ~~the purposes of this section, a “minor” is a person under~~
18 ~~the age of 18 years and an “adult” is a person who is at least~~
19 ~~18 years of age.~~

20 ~~(b) Any person who engages in an act of unlawful~~
21 ~~sexual intercourse with a minor who is not more than~~
22 ~~three years older or three years younger than the~~
23 ~~perpetrator, is guilty of a misdemeanor.~~

24 ~~(c) Any person who engages in an act of unlawful~~
25 ~~sexual intercourse with a minor who is more than three~~
26 ~~years younger than the perpetrator is guilty of either a~~
27 ~~misdemeanor or a felony, and shall be punished by~~
28 ~~imprisonment in a county jail not exceeding one year, or~~
29 ~~by imprisonment in the state prison.~~

30 ~~(d) Any person over the age of 21 years who engages~~
31 ~~in an act of unlawful sexual intercourse with a minor who~~
32 ~~is under 16 years of age is guilty of either a misdemeanor~~
33 ~~or a felony, and shall be punished by imprisonment in a~~
34 ~~county jail not exceeding one year, or by imprisonment~~
35 ~~in the state prison for two, three, or four years.~~

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



1 ~~(A) An adult who engages in an act of unlawful sexual~~
2 ~~intercourse with a minor less than two years younger than~~
3 ~~the adult is liable for a civil penalty not to exceed two~~
4 ~~thousand dollars (\$2,000).~~

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

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

13 ~~(D) An adult over the age of 21 years who engages in~~
14 ~~an act of unlawful sexual intercourse with a minor under~~
15 ~~16 years of age is liable for a civil penalty not to exceed~~
16 ~~twenty-five thousand dollars (\$25,000).~~

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

