

ASSEMBLY BILL

No. 2058

Introduced by Assembly Member Cohn

February 15, 2006

An act to amend Section 288 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as introduced, Cohn. Sex offenses: lewd and lascivious acts.

Under existing law, any person who commits a lewd or lascivious act upon a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony.

This bill would make it a misdemeanor or felony for any employee or volunteer of a school to commit the above-described act on a minor who is 14, 15, 16, or 17 years of age who attends the school where the person works or volunteers. Because the bill would create a new crime, it 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: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 288 of the Penal Code is amended to
2 read:

3 288. (a) (1) Any person who willfully and lewdly commits
4 any lewd or lascivious act, including any of the acts constituting
5 other crimes provided for in Part 1, upon or with the body, or any
6 part or member thereof, of a child who is under the age of 14
7 years, with the intent of arousing, appealing to, or gratifying the
8 lust, passions, or sexual desires of that person or the child, is
9 guilty of a felony and shall be punished by imprisonment in the
10 state prison for three, six, or eight years.

11 (2) *Any employee or volunteer of a public or private school*
12 *who commits an act described in paragraph (1) upon a minor*
13 *who is 14, 15, 16, or 17 years of age who attends the same school*
14 *at which the person is employed or volunteers, with the intent*
15 *described in paragraph (1), is guilty of a public offense and shall*
16 *be punished by imprisonment in the county jail or in the state*
17 *prison for one, two, or three years.*

18 (b) (1) Any person who commits an act described in
19 subdivision (a) by use of force, violence, duress, menace, or fear
20 of immediate and unlawful bodily injury on the victim or another
21 person, is guilty of a felony and shall be punished by
22 imprisonment in the state prison for three, six, or eight years.

23 (2) Any person who is a caretaker and commits an act
24 described in subdivision (a) upon a dependent person by use of
25 force, violence, duress, menace, or fear of immediate and
26 unlawful bodily injury on the victim or another person, with the
27 intent described in subdivision (a), is guilty of a felony and shall
28 be punished by imprisonment in the state prison for three, six, or
29 eight years.

30 (c) (1) Any person who commits an act described in
31 subdivision (a) with the intent described in that subdivision, and
32 the victim is a child of 14 or 15 years, and that person is at least
33 10 years older than the child, is guilty of a public offense and
34 shall be punished by imprisonment in the state prison for one,
35 two, or three years, or by imprisonment in a county jail for not
36 more than one year. In determining whether the person is at least
37 10 years older than the child, the difference in age shall be

1 measured from the birth date of the person to the birth date of the
2 child.

3 (2) Any person who is a caretaker and commits an act
4 described in subdivision (a) upon a dependent person, with the
5 intent described in subdivision (a), is guilty of a public offense
6 and shall be punished by imprisonment in the state prison for
7 one, two, or three years, or by imprisonment in a county jail for
8 not more than one year.

9 (d) In any arrest or prosecution under this section or Section
10 288.5, the peace officer, district attorney, and the court shall
11 consider the needs of the child victim or dependent person and
12 shall do whatever is necessary, within existing budgetary
13 resources, and constitutionally permissible to prevent
14 psychological harm to the child victim or to prevent
15 psychological harm to the dependent person victim resulting
16 from participation in the court process.

17 (e) Upon the conviction of any person for a violation of
18 subdivision (a) or (b), the court may, in addition to any other
19 penalty or fine imposed, order the defendant to pay an additional
20 fine not to exceed ten thousand dollars (\$10,000). In setting the
21 amount of the fine, the court shall consider any relevant factors,
22 including, but not limited to, the seriousness and gravity of the
23 offense, the circumstances of its commission, whether the
24 defendant derived any economic gain as a result of the crime, and
25 the extent to which the victim suffered economic losses as a
26 result of the crime. Every fine imposed and collected under this
27 section shall be deposited in the Victim-Witness Assistance Fund
28 to be available for appropriation to fund child sexual exploitation
29 and child sexual abuse victim counseling centers and prevention
30 programs pursuant to Section 13837.

31 If the court orders a fine imposed pursuant to this subdivision,
32 the actual administrative cost of collecting that fine, not to
33 exceed 2 percent of the total amount paid, may be paid into the
34 general fund of the county treasury for the use and benefit of the
35 county.

36 (f) For purposes of paragraph (2) of subdivision (b) and
37 paragraph (2) of subdivision (c), the following definitions apply:

38 (1) "Caretaker" means an owner, operator, administrator,
39 employee, independent contractor, agent, or volunteer of any of

1 the following public or private facilities when the facilities
2 provide care for elder or dependent persons:

3 (A) Twenty-four hour health facilities, as defined in Sections
4 1250, 1250.2, and 1250.3 of the Health and Safety Code.

5 (B) Clinics.

6 (C) Home health agencies.

7 (D) Adult day health care centers.

8 (E) Secondary schools that serve dependent persons and
9 postsecondary educational institutions that serve dependent
10 persons or elders.

11 (F) Sheltered workshops.

12 (G) Camps.

13 (H) Community care facilities, as defined by Section 1402 of
14 the Health and Safety Code, and residential care facilities for the
15 elderly, as defined in Section 1569.2 of the Health and Safety
16 Code.

17 (I) Respite care facilities.

18 (J) Foster homes.

19 (K) Regional centers for persons with developmental
20 disabilities.

21 (L) A home health agency licensed in accordance with
22 Chapter 8 (commencing with Section 1725) of Division 2 of the
23 Health and Safety Code.

24 (M) An agency that supplies in-home supportive services.

25 (N) Board and care facilities.

26 (O) Any other protective or public assistance agency that
27 provides health services or social services to elder or dependent
28 persons, including, but not limited to, in-home supportive
29 services, as defined in Section 14005.14 of the Welfare and
30 Institutions Code.

31 (P) Private residences.

32 (2) “Board and care facilities” means licensed or unlicensed
33 facilities that provide assistance with one or more of the
34 following activities:

35 (A) Bathing.

36 (B) Dressing.

37 (C) Grooming.

38 (D) Medication storage.

39 (E) Medical dispensation.

40 (F) Money management.

1 (3) “Dependent person” means any person who has a physical
2 or mental impairment that substantially restricts his or her ability
3 to carry out normal activities or to protect his or her rights,
4 including, but not limited to, persons who have physical or
5 developmental disabilities or whose physical or mental abilities
6 have significantly diminished because of age. “Dependent
7 person” includes any person who is admitted as an inpatient to a
8 24-hour health facility, as defined in Sections 1250, 1250.2, and
9 1250.3 of the Health and Safety Code.

10 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
11 subdivision (c) apply to the owners, operators, administrators,
12 employees, independent contractors, agents, or volunteers
13 working at these public or private facilities and only to the extent
14 that the individuals personally commit, conspire, aid, abet, or
15 facilitate any act prohibited by paragraph (2) of subdivision (b)
16 and paragraph (2) of subdivision (c).

17 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
18 subdivision (c) do not apply to a caretaker who is a spouse of, or
19 who is in an equivalent domestic relationship with, the dependent
20 person under care.

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the
26 penalty for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition of a
28 crime within the meaning of Section 6 of Article XIII B of the
29 California Constitution.