

AMENDED IN ASSEMBLY APRIL 22, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1313**

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**Introduced by Assembly Member Rod Pacheco**

February 26, 1999

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~~An act to amend Section 647 of the Penal Code, relating to privacy. An act relating to drug offenders.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1313, as amended, Rod Pacheco. ~~Disorderly conduct; unlawful surveillance~~ *Drug offenders.*

*Existing law provides criminal penalties for those who violate the drug laws of this state.*

*This bill would provide that it is the intent of the Legislature to reform the way in which the State of California sentences drug law violators.*

~~(1) Existing law makes it a misdemeanor for anyone, while loitering, prowling, or wandering upon the private property of another, at any time, to peek in the door or window of any inhabited building or structure, where the person has no visible or lawful business with the owner or occupant. Existing law also makes it a misdemeanor for anyone who looks through a hole or opening or views, by means of any instrumentality, into the interior of a room, where the occupant has a reasonable expectation of privacy, with the intent to invade that privacy. A misdemeanor is punishable by imprisonment in a county jail not exceeding 6 months, by a fine not exceeding \$1,000, or by both. Existing law authorizes~~

~~the court, upon conviction for either of the above offenses, to require counseling as a condition of probation and also makes the 2nd or subsequent conviction for either of the above offenses a misdemeanor punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both.~~

~~This bill would additionally provide that anyone who secretes a periscope, telescope, binoculars, camera, or camcorder with the intent to invade the privacy of a person or persons who otherwise have a reasonable expectation of privacy, whether in a public or private place, is also guilty of disorderly conduct, punishable as a misdemeanor and subject to these sentencing provisions. By creating a new crime, this bill would impose a state-mandated local program.~~

~~This bill would also provide that the above-described new provisions do not apply to public employees, and that it is a defense to a violation of those provisions that the person charged with the violation was engaged in a legitimate criminal investigation, and was acting within the course and scope of his or her duties in that capacity.~~

~~(2) 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 no. State-mandated local program: yes no.~~

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

- 1 ~~SECTION 1. Section 647 of the Penal Code is~~
- 2 ~~SECTION 1. It is the intent of the Legislature to~~
- 3 ~~reform the way in which the State of California sentences~~
- 4 ~~drug law violators.~~
- 5 ~~amended to read:~~
- 6 ~~647. Every person who commits any of the following~~
- 7 ~~acts is guilty of disorderly conduct, a misdemeanor:~~



1 ~~(a) Who solicits anyone to engage in or who engages~~  
2 ~~in lewd or dissolute conduct in any public place or in any~~  
3 ~~place open to the public or exposed to public view.~~

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

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

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

24 ~~(e) Who loiters or wanders upon the streets or from~~  
25 ~~place to place without apparent reason or business and~~  
26 ~~who refuses to identify himself or herself and to account~~  
27 ~~for his or her presence when requested by any peace~~  
28 ~~officer so to do, if the surrounding circumstances would~~  
29 ~~indicate to a reasonable person that the public safety~~  
30 ~~demands this identification.~~

31 ~~(f) Who is found in any public place under the~~  
32 ~~influence of intoxicating liquor, any drug, controlled~~  
33 ~~substance, toluene, or any combination of any~~  
34 ~~intoxicating liquor, drug, controlled substance, or~~  
35 ~~toluene, in such a condition that he or she is unable to~~  
36 ~~exercise care for his or her own safety or the safety of~~  
37 ~~others, or by reason of his or her being under the~~  
38 ~~influence of intoxicating liquor, any drug, controlled~~  
39 ~~substance, toluene, or any combination of any~~  
40 ~~intoxicating liquor, drug, or toluene, interferes with or~~



1 ~~obstructs or prevents the free use of any street, sidewalk,~~  
2 ~~or other public way.~~

3 ~~(g) When a person has violated subdivision (f) of this~~  
4 ~~section, a peace officer, if he or she is reasonably able to~~  
5 ~~do so, shall place the person, or cause him or her to be~~  
6 ~~placed, in civil protective custody. The person shall be~~  
7 ~~taken to a facility, designated pursuant to Section 5170 of~~  
8 ~~the Welfare and Institutions Code, for the 72-hour~~  
9 ~~treatment and evaluation of inebriates. A peace officer~~  
10 ~~may place a person in civil protective custody with that~~  
11 ~~kind and degree of force which would be lawful were he~~  
12 ~~or she effecting an arrest for a misdemeanor without a~~  
13 ~~warrant. No person who has been placed in civil~~  
14 ~~protective custody shall thereafter be subject to any~~  
15 ~~criminal prosecution or juvenile court proceeding based~~  
16 ~~on the facts giving rise to this placement. This subdivision~~  
17 ~~shall not apply to the following persons:~~

18 ~~(1) Any person who is under the influence of any drug,~~  
19 ~~or under the combined influence of intoxicating liquor~~  
20 ~~and any drug.~~

21 ~~(2) Any person who a peace officer has probable cause~~  
22 ~~to believe has committed any felony, or who has~~  
23 ~~committed any misdemeanor in addition to subdivision~~  
24 ~~(f) of this section.~~

25 ~~(3) Any person who a peace officer in good faith~~  
26 ~~believes will attempt escape or will be unreasonably~~  
27 ~~difficult for medical personnel to control.~~

28 ~~(h) Who loiters, prowls, or wanders upon the private~~  
29 ~~property of another, at any time, without visible or lawful~~  
30 ~~business with the owner or occupant. As used in this~~  
31 ~~subdivision, "loiter" means to delay or linger without a~~  
32 ~~lawful purpose for being on the property and for the~~  
33 ~~purpose of committing a crime as opportunity may be~~  
34 ~~discovered.~~

35 ~~(i) Who, while loitering, prowling, or wandering upon~~  
36 ~~the private property of another, at any time, peeks in the~~  
37 ~~door or window of any inhabited building or structure,~~  
38 ~~without visible or lawful business with the owner or~~  
39 ~~occupant.~~



1 ~~(j) Who lodges in any building, structure, vehicle, or~~  
2 ~~place, whether public or private, without the permission~~  
3 ~~of the owner or person entitled to the possession or in~~  
4 ~~control of it.~~

5 ~~(k) (1) Anyone who looks through a hole or opening,~~  
6 ~~into, or otherwise views, by means of any instrumentality,~~  
7 ~~including, but not limited to, a periscope, telescope,~~  
8 ~~binoculars, camera, or camcorder, the interior of a~~  
9 ~~bathroom, changing room, fitting room, dressing room, or~~  
10 ~~tanning booth, or the interior of any other area in which~~  
11 ~~the occupant has a reasonable expectation of privacy,~~  
12 ~~with the intent to invade the privacy of a person or~~  
13 ~~persons inside. This subdivision shall not apply to those~~  
14 ~~areas of a private business used to count currency or other~~  
15 ~~negotiable instruments.~~

16 ~~(2) Anyone who secretes a periscope, telescope,~~  
17 ~~binoculars, camera, or camcorder with the intent to~~  
18 ~~invade the privacy of a person or persons who otherwise~~  
19 ~~have a reasonable expectation of privacy, whether in a~~  
20 ~~public or private place, is guilty of disorderly conduct, a~~  
21 ~~misdemeanor. This paragraph shall not apply to public~~  
22 ~~employees. It shall be a defense to a charge of violation of~~  
23 ~~this paragraph that the person so charged was engaged in~~  
24 ~~a legitimate criminal investigation, and was acting within~~  
25 ~~the course and scope of his or her duties in that capacity.~~

26 ~~In any accusatory pleading charging a violation of~~  
27 ~~subdivision (b), if the defendant has been once~~  
28 ~~previously convicted of a violation of that subdivision, the~~  
29 ~~previous conviction shall be charged in the accusatory~~  
30 ~~pleading. If the previous conviction is found to be true by~~  
31 ~~the jury, upon a jury trial, or by the court, upon a court~~  
32 ~~trial, or is admitted by the defendant, the defendant shall~~  
33 ~~be imprisoned in a county jail for a period of not less than~~  
34 ~~45 days and shall not be eligible for release upon~~  
35 ~~completion of sentence, on probation, on parole, on work~~  
36 ~~furlough or work release, or on any other basis until he or~~  
37 ~~she has served a period of not less than 45 days in a county~~  
38 ~~jail. In all cases in which probation is granted, the court~~  
39 ~~shall require as a condition thereof that the person be~~  
40 ~~confined in a county jail for at least 45 days. In no event~~



1 ~~does the court have the power to absolve a person who~~  
2 ~~violates this subdivision from the obligation of spending~~  
3 ~~at least 45 days in confinement in a county jail.~~

4 ~~In any accusatory pleading charging a violation of~~  
5 ~~subdivision (b), if the defendant has been previously~~  
6 ~~convicted two or more times of a violation of that~~  
7 ~~subdivision, each such previous conviction shall be~~  
8 ~~charged in the accusatory pleading. If two or more of~~  
9 ~~these previous convictions are found to be true by the~~  
10 ~~jury, upon a jury trial, or by the court, upon a court trial,~~  
11 ~~or are admitted by the defendant, the defendant shall be~~  
12 ~~imprisoned in a county jail for a period of not less than 90~~  
13 ~~days and shall not be eligible for release upon completion~~  
14 ~~of sentence, on probation, on parole, on work furlough or~~  
15 ~~work release, or on any other basis until he or she has~~  
16 ~~served a period of not less than 90 days in a county jail. In~~  
17 ~~all cases in which probation is granted, the court shall~~  
18 ~~require as a condition thereof that the person be confined~~  
19 ~~in a county jail for at least 90 days. In no event does the~~  
20 ~~court have the power to absolve a person who violates this~~  
21 ~~subdivision from the obligation of spending at least 90~~  
22 ~~days in confinement in a county jail.~~

23 ~~In addition to any punishment prescribed by this~~  
24 ~~section, a court may suspend, for not more than 30 days,~~  
25 ~~the privilege of the person to operate a motor vehicle~~  
26 ~~pursuant to Section 13201.5 of the Vehicle Code for any~~  
27 ~~violation of subdivision (b) that was committed within~~  
28 ~~1,000 feet of a private residence and with the use of a~~  
29 ~~vehicle.~~

30 ~~SEC. 2. No reimbursement is required by this act~~  
31 ~~pursuant to Section 6 of Article XIII B of the California~~  
32 ~~Constitution because the only costs that may be incurred~~  
33 ~~by a local agency or school district will be incurred~~  
34 ~~because this act creates a new crime or infraction;~~  
35 ~~eliminates a crime or infraction, or changes the penalty~~  
36 ~~for a crime or infraction, within the meaning of Section~~  
37 ~~17556 of the Government Code, or changes the definition~~



1 ~~of a crime within the meaning of Section 6 of Article~~  
2 ~~XIII B of the California Constitution.~~

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